

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-08-2329

RECEIVED

APR - 9 2013

S.C. Supreme Court

Robert O. Call, Jr., ...Appellant,

v.

Berkeley County Republican Party (Timothy Callanan, as Chairman);
South Carolina Republican Party (Matt Moore, as Executive Director, and
Chad Connolly, as Chairman); Berkeley County Election Commission;
South Carolina State Election Commission (Marci Andino, as Executive
Director, and Chris Whitmire as Director of Public Information and
Training); Timothy Callanan and Kenneth Gunn, ... Respondents.

**MOTION OF SOUTH CAROLINA STATE ELECTION COMMISSION
TO DISMISS APPEAL AS MOOT**

Respondent South Carolina State Election Commission (Marci Andino, as Executive
Director, and Chris Whitmire as Director of Public Information and Training) (collectively, SEC)
hereby move this Court for an Order dismissing Appellant Robert O. Call's (Appellant) appeal
on the ground the appeal is moot.

FACTUAL BACKGROUND

Appellant was the incumbent Republican candidate for District 3 Berkeley County
Council (District 3) and lost the primary election on June 12, 2012, to his challenger, Respondent
Kenneth Gunn. (See Ex. 1, Complaint ¶2; see also Appellant's Initial Brief 4.) Appellant filed
his Verified Summons and Complaint on August 10, 2012, five days before the statutory

deadline for candidates' names to be certified for inclusion on the general election ballot pursuant to Section 7-13-350 of the South Carolina Code. (Ex. 1.) The SEC, however, was not served with Appellant's Complaint until August 15, 2012—the deadline for political parties to certify candidates' names for the November 2012 general election. (Ex. 1, cover letter with date stamp.) Appellant's complaint alleges Respondent Gunn violated Section 8-13-1356(B) of the South Carolina Code, which requires a non-exempt individual to file a paper copy of his statement of economic interest (SEI) contemporaneously with his statement of intention of candidacy (SIC), by not contemporaneously filing a copy of his SEI with his SIC. The relief requested in Appellant's Complaint asked the circuit court to declare Respondent Gunn could not be certified to the ballot as the Republican Party candidate for District 3 Berkeley County Council, to enjoin his name being certified, or to have his name decertified if it had already been certified. (Ex. 1, p. 11.)

On August 16, 2012, the day after it received Appellant's Complaint, the SEC filed a motion to dismiss on the grounds laches barred relief and the statutory deadline for certification had passed. (Ex. 2, SEC's Motion to Dismiss, p. 1–3.) A hearing was held on the SEC's motion to dismiss on August 17, 2012, two days after the statutory deadline for certifying names for the general election ballot. During this hearing, testimony was taken and evidence received both in support of and in opposition to the factual position and legal arguments advanced by Appellant in his Complaint. (Ex. 3, Transcript of August 17 Hearing, 39:3–93:4.) After receiving testimony and evidence, the circuit court judge granted the SEC's motion to dismiss on the ground of laches and an Order was entered on August 23, 2012. (Ex. 3, Tr., 93:9–16.) Appellant filed his Notice of Appeal on September 6, 2012, exactly two months before the general election.

During the pendency of the appeal, Appellant did not seek to expedite the appeal or to stay or postpone the upcoming election for District 3 Berkeley County Council, and the general election was held on November 6, 2012. Mr. Gunn received the majority of the votes and was elected to District 3 Berkeley County Council.

DISCUSSION

Appellant argues the circuit court judge erroneously determined Appellant had unreasonably delayed in bringing his lawsuit, thereby prejudicing the Respondents. The only relief requested by Appellant asks this Court to overturn the circuit court judge's order dismissing the complaint and to remand the case for a trial on the merits. Appellant's appeal should be dismissed as moot because both the election and a trial on the merits have been held and no actual controversy exists.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

I. The 2012 General Election Has Been Held, Therefore This Appeal is Moot.

Appellant could only receive his requested relief from the circuit court prior to the November 6, 2012 general election. Because the election has been held, Appellant's request for relief is moot, and thus his appeal is moot and should be dismissed.

In his Complaint, Appellant primarily sought a temporary restraining order and a temporary and permanent injunction to enjoin the Berkeley County Republican Party and the

South Carolina Republican Party from certifying Respondent Gunn as the Republican Party candidate for District 3, and requested the circuit court order Respondent Gunn's name be decertified if certification had occurred prior to the hearing. Respondent Gunn's name cannot be decertified from the general election ballot at this point in time because the general election has been conducted and Respondent Gunn has been elected to District 3. "Where only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits, or consider the granting of a new trial after it has become impossible to have a new trial in the case." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 597 (2001). Because Respondent Gunn cannot be decertified from the general election ballot, Appellant's requested relief is no longer justiciable and a trial on the merits is impossible. Therefore this Court should dismiss Appellant's appeal as moot.

II. A Hearing on the Merits Has Been Held, Therefore This Appeal is Moot.

In this appeal, Appellant's only requested relief is a remand for a trial on the merits. As is evident from the transcript of the hearing, Appellant already has received the relief he seeks from this Court—the circuit court judge held a hearing on the merits of Appellant's case on August 17, 2012. Therefore, this appeal is moot because no actual controversy exists, and this appeal should be dismissed.

At the August 17, 2012 hearing, after the parties had made their arguments regarding the SEC's motion to dismiss, the circuit court judge said:

All right. In order to preserve time, I don't want to make y'all sit here and wait while I read these cases. **I'm going to take the motion under advisement. I'm going to proceed and take the testimony** and then after I've heard the testimony, I want to sit down and digest these cases and I'll make a decision then on your motion. **And if I rule against your motion, I'll make a decision on the factual findings at the same time.** Because I don't want to go take a break, read that, and y'all are sitting here twiddling your thumbs. At least we can accomplish

something. **So I'm going to take it under advisement and proceed with the request for the restraining order.**

(Ex. 3, Tr., 38:12–25) (emphasis added). It is clear from the circuit court judge's own words that he held a hearing on the merits of Appellant's complaint.

During the hearing on the merits, Appellant took the stand and testified that Mr. Callanan, the chairman of the Berkeley County Republican Party, told every candidate to file his statement of economic interest (SEI) online and not with Mr. Callanan. (Ex. 3, Tr., 46:14–21.) During cross-examination, Appellant testified he had no personal knowledge of whether Respondent Gunn provided to Mr. Callanan a paper copy of this SEI when he filed his statement of intention of candidacy (SIC). (Ex. 3, Tr., 57:1–4.) Mr. Callanan testified Respondent Gunn met with Mr. Callanan on March 26, 2012, in a parking lot prior to a county council meeting, and submitted paper copies of his SIC and SEI to Mr. Callanan for filing at that time. (Ex. 3, Tr., 60:6–61:4; 66:5–17.) Respondent Gunn testified to the same set of facts as did Mr. Callanan. (Ex. 3, Tr., 77:16–78:5.)

Clearly, Appellant had his day in court. The circuit court judge heard all the evidence regarding Appellant's claim. This fact is not changed simply because the circuit court judge granted the SEC's motion to dismiss based upon laches.

After the circuit court granted the SEC's motion to dismiss and denied Appellant's requested relief, Appellant did not seek to enjoin the election and took no steps whatsoever to prevent the general election from going forward with Respondent Gunn's name on the ballot as the Republican Party candidate. Nothing in the Record designated by Appellant indicates Appellant sought to have his own name certified to the general election ballot after he lost the primary election. Appellant did not protest the election results, nor has Appellant asked this Court to nullify the results of the general election. Even were this Court to vacate the order

dismissing Appellant's Complaint and require the circuit court to make factual findings on the evidence taken, Appellant cannot receive his requested relief because the November 6, 2012 general election has come and gone. In sum, Appellant seeks no meaningful relief from this Court and could seek no meaningful relief from the circuit court on remand.

Any decision by this Court will not have a practical legal effect because none of the relief Appellant has requested during the life of his case can be granted. Therefore, this Court should dismiss Appellant's appeal as moot.

CONCLUSION

Appellant cannot receive the relief requested from this Court nor can he receive the relief he requested from the circuit court. Therefore, any decision by this Court will not have a practical legal effect and Respondent South Carolina State Election Commission respectfully requests this Court dismiss Appellant's appeal as moot.

Respectfully submitted,

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By: 

Attorneys for Respondent South Carolina
State Election Commission (Marci Andino as
Executive Director and Chris Whitmire as
Director of Public Information and Training)

April 8, 2013
Columbia, South Carolina

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August 13, 2012

VIA-CERTIFIED MAIL ONLY
RETURN RECEIPT REQUEST
DELIVERED RESTRICTED TO ADDRESSEE
7011 2000 0001 8674 0720

RECEIVED

AUG 15 2012

SC ELECTION COMM.

Marci Andino, Executive Director
South Carolina State Election Commission
2221 Devine Street, Suite 101
Columbia, SC 29205

RE: Robert O. Call, Jr. v. Berkeley County Republican Party, South Carolina Republican
Party, et.al
Case No.: 2012-CP-08-2329
Our file: 12-088

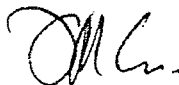
Dear Ms. Andino:

Enclosed for service upon the South Carolina State Election Commission is a filed copy of a Summons and Complaint relative to the above case which is served pursuant to South Carolina Rules to Civil Procedure. It is my understanding that a hearing has been scheduled before the Honorable Judge J.C. Nicholson, Jr. at the Charleston County Judicial Center located at 100 Broad Street on Wednesday, August 15, 2012 at 10:00a.m.

The purpose of the hearing is for the Plaintiff to seek a Temporary Restraining Order and Temporary Injunction, as referred to in the attached Complaint.

With kindest regards, I am

Very truly yours,



Frank M. Cisa

FMC/alp
Enclosures

EXHIBIT

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Robert O. Call, Jr.)
Plaintiff,)
)
vs.)
)
Berkeley County Republican Party)
(Timothy Callanan, as Chairman),)
South Carolina Republican Party)
(Matt Moore as Executive Director)
& Chad Connolly, as Chairman),)
Berkeley County Election)
Commission; South Carolina State)
Election Commission (Marci Andino,))
as Executive Director & Chris)
Whitmire as Director of Public)
Information and Training);)
Timothy Callanan and Kenneth)
E. Gunn)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT COURT
CASE NO.: 2012-CP-08- 2329

SUMMONS

FILED
2012 AUG 10 AM 11:40
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their office located at 858 Lowcountry Blvd., Suite 101, Mt. Pleasant, South Carolina, 29464 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

(SIGNATURE ON FOLLOWING PAGE)

CISA & DODDS, LLP

By:



Frank M. Cisa
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-6530

ATTORNEY FOR PLAINTIFF

This 9th day of August, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Robert O. Call, Jr.)
Plaintiff,)
vs.)
Berkeley County Republican Party)
(Timothy Callanan, as Chairman),)
South Carolina Republican Party)
(Matt Moore as Executive Director)
& Chad Connolly, as Chairman),)
Berkeley County Election)
Commission; South Carolina State)
Election Commission (Marci Andino,))
as Executive Director & Chris)
Whitmire as Director of Public)
Information and Training);)
Timothy Callanan and Kenneth)
E. Gunn)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT COURT
CASE NO.: 2012-CP-08-2329

FILED
AUG 10 AM 11:40
CLERK OF COURT
BERKELEY COUNTY, SC

VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT
WRIT OF MANDAMUS, AND
INJUNCTIVE RELIEF

Plaintiff, Robert O. Call, Jr., complaining of the above named Defendants alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff, Robert O. Call, Jr., by and through his undersigned counsel, seeks a Declaratory Judgment under Rule 57, Writ of Mandamus and Injunctive Relief under Rule 65 of the S.C. Rules of Procedure in connection with a dispute as to whether the Defendants must comply with the S.C. Supreme Court's Order in *Anderson v. S.C. Election Comm'n Op. No 27210* (S.C. Sup. Ct. Filed May 2, 2012) *interpreting* S.C. Code Section 8-13-1356 and holding that given its plain language, Section 8-13-1356 should be applied as written).

