

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Michael Anderson and Robert Barger, Plaintiffs-Petitioners,

v.

South Carolina State Election Commission; Marci Andino, as Executive Director and as a representative of the South Carolina State Election Commission; South Carolina Democratic Party; Richard A. Harpootlian, as Chair of the Executive Committee of and as a representative of the South Carolina Democratic Party; South Carolina Republican Party; Chad Connelly, as Chair of the Executive Committee of and as a representative of the South Carolina Republican Party; Lexington County Commission of Registration and Elections; Dean Crepes, as Director of and as a representative of the Lexington County Commission of Registration and Elections; Lexington County Democratic Party; Kathy Hensley, as Chair of and as a representative of the Lexington County Democratic Party; Lexington County Republican Party; Steven Isom, as Chair of and representative of the Executive Committee of the Lexington County Republican Party,Defendants-Respondents.

PETITION FOR ORIGINAL JURISDICTION

The above-named Petitioners submit this Petition for Original Jurisdiction pursuant to Article V, section 5, of the South Carolina Constitution, Section 14-3-310 of the South Carolina Code, and South Carolina Appellate Court Rule 245. A proposed Complaint is attached as Exhibit A and incorporated herein by reference. In accordance with Rule 245(a), this Petition is further supplemented by the Affidavits of Petitioners Michael

Anderson and Robert Barger and other referenced documents attached to the Complaint as Exhibits 1 through 15.

Introduction

As explained below and in the Complaint filed contemporaneously with this Petition, this controversy involves the pending certification of certain individuals seeking nomination by political party primary to become candidates for the South Carolina House of Representatives (“House of Representatives”), the South Carolina Senate (“Senate”), or a countywide office. The individuals identified herein as well as other individuals on both the state and county levels, attempted to declare as candidates but failed to file a Statement of Economic Interests form (“SEI”) at the same time and with the same official with whom the individuals filed a declaration of candidacy or petition for nomination as required by S.C. Code Ann. § 8-13-1356(B). Consequently, these individuals did not comply with the filing requirements to become candidates seeking nomination to these offices in the party primary currently scheduled for June 12, 2012, and may not properly appear on the election ballots for the Democratic and Republican Primary Elections.

Petitioners assert that this matter is appropriate for consideration in this Court’s original jurisdiction and that this Court should grant the petition and entertain this controversy in its original jurisdiction. This matter requires a determination of whether certain individuals have properly filed a Statement of Intention of Candidacy (“SIC”), including the required SEI, and, thus, whether those individuals properly may be candidates in the upcoming primary elections and appear on the ballot in the upcoming primary elections. This matter also involves application of the statutes enacted by the

General Assembly governing the process of filing for elections and appearing on the ballot for elections.

In short, this matter involves questions surrounding the integrity of this State's election process, which is a matter of serious public interest and concern. Moreover, given that the primary elections are scheduled for June 12, 2012, less than two months away, and that ballots are scheduled to be mailed not later than April 28, 2012,¹ this matter involves questions of the utmost urgency, requiring this Court's attention without further delay and an expedited briefing and argument schedule. Petitioners assert that the facts are not materially in dispute and, thus, that this Court's attention will not be required to resolve factual disputes but instead may be focused upon the application of two statutes governing the process for timely filing to become a candidate, sections 7-11-15 and 8-13-1356, and maintaining the integrity of this State's election process.

Support for Granting Petition

In support of this Petition, the Petitioners would respectfully show as follows:

1. Petitioner Michael Anderson is a resident and citizen of Lexington, South Carolina, and is qualified and registered to vote in the State primary election currently scheduled for June 12, 2012 ("State Primary"). By virtue of his residency, Petitioner Anderson is qualified to vote in the State Primary for those individuals seeking nomination to become candidates for offices in Lexington County, including the office of Lexington County Coroner.

2. Petitioner Robert G. Barger is a resident and citizen of Lexington, South Carolina, and is qualified and registered to vote in the State Primary. By virtue of his

¹ See <http://www.scvotes.org/files/2012%20ge%20calendar%20v4%20red.pdf>.

residency, Petitioner Barger is qualified to vote in the State Primary for those individuals seeking nomination to become candidates for House of Representatives District 88 and Senate Election District 23.

