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The South Carolina Primary Debacle: The Impact of Anderson v. South Carolina State Election Commission and Vague State Election Laws on the 2012 Election

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**THE SOUTH CAROLINA PRIMARY DEBACLE:
THE IMPACT OF *ANDERSON V. SOUTH CAROLINA STATE ELECTION
COMMISSION* AND VAGUE STATE ELECTION LAWS ON THE 2012 ELECTION**

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I. INTRODUCTION

As one candidate who was removed from a South Carolina primary ballot noted, “This case is one of the strangest cases in the history of American election law.”¹ On May 2, 2012, the South Carolina Supreme Court handed down its ruling in *Anderson v. South Carolina Election Commission*,² which effectively removed nearly 200 candidates from the June 12 primary ballots for failure to properly file their statements of economic interests.³ Consequently, numerous

1. Adam Beam, *How S.C. 2012 Primaries Imploded*, THE STATE, May 6, 2012, at A1 (quoting Complaint at 1, *Somers v. S.C. State Election Comm’n*, 871 F. Supp. 2d 490 (D.S.C. 2012) (No. 3:12-CV-01191-CMC-CHH-JMC)), available at <http://www.thestate.com/2012/05/06/2265133/supreme-courts-ruling-on-filing.html>.

2. 397 S.C. 551, 725 S.E.2d 704 (2012) (per curiam).

3. See *id.* at 557–58, 725 S.E.2d at 707–08 (holding that candidates must file a statement of economic interests at the same time and with the same official whom candidates filed a statement of

politicians and other interested parties attempted to avoid the court's ruling by filing subsequent litigation on alternative legal theories in both state and federal court, but such efforts proved futile.⁴ The court's decision in *Anderson* correctly resolved the issue of whether the candidates properly filed their statements of economic interests;⁵ however, the practical effect of this ruling was that it left the fate of such candidates in the hands of state legislators, many of whom the candidates were challenging in the upcoming primaries.⁶ Some legislators introduced bills to amend the filing requirements under state election law and restore the ousted candidates to the ballots, but incumbents facing potentially tough primary opposition had very little incentive to quickly pass such reforms.⁷ As a result, the attempted reforms put the legislature in a state of gridlock toward the end of its session, the reforms did not pass, and the legislature produced no remedy for the disqualified candidates.⁸

While the candidates who were removed from the ballots should have researched the laws that establish the filing requirements, many of the candidates—especially those who are not attorneys—would have had trouble discerning the proper method for filing the various forms required to run for public office. Moreover, many of the candidates who only filed their statements electronically acted allegedly on the advice of state and local party officials and state election officials.⁹ Undoubtedly, confusion over the filing process was widespread, not only among potential candidates, but also among those in charge of complying with and enforcing state election laws.¹⁰ By removing nearly one-fifth of the potential candidates from the ballot,¹¹ the “primary debacle” profoundly affected political races at nearly every level of government. Thus, to

intention of candidacy, and that primary ballot requirements cannot be satisfied by filing a statement of economic interests electronically with the State Ethics Commission).

4. See, e.g., *Smith v. S.C. Election Comm'n*, 874 F. Supp. 2d 483, 494–97 (D.S.C. 2012) (citing *Anderson*, 397 S.C. 551, 725 S.E.2d 704; *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 421 (2012) (per curiam); S.C. CODE ANN. §§ 8-13-365, -1356 (Supp. 2012)) (holding that none of the state court decisions constituted a change in voting procedures or practices requiring preclearance under the Voting Rights Act); *Somers*, 871 F. Supp. 2d at 496–97 (holding that a candidate for state office lacked standing to bring a Voting Rights Act § 5 claim or equal protection claim individually or on behalf of Uniformed and Overseas Citizens Absentee Voting Act voters); *Florence Cnty. Democratic Party*, 398 S.C. at 129–30, 727 S.E.2d at 421 (citing *Anderson*, 397 S.C. at 557–58, 725 S.E.2d at 707–08) (holding that certain candidates were improperly certified because they failed to comply with requirements of filing an SEI as the court in *Anderson* required).

5. See *Anderson*, 397 S.C. at 557–58, 725 S.E.2d at 707–08.

6. See *Beam*, *supra* note 1 (explaining how incumbents who were exempt from the court ruling are now running unopposed or are facing an easy victory and, thus, have no reason to change the law to allow the candidates back on the ballot).

7. See *id.*

8. See *infra* Part IV.

9. See *Beam*, *supra* note 1.

10. Complaint at 4, *Somers v. S.C. State Election Comm'n*, 871 F. Supp. 2d 490 (D.S.C. 2012) (No. 3:12-CV-01191-CMC-CHH-JMC).

11. See *Beam*, *supra* note 1.

prevent another chaotic primary season like the one South Carolina experienced in 2012, the conflicting statutes must be amended to clearly express how, where, and with whom filings should be submitted.