PARTIES JURISDICTION AND VENUE

2. Plaintiff is a citizen and resident of Berkeley County, South Carolina and is currently a member of Berkeley County Council and ran as a candidate for the Berkeley County Council District 3 seat in the Republican Primary held on June 12, 2012.
3. Defendant, Berkeley County Republican Party (BCRP), is a county committee of the South Carolina Republican Party-certified by the South Carolina Election Commission and the Berkeley County Election Commission to nominate candidates for offices' to be voted on in a general or special election and nominates candidates of that party by party primary.
4. Defendant, South Carolina Republican Party (SCRCP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. Seq. Chad Connolly is sued in his capacity as Chairman of the SCRCP. Defendants BCRP and SCRCP are collectively referred to herein as "Party Defendants."
5. Defendant Berkeley County Election Commission (BEC), has been codified by the South Carolina Legislature as a government entity which conducts elections and registers electors in Berkeley County. BEC is a necessary party to this action to ensure complete relief.
6. Defendant, South Carolina State Election Commission (SCSEC), is a commission organized under the laws of South Carolina with a primary mission to ensure every eligible citizen has the opportunity to register to vote, participate in fair and

impartial elections, and have the assurance that their votes will count. SCSEC is a necessary party to the action to ensure complete relief.

7. Defendant, Kenneth E. Gunn, is a citizen and resident of Berkeley County running for election to the Berkeley County Council District 3 seat, (the "Candidate")
8. The Defendant, Timothy Callanan is a citizen and resident of Berkeley County, and serves as the Berkeley County, Republican Party Chairman and candidate filing officer for the Berkeley County Republican Party.
9. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act under S.C. Code Section 15-53-10 through 15-53-140 for the declaration of rights, status, and other legal relations.
10. Incorporated in this action is a Petition for a Writ of Mandamus¹ to compel officers charged with ministerial duties , which have refused to perform those duties, to immediately comply with the laws of South Carolina and carry out their respective duties.
11. Plaintiff seeks a preliminary and permanent injunction pursuant to Rule 65 of the South Carolina and respectfully request this Court to exempt Plaintiff from submitting security as contemplated in Rule 65 (c).
12. Plaintiff has substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute and Order² questioned.

¹Writ of Mandamus is a form of relief. *Plum Creek Development Co., Inc. V. City of Conway* , 334 S.C. 30 (1999).

²*Anderson v. S.C. Election Comm'n Op. No 27120* (S.C. Sup. Ct. Filed May 2, 2012)

13. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.
14. A Writ of Mandamus is needed to command those Defendants with ministerial duties, to perform those duties which Plaintiff (Petitioner) has a specific right therein, and which the Plaintiff (Petitioner) has no other legal remedy.
15. If injunctive Relief is granted against any or all of the Defendants, Plaintiff believes he is entitled to an award of attorney's fees and the cost associated with bringing this action as this Court deems appropriate, from the Defendants who have violated the Order³ of the South Carolina Supreme Court.
16. Jurisdiction and venue are proper before this Court.

GENERAL ALLEGATIONS

17. Plaintiff seeks to enforce the rule of law and protect the integrity of the election process. The General Election is scheduled for November 6, 2012 and ballots are to be provided to the Executive Director of the State Election Commission certification of candidates for the General Election is to be completed by September 15, 2012. Time is of the essence. The Court should not permit an ineligible candidate to be certified for the General Election or his name placed upon the ballot. The Court should immediately take action to prevent fraudulent ballots from being printed. Plaintiff submits that the Candidate's candidacy is *void ab initio* inasmuch as he has never been an eligible candidate for the November 6, 2012 General Election. The Candidate must be removed from the

³Id.

ballot in order for the election process to proceed in a lawful manner.

18. The gravamen of the Declaratory Judgment, Writ of Mandamus and Injunctive Relief causes of action is that the Candidate failed to (1) comply with the provision of Section 8-13-1356; (2) was unlawfully certified by the Party Defendants; (3) was held ineligible to appear on a ballot by the Supreme Court; and (4) must not be certified as candidate for the general election and must be removed from the ballot.
19. Plaintiff has brought this action to seek enforcement of South Carolina law S.C. Code Section 8-13-1356 and recent SC Supreme Court decisions. The South Carolina Supreme Court held in *Anderson v. S.C. Election Comm'n* Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) that S.C. Code Section 8-13-1356 requires a non-exempt candidate to file a paper copy of a Statement of Economic Interest (SEI) simultaneously with a Statement of Intention of Candidacy (SIC) as the only method by which a non-exempt individual can comply with Sec. 8-13-1356, *Id.* The remedy is removal of the ineligible candidate from the ballot.
20. Under Code Section 8-13-1356(B), non-exempt individuals must file a Statement of Economic Interest *at the same time* and with the same official with whom the individual files a Statement of Intention of Candidacy. (Emphasis Added).
21. Under Code Section 8-13-1356(E), an officer authorized to receive declarations of candidacy and petitions for nominations *may not* accept a Statement of Intention of Candidacy unless it is accompanied by a Statement of Economic Interest. (Emphasis Added).

22. Upon information and belief the Candidate failed to provide his SEI at the same time as his SIC, which failed to comply with Sections 8-13-1356 (B) and 8-13-1356 (E).
23. Indeed, the BCRP followed instructions provided by the SCRP that incorrectly directed the BCRP to advise non-incumbent candidates filing for office not to provide a paper copy of the SEI.
24. On May 2, 2012, the South Carolina Supreme Court issued a Declaratory Judgment holding that any individual who did not comply with the plain language requirements as set forth under 8-13-1356 (B) and (E) was **“improperly placed on the party primary ballots and must be removed”** and directed the “appropriate official of the political parties to file with the State Election Commission.... by noon May 4, 2012, a list of only those non-exempt candidates who simultaneously filed and SEI and SIC as required by Section 8-13-1356(B).” *Anderson*.
25. On May 4, 2012, per Supreme Court’s Order dated May 22, 2012, the SCRP, submitted to the SEC a list of individuals who were qualified to be certified by the SCRP.
26. In spite of the Supreme Court’s Order⁴, the party Defendants did unlawfully certify the Candidate for the June 12, 2012 Republican Primary election.
27. The Candidate is unlawful and ineligible for the General Election Ballot.
28. Section 8-13-1356(E) further provides that, “[i]f the candidate’s name

⁴*Anderson v. S.C. Election Comm’n* Op No. 27120 (S.C. Sup. Ct. Filed May 2, 2012)

inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election”.

29. The Candidate must not be certified by the Party Defendants for the General Election ballot.
30. The Candidate and Party Defendants actions are in direct conflict with the Court's decision in *Anderson* and are in absolute denial of the main premise on which the conflict stemmed.
31. The Candidate and Party Defendants were aware of the significant election issues before our Highest Court. And further that they understood and yet willfully disregarded the clear language of the statute and the Supreme Court's Order in *Anderson*.
32. The Defendant, Timothy Callanan, as the Chairman of the Berkeley County Republican Party and as the filing officer advised all Candidates that they were not to file a Statement of Economic Interest with him but instead directed Candidates to file a Statement of Economic Interest on the State Ethics Commissions website.
33. That although the Defendant, Timothy Callanan, was well aware that the Defendant, Kenneth E. Gunn, had not filed his Statement of Economic Interest at the same time that he filed his Declaration of Candidacy, he advised the SCRP that he received the Defendant, Kenneth E. Gunn's Statement of Economic Interest at the same time that he received the Declaration of Candidacy in willful

violation of the Order of the South Carolina Supreme Court.

34. The Defendant, Kenneth E. Gunn, likewise was well aware that he did not file his Statement of Economic Interest with the Defendant, Timothy Callanan at the same time that he filed his Declaration of Candidacy.
35. Even though the Defendant, Kenneth E. Gunn, failed to follow the dictates of Section 8-13-1356 and the Supreme Court's decision in *Anderson* he acquiesced to the actions of the BCRP and SCRP and allowed himself to be unlawfully certified as a Candidate in wilful violation of the decision of the Supreme Court in *Anderson*.

FOR A FIRST CAUSE OF ACTION AGAINST THE CANDIDATE AND PARTY

DEFENDANTS

(DECLARATORY JUDGMENT)

36. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.
37. The candidacy of the Candidate is *void ab initio* in much as his failure to comply with the SC Code Section 8-13-1356 renders his candidacy ineligible and his name may not be placed on the ballot.
38. Pursuant to the S.C. Uniform Declaratory Judgments Act, Plaintiff is informed and believes it is entitled to an order of this court declaring the Candidate ineligible for the November 6, 2012 General Election ballot and further declaring his candidacy declared *void ab. Initio*.

40. The Plaintiff is the only eligible candidate that can be certified for the November 6, 2012 General Election. S.C. Code Section 7-11-10 provides in pertinent part, "... this proviso shall not prevent a defeated candidate from later becoming his party's nominee for that office in that election if the candidate first selected as the party's nominee.... ceases to become the party's nominee for such office before the election is held."

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS.

(WRIT OF MANDAMUS)

40. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.
41. Once the Candidate's candidacy has been declared *void ab initio* and his name ineligible for the November 6, 2012 General Election ballot, Plaintiff is informed and believes he is entitled to an order directing those Defendants responsible for the ministerial acts of certifying candidates to the ballot and placing the name on the ballots and counting the ballots, not to certify the Candidate and not to count any votes cast for the Candidate.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(INJUNCTIVE RELIEF)

42. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.
43. The integrity of our electoral process is fundamental to our Democracy and conduct which would allow illegal and ineligible candidate on the ballot would

cause irreparable harm to the Plaintiff and the electoral process.

44. To the extent the Court should determine that injunctive relief is necessary to effectuate the order of this Court, enjoin the Defendants from certifying the Candidate to the ballot and placing his name on the ballot and counting the ballots, Plaintiff is informed and believes he is entitled to such an order.