3. Respondent South Carolina Election Commission (“Commission”) is an agency of the government of the State of South Carolina and an entity charged with carrying out the authority conferred upon it by the South Carolina Election Law, S.C. Code Ann. § 7-1-10, et seq.

4. Respondent Marci Andino is the duly appointed Executive Director and representative of the Commission.

5. Respondent South Carolina Democratic Party (“SCDP”) is a political party certified by the Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary.

6. Respondent Richard A. Harpootlian is the duly appointed or elected Chairman of the Executive Committee and a representative of the SCDP.

7. Respondent South Carolina Republican Party (“SCR”) is a political party certified by the Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary.

8. Respondent Chad Connelly is the duly appointed or elected Chairman of the Executive Committee and a representative of the SCR.

9. Respondent Lexington County Commission of Registration and Elections (“Lexington Commission”) is an agency of the government of the State of South Carolina

and of Lexington County and is an entity charged with carrying out the authority conferred upon it by the South Carolina Election Law, S.C. Code Ann. § 7-1-10, et seq.

10. Respondent Dean Crepes is the duly appointed Executive Director and representative of the Lexington Commission.

11. Respondent Lexington County Democratic Party (“LCDP”) is a county committee of SCDP.

12. Respondent Kathy Hensley is the duly appointed or elected Chairwoman of the Executive Committee and a representative of the LCDP.

13. Respondent Lexington County Republican Party (“LCRP”) is a county committee of the SCRP.

14. Respondent Steven Isom is the duly appointed or elected Chairman of the Executive Committee and a representative of the LCRP.

15. The South Carolina requirements for filing to become a candidate nominated by a political party primary are clear. “In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary . . . must file a statement of intention of candidacy between noon on March sixteenth and noon on March thirtieth.” S.C. Code Ann. § 7-11-15.

16. Although certain persons are exempt from the requirement to file statements of economic interests at the same time as their statement of intention of candidacy, see S.C. Code Ann. § 8-13-1356(A), (D), and (F),² candidates seeking nomination for the House of Representatives, Senate, or countywide office are required to file their statements of

² These are individuals who have current disclosure statements on file, who are seeking to become candidates other than by filing (e.g., petition candidates), or who file for office before January 1 of the year in which the election is held are subject to different requirements for filing a statement of economic interests.

intention of candidacy with the county executive committee of their respective party. S.C. Code Ann. § 7-11-15(2) & (3). Within five days of the receipt of the statements, but no later than 5:00 p.m. on March 30th, the county committees must transmit the statements of those individuals seeking nomination for the House of Representatives or Senate along with the applicable filing fees to the respective state executive committees. S.C. Code Ann. § 7-11-15(2).

17. No later than 12:00 noon on April 9th ³ of each general election year, the state and county executive committees must provide to the Commission written certification of the names of all persons seeking the nomination by political party primary to become candidates. S.C. Code Ann. § 7-13-40. The political parties “must verify the qualifications of those candidates prior to certification to the [Commission] of the names of the candidates to be placed on primary ballots.” Id. Furthermore,

The written verification required by this section must contain a statement that each candidate certified meets . . . the qualifications for office for which he has filed. Political parties must not accept the filing of any candidate who does not . . . meet the qualifications for the office for which the candidate desires to file, and such candidate’s name shall not be placed on a primary ballot.

Id.

18. In considering whether individuals seeking to be nominated should be certified, political parties are also required to verify whether those individuals have complied with certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. Specifically, political parties must ensure that these individuals filed an SEI concurrent with their filing of an

³ If April 9th falls on a Saturday or Sunday, the state executive committee must certify the names of all candidates to be placed on the ballot no later than 12:00 noon on the following Monday. S.C. Code Ann. § 7-13-40.

SIC: “A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy.” S.C. Code Ann. § 8-13-1356(B) (emphasis supplied).⁴ Moreover, “an officer authorized to receive declarations of candidacy ... may not accept a declaration of candidacy ... unless the declaration ... is accompanied by a statement of economic interests.” S.C. Code § 8-13-1356(E) (emphasis supplied). If a candidate fails to file a statement of economic interests but the candidate's name 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.**” *Id.* (emphasis supplied).