This Note examines South Carolina state constitutional and statutory requirements for a candidate filing to run for public office. Specifically, Part II examines the statutes that outline the requirements for filing the statement of intention of candidacy (SIC)¹² and the statement of economic interests (SEI),¹³ pointing out the ambiguities that led to contentious litigation. Next, Part III provides an in-depth analysis of *Anderson*, the leading case that started the primary debacle and paved the way for all of the subsequent cases brought before state and federal courts.¹⁴ Part IV then discusses how, after unsuccessfully challenging the court's decision, disqualified candidates resorted to gathering signatures to appear as petition candidates on the November 6 general election ballots. Finally, Part V analyzes last session's failed legislative proposals, and Part VI proposes new legislation aimed at clarifying state election laws and preventing a similar debacle from occurring in the future.

II. THE ELECTIONS PROCESS IN SOUTH CAROLINA

A. *Qualifications and Requirements for Candidates Running for Public Office*

Under the South Carolina Constitution, to be eligible for a seat in the General Assembly a candidate must be a duly qualified elector in the district in which he or she is elected at the time of the election.¹⁵ A candidate must be at least twenty-five years old to run for South Carolina Senate and at least twenty-one years old to run for the South Carolina House of Representatives.¹⁶ Moreover, the candidate must be a legal resident of the district in which he or she is running at the time of filing for the office.¹⁷

Although the constitutional requirements for individuals running for public office in South Carolina are straightforward, qualified candidates must meet both the constitutional *and* statutory requirements for office.¹⁸ The General Assembly has passed numerous statutory provisions that impose additional candidacy requirements and outline a specific filing process that prospective candidates

12. See S.C. CODE ANN. § 7-11-15 (Supp. 2012).

13. See S.C. CODE ANN. § 8-13-1356 (Supp. 2012).

14. See *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012).

15. See S.C. CONST. art. III, § 7.

16. See *id.*

17. *Id.*

18. See *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 383–84, 735 S.E.2d 453, 458 (2012) (Pleicones, J., dissenting).

must follow.¹⁹ The main filing requirements at issue in this Note involve the SIC and SEI forms, which if filed improperly, prevent a candidate from participating in subsequent steps of the elections process. Thus, as many candidates have quickly learned, the election laws that the General Assembly adopts and amends are as important as the constitutional requirements.

South Carolina Code section 7-11-15 requires a candidate seeking nomination for the state Senate or House of Representatives to file an SIC form, which contains the candidate's statement of intention of candidacy, with the county executive committee of the candidate's respective political party in the county in which the candidate resides.²⁰ The SIC must be on a form designated and provided by the State Election Commission, and "must contain an affirmation that the candidate meets, or will meet by the time of the general election, *or as otherwise required by law*, the qualifications for the office sought."²¹ Subsequently, the party's county executive committee must transmit the statements along with the applicable filing fees to the party's state executive committee within five days of receiving the statements.²² The state executive committee must then certify the candidate pursuant to section 7-13-40,²³ which requires the party's chairman, vice chairman, or secretary to provide written certification verifying the qualifications of all candidates whose names are to be placed on the party's primary ballot to either the county or state election commission, whichever is appropriate.²⁴

Section 8-13-1356(B) provides another key statutory requirement: that a candidate running for public office provide an ethical disclosure of the candidate's economic interests by filing an SEI form.²⁵ The State Ethics Commission is required to furnish the SEI forms to each clerk of court in the state.²⁶ The General Assembly passed section 8-13-1356(B) in 1991—"just one year after five S.C. lawmakers were indicted for selling their votes"—as part of a major reform package that changed state ethics and election laws for those running for and holding public office.²⁷ Section 8-13-1356(B) requires a candidate running for public office to file an SEI "for the preceding calendar year *at the same time and with the same official with whom the candidate files a*

19. See, e.g., S.C. CODE ANN. § 7-11-15 (Supp. 2012) (requiring candidates to file statements of intention of candidacy); § 8-13-1356 (requiring candidates to file statements of economic interests).

20. § 7-11-15(2).

21. § 7-11-15(3) (emphasis added).

22. § 7-11-15(2).

23. *Id.*

24. § 7-13-40. If the district includes more than one county, the State Election Commission must prepare the primary ballot; conversely, if the district covers only one county, that county's election commission is responsible for preparing the primary ballot. See § 7-11-15(1)–(3).

25. § 8-13-1356(B).

26. § 8-13-1356(H).