FOR A FOURTH CAUSE OF ACTION AGAINST TIMOTHY CALLANAN

(SPOILIATION)

45. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.
46. Upon information and belief Defendant, Timothy Callanan has in his possession, custody and control the Berkeley County Republican Party candidate filing documents which Plaintiff considers to be critical evidence in this matter that has been removed from its proper location.
47. Further that Defendant Callanan has failed to comply with SC Code Section 8-13-1356 (C).
48. Upon information and belief Defendant Callanan is currently concealing the filing documents and denying access by the public and others without the authority to do so.
49. Upon information and belief, Defendant Callanan allowed for the spoliation of some of critical evidence in this matter.
50. Plaintiff is informed and believes, Defendant Callanan should be ordered by this Court (1) to *turn* over all original filing and filing related documents to the Court

to preserve this evidence and control the chain of custody, and (2) provide a complete and identical copy of the same documents to each party on this lawsuit.

WHEREFORE, the Plaintiff prays that this Court expedite and set this matter to be heard as soon as this Court deems appropriate under the circumstances. Plaintiff prays, in the interest of Justice, that this Court (1) immediately order Defendant Callanan to turn over to the Court all candidate filing and related records and further inquire as to whether or not the records are complete; (2) declare the Candidate ineligible for the November 6, 2012 General Election ballot; (3) issue a Writ of Mandamus against those several Defendants to require compliance in their various ministerial duties consistent with the S.C. Code and *Anderson*; (4) grant injunctive relief to enforce the Supreme Court's clear command under *Anderson*. Further, the Plaintiff specifically requests that this Court ORDER all Defendants to:

- (1) Comply with the holdings in *Anderson* and *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. Filed June 5, 2012);
- (2) Not certify the name of the Candidate to the General Election. *Anderson* is clear: the name "must be removed.";
- (3) Grant a Writ of Mandamus to all Defendants tasked with the necessary ministerial duties to comply with the terms on the declaratory judgment and injunctive relief.
- (4) The Court grant a temporary restraining order and a temporary and permanent injunctive to enjoin, restrain and prohibit the party Defendants from certifying the name of Kenneth E. Gunn for the republican nominee for the November 6, 2012 General Election for District 3 Berkeley County Council seat and further to the

extent the certifications have already have taken place, requiring the party

Defendants to decertify the name of Kenneth E. Gunn as a republican nominee for the November 6, 2012 General Election for District 3, Berkeley County Council seat and from issuing Berkeley County General Election ballots which contain the name of Kenneth E. Gunn as a candidate.

- (5) For an Order finding the Defendants, Timothy Callanan and Kenneth E. Gunn, in willful contempt of the Supreme Court's Order and command under *Anderson* and award the Plaintiff attorney's fees and costs of and from these Defendants;
- (6) Award court costs and attorney's fees to the Plaintiff pursuant to Rule 65 of the S.C. Rules of Civil Procedure.

CISA & DODDS, LLP



Frank M. Cisa
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-6530
Fax: (843) 881-5433
Attorneys for the Plaintiff

This 9th day of August, 2012
Mt. Pleasant, SC

20 12 CP - 08 - 2329

VERIFICATION

I HAVE READ THAT ABOVE COMPLAINT IN ITS ENTIRETY AND VERIFY
THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Robert O. Call Jr

Robert O. Call, Jr.

SWORN before me on August 9th, 2012.

Ashley Pardee

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11/7/2015

FILED
2012 AUG 10 AM 11:40
MARY P. GORDON
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Robert O. Call, Jr.

Plaintiff(s)

vs.

Berkeley County Republican Party, South
Carolina Republican Party, Et. Al

Defendant(s)

IN THE COURT OF COMMON PLEAS

2012-CP-08-2329

CIVIL ACTION COVERSHEET

- CP -

FILED
2012 AUG 10 AM 11:40
CLERK OF COURT
BERKELEY COUNTY, SC

(Please Print)

Submitted By: Frank M. Cisa, Esquire

Address: Cisa & Dodds, LLC

858 Lowcountry Blvd., Suite 101

SC Bar #:

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Other:

E-mail:

Mt. Pleasant, SC 29464

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Other (299) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | | ☐ Products Liability (340) | ☐ Partition (440) |
| ☒ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Other (399) | ☐ Building Code Violation (460) |
| | | | ☐ Other (499) |

- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
-
- | | |
|--|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | |

Submitting Party Signature: _____

Date: August 10, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Robert O. Call, Jr.,)

Plaintiff,)

v.)

Berkeley County Republican Party (Timothy Callanan, as Chairman); South Carolina Republican Party (Matt Moore, as Executive Director, and Chad Connolly, as Chairman); Berkeley County Election Commission; South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training); Timothy Callanan and Kenneth E. Gunn,)

Defendants.)

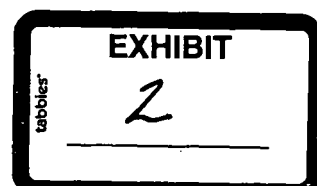
Civil Action No. 2012-CP-08-2329

**MOTION TO DISMISS OF
DEFENDANT SOUTH CAROLINA
STATE ELECTION COMMISSION**

FILED
2012 AUG 17 PM 1:28
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Pursuant to the South Carolina Rules of Civil Procedure, Defendant South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) (SEC) hereby respectfully requests that this Court grant the Motion to Dismiss on the following grounds:

1. Plaintiff has unreasonably delayed in bringing this action and Plaintiff's claims should be dismissed pursuant to the equitable doctrine of laches. The case was filed with the Clerk of Court of Berkeley County on August 13, 2012, and was not received by the SEC until August 15, 2012. Plaintiff relies on Anderson v. South Carolina Election Comm'n, 397 S.C. 551, 725 S.E.2d 704 (2012), reh'g denied May 4, 2012, and on S.C. Code Ann. § 8-13-1356(B) (Supp. 2011). Furthermore, Plaintiff alleges he was a candidate for the Berkeley County Council District 3 seat for the Republican Primary held on June 12, 2012. Therefore, Plaintiff (1) knew that Defendant Gunn had been certified as a candidate for Berkeley County Council District 3 by no later than May 4, 2012 and (2) knew that he lost the primary and that Defendant Gunn would be the Republican Party nominee for Berkeley County Council District 3 no later



than June 14, 2012 when the Berkeley County Election Commission, sitting as the Board of Canvassers, certified the results of the election. The doctrine of laches “applies where Plaintiffs’ lack of diligence, defined as an inexcusable or unreasonable delay in filing suit, prejudices Defendants.” See Castello v. United States, 365 U.S. 265, 282 (1961); White v. Daniel, 909 F.2d 99, 102 (4th. Cir. 1990); Smith v. State of South Carolina Election Commission, C.A. No. 3:12-CV-1543-CHH-CMC-JMC (D.S.C. June 18, 2012) (finding that the equitable doctrine of laches weighs against plaintiffs who sought to be included on the ballot for the June 12, 2012 primary election but were removed following Anderson because filing the action on June 11, 2012 constituted unreasonable delay when the plaintiffs knew or should have known the matters complained of no later than May 4, 2012), a copy of which is attached hereto as Attachment A for the convenience of the Court. Due to this unreasonable delay in bringing this action and failure to expeditiously serve the SEC, the equitable doctrine of laches requires that Plaintiff’s claims be dismissed.

2. Because the statutory deadline for the political parties to certify candidates for inclusion on the General Election ballot was at noon on August 15, 2012, courts are now without the power to grant the relief sought and this matter is moot. See Sasser v. South Carolina Democratic Party, 277 S.C. 67, 282 S.E.2d 602 (1981), attached hereto as Attachment B for the convenience of the Court, holding that “by the very nature of the election system, contests of a primary election must be settled in time for the electorate to exercise their voting franchise at the general election set by law. As a general rule, courts have held that they are without power to grant substantial relief once the time passes for the name of a contestant to be certified for the election of officers to be placed on the official ballot.” In Sasser, an appeal from a circuit court order sustaining demurrers to appellant’s petition to nullify the results of the June 1980 Democratic primary for the nomination to the South Carolina House of Representatives in District 106 was dismissed. Also see, Willis v. Wukela, 379 S.C. 126, 665 S.E.2d 171 (2008) attached hereto as Attachment C for the convenience of the Court, wherein relying upon Sasser the South Carolina Supreme Court dismissed an election appeal involving a municipal election explaining

that § 7-13-350 "provided that candidates nominated by party primary, except in cases of special and municipal elections, must be certified by September 18 (which has since been changed to August 15)" and went on to hold that because "the intent of the Legislature was clear in mandating that, if a municipal election is scheduled to coincide with a November general election, names of the party candidates must be certified by August 15" and dismissed the appeal with prejudice. In this case, as of noon, August 15, 2012, time passed for the name of either Plaintiff Call or Defendant Gunn to be certified to be placed on the official ballot. Therefore, this Court is without the power to grant the relief sought by the Plaintiff and Plaintiff's Complaint should be dismissed.

Respectfully submitted,

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By: Ariail B. Kirk

Attorneys for Defendant South Carolina State
Election Commission (Marci Andino, as
Executive Director, and Chris Whitmire, as
Director of Public Information and Training)

August 16, 2012

Columbia, South Carolina

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1 MS. KIRK: Thank you, Your Honor.

2 THE COURT: Your motion.

3 MR. CISA: Your Honor, if I may just
4 preliminarily explain to you what our position is.

5 As I've told you, I represent Bob Call, who's an
6 incumbent and now a candidate -- or now a member of
7 Berkeley County Council. He's an exempt candidate as
8 far as the issues we're dealing here as far as filing
9 a Statement of Economic Interest.

10 As set forth in Bob Call's -- what our position
11 is is that no non-exempt candidate in Berkeley County
12 filed a Statement of Economic Interest with the filing
13 officer, who is Tim Callanan, the chairman of the
14 Berkeley County Republican Party, simultaneously with
15 filing their declaration of candidacy because Tim
16 Callanan was operating under the missimpression that
17 it wasn't to be given to him, it was to be filed on
18 line at the state ethics commission --

19 THE COURT: Well, do you have any other -- any
20 affidavit presented by your client Mr. Call? Do you
21 have any -- is it Cull or Call? Mr. Call?

22 MR. CISA: Mr. Call. Mr. Call.

23 THE COURT: Mr. Call.

24 MR. CISA: Right.

25 THE COURT: Do you have any testimony you want



1 to offer to the Court, factually?

2 MR. CISA: Well, I can call Mr. Call and he
3 can --

4 THE COURT: Well, I mean, you don't have to. I
5 mean, I'm not telling you how to try your case. I
6 just want to know if you have any further testimony
7 from anybody --

8 MR. CISA: Well, I mean, I --

9 THE COURT: -- from the republican party in
10 Berkeley or Mr. Call or who.

11 MR. CISA: I mean --

12 THE COURT: I mean, that's what I'm trying to
13 get --

14 MR. BOLCHOZ: Your Honor, I mean, I think we can
15 stipulate to what Mr. Call would say. I wouldn't
16 cross-examine him if he's -- if he takes the stand.

17 THE COURT: Well, somebody else may want to
18 cross-examine him.

19 Do you -- do y'all just want to stipulate as to
20 his affidavit or do y'all want to call him so you can
21 cross him?