19. In addition to the clear statutory mandate, the State Election Commission, as well as the State Senate and House Ethics Committees, have made the requirement of contemporaneous filing of the statement of economic interests clear to the political parties, candidates, and the general public. The Commission advises that “Candidates must also file a Statement of Economic Interest (SEI) form with the State Ethics Commission. This must be done electronically on the State Ethics Commission website. A copy of the SEI receipt, or other proof of filing, is required to be submitted with your SIC form at the time of filing.” See State Election Commission website (http://www.scvotes.org/candidate_information/nomination_by_political_party). The House of Representatives and Senate Ethics Committees provide similar information.

⁴ Individuals seeking to become candidates must file their statement of economic interests form electronically for public disclosure on the website of the South Carolina Ethics Commission. See S.C. Code Ann. § 8-13-365 (“These disclosures and reports must be filed using an Internet-based filing system as prescribed by the commission.”); <http://ethics.sc.gov/StatementofEconomicInterests/Pages/index.aspx> (“Where are the forms submitted? All Statement of Economic Interests Forms must be filed electronically . . . Upon filing, the information is immediately available to the public through public reporting, also accessed in Quick Links.”).

See House of Representatives Ethics Committee website (<http://www.scstatehouse.gov/committeeinfo/houseethics.php>) (referencing information made available by the South Carolina State Ethics Commission pertaining to the ethical filing requirements of candidates); Senate Ethics Committee website (<http://www.scstatehouse.gov/CommitteeInfo/SenateEthics.php>) (same). Nevertheless, a number of candidates have been certified as candidates for the primary election without complying with these procedures.

20. George “Clay” Burkett is seeking the Republican nomination to become a candidate for Lexington County Coroner in the 2012 South Carolina General Election.

21. Upon information and belief, on or about March 26, 2012, Mr. Burkett filed an SIC with the LCRP to become a candidate for Lexington County Coroner in the 2012 South Carolina General Election by nomination through a political party. Upon information and belief, Mr. Burkett did not file an SEI at the same time and with the same official with whom he filed his SIC because he did not file an SEI with the State Ethics Commission until April 6, 2012.

22. In order to qualify as a candidate to run in the general election for District 88 of the House of Representatives, Walid Hakim is seeking to become the Democratic nominee by political party primary.

23. Upon information and belief, on or about March 29, 2012, Mr. Hakim filed an SIC with the LCDP to become a candidate for District 88 of the House of Representatives in the 2012 South Carolina General Election by nomination through a political party. However, upon information and belief, Mr. Hakim did not file an SEI at the same time and with the same official with whom he filed his SIC. In fact, upon information and belief,

Mr. Hakim has not filed an SEI with the LCDP or any other appropriate governing body to date.

24. Katrina F. Shealy is seeking the Republican nomination to become a candidate for District 23 of the Senate.

25. Upon information and belief, on or about March 16, 2012, Ms. Shealy filed an SIC with the LCRP to become a candidate for District 23 of the Senate in the 2012 South Carolina General Election by nomination through a political party. However, upon information and belief, Ms. Shealy did not file an SEI at the same time and with the same official with whom she filed her SIC because she did not file an SEI with the State Ethics Commission until April 12, 2012.

26. Upon information and belief, numerous other individuals seeking nomination to be candidates for office through the political primary process were required but failed to file an SEI at the same time and with the same official with whom the individual filed an SIC.

27. For example, upon information and belief, Jimmy D. McMillan is seeking the Republican nomination to become a candidate for District 36 of the House of Representatives in Spartanburg County. However, Mr. McMillan failed to file a statement of economic interests until April 16, 2012—16 days after the statutory close of the filing period set forth in S.C. Code Ann. § 7-11-15.

28. Similarly, upon information and belief, Larry H. Carter Center filed an SIC with the Charleston County Democratic Party on or about March 16, 2012 to seek the Democratic nomination to become a candidate for District 114 of the House of Representatives. Even so, upon information and belief, Mr. Carter Center did not file an

SEI at the same time and with the same official with whom he filed his SIC because he did not file an SEI with the State Ethics Commission until April 17, 2012—17 days after the statutory close of the filing period set forth in S.C. Code Ann. § 7-11-15.