27. See Beam, *supra* note 1.

declaration of candidacy or petition for nomination.”²⁸ Since the adoption of this statute, an officer authorized to receive declarations of candidacy may not accept such a declaration unless it is accompanied by an SEI.²⁹ “If the candidate’s name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy . . . must not certify the candidate subsequent to the election.”³⁰ Interestingly, section 8-13-1356(B) does not apply to public officials who already have current disclosures on file with the appropriate supervisory office.³¹

While public officials with current disclosures on file do not have to file a new SEI, those candidates who are required to furnish SEI forms must jointly file their SEI and SIC forms with their party’s county executive committee and rely on that entity to distribute the disclosure forms to the proper authorities.³² Such candidates’ forms must be submitted to both the State Election Commission and the State Ethics Commission.³³ Candidates may file their disclosure forms with the State Ethics Commission using its electronic filing system.³⁴ However, the State Ethics Commission has the authority to specify the format in which all certified campaign reports must be filed.³⁵

Although these statutes are in the same chapter and title as section 8-13-1356, these provisions deal with State Ethics Commission filings and not forms that candidates are required to file with the State Election Commission to run for public office.³⁶ As mentioned above, candidates’ SEI and SIC forms must be filed with both the State Ethics Commission and the State Election Commission; however, section 8-13-1356 does not expressly discuss the manner in which candidates must file forms.³⁷ Rather, the statute merely states that candidates must file their SIC and SEI forms at the same time and with the same official.³⁸ An officer authorized to receive SIC and SEI forms may not certify a candidate if those forms are not submitted properly.³⁹

Although South Carolina’s election laws set forth relatively strict filing requirements, section 8-13-1170 provides for some leniency as to filing deadlines and substance. In certain circumstances, candidates may receive time

28. § 8-13-1356(B) (emphasis added).

29. § 8-13-1356(E).

30. *Id.*

31. § 8-13-1356(A).

32. See § 8-13-1356(B); § 7-11-15.

33. Interview with Marci Andino, Exec. Dir., State Election Comm’n, in Columbia, S.C. (Oct. 24, 2012); see also §§ 7-11-15(3), 8-13-1356 (requiring, when read together, that the forms be submitted to the State Election Commission and the State Ethics Commission).

34. See § 8-13-365.

35. See § 8-13-1358.

36. See *Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 557–58, 725 S.E.2d 704, 707 (2012) (per curiam).

37. See § 8-13-1356(B).

38. See *id.*

39. See § 8-13-1356(E).

extensions for filing the appropriate disclosure forms.⁴⁰ Under section 8-13-1170(B), the appropriate supervisory office has the discretion to grant a reasonable extension of time for filing an SEI as long as the extension does not exceed thirty days.⁴¹ Moreover, section 8-13-1170(A) states that “[t]he appropriate supervisory office may, in its discretion, determine that errors or omissions on statements of economic interests are inadvertent and unintentional . . . and may be handled as technical violations not subject to the provisions of this chapter pertaining to ethical violations.”⁴²

B. Nomination of Candidates Running for Public Office

After a candidate properly files the required forms and disclosures with the State Election Commission and the State Ethics Commission, the candidate must be nominated for the public office he or she is seeking.⁴³ Candidates for offices voted on in a general or special election may be nominated by political party primary, by political party convention, or by petition.⁴⁴

The first, most prevalent way in which a candidate may be nominated is by political party primary.⁴⁵ If a candidate wins a political party primary election, he or she is that party’s nominee and will appear on the ballot for the ensuing general or special election.⁴⁶ Additionally, if any candidates are unopposed after the closing of entries for the political party’s primary election, the state committee or the county committee, depending on the office being sought, “shall declare such unopposed candidates as party nominees, and the names of unopposed candidates shall not be placed upon the primary election ballots but shall be certified for general election ballots.”⁴⁷

However, even if a candidate is defeated in the political party’s primary election, the candidate may later become the party’s nominee if the candidate initially selected as the party’s nominee dies; resigns for a legitimate, nonpolitical reason; *becomes disqualified after nomination*; or otherwise ceases to become the party’s nominee before the election is held.⁴⁸ In that situation, the vacancy must be filled by a special party primary election.⁴⁹ Candidates defeated in the party’s primary election can participate in this special party

40. See § 8-13-1170.

41. See § 8-13-1170(B). However, the thirty-day extension limit may not apply in cases of illness or incapacitation. *Id.*

42. § 8-13-1170(A).

43. See § 7-11-10.

44. *Id.*

45. See *id.*

46. See *id.* Under unique circumstances where a political party cannot submit a candidate’s name in time to appear on the general election ballot, the candidate and party must hold a “special election”—a process outlined in section 7-11-50.

47. S.C. CODE ANN. § 7-11-90 (1976).

48. S.C. CODE ANN. § 7-11-50 (Supp. 2012).

49. See § 7-11-55.

primary election, thus affording them a second chance at becoming the party nominee.⁵⁰

The second, less-utilized way in which a candidate may be nominated is by a political party convention.⁵¹ A party may only use the convention method to nominate candidates if three-fourths of the convention's total membership votes in favor of using that method.⁵² However, party members may not decide whether to use the convention method for the offices of state Senate and House of Representatives; rather, the party's state committee must determine the nomination process for the party's candidates for those offices.⁵³ Party conventions also may not "make nominations for one or more offices at the convention and order primaries for other offices to be filled during the same election year"; they must choose one method or the other.⁵⁴ Still, if a party uses the convention method, nominations must be made public before the party certifies candidates to the appropriate authorities charged with preparing the ballots for the general or special election.⁵⁵

The final way a candidate may be nominated is by petition.⁵⁶ Some political candidates, for various reasons, do not meet the filing requirements under South Carolina's election laws and, thus, run for office as petition candidates.⁵⁷ Petition candidates must collect "the signatures of at least five percent of the qualified registered electors [in] the geographical area of the office" in which they are running.⁵⁸ However, "no petition candidate is required to furnish the signatures of more than ten thousand qualified registered electors for any office."⁵⁹ After gathering signatures, the candidate must then file a nominating petition with the State Election Commission, the county election commission, or the clerk of a municipality—depending on the level of office the candidate is seeking—and the respective commission must certify the petition, which is kept as a public record.⁶⁰

While certified petition candidates' names appear on general election ballots without party affiliations next to their names, candidates must still meet the constitutional requirements outlined above and must also meet the statutory requirements set forth for petition candidates.⁶¹ Specifically, under section 8-13-

50. See §§ 7-11-50, -55.

51. See § 7-11-10.

52. See § 7-11-30.

53. *Id.*

54. *Id.*

55. *Id.*

56. See § 7-11-10.

57. See Beam, *supra* note 1 (discussing how some candidates who were removed from the ballot considered running as petition candidates).

58. § 7-11-70.

59. *Id.*

60. See *id.* All nominating petitions must be on the same standardized form, and the requirements for this form are detailed in section 7-11-80.

61. See, e.g., § 8-13-1356(D)–(E) (requiring that all candidates file an SEI and prohibiting officers from receiving petitions unless they are accompanied by an SEI); S.C. CONST. art. III, § 7

1356(D), an “individual who becomes a candidate other than by filing” must file an SEI no later than fifteen business days after becoming a candidate with the appropriate supervisory office.⁶² Additionally, under section 8-13-1356(E), an officer authorized to receive petitions for nominations may not accept a petition for nomination unless the petition is accompanied by an SEI form.⁶³

Filing petitions is typically an unorthodox means of obtaining nomination for public office because it is burdensome for the candidates.⁶⁴ According to Marci Andino, the Executive Director of the South Carolina State Election Commission, only thirty-six petition candidates gathered the requisite number of signatures and filed the proper paperwork to appear on the November 6, 2012 general election ballot.⁶⁵ In fact, candidates often use petitions for nomination as a tool of last resort when they are unable to meet the statutory requirements outlined in South Carolina election laws.⁶⁶

III. THE SOUTH CAROLINA SUPREME COURT DECISION THAT SPARKED THE PRIMARY DEBACLE

As discussed above, candidates filing to run for the South Carolina House of Representatives or Senate are required to file their forms and disclosures with both the State Election Commission and the State Ethics Commission.⁶⁷ Prior to a 2010 amendment to the state’s election laws, candidates were required to file their disclosure forms with the State Ethics Commission in person.⁶⁸ However, the new law—section 8-13-365 of the South Carolina Code—charged the State Ethics Commission with establishing an electronic filing system for all disclosures and reports from all persons and entities subject to its jurisdiction.⁶⁹ Thus, after 2010, candidates were required to file their forms and disclosures in

(stating that “[n]o person is eligible for a seat in the Senate or House of Representatives” unless the listed qualifications are met).

62. § 8-13-1356(D).

63. § 8-13-1356(E).

64. See § 7-11-70 (requiring petition candidates to collect signatures from at least five percent of qualified electors in their geographical area); see also Brian McConchie, *More Candidates Disqualified from SC Primaries*, MIDLANDSCONNECT.COM, <http://www.midlandsconnect.com/news/story.aspx?id=763625#.USU7dM3kZbw> (last updated June 8, 2012, 11:50 PM) (explaining how it can be difficult to acquire the necessary number of signatures to qualify as a petition candidate).

65. Interview with Marci Andino, *supra* note 33. Specifically, Ms. Andino said that twenty-six petition candidates qualified to appear on the general election ballot for the state House of Representatives and ten petition candidates qualified to appear on the general election ballot for state Senate. *Id.*

66. See, e.g., Beam, *supra* note 1 (explaining the situation of one candidate who, after losing her spot on the ballot because she filed her SEI online, decided to run as a petition candidate).

67. See Interview with Marci Andino, *supra* note 33.

68. See Beam, *supra* note 1 (explaining how allowing candidates to file the forms online would prevent people from having to come to Columbia to get paper copies at the State Ethics Commission).

69. See § 8-13-365(A).

person with the State Election Commission, but they could file electronically with the State Ethics Commission.⁷⁰

The change to one filing requirement, but not the other, created a conflict for those trying to follow the law.⁷¹ Recognizing this inconsistency, the Executive Director of the State Election Commission collaborated with Cathy Hazelwood, the Deputy Director and General Counsel for the South Carolina State Ethics Commission,⁷² to try to harmonize the conflicting statutes.⁷³ They concluded that if an individual filing for candidacy filed an SEI online with the State Ethics Commission, the prospective candidate also needed to submit a paper copy, *or a receipt with a time stamp showing that the individual filed an SEI online*, in person with the State Election Commission to satisfy the SEI filing requirement.⁷⁴ Unfortunately, some politicians and other interested parties did not reach the same conclusion, and the General Assembly never formally addressed the inconsistency in the statutes. Thus, the inconsistent statutes remained in place going into the 2012 primaries.⁷⁵

In the spring of 2012, Michael Anderson and Robert Barger, two Lexington County voters, noticed a number of candidates failed to properly file their SEIs in person for the 2012 election, and filed a lawsuit against the State Election Commission, the South Carolina Democratic Party, the South Carolina Republican Party, the Lexington County Commission of Registration and Elections, the Lexington County Democratic Party, and the Lexington County Republican Party, asking the court to remove the candidates from the primary ballots for failure to follow the state's filing process.⁷⁶ When considering the lawsuit, the South Carolina Supreme Court determined that this issue was ripe for judicial determination and stated that the matter came within the court's original jurisdiction.⁷⁷ Moreover, the court recognized that the plaintiffs, as voters, would likely be presented with a slate of candidates who would not be

70. See *id.*; see also Interview with Marci Andino, *supra* note 33 (“The 2010 law allowed SEIs to be filed electronically with the Ethics Commission, but not the Election Commission.”).

71. See Beam, *supra* note 1.

72. See Staff of South Carolina State Election Commission, SC.GOV, <http://ethics.sc.gov/AboutUs/Pages/Commission.aspx#staff> (last visited Mar. 28, 2013).

73. Interview with Marci Andino, *supra* note 33.

74. *Id.* According to Ms. Andino, both the State Ethics Commission and the State Election Commission posted instructions to their web sites informing candidates that either method would satisfy the SEI filing requirement. *Id.* Additionally, Ms. Andino and Ms. Hazelwood met with the state party chairs in early 2012 to inform them about the potential filing problems that were likely to arise in the 2012 elections. *Id.* The state party chairs were then instructed to meet with each of the county party chairs to relay this information. *Id.*

75. See Beam, *supra* note 1.

76. See *id.* (citing *Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 725 S.E.2d 704 (2012) (per curiam)). Specifically, Anderson and Barger realized that “many candidates only filed their [SEIs] online and did not file hard copies with the state parties.” *Id.*

77. See *Anderson*, 397 S.C. at 554–56, 725 S.E.2d at 705–06. The court also rejected the South Carolina Republican Party's claim that it lacked subject matter jurisdiction over the issue, stating that “[h]ere we are not asked to judge a disputed legislative election but rather to interpret a statute.” *Id.* at 555, 725 S.E.2d at 706.

certified after the election and further noted that the matter was of “great public importance” because “[i]ntegrity in elections is foundational.”⁷⁸ Thus, in *Anderson*, the South Carolina Supreme Court granted the plaintiffs relief “to require compliance with the law and ensure that only legally qualified candidates [were] included on the ballots.”⁷⁹

The court first interpreted section 8-13-1356 of the South Carolina Code and determined that the provision “unambiguously mandates that an individual file an SEI *at the same time and with the same official* with whom the individual files an SIC.”⁸⁰ Still, the South Carolina Republican Party (State Republicans) argued that section 7-11-15(3), “which provides that an individual’s name must appear on the ballot if the individual produces a signed and dated copy of a timely filed SIC,” directly conflicted with section 8-13-1356(B), which requires that the SIC and SEI be filed simultaneously.⁸¹ The South Carolina Supreme Court disagreed with the State Republicans’ argument that the statutes were irreconcilable and instead held that the statutes could be harmonized.⁸² The court stated that section 7-11-15(3) “sets forth the requirements for an individual’s name to appear on the ballot ‘*except as otherwise provided by law*.’”⁸³ Additionally, the court stated that “[s]ection 8-13-1356(E) expressly references Chapter 11 of Title 7 and prohibits a political party from accepting an SIC for filing if it is not accompanied by an SEI.”⁸⁴ Therefore, the court “decline[d] to ignore the ‘except as otherwise provided by law’ language” of section 7-11-15(3) and the unambiguous language of section 8-13-1356(E) because it concluded that the two statutes could be easily reconciled.⁸⁵

The court then addressed the issue raised by the South Carolina Democratic Party (State Democrats), who argued that section 8-13-365 required candidates to file an SEI electronically on the State Ethics Commission’s web site, and that the requirement of section 8-13-1356(B)—that an individual file an SEI “*at the same time and with the same official* with whom the individual files an SIC”—could be satisfied alternatively by electronically filing an SEI with the State Ethics Commission pursuant to section 8-13-365.⁸⁶ The court disagreed and concluded that, because section 8-13-365 is not part of the qualification process to include an individual on the ballot, filing an SEI electronically with the State

78. *Id.* at 555–56, 725 S.E.2d at 706.

79. *Id.* at 556, 725 S.E.2d at 706.

80. *Id.* at 557, 725 S.E.2d at 707 (emphasis added).

81. *Id.*

82. *Id.* However, the court did not harmonize the statutes the same way that Ms. Andino and Ms. Hazelwood had prior to the primary ballot litigation. See Interview with Marci Andino, *supra* note 33.

83. *Anderson*, 397 S.C. at 557, 725 S.E.2d at 707 (emphasis added) (quoting § 7-11-15(3)).

84. *Id.*

85. *Id.* (quoting § 7-11-15(3)).

86. *Id.* at 557–58, 725 S.E.2d at 707 (emphasis added) (quoting § 8-13-1356(B)).

Ethics Commission could not excuse noncompliance with section 8-13-1356(B).⁸⁷

Finally, the court addressed the State Republicans' argument that section 8-13-1356 "impermissibly adds qualifications for an individual to serve in the General Assembly."⁸⁸ Specifically, the State Republicans argued that section 7 of article III of the South Carolina Constitution "sets forth the only qualifications for service" and that section 8-13-1356 was unconstitutional because it heightened the qualifications for office.⁸⁹ However, the court stated that section 8-13-1356 "*does not alter the qualifications for one to serve as a legislator*." Instead, it merely delineates filing requirements to appear on a ballot.⁹⁰ Thus, the court held that, based on unambiguous language and legislative intent, sections 8-13-1356 and 7-11-15(3) require an individual to file an SEI at the same time and with the same official with whom an SIC is filed.⁹¹ Accordingly, the court "prohibit[ed] political party officials from accepting an SIC [that was] not accompanied by an SEI."⁹²

Because the South Carolina Supreme Court concluded that section 8-13-1356(B) was constitutional and could be reconciled with section 7-11-15(3), the court held that any non-exempt individuals⁹³ who did not properly file their SICs simultaneously with their SEIs were improperly placed on the party primary ballots and had to be removed.⁹⁴ The practical effect of the court's ruling on the election process was that nearly 200 candidates were removed from the primary ballots.⁹⁵ The court acknowledged this mass removal and stated:

We fully appreciate the consequences of our decision, as lives have been disrupted and political aspirations put on hold. However, the conduct of the political parties in their failure to follow the clear and unmistakable directives of the General Assembly has brought us to this point. Sidestepping the issue now would only delay the inevitable.⁹⁶

87. *Id.*

88. *Id.* at 558, 725 S.E.2d at 707.

89. *Id.*

90. *Id.* (emphasis added). This particular quotation became a divisive point between the majority and dissent in *Tempel v. South Carolina State Election Commission*, 400 S.C. 374, 735 S.E.2d 453 (2012). The *Tempel* case is discussed in more detail in Section III.B.

91. *Anderson*, 397 S.C. at 558, 725 S.E.2d at 707–08.

92. *Id.* at 558, 725 S.E.2d at 708.

93. As explained in Part II.A of this Note, incumbents are exempt from the filing requirements outlined in section 8-13-1356(B) because they are "public officials" with current disclosure statements on file. See S.C. CODE ANN. § 8-13-1356(A) (Supp. 2012). Thus, when the court in *Anderson* mentions "non-exempt individuals," it is referring to any candidate who is not an incumbent. See *Anderson*, 397 S.C. at 558, 725 S.E.2d at 708.

94. See *Anderson*, 397 S.C. at 558, 725 S.E.2d at 708.

95. See Beam, *supra* note 1.

96. *Anderson*, 397 S.C. at 558–59, 725 S.E.2d at 708.

The court provided the appropriate political party officials with a deadline of noon on May 4, 2012, at which time they were to produce a list of *only* those candidates who properly filed their SICs and SEIs simultaneously as required by section 8-13-1356(B).⁹⁷

A. *The Aftermath of the Anderson Decision*

Because the court's ruling affected a large number of races at the county level, the county party chairs had to compile the list of candidates in their jurisdictions who met the filing requirements and then submit that list to the State Election Commission.⁹⁸ Unfortunately, the parties in several counties were reluctant to comply with the South Carolina Supreme Court's ruling in *Anderson*.⁹⁹ The Florence County Republican Party (County Republicans) tried to circumvent the ruling by certifying the eligibility of all of its candidates, despite the fact that many of the candidates had not properly filed their SEI forms.¹⁰⁰ The Florence County Democratic Party (County Democrats) subsequently sued the County Republicans for their blatant disregard of the supreme court's ruling in *Anderson*.¹⁰¹ In *Florence County Democratic Party v. Florence County Republican Party*,¹⁰² the South Carolina Supreme Court stated that it had already clearly held in *Anderson*¹⁰³ "that filing a paper copy of an SEI simultaneously with the filing of an SIC [was] the *only* method by which a non-exempt individual [could] comply with [section 8-13-1356(B)]."¹⁰⁴ The court

97. *Id.* at 558, 725 S.E.2d at 708.

98. *See* Beam, *supra* note 1. Interestingly, some believe that these county party chairs misdirected the candidates about the filing requirements in the first place. Interview with Marci Andino, *supra* note 33; *see also* Beam, *supra* note 1 ("A lot of candidates—acting on the advice of state and local party officials and state election officials—filed their economic interest statements online."). According to Ms. Andino, the problem this year was not that most candidates had only filed their SEI forms electronically; rather, the problem was that candidates had not filed an SEI form *at all*. Interview with Marci Andino, *supra* note 33. In fact, Ms. Andino said that in some complaints, removed candidates stated that they tried to turn in a copy of the SEI form in person with their respective county party chairs, but officials told the candidates not to turn in a paper copy of the SEI because the candidates did not need it. *Id.*

99. *See* Beam, *supra* note 1.

100. *See id.*

101. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 126, 727 S.E.2d 418, 419 (2012) (per curiam).

102. 398 S.C. 124, 727 S.E.2d 418.

103. *Id.* at 128, 727 S.E.2d at 421.

104. *Id.* at 126, 727 S.E.2d at 419 (citing S.C. CODE ANN. § 8-13-1356(B) (Supp. 2012)). Here, the court was referring to its holding in *Anderson*, which the court clarified by allowing petitions for rehearing. *Id.* In *Florence County Democratic Party*, "[t]he County Republicans admit[ted] that they certified individuals as candidates who did not comply with the filing requirements of § 8-13-1356(B), as construed by [the] Court in *Anderson*." 398 S.C. at 126–27, 727 S.E.2d at 420. However, the County Republicans tried to argue that "the term 'candidate' is included in the definition of 'public official,'" and that the candidates who filed their SEIs online prior to filing an SIC in person had SEIs on file, thus qualifying them as "public officials" exempt

rejected all of the County Republicans' arguments and held that the County Republicans, like all of the political parties in South Carolina, were bound by its decision in *Anderson*.¹⁰⁵

Although the County Republicans' noncompliance with the court's mandates was the only issue before the South Carolina Supreme Court in *Florence County Democratic Party*, numerous interested parties—mainly candidates removed from the primary ballot by the *Anderson* ruling—filed amicus curiae briefs seeking to have their names restored to the primary ballots in other elections.¹⁰⁶ The court denied these requests and issued the following warning:

However, just as the Florence County political parties were bound by the decision in *Anderson*, this decision applies to the political party primaries throughout the State. To the extent other county political parties have improperly certified candidates, *those parties ignore the decisions of this Court at their own peril*.¹⁰⁷

The South Carolina Supreme Court's stern warning was largely a response to the overwhelming amount of litigation involving individuals and county parties that took place after its decision in *Anderson*, most of which mirrored the litigation in *Anderson* and *Florence County Democratic Party*.¹⁰⁸ The State Election Commission was involved in thirty-four lawsuits in 2012 regarding candidates contesting their removal from the primary ballots.¹⁰⁹ After *Anderson* and *Florence County Democratic Party*, candidates who were removed from the ballots sought relief in federal court; however, these efforts proved futile as well.¹¹⁰ Therefore, the *Anderson* ruling essentially prevented candidates

under section 8-13-1356(A). *Id.* at 127, 727 S.E.2d at 420. For the statutory definitions of "public official" and "candidate," see subsections (28) and (4), respectively, of section 8-13-1300(28).

105. *Florence Cnty. Democratic Party*, 398 S.C. at 130, 727 S.E.2d at 421. The court was not pleased with the County Republicans for indicating in their petition for original jurisdiction that "they 'carefully followed [the Court's] ruling' in *Anderson*," but acknowledged that they had improperly certified candidates in response to a direct request by the court. *Id.* at 129, 727 S.E.2d at 421 (alteration in original). Using rather profound words, the court stated that it was "disappointed in the County Republicans for failing to diligently perform [their] duty and for presenting an inaccurate statement to [the] Court concerning their actions in certifying candidates for the party primary." *Id.*

106. *See id.* at 130, 725 S.E.2d at 421.

107. *Id.* (emphasis added).

108. *See* Interview with Marci Andino, *supra* note 33.

109. *Id.*

110. *See, e.g.,* Smith v. S.C. Election Comm'n, 874 F. Supp. 2d 483, 494–97 (D.S.C. 2012) (denying a temporary restraining order to hold off the elections because Smith did not meet his burden of establishing the likelihood of success on the merits of the claim that any of the alleged actions constituted a change in voting procedures or practices which required preclearance under § 5 of the Voting Rights Act); Somers v. S.C. State Election Comm'n, 871 F. Supp. 2d 490, 496–97 (D.S.C. 2012) (holding that a candidate for state office lacked standing to bring a Voting Rights Act

removed from the primary ballots from successfully seeking any judicial remedy.

B. The State Supreme Court's Narrow Holding that Carved Out an Exception to Anderson

While the option of judicial remedy was unavailable to a vast majority of the candidates removed from the primary ballots, the South Carolina Supreme Court ultimately granted relief to one candidate in a unique, high-profile case—*Tempel v. South Carolina State Election Commission*.¹¹¹ In the race for state Senate District 41, all Republican contenders, except for Paul Thurmond,¹¹² were removed from the primary ballot for failure to comply with the mandates of section 8-13-1356(B), as interpreted in *Anderson* and clarified in *Florence County Democratic Party*.¹¹³ Thurmond, a part-time municipal prosecutor for the City of North Charleston, admitted that he had not filed an SEI simultaneously with his SIC when filing to run as a Republican for District 41.¹¹⁴ Thurmond also admitted that he had never filed an SEI in connection with his position as a municipal prosecutor.¹¹⁵ Still, Thurmond's name was kept on the ballot, and he won the Republican primary election for District 41.¹¹⁶ However, after George Tempel, the Democratic contender for District 41, filed suit against the State Election Commission, the circuit court voided the results of that primary and disqualified Thurmond as the party's nominee for failing to meet the statutory filing requirements.¹¹⁷ The circuit court then ordered the Charleston County Republican Party to conduct a special primary election, which Thurmond won.¹¹⁸ Tempel and the State Election Commission appealed the circuit court's decision ordering a special primary election.¹¹⁹

In *Tempel*, the South Carolina Supreme Court, in a narrow ruling, determined that the Charleston County Republican Party properly held a special

§ 5 claim or equal protection claim individually or on behalf of Uniformed and Overseas Citizens Absentee Voting Act voters).

111. 400 S.C. 374, 382, 735 S.E.2d 453, 457 (2012).

112. Paul Thurmond is the son of the late United States Senator Strom Thurmond, who served South Carolina for forty-eight years in the United States Senate prior to his retirement in 2003. See Strom Thurmond Inst., *The Biography of Senator Strom Thurmond*, CLEMSON U., <http://sti.clemson.edu/about-us-mainmenu-27/biography-mainmenu-126> (last visited Mar. 28, 2013). Prior to serving in the United States Senate, Strom Thurmond served as a State Senator and as Governor of South Carolina. See *id.* He also once ran unsuccessfully for President of the United States in 1948. See *id.*

113. *Tempel*, 400 S.C. at 376–77, 735 S.E.2d at 454.

114. *Id.* at 376, 735 S.E.2d at 454.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

primary election for the District 41 seat.¹²⁰ In a 3–2 decision, the court held that the special primary election was proper because Thurmond was a “disqualified” candidate under section 7-11-55 and that this designation necessitated the special election.¹²¹ In ruling on the issue that removed most candidates from the primary ballot in *Anderson* and *Florence County Democratic Party*, the court first said that “[a]ssuming, without deciding, that a part-time municipal prosecutor is a public official who is required to file an SEI, we hold Thurmond was not exempt from the simultaneous filing requirement of section 8-13-1356(B).”¹²² However, the court stated that Thurmond was selected through a party primary election, though he ran unopposed, and that he was certified as the Republican Party nominee for District 41.¹²³ The court rejected the State Election Commission’s argument that Thurmond was not the party nominee because he was improperly certified and stated that “[t]he fact that the Republican Party in good faith, albeit erroneously, believed Thurmond was exempt from the filing requirement of section 8-13-1356(B) does not negate his status as the party nominee.”¹²⁴

The broader issue in *Tempel* was “what South Carolina’s election law regime provides to political parties, candidates, and citizens upon the disqualification or resignation of a party nominee.”¹²⁵ Chief Justice Toal pointed out that *Anderson* did not address the issues in *Tempel* and therefore was not controlling.¹²⁶ Thus, the court tried to determine the meaning of the term “disqualified” by looking at the legislative intent behind section 7-11-55—the party nominee replacement statute—which states that when a party nominee selected through a party primary election is disqualified, the vacancy must be filled through a special primary.¹²⁷ The court stated that it was “clear from the face of the statute that the General Assembly intended to provide a mechanism

120. *See id.* at 382, 735 S.E.2d at 457. Current Lieutenant Governor Glenn F. McConnell