22 MR. HOWELL: I'm fine with the affidavit, Your
23 Honor.

24 MS. KUTZ: We'll stipulate to the affidavit.

25 THE COURT: Ms. Kirk?

1 MS. KIRK: We have no trouble with the
2 affidavit, Your Honor.

3 THE COURT: Okay. Well, we'll -- I understand
4 the parties stipulate Mr. Call would testify as to
5 what is in his affidavit.

6 Do you have any other testimony from anybody
7 else?

8 MR. CISA: Let me check one thing, Judge, real
9 quick.

10 THE COURT: Okay.

11 [Whereupon, Mr. Cisa and Mr. Call confer]

12 MR. BOLCHOZ: Your Honor, if I could just --
13 while they're talking about that.

14 In terms of the affidavit -- and I already said
15 I would stipulate to it -- some of it is opinion
16 based. I know you're going to read it, so we don't
17 have any problem with you reading it and interpreting
18 it. I don't know if that matters.

19 THE COURT: Well, do you want to call him or
20 not? I mean, I'm just giving you that opportunity.
21 If you want to call him, I'll tell Mr. Cisa to call
22 him, you can cross-examine him, or do what you want
23 to. I'm not trying to tell y'all how to try your
24 case. However you want to try it is fine with me. Or
25 if you want to call him as your witness. I mean, it

1 doesn't matter to me. I'm not going to tell Mr. Cisa
2 that he has to call him.

3 MR. CISA: Well, the reason I wasn't going to
4 call him is because I was thinking that everybody
5 accepted the affidavit, didn't have any problem with
6 it.

7 THE COURT: Mr. Callanan, what's your position?

8 MR. CALLANAN: I just took another -- Your
9 Honor, I got this last night. I just -- I noticed
10 that he says based on everything he knows --

11 THE COURT: Well, I got it this morning --

12 MR. CALLANAN: -- certified --

13 THE COURT: -- so we're in the same boat. Okay?

14 MR. CALLAHAN: Yeah. Let's just maybe -- can I
15 just withdraw that and I'll cross-examine? Let him
16 put him up --

17 THE COURT: That's fine.

18 MR. CISA: I call --

19 MR. CALLANAN: -- and ask him a couple of
20 questions.

21 MR. CISA: I call Bob Call.

22 THE COURT: Mr. Call, come around and be sworn.

23 [Whereupon, Mr. Call comes forward]

24 THE CLERK OF COURT: Place your left hand on the
25 Bible and raise your right hand.

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1 [Whereupon, Mr. Call is duly sworn by the clerk
2 of court as follows: do you swear or affirm the
3 testimony you shall give this Court shall be the truth
4 and nothing but the truth, so help you God]

5 THE WITNESS: Yes.

6 THE CLERK OF COURT: Have a seat, please.

7 [Whereupon, Mr. Call takes the witness stand]

8 THE CLERK OF COURT: State your full name for
9 the record, sir, and spell your last name.

10 THE WITNESS: [No response]

11 MR. CISA: Ready, Judge?

12 THE COURT: Yes, sir.

13 - - - - -

14 ROBERT O. CALL, JR.,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. CISA:

19 Q. State your full name.

20 A. Robert O. Call, Jr.

21 Q. Where do you reside, Mr. Call?

22 A. 105 Goose Creek Drive, Goose Creek --

23 Q. Is that in --

24 A. -- South Carolina.

25 Q. -- Berkeley County?

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1 A. I'm sorry?

2 Q. Is that in Berkeley County?

3 A. Yes, it is.

4 Q. Are you currently -- you currently hold public
5 office in Berkeley County?

6 A. Yes.

7 Q. What office is that?

8 A. I'm a member of the Berkeley County Council for
9 district three.

10 Q. And how long have you been a member of the
11 Berkeley County Council for district three?

12 A. About three and a half years.

13 Q. Can you tell me who the chairman of the Berkeley
14 County Republican Party is?

15 A. Mr. Tim Callanan.

16 Q. Did you file a declaration of candidacy for the
17 current Berkeley County Council seat for district three,
18 Berkeley County?

19 A. Yes.

20 Q. Okay. Do you recall when you filed your
21 declaration for candidacy?

22 A. Yes. I filed it a few minutes after noon on
23 March the 30th -- I mean, March the 15th --

24 THE COURT: Does anybody contest the fact that
25 he was exempt and he filed it timely, had a timely SEI

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1 as a public official? Does anybody question that?

2 MR. BOLCHOZ: No, sir.

3 MR. CISA: All right. I'll move on --

4 Q. [Mr. Cisa] At the time you filed, where did you
5 file?

6 A. We filed in a small office or a conference room
7 that's set aside for members of county council's use in
8 the county office building across the hall from the clerk
9 of court's office.

10 Q. Okay. At the time that you were there, were
11 there any other candidates there?

12 A. Yes. There was probably ten there.

13 Q. All right. Was Mr. Callanan there, also?

14 A. Yes.

15 Q. Was a question asked about where you file your
16 Statement of Economic Interest?

17 A. Yes. I asked the question.

18 Q. Okay. What did Mr. Callanan say?

19 A. He said you file them on line.

20 Q. Okay. Did he say that to you as well as the
21 other candidates?

22 A. He said it to me as well as other candidates.
23 There were other candidates that heard it. The --

24 Q. Did -- when did you first see the Supreme
25 Court's decision in Anderson vs. South Carolina Election

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1 Commission, et al?

2 A. I believe it was May the 2nd.

3 Q. Okay. When it came out?

4 A. Yes.

5 Q. Did you take any action relative to that
6 decision as far as the South Carolina Republican Party?

7 A. I wrote them just about every day.

8 Q. What did you write them about?

9 A. Well, I wrote them about Mr. Callanan's
10 statements that -- where he would make it on the record,
11 and conflict in statements, and change -- he'd change his
12 statements. Once -- one time he changed it twice in one
13 day about who had filed their SEIs and who hadn't.

14 I wrote him and explained to him that as I
15 understood, the law was very clear and it didn't seem to
16 be that Mr. Callanan had complied with the very clear
17 ruling from the Supreme Court. And I wrote that to them
18 in different ways on almost a daily basis. As a matter of
19 fact, I wrote it to them so many times they told me just
20 quit writing to them, they were investigating it and they
21 would get back to me.

22 Q. Are you aware of any non-exempt candidate for
23 the -- in the republican party primary for Berkeley
24 County, that was not disqualified, other than Mr. Gunn?

25 A. [No response]

1 Q. Do you understand the question?

2 A. I don't think I understood the question.

3 Q. Are you aware of any non-exempt candidates that
4 ran in the republican -- the Berkeley County republican
5 primary that was qualified, other than Mr. Gunn?

6 A. No.

7 Q. Are you aware of any candidates who were
8 disqualified?

9 A. Yes.

10 Q. Which candidates were disqualified?

11 A. Mr. Samuel Rivers and Mr. Charlie Davis.

12 Originally, Mr. Callanan stated that Mr. Gunn was going to
13 be affected by it and that Mr. Allen Weiss was going to be
14 affected by it.

15 They were all -- I guess he thought they were
16 all non exempt at the time and as it turned out, Mr. Weiss
17 was an exempt candidate because he's a member of a board
18 that requires that to be filed.

19 Q. Do you know if Mr. Gunn is an exempt candidate?

20 A. Mr. Gunn is not an exempt candidate.

21 Q. Did you finally hear from the republican party,
22 as far as a decision, when you were sending him all these
23 e-mails?

24 A. I heard from him on two occasions. And I don't
25 have -- the papers are laying over there on the desk, but

1 I think that I can tell you --

2 THE COURT: Who were -- who were you e-mailing?

3 I missed that.

4 THE WITNESS: I'm sorry. Matt Moore and
5 Mr. Chad Colony.

6 THE COURT: Matt Moore is the executive --

7 THE WITNESS: Executive director of the South
8 Carolina GOP.

9 THE COURT: And who is the other individual?

10 THE WITNESS: Chad Colony is the chairman of the
11 South Carolina GOP.

12 THE COURT: All right. I missed that. I
13 apologize.

14 THE WITNESS: Well, that's okay.

15 THE COURT: Go ahead.

16 Q. [Mr. Cisa] After you exhausted your dealings
17 with the South Carolina Republican Party, did you try to
18 find a lawyer --

19 A. Did I try to find --

20 Q. -- to help you with --

21 A. Yes, I did.

22 At first I thought I needed -- well, again, I
23 thought I had one and that lawyer discovered that they had
24 a conflict. I don't think I should name them. But they
25 had a conflict and they suggested that I get another

1 lawyer.

2 I thought I needed one in Columbia because I
3 thought that's where the case was going to be handled at
4 the Supreme Court. And we got in touch with another one.
5 It turned out that he was representing the South Carolina
6 GOP so we couldn't use him. Several others were already
7 too busy with these same cases.

8 So we thought we had a specialist, an election
9 specialist -- we just thought we needed an election law
10 specialist. And he didn't return our telephone call for
11 about three weeks so we contacted two others and they were
12 also too busy. I think they've probably been in this
13 courtroom already this week.

14 So after looking at the facts and the law, I
15 took it to Mr. Cisa, who's represented me for a number of
16 years. And it appeared to be just basically a very clear
17 order from the Supreme Court and whether or not it had
18 been complied with.

19 Q. All right. Let me show you a document that's
20 dated May 2nd, 2012. It says BCRPFB post by Tim Callanan.
21 Can you tell me what that is?

22 A. This is a facebook post by -- Mr. Callanan
23 posted it on May the 2nd.

24 Q. Okay. Is that something you printed off?

25 A. Yes.

1 MR. CISA: Your Honor, it's attached to the
2 affidavit but I'm not sure about the status of the
3 affidavit. I would ask this to be introduced into
4 evidence.

5 THE COURT: Any objection?

6 MR. BOLCHOZ: No, sir, Your Honor.

7 THE COURT: All right. I guess we'll make that
8 Plaintiff's Number 1.

9 [Whereupon, Plaintiff's Exhibit Number 1 is
10 marked by the court reporter]

11 [Whereupon, Plaintiff's Exhibit Number 1 is
12 admitted into evidence by the Court]

13 Q. [Mr. Cisa] I'm going to show you another
14 document that's got the same thing. It's dated May the
15 3rd, 2012. It says BCRPFB page post by Tim Callanan. Can
16 you tell me what that is, Mr. Call.

17 A. Yes, Mr. Cisa. BC and RP -- in all these cases,
18 BCRPFB is the Berkeley County Republican Party facebook
19 page post by Tim Callanan. And it is, again, a posting
20 that Mr. Callanan personally placed on facebook.

21 MR. CISA: All right. Your Honor, I would ask
22 that that be introduced into evidence as Plaintiff's
23 Exhibit Number 2.

24 [Whereupon, Plaintiff's Exhibit Number 2 is
25 marked by the court reporter]

1 THE COURT: Any objection?

2 MR. BOLCHOZ: No, sir; Your Honor.

3 THE COURT: All right. Plaintiff's Number 2 --
4 if anybody has any objection, please stand up real
5 quick, if you would.

6 Plaintiff's Number 2 admitted without objection.

7 [Whereupon, Plaintiff's Exhibit Number 2 is
8 admitted into evidence by the Court]

9 Q. [Mr. Cisa] Let me ask you if you can identify
10 that for me.

11 A. Yes, sir, Mr. Cisa. This is a Statement of
12 Intention of Candidacy.

13 Q. Is that your Statement of --

14 A. It is mine --

15 Q. -- Intention of Candidacy?

16 A. -- yes, it's my -- copy of mine.

17 Q. Is that what you filed?

18 A. Yes.

19 Q. All right. Looking at that statement, did
20 anyone with the Berkeley County Republican Party sign
21 something acknowledging that you had filed that?

22 A. Yes.

23 Mr. Callanan signed it. He signed it in my
24 presence.

25 Q. Okay. What day did he sign it?

1 A. The 16th of March at 12:29.

2 Q. Okay. So you walked out the door with a copy
3 where he acknowledged your receipt; correct?

4 A. Yes.

5 MR. CISA: All right. Your Honor, I would ask
6 that be introduced as Plaintiff's Exhibit 3.

7 [Whereupon, Plaintiff's Exhibit Number 3 is
8 marked by the court reporter]

9 THE COURT: Any objection?

10 MR. BOLCHOZ: No objection.

11 THE COURT: Without objection.

12 [Whereupon, Plaintiff's Exhibit Number 3 is
13 admitted into evidence by the Court]

14 Q. [Mr. Cisa] I want to show you another document
15 that's titled S.C. State Ethics Commission Public
16 Disclosure and Accountability Reporting, name, Kenneth E.
17 Gunn. Do you know what that is?

18 [Whereupon, the witness reviews documents]

19 A. This appears to be Mr. Gunn's computer file,
20 Statement of Economic Interest.

21 Q. [Mr. Cisa] Okay. What's the date it was filed?

22 A. It was filed on --

23 Q. See up at the top left?

24 A. The top left. Oh. I'm sorry. 3/30, 2012.

25 Q. Okay. Where was it filed?

1 A. Where was it filed?

2 Q. Yes.

3 A. It was filed with the ethics commission online.

4 Q. Is that filing consistent with what Mr. Callanan
5 had told you?

6 A. I'm sorry. I didn't hear the question.

7 Q. Was that filing -- is that filing consistent
8 with what Mr. Callanan had told the candidates to do?

9 A. Yes, it is. That's exactly what he told us to
10 do.

11 MR. CISA: Your Honor, I would ask that this be
12 introduced as Plaintiff's Exhibit 4.

13 [Whereupon, Plaintiff's Exhibit Number 4 is
14 marked by the court reporter]

15 [Whereupon, Plaintiff's Exhibit Number 4 is
16 admitted into evidence by the Court]

17 Q. [Mr. Cisa] I want to show you another document
18 called Statement of Economic Interest. Tell me what that
19 is.

20 [Whereupon, the witness reviews documents]

21 A. This is a -- this is a screen shot that comes up
22 before you select the actual Statement of Economic
23 Interest, which you just gave me, and this shows the exact
24 time that the file -- that he filed.

25 Q. [Mr. Cisa] Okay. Does this document relate to

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1 Mr. Gunn's --

2 A. Yes.

3 Q. -- time he filed his Statement of Economic
4 Interest?

5 A. Yes.

6 Q. What time did he file it?

7 A. He filed 3/3/2012, 2:53 p.m.

8 MR. CISA: Your Honor, I would ask that this be
9 introduced as Plaintiff's Exhibit Number 5.

10 THE COURT: How is that different from Number 4?

11 MR. CISA: Judge, one is the Statement of
12 Economic Interest that's attached to -- both of these
13 are attached to the affidavit. And then this one
14 simply tells you the exact time it was filed.

15 THE COURT: Okay. So the time of filing. Any
16 objection?

17 MR. BOLCHOZ: No, Your Honor.

18 THE COURT: Okay. Without objection, admitted.

19 [Whereupon, Plaintiff's Exhibit Number 5 is
20 admitted into evidence by the Court]

21 [Whereupon, Plaintiff's Exhibit Number 5 is
22 admitted into evidence by the Court]

23 Q. [Mr. Cisa] Mr. Call, are you familiar with the
24 time that this -- that the Statement of Economic Interest
25 is supposed to be filed with the state ethics commission?

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1 A. This is the same document --

2 Q. I know. But listen --

3 A. -- Mr. Cisa.

4 Q. -- listen to my question.

5 Are you familiar with the deadline for filing
6 the Statement of Economic Interest with the state ethics
7 commission?

8 A. Yes.

9 Q. What's the deadline?

10 A. The deadline is March the 30th at noon.

11 Q. Okay. Based on that document, did Mr. Gunn make
12 that deadline?

13 A. He filed at 2:53 p.m.

14 MR. CISA: Okay. Your Honor, I don't think I
15 have anymore questions at this time.

16 THE COURT: Okay. Mr. Howell, cross-
17 examination?

18 MR. HOWELL: Nothing from the election
19 commission, Your Honor.

20 MS. KUTZ: Nothing, Your Honor.

21 THE COURT: Ms. Kirk?

22 MS. KIRK: Nothing, Your Honor.

23 MR. BOLCHOZ: Just briefly, Your Honor.

24 - - -

25 - - -

CROSS-EXAMINATION

BY MR. BOLCHOZ:

Q. Mr. Call, can you tell me if you recall if there was a county council meeting on the 26th of March or thereabouts? Were you present at that meeting?

A. You're not giving me enough to recall it. We do a lot.

Q. So you don't recall yes or no whether there was a county council meeting on March the 22nd?

A. On the --

Q. Or the 26th. Excuse me.

A. Of March?

Q. Yes, sir.

A. I would have to look at the calendar. If it was the fourth Monday of the month, then it would have been a meeting.

Q. You were -- do you have any recollection of seeing Mr. Gunn and Mr. Callanan in the parking lot outside of Berkeley County chambers on March 22nd -- 26th?

A. No.

Q. And you weren't present at any meetings where Mr. Gunn may have handed to Mr. Callanan his SEI over the past --

A. No.

Q. -- over those three months?

1 So you don't have any knowledge of whether --
2 specific, direct knowledge, personal knowledge, of whether
3 or not he handed that SEI to Mr. Callanan?

4 A. No.

5 MR. BOLCHOZ: I don't have anything further,
6 Your Honor.

7 THE COURT: Mr. Gunn, do you have any questions
8 you would like to ask, please, sir?

9 MR. GUNN: No, Your Honor.

10 THE COURT: Okay. If you do, feel free. Okay.
11 Thank you very much.

12 Anything in reply?

13 MR. CISA: Nothing, Your Honor.

14 THE COURT: You may step down. Thank you very
15 much.

16 [Whereupon, Mr. Call is excused and exits the
17 witness stand]

18 MR. CISA: Just ask him one question, Judge, and
19 see if somebody else --

20 THE COURT: Yes, sir.

21 MR. CISA: -- is here?

22 No, not on the stand. I just wanted to ask him
23 a question.

24 THE COURT: Oh. Okay.

25 MR. CISA: I'm looking for somebody else --

1 THE COURT: Come talk to your lawyer.

2 [Whereupon, Mr. Cisa and Mr. Call confer]

3 MR. CISA: I don't have any further witness,
4 Your Honor.

5 THE COURT: Pardon?

6 MR. CISA: Sir?

7 THE COURT: Any further witnesses?

8 MR. CISA: No, sir.

9 THE COURT: Are any of the defendants going to
10 offer any witnesses?

11 MR. BOLCHOZ: Your Honor, on behalf of the
12 Party, I would call two witnesses.

13 THE COURT: Which party? The State or --

14 MR. BOLCHOZ: The Berkeley County --

15 THE COURT: -- local?

16 MR. BOLCHOZ: -- the local, the -- the county
17 party.

18 THE COURT: Okay. I think we've got the State
19 represented --

20 MR. BOLCHOZ: Yes, sir.

21 THE COURT: -- over there.

22 MR. BOLCHOZ: Yes, sir.

23 MS. KUTZ: Yes, Your Honor.

24 THE COURT: Okay. Call your witness.

25 MR. BOLCHOZ: Your Honor, I would call Tim

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1 Callanan.

2 [Whereupon, Mr. Callanan comes forward]

3 THE CLERK OF COURT: Please put your left hand
4 on the Bible and raise your right hand.

5 [Whereupon, Mr. Callanan is duly sworn by the
6 clerk of court as follows: do you swear or affirm the
7 testimony you shall give this Court shall be the truth
8 and nothing but the truth, so help you God]

9 THE WITNESS: I do.

10 THE CLERK OF COURT: Have a seat, please.

11 [Whereupon, Mr. Callanan takes the witness
12 stand]

13 THE CLERK OF COURT: State your full name and
14 spell your last, please.

15 THE WITNESS: My name is Tim Callanan. It's
16 C-A-L-L-A-N-A-N.

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- - -

- - -

1 TIM CALLANAN,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BOLCHOZ:

6 Q. Mr. Callanan, do you recall if there was a
7 county council meeting on March 26th of this year?

8 A. Correct. Yes.

9 Q. And did you have an opportunity to meet with
10 Mr. Gunn prior to that --

11 A. Yes.

12 He had -- he had contacted me and arranged to
13 meet him prior to the meeting.

14 Q. Okay. Can you tell the Court what the purpose
15 of that meeting was?

16 A. He wanted to submit his filing papers to run for
17 County Council District Three.

18 Q. And the deadline for filing those papers was
19 what?

20 A. The 30th at noon.

21 Q. And so he contacted you. He asked you to meet
22 him prior to the county council meeting?

23 A. Correct.

24 Q. And tell the Court what happened from that
25 point.

1 A. From that point, we met him in the parking lot.
2 He had a stack of papers with him. He handed me a
3 Statement of Intention of Candidacy. He then signed that
4 on the hood of his car. A pledge, he signed that, as
5 well, in my presence.

6 And then he -- and then he handed me the
7 Statement of Economic Interest, actually two copies of it,
8 handwritten.

9 Q. Okay. I'm going to -- I'm going to hand you --
10 can you identify that?

11 A. Yes.

12 That's the Statement of Economic Interest that
13 Mr. Gunn -- or a copy of it that Mr. Gunn submitted to me
14 on the 26th.

15 MR. BOLCHOZ: Your Honor, I would ask that this
16 be marked as Defendant's Number 1.

17 THE COURT: Does anybody have any objections?

18 MR. CISA: No objection.

19 [Whereupon, Defendant's Exhibit Number 1 is
20 marked by the court reporter]

21 THE COURT: Defendant's Number 1 admitted
22 without objection.

23 [Whereupon, Defendant's Exhibit Number 1 is
24 admitted into evidence by the Court]

25 Q. [Mr. Bolchoz] Now, Mr. Callanan, can you --

1 just explain from the point that you took that document
2 from Mr. Gunn what happened with that.

3 A. I had to go to a council meeting. I had signed
4 and time-stamped -- there's one document, which I believe
5 is the Statement of Intention of Candidacy, which requires
6 you to time and date stamp it. I did that. I told him I
7 was in absence of a copier, I would get him copies back,
8 you know, as early as possible, and went into the council
9 meeting.

10 Q. Okay. And so you took all the documents that he
11 brought --

12 A. Correct.

13 Q. -- and handed to you?

14 MR. BOLCHOZ: Your Honor, I would move that into
15 evidence.

16 THE COURT: I think it's already into evidence.

17 Q. [Mr. Bolchoz] After you went to the county
18 council meeting, what did you do with those documents?
19 What happened next?

20 A. I had them with me at the council meeting. When
21 I left the council meeting, I met Mr. Gunn again, who
22 wanted copies of the documents that I'd received them and
23 signed them.

24 Q. Okay. And so what did you do? Did you give him
25 -- how did you go about --

1 A. I couldn't because I had no means to a copier.
2 So he had requested that he lives two minutes away, that
3 we drive there and copy them at his house. I had no
4 problem with that. It was on my way home.

5 Q. So you did that?

6 A. Yeah.

7 Q. You gave him copies of all those documents?

8 A. Well, I didn't need to give -- the copies that
9 he needed copies of was the intention of candidacy and the
10 pledge, because those were the ones that I signed. I --
11 we copied those. I kept the originals. I already had two
12 copies of the Statement of Economic Interest. At that
13 time I informed him that he needed to file that online.
14 And I gave him one of the copies back.

15 Q. What did you do with the other copy?

16 A. Retained it.

17 Q. Okay. And how long did you retain that?

18 A. I still have it.

19 MR. BOLCHOZ: I don't have any other questions.

20 THE COURT: Mr. Howell, cross-examination?

21 MR. HOWELL: Nothing, Your Honor.

22 THE COURT: Cross?

23 MS. KUTZ: Nothing, Your Honor.

24 MS. KIRK: Nothing, Your Honor.

25 MR. CISA: A couple of --

1 THE COURT: Mr. Cisa?

2 MR. CISA: -- of questions, Judge, yes, sir.

3 CROSS-EXAMINATION

4 BY MR. CISA:

5 Q. Mr. Callanan, were you telling people,
6 prospective candidates for Berkeley County public office,
7 that they needed to file their Statement of Economic
8 Interest with the state ethics commission and not with
9 you?

10 A. I believe I was telling them that -- the
11 instructions that were given to me from the state party
12 were that they had to file online with the ethics
13 commission. And I don't --

14 Q. And not --

15 A. -- I don't recall giving that instruction, but I
16 would have had no problem giving that instruction.

17 Q. Okay. So you would have -- if asked, you would
18 have given the instruction that you are to file your
19 Statement of Economic Interest online, not with you as the
20 filing officer of Berkeley County; correct?

21 A. Correct.

22 Q. Okay. And you talked about a minute ago -- you
23 understand that the Declaration of Candidacy has to be
24 filed with you, as the filing officer, for any office in
25 Berkeley County -- countywide seat, by March 30th at noon;

1 is that correct?

2 A. Correct.

3 Q. And you likewise understand that the Statement
4 of Economic Interest also has to be filed with the state
5 ethics commission by March 30th at noon; correct?

6 A. I -- that's not how I understand it.

7 Q. You don't -- you don't -- that's not how you
8 understand it?

9 A. No.

10 I understand that it has to be filed with me
11 simultaneously at the time that he files the statement of
12 candidacy.

13 Q. You understand that now. But did you understand
14 it prior to March 30th, 2012, at noon?

15 A. [No response]

16 Q. Did you understand prior to March 30th, 2012,
17 that any potential non-exempt candidate had to file their
18 Statement of Economic Interest with you?

19 A. Oh. No.

20 Q. You didn't understand that?

21 A. No.

22 I -- the instructions I was given were
23 different.

24 Q. Okay. Your instructions were that they file
25 online with the state ethics commission?

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1 A. Correct.

2 Q. That's what you would have told somebody;
3 correct?

4 A. If asked.

5 Q. Okay. And you mentioned that when -- you said
6 Mr. Callanan -- I mean, Mr. Gunn filed his declaration of
7 candidacy with you on March 26th; correct?

8 A. Correct.

9 Q. At the same time he filed what you've introduced
10 into evidence as -- what we -- you introduced into
11 evidence as Statement of Economic Interest; correct?

12 A. Correct.

13 Q. All right. So his filing took place on March
14 26th --

15 A. Correct.

16 Q. -- 2012; correct?

17 A. Correct.

18 Q. Okay. Now, did you stamp the declaration of
19 candidacy received on a certain date?

20 A. Yes.

21 Q. Okay. Did you stamp the Statement of Economic
22 Interest that it was received on a certain date?

23 A. No.

24 Q. Why not?

25 A. Because there's no place to do it on the

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1 document.

2 Q. Okay. So you don't do any acknowledgment back
3 to Mr. Gunn as far as the Statement of Economic Interest;
4 correct?

5 A. Correct.

6 Q. Now, do you know where Mr. Gunn got the paper
7 copy of the Statement of Economic Interest?

8 A. No.

9 Q. Don't know?

10 A. No.

11 Q. Didn't ask him?

12 A. No.

13 Q. Well, let me show you -- let me show you a
14 document that I have marked as Plaintiff's Exhibit
15 Number 1.

16 A. Okay.

17 Q. Do you have a facebook account?

18 A. I certainly do.

19 Q. And do you do a post on facebook?

20 A. Yes, I do.

21 Q. Is Plaintiff's Exhibit Number 1 a post that you
22 did on facebook?

23 A. Yes.

24 Q. Got your picture on it --

25 A. Yes.

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1 Q. -- correct?

2 A. Yes, it does.

3 Q. Okay. And you say in this post that paper forms
4 is no longer available anywhere; correct?

5 A. Correct.

6 Q. But you had already received a -- according to
7 your testimony, you received a paper form from Mr. Gunn on
8 March 26th; correct?

9 A. Correct.

10 And I'm referring for clarification here. This
11 is a referring to the state's ethics commission and the
12 state ethics commission no longer provided a copy of the
13 SEI anywhere on the website. That's what I was referring
14 to.

15 Q. Yeah. But you said you typed in all the
16 information for the Statement of Economic Interest online,
17 a paper form is no longer available anywhere. Correct?

18 A. Correct. And anywhere, I was referring to the
19 state ethics commission website.

20 Q. And then you said the process was totally
21 absurd; correct?

22 A. I absolutely said that.

23 Q. Okay. Let me ask you -- looking at Plaintiff's
24 Exhibit Number 2, is this another post that you put on
25 your facebook account?

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1 A. Correct.

2 Q. Okay. And it's dated May 3rd, 2012?

3 A. That's correct.

4 Q. All right. And it was in response to a question
5 by Greg Adams: what candidates are now affected by the
6 Supreme Court ruling.

7 Is that correct?

8 A. That's correct.

9 Q. All right. And you said: I have two candidates
10 who provided evidence that the state ethics commission
11 reporting website was defective and prevented them from
12 filing SEIs.

13 Correct?

14 A. That's correct.

15 Q. So at that time you were still thinking that
16 these two candidates were probably eligible because the
17 website was down?

18 A. No.

19 I think if you continue to read, that I was
20 waiting for clarification from the court. That was my
21 last sentence of that post.

22 Q. Okay. And then you said one candidate you had a
23 form filled out and was told by me that the state law
24 requires SEIs to be filed online.

25 A. Correct.

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1 Q. Who was that candidate?

2 A. That was Ken Gunn.

3 Q. Right. Okay.

4 And then you have -- you said: I asked the
5 state party how to handle these three.

6 Correct?

7 A. Correct.

8 Q. Now, you were asking them how to handle all
9 three. Why were you asking them how to handle Mr. Gunn?

10 A. Because -- and if you go back to the original
11 post, it was my interpretation that paper filings were not
12 acceptable, that the only way that you could file properly
13 was to bring a computer in with you and press the file
14 button while you were filing. That was my interpretation
15 after the original Supreme Court ruling. And the state --
16 I was informed by the state party that they were going
17 back to the Supreme Court for clarification of that
18 ruling.

19 Q. Mr. Callanan, did you accept a Statement of
20 Economic Interest from any other candidate that was
21 running for a Berkeley County candidacy?

22 A. No.

23 Q. None?

24 A. None.

25 Q. Only Mr. Gunn --

1 A. Correct.

2 Q. -- is your testimony?

3 A. Correct.

4 Q. And, in fact, you told Charles Davis that he
5 didn't need to file a Statement of Economic Interest with
6 you, he needed to file it online with the state ethics
7 commission, didn't you?

8 A. As I said before in my previous testimony -- I
9 mean, in this testimony, I don't recall. But I don't deny
10 that I would have said those words, because those were the
11 instructions by the state party.

12 Q. You don't recall that a member of non-exempt
13 candidates were upset with you because of what you had
14 told him about where to file the Statement of Economic
15 Interest?

16 A. He was not upset at the time, because he was
17 filing for office.

18 What time period are you talking about?

19 Q. It's true that you have no evidence or no
20 documents to show when that Statement of Economic
21 Interest, that you claim was given to you, was given to
22 you; is that not correct?

23 A. It was -- I would -- I would suppose none.

24 I don't have any evidence on when any of them
25 were given to me.

1 Q. Well, you said there was only one given to you.

2 A. No. That any of the statement of candidacies
3 were given to me. Any filing documents.

4 Q. Well, didn't you testify a minute ago that the
5 statement of candidacy has a place that you signed when
6 you got it?

7 A. Correct.

8 Q. Right.

9 A. So you have the evidence of when the statement
10 of candidacy --

11 A. And the pledge.

12 Q. Yeah.

13 A. I have no evidence of the pledge, when I
14 received it.

15 Q. Okay. And all this happened on March 26th,
16 2012?

17 A. Correct.

18 MR. CISA: Could we have one second?

19 THE COURT: Yes, sir.

20 [Whereupon, Mr. Cisa and Mr. Call confer]

21 Q. [Mr. Cisa] Well, let me show you one more
22 document and ask if you can identify it. It's a -- it's
23 actually a post from Ken Gunn's facebook page. Do you
24 remember seeing that?

25 A. Yeah, I think I recall this.

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1 Q. That's a post March 28th; is that correct?

2 A. That's correct.

3 Q. 2012.

4 And what is Mr. Gunn telling you on that post?

5 A. That he's proud to announce that today I filed
6 to run his conservative republican candidate for Berkeley
7 County Council.

8 Q. So he's saying he filed on March 28th, not on
9 March 26th?

10 A. Correct.

11 Q. Have you seen the other posts on -- well, let me
12 ask you --

13 A. Sure.

14 MR. CISA: Your Honor, I would like to introduce
15 this into evidence as Plaintiff's Exhibit 6.

16 THE COURT: I'm sorry. Which one, now?

17 MR. CISA: Plaintiff's 6, Judge.

18 THE COURT: Plaintiff's 6.

19 [Whereupon, Plaintiff's Exhibit Number 6 is
20 marked by the court reporter]

21 THE COURT: Any objection to Plaintiff's 6?

22 MR. BOLCHOZ: No objection.

23 THE COURT: Without objection.

24 [Whereupon, Plaintiff's Exhibit Number 6 is
25 admitted into evidence by the Court]

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1 Q. [Mr. Cisa] On Plaintiff's Exhibit 6, you're
2 quoted as saying: Tim Callanan said his decision will
3 likely impact -- the decision will likely impact the
4 candidacy of both candidates for the new South Carolina
5 House District Five --

6 A. Fifteen.

7 Q. -- Fifteen. That's Charlie Davis and Samuel
8 Rivers. And you said it should also impact Kenny Gunn,
9 who is challenging incumbent Bob Call. Is that correct?

10 A. That's correct.

11 Q. Okay.

12 THE COURT: That's Number 6?

13 MR. CISA: Yes, sir, Judge.

14 THE COURT: Do you have a copy of it or is it
15 attached to your affidavit?

16 MR. CISA: It's attached to the affidavit.

17 THE COURT: It's attached?

18 MR. CISA: Yes, sir. I can give you another
19 copy. I think --

20 THE COURT: No. I just didn't find it. Excuse
21 me. Let me look real quick.

22 [Whereupon, the Court reviews documents]

23 THE COURT: Okay. Anything else?

24 MR. CISA: No, sir, Judge.

25 THE COURT: Mr. Gunn, do you have any questions

1 you would like to ask of this witness?

2 MR. GUNN: No, sir.

3 THE COURT: Okay. Does anybody else have any
4 questions?

5 MS. KIRK: No, sir.

6 THE COURT: All right. You may step down.
7 Thank you very much, Mr. Callanan.

8 [Whereupon, Mr. Callanan is excused and exits
9 the witness stand]

10 THE COURT: Do you have anymore witnesses you
11 would like to call?

12 MR. BOLCHOZ: Your Honor, I would call Kenneth
13 Gunn to the stand.

14 THE COURT: Okay.

15 [Whereupon, Mr. Gunn comes forward]

16 THE CLERK OF COURT: Place your left hand on the
17 Bible and raise your right hand.

18 [Whereupon, Mr. Gunn is duly sworn by the clerk
19 of court as follows: do you swear or affirm the
20 testimony you shall give this Court shall be the truth
21 and nothing but the truth, so help you God]

22 THE WITNESS: I do.

23 THE CLERK OF COURT: Have a seat, please.

24 [Whereupon, Mr. Callanan takes the witness
25 stand]

1 THE CLERK OF COURT: Please state your full name
2 and spell your last.

3 THE WITNESS: My name is Kenneth Earl Gunn and
4 my address is 212 Intermental [phonetic] Village
5 Circle, Moncks Corner, South Carolina.

6 - - - - -

7 KENNETH E. GUNN,

8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MR. BOLCHOZ:

12 Q. Mr. Gunn, I'm going to show you what's been
13 marked as Defendant's Number 1.

14 A. Yes, sir.

15 Q. Can you identify that?

16 A. Yes, sir.

17 This is my statement of -- my SEI that I
18 downloaded and filled out and turned in to Mr. Callanan on
19 the 26th of March.

20 Q. That's your handwriting? You wrote -- you
21 filled it in yourself?

22 A. Yes, sir.

23 Q. And you said you downloaded that. Where did you
24 get that? Can you be a little more specific?

25 A. I had no idea I would have to remember all this

1 stuff when it occurred. But I did a Google search for the
2 -- I forget the exact wording I did for it, but the PDF
3 file. I had a choice of a couple of different sites and I
4 got it off of a county website, South Carolina. I think
5 the county started with an A, maybe. I'm not sure.

6 Q. Did you -- can you recall what date it was when
7 you downloaded that Google --

8 A. It was prior to the 26th. A couple -- I'm not
9 sure. A couple of days prior to that.

10 Q. And was anybody present when you filled it out
11 and do you remember the circumstances in which you filed
12 it out?

13 A. No.

14 My -- as a matter of fact, my wife was on a trip
15 to West Virginia at the time so --

16 Q. And so after you filed that out, what did you do
17 with it?

18 A. I made a copy of -- actually, I made two copies
19 of it and stapled it together.

20 Q. And then?

21 A. And then I met with Mr. Callanan on the 26th,
22 prior to the Berkeley County Council meeting. I provided
23 him two copies of this, along with a copy with my check,
24 and I signed the two other documents. I forget the name
25 of -- the candidacy documents, with him.

1 And he was heading into the -- I caught him going into
2 the meeting and I signed them and handed them to him and
3 said, okay, and off we went. We went into the meeting.

4 Q. So you were in the parking lot?

5 A. Yes, sir.

6 Q. And then --

7 A. And there was -- he's not here and I haven't
8 even talked to him about it. There was a Mr. Bates
9 [phonetic] was in the parking lot at the time but I
10 wouldn't -- I couldn't call him as a witness, but he was
11 aware I had my paperwork and was turning it in that night.

12 Q. And then so you handed the packet to Mr.
13 Callanan?

14 A. Correct.

15 Q. He went to the meeting?

16 A. Yes.

17 Q. And then you met him again?

18 A. Right.

19 After the meeting he came out and I told him I
20 would like to have a copy -- I wanted to keep a copy of
21 everything and I wanted a copy of the two candidacy
22 documents and stuff. And he said he couldn't make a copy
23 to give them to me. And I asked him if he wanted a -- on
24 the drive home and he said, yeah, I was going to stop by
25 my house, I'll make a copy at my house. And we did. And

1 made a copy of those for my records.

2 As I recall, he then told me, he said he didn't
3 have to turn this, you know, paper copy in, but you did,
4 I'll -- you know, I'll give you a copy of it. He gave me
5 -- he gave me two and he said I have to file online, also.

6 Q. And he -- so he gave you back one of the two
7 copies --

8 A. Correct.

9 Q. -- you originally gave him?

10 A. Correct.

11 Q. And there was some talk before about this post
12 that you made where you indicated that you filed today on
13 March 28th --

14 A. That was sort of -- we had talked about -- it's
15 kind of silly when I speak to it. It's like waiting to
16 the last minute so that a whole bunch of other people
17 won't file or anything and wait until the last minute,
18 catch Mr. Call by surprise sort of like, you know, and --

19 Q. Wait until the last minute in terms of
20 announcing --

21 A. Before he knows that he has an opponent. He
22 was -- at the time, he was unopposed and we were waiting
23 to see if anybody else had filed. And that's why we --
24 why we waited until the 26th. I could have filed earlier
25 than that but I didn't. Just wait until the 26th.

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1 MR. BOLCHOZ: Okay. I don't --

2 A. May I --

3 MR. BOLCHOZ: -- have any further --

4 A. May I add the clarification --

5 MR. BOLCHOZ: -- questions.

6 A. -- I think why I did this?

7 Q. [Mr. Bolchoz] Sure.

8 A. The website said I had to turn in an SEI at the
9 time I filed. That's what it says. It still says that.
10 It said it then.

11 There was no -- you know, we couldn't figure out
12 online how to get the thing off of there. And when I
13 called Mr. Callanan, when I realized that I was supposed
14 to fill out this -- fill out this form, I hadn't really
15 talked to him about it but I read that. He didn't -- he
16 was away at a basketball game during March Madness. And
17 that's why I downloaded the form. I just did what it said
18 and filled it out.

19 And then he informed me I needed to do it
20 otherwise. Because when I downloaded it -- when I saw it,
21 it has these things where I used to do when I was working.
22 It has these lines for the key person to key them in. And
23 the website had some wording to it that they would put
24 them in and stuff like that. So that's why I thought this
25 was necessary. That's why I did it.

1 MR. BOLCHOZ: I don't have anything further,
2 Your Honor.

3 THE COURT: When did you download that off the
4 ethics commission website?

5 THE WITNESS: I did not download this off the
6 ethics commission website.

7 THE COURT: Where did you download it from?

8 THE WITNESS: From some county website, some
9 South Carolina county website. I can't remember the
10 county's name. I think it starts with an A. But when
11 I did the search for the form, it popped up several
12 things and it was eclipsed [phonetic] and went to a PDF
13 file. And it was associated with some county with a
14 form on that county in South Carolina's website to
15 download it.

16 THE COURT: Any cross-examination?

17 MS. KIRK: No, sir.

18 THE COURT: Mr. Howell?

19 MR. HOWELL: Nothing, Your Honor.

20 MS. KUTZ: No, Your Honor.

21 THE COURT: Mr. Cisa?

22 MR. CISA: I've just got a few questions, Judge.

23 - - -

24 - - -

25 - - -

CROSS-EXAMINATION

BY MR. CISA:

Q. Mr. Gunn, you didn't go to the state ethics commission's website to look for this form; is that correct?

A. We had been at the state ethics website several times because we were kind of nervous. I've never done anything like this. You know, I've never run for office and filing online. I knew we had to set up an account. I had heard that. And we had looked there for instructions and we went and downloaded the -- we had been told we had to do our financial thing on the ethics website. That's what we -- how it was told. I had asked, you know, how do you handle the contributions and stuff like that. So that's why we were there. And then I saw the SEI thing told me I had to have a form and that's what -- proceeded to --

Q. Okay. So you went to the South Carolina State Ethics Commission's website and you looked at the instructions about filing Statement of Economic Interest; correct?

A. Correct.

Q. And you read those instructions; correct?

A. Correct.

Q. And then as a result of that, you Googled and

1 went to some county you can't remember and you pulled off
2 a form?

3 A. Because I could not find a form to fill out.

4 Q. Right.

5 And you understand that that form is not the
6 form that's required pursuant to the statute, that the
7 form that's required pursuant to the statute is the one on
8 the South Carolina Ethics Commission's website? Do you
9 understand that?

10 A. I did not -- at the time, I was told that I had
11 to fill it out online, also. I was under the impression
12 that filling out this form would create that form online.

13 Q. Right.

14 And these are general instructions, general
15 information about, that you saw on the state ethics
16 commission website?

17 [Whereupon, the witness reviews documents]

18 A. It -- this is the page that -- I would have to
19 read this whole thing.

20 There was a portion on there that require --
21 that states that you turn in the form at the time of
22 filing.

23 Q. [Mr. Cisa] Does that look like the instructions
24 that you read --

25 A. That looks like it, yeah.

1 MR. CISA: Okay. Can I have it back?

2 [Whereupon, the witness proffers documents to
3 Mr. Cisa]

4 Q. [Mr. Cisa] Would you agree with me that the
5 instructions on the state ethics commission website said
6 if you are filing a Statement of Economic Interest as a
7 candidate, you must file your form using the electronic
8 filing system, print a copy, and file that paper copy --

9 A. That's the new instructions --

10 Q. -- with the election commission?

11 A. -- that's been on there since the Supreme Court
12 ruling.

13 Q. So this is not -- I thought you just said this
14 is what you saw --

15 A. Sir, I didn't read it all --

16 Q. -- on the website.

17 A. The instructions that were on the website have
18 changed -- or have changed since the Supreme Court ruling.

19 The instructions -- and I have a copy at home.
20 I don't -- I never thought to bring it. But it stated I
21 had to file a -- I forget the exact wordings -- I had to
22 file a written copy at the time of my filing. And that's
23 why I downloaded this -- hunted for this file and found
24 it.

25 Q. Do you have anything that would indicate, other

1 than what's been put into evidence, that Mr. Callanan
2 received this Statement of Economic Interest on March
3 26th, 2012, other than what's been put into evidence?

4 A. This has my signature and the date that I wrote
5 on it and --

6 Q. I understand that.

7 A. -- that's the date that I turned it in, yes,
8 sir.

9 Q. Did you get a receipt for your declaration of
10 candidacy?

11 A. Yes, sir.

12 Q. And you didn't get a receipt for your Statement
13 of Economic Interest; is that correct?

14 A. I didn't know that I needed a receipt. I had a
15 copy of it and he had a copy of it.

16 Q. Well, did you think you needed to file it?

17 A. Pardon me?

18 Q. Did you think you needed to file it?

19 A. The SEI form? Yes, sir. That's why I filled it
20 out.

21 Q. Okay. Well, if you thought you needed to file
22 it with Mr. Callanan, why didn't you get a receipt for it
23 just like you got a receipt for your declaration of
24 candidacy?

25 A. Sir, I'm new to politics. It did not have a

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1 place for him to sign receipt on it.

2 MR. CISA: Thank you, sir. No question -- no
3 further questions, Your Honor.

4 THE COURT: Where is the original SEI form?

5 THE WITNESS: Mr. Callanan has it.

6 THE COURT: Mr. Callanan, have you got the
7 original form?

8 MR. CALLANAN: Yes, sir.

9 THE COURT: How about handing it up, please,
10 sir.

11 [Whereupon, Mr. Bolchoz proffers documents to
12 the Court]

13 THE COURT: Thank you, sir.

14 [Whereupon, the Court reviews documents]

15 THE COURT: Thank you very much.

16 All right. Anybody have any cross --

17 MS. KUTZ: No, sir, Your Honor.

18 THE COURT: -- any cross? Any reply?

19 MR. BOLCHOZ: No, sir.

20 THE COURT: All right. You may step down,
21 Mr. Gunn. Thank you very much.

22 THE WITNESS: Thank you, Your Honor.

23 [Whereupon, Mr. Gunn is excused and exits the
24 witness stand]

25 THE COURT: Do you have any further witnesses?

1 MR. BOLCHOZ: Nothing further, Your Honor.

2 THE COURT: Okay. Do you have any testimony in
3 reply?

4 MR. CISA: No, Your Honor.

5 THE COURT: All right. Does anybody else have
6 any witnesses they would like to call?

7 MR. HOWELL: Nothing, Your Honor.

8 MS. KUTZ: None, Your Honor.

9 THE COURT: Okay. Ms. Kirk, I assume you're
10 familiar with the elections process and the ethics
11 commission?

12 MS. KIRK: Recently I have become so, Your
13 Honor.

14 THE COURT: Just recently?

15 MS. KIRK: Yes.

16 THE COURT: Do you know of any other place you
17 can get the state ethics commission form other than
18 the website, the state ethics commission website? Or
19 do they disperse them out to other people?

20 MS. KIRK: I believe it is dispersed. But I can
21 step out and check with Ms. Andino, if you would like.

22 THE COURT: Pardon?

23 MS. KIRK: If you would like for me to step out
24 and check with Ms. Andino, I can confer. I believe
25 that --

1 THE COURT: Do they disperse them to different
2 interested parties that may need them?

3 MS. KIRK: I believe so. But I can confirm
4 that.

5 MR. BOLCHOZ: Your Honor, I might be able to
6 fill in some details on that. I'm a two-time loser
7 myself, so I've filed a couple of times.

8 Those forms, as Mr. Gunn indicated, some of the
9 counties, some of the different local agencies, will
10 put a form on their website just like he indicated.

11 Otherwise, I think the only way you can get it
12 off the ethics website nowadays is to actually open a
13 file and fill it out and then print off the screen
14 shot, because they don't want you to file the paper
15 anymore.

16 So it is available and some of the forms that
17 are online are probably older ones that call for the
18 same information but not identical in format to the
19 one that's online.

20 THE COURT: All right. Thank you very much.

21 Mr. Cisa, anything you would like to add as far
22 as brief closing arguments?

23 And I'm going to go read these cases and I'll
24 come back and let you know my decision.

25 MR. CISA: Judge --

1 THE COURT: And after he -- if anybody else
2 would like to say something, I'll be glad to hear
3 them.

4 MR. CISA: You know, we're at a point where, of
5 course, there's been no discovery or anything. And I
6 understand where we are because of the situation.

7 But based upon my review of the postings, I
8 submit to the Court the testimony offered by these two
9 gentlemen is not credible. And I just ask you to
10 please review the attachments to the affidavits. You
11 know, the story has changed a number of times.

12 When I come in today, I get this form that's not
13 -- get this form that doesn't say received or anything
14 on it. And it certainly is in conflict with what the
15 facebook postings say on both of their accounts.

16 THE COURT: Well, based on the Huntley case, the
17 website keeps track of when people go online,
18 downloading this form, and you can subpoena that from
19 the ethics commission specifically as to when the
20 downloading occurred. In the Hundley case, he
21 testified when he downloaded it and they had the
22 information from the ethics commission that, yes,
23 someone was online at that time downloading this form.

24 MR. CISA: Right.

25 THE COURT: But in this case he says he

1 downloaded it from a separate source.

2 MR. CISA: And, Judge, I think under the rule,
3 if you -- even when you file your -- online with the
4 ethics commission, you've got to file it by noon on
5 March the 30th, is the rule. He didn't file it by
6 noon on March 30th.

7 But I just -- like I say --

8 THE COURT: Well, it boils down to a credibility
9 issue.

10 MR. CISA: That's what it is. I agree with
11 that.

12 THE COURT: Anything from anybody else?

13 MS. KUTZ: No, Your Honor.

14 MR. BOLCHOZ: Your Honor, just briefly, if I
15 could address in reverse order.

16 The issue of when he filed on the ethics
17 website --

18 THE COURT: It's immaterial. That doesn't
19 matter. That's not -- that's -- the filing
20 electronically under the cases is -- doesn't matter.

21 MR. BOLCHOZ: Yes, sir.

22 THE COURT: It's immaterial.

23 MR. BOLCHOZ: So going to the other --

24 THE COURT: The question is whether he filed the
25 paper form --

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1 MR. BOLCHOZ: Right.

2 THE COURT: -- at the same time he filed his
3 Statement of Intent of Candidacy.

4 MR. BOLCHOZ: Okay.

5 THE COURT: I didn't mean to cut you off.

6 MR. BOLCHOZ: No, sir. That's all right. It's
7 fine.

8 It sounded like Mr. Cisa was making the argument
9 that he filed late and so therefore he's not
10 certified. And there's a fine for that. It's a
11 hundred-dollar fine. It's not a situation where it
12 would keep you off the ballot anyway.

13 THE COURT: Well, I don't think the fact that he
14 filed electronic on time or didn't file -- it's
15 immaterial.

16 MR. BOLCHOZ: Yes, sir.

17 THE COURT: -- as far as the Anderson case is
18 concerned.

19 MR. BOLCHOZ: Yes, sir.

20 I would just -- and I know you mentioned this
21 and I think you mentioned Judge King's order before.
22 The issue here is really very, very, very narrow: did
23 Mr. Gunn --

24 THE COURT: Well, it's a little broader than any-
25 of them. Ms. Kirk has got an interest in issue. That

1 makes it a little different from any of the rest of
2 them.

3 MR. BOLCHOZ: Yes, sir.

4 The -- you know, I --

5 THE COURT: But as far as -- taking that aside,
6 as far as your client is concerned, yes, it is, it's
7 very narrow --

8 MR. BOLCHOZ: Yes, sir.

9 THE COURT: -- does the Court believe he filed
10 it simultaneously or at the same time he filed his
11 Statement of Intent of Candidacy or did he not.

12 MR. BOLCHOZ: And I would just ask Your Honor to
13 take into account also, when you're considering the
14 credibility of the witnesses, the fact that Mr. Gunn,
15 you know, may have accidentally done the right thing,
16 when the other potential candidates did not, and
17 actually followed Mr. Callanan's instructions. That
18 doesn't change the fact that he did what he was
19 supposed to have done.

20 Whether he did it on purpose because he knew he
21 had to, or whether he accidentally did, is immaterial.
22 He provided that. I think the testimony is very
23 credible. And I know that you're going to have to
24 decide that issue. But I would just ask you to keep
25 that in mind.

1 THE COURT: Okay. Anything else?

2 MR. CISA: No, sir.

3 THE COURT: All right. Thank you very much.

4 Let me go read these cases.

5 We'll take about a thirty-minute break. If
6 y'all will be back in the courtroom in thirty minutes.

7 [Whereupon, a recess is taken from 11:22 a.m. to
8 12:31 p.m.]

9 THE COURT: All right. I have reviewed the
10 cases and reviewed the testimony and the documents,
11 and the Court is going to grant the state election
12 commission's motion that Ms. Kirk has filed based on
13 latches.

14 There's been an unreasonable delay and the
15 defendants would be prejudiced if the Court should
16 move forward with the case at this time.

17 Ms. Kirk, if you'll prepare me a proposed order,
18 please.

19 MS. KIRK: Yes, sir. .

20 THE COURT: Thank you very much.

21 [HEARING CONCLUDES AT 12:34 P.M.]

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25

C E R T I F I C A T E

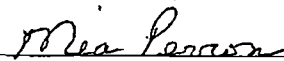
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable J.C. Nicholson, Jr., on Friday, August 19, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 13th day of January, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-08-2329

RECEIVED

APR - 9 2013

S.C. Supreme Court

Robert O. Call, Jr., ...Appellant,

v.

Berkeley County Republican Party (Timothy Callanan, as Chairman);
South Carolina Republican Party (Matt Moore, as Executive Director, and
Chad Connolly, as Chairman); Berkeley County Election Commission;
South Carolina State Election Commission (Marci Andino, as Executive
Director, and Chris Whitmire as Director of Public Information and
Training); Timothy Callanan and Kenneth Gunn, ... Respondents.

PROOF OF SERVICE

I certify that I have served the attached Motion of South Carolina Election Commission
to Dismiss Appeal as Moot on the below-named parties, at the addresses given, by depositing a
copy in the United States Mail, postage prepaid, on this 5th day of April, 2013.

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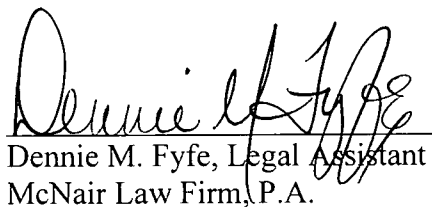
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April 9, 2013

Columbia, South Carolina