29. These examples are illustrative, however, and there are other purported candidates who have not complied with the statutory requirements for becoming a candidate.

30. The statutory requirements for validly filing an SIC by these candidates required a contemporaneous, electronic filing of an SEI and submission of a copy of that form along with the SIC. However, upon information and belief, none of these purported candidates filed an SEI at the same time and with the same official with whom they attempted to file their SIC because they did not file an SEI with the State Ethics Commission until a date after the filing of their SIC.

31. Because these individuals were required but failed to file an SEI as required by S.C. Code Ann. § 8-13-1356(B), these individuals did not comply with the statutorily mandated methods of becoming candidates for office by political party primary and Respondents LCDP, LCRP, SCDP and SCRCP were required by statute to refuse their SIC. Moreover, because these individuals were required to file an SEI concurrently with their SIC, but failed to do so, these individuals are not qualified or eligible to seek nomination by political party primary for the respective offices and are not qualified as candidates to run in the general election.

32. Notwithstanding the disqualification and ineligibility of these and other individuals to seek the nomination to be a candidate for these various offices, upon information and belief, the LCDP, the LCRP, the SCDP, the SCRCP, and other county

political parties accepted the deficient filings of these and other individuals and provided written certification to the State Commission or Lexington Commission that these individuals met the qualifications for the office for which the individual desired to file.

33. Notwithstanding the disqualification and ineligibility of these and other individuals to seek the nomination to be a candidate for these various offices, upon information and belief, the Commission or the Lexington Commission accepted the written certifications from the LCDP, the LCRP, the SCDP, the SCRP, and other county political parties certifying that these individuals met the filing requirements for which the individual desired to file.

34. By letter dated April 16, 2012, Plaintiff Anderson requested that the Commission, the SCDP, and the SCRP refuse or, if necessary, remove the individuals identified above who are seeking the nomination to be candidates for office through political party primaries and who were required, but failed, to file an SEI at the same time and with the same official with whom they filed an SIC. By letter dated April 18, 2012, the Commission responded stating that it is not given the authority to determine if a candidate certified by a political party meets the qualifications to hold office or if the candidate completed the filing process properly. To date, neither the SCDP nor the SCRP has provided any response.

35. Upon information and belief, the State Commission, the Lexington Commission, and other county election commissions throughout South Carolina are in the process of formulating ballots which will include the name of these and other individuals who required but failed to file an SEI at the same time and with the same official with whom they filed their SIC.

36. This matter implicates the validity of this State's election process and, thus, is a matter of critical public importance. A timely resolution to this question is critical to ensuring the validity of the upcoming primary elections and ensuring the validity of the general election should one of these purported candidates prevail in a primary election and appear on the general election ballot.

37. The Petitioners respectfully assert that such an important issue should be decided immediately by this State's highest court. Delay in this Court's adjudication of the issue could be detrimental to the integrity of the mandated election process.

38. The Petitioners submit that this Petition, and the complaint submitted contemporaneously with this Petition pursuant to Rule 245(c) raise an issue of significant public interest which is appropriate for adjudication by this Court in its original jurisdiction for the following reasons:

- a. Resolution of this claim in this Court will provide needed guidance not only to the Petitioners and Respondents but to all county election parties and officials.
- b. Resolution of this claim also will ensure the integrity of and public confidence in this state's election process.
- c. This claim involves application of this state's election statutes to facts that Petitioners do not believe will be materially in dispute—the failure to properly file a complete SIC including an SEI and the legal ramifications and duties resulting from that failure.

In support of the this Petition, the Petitioners submit herewith a complaint and the notice to Respondent as required by Rule 245(c), SCACR, and incorporate by reference the supporting affidavits of Michael Anderson and Robert Barger and exhibits attached to the complaint as Exhibits 1 through 15.

WHEREFORE, having fully set forth their Petition, the Petitioners respectfully request that this Court grant the within Petition.

Respectfully submitted,

WILLOUGHBY & HOEFER, P.A.

Tracey C. Green

Benjamin P. Mustian

Post Office Box 8416

Columbia, South Carolina 29202-8416

(803) 252-3300

*Attorneys for Petitioners Michael Anderson
and Robert G. Barger*

Columbia, South Carolina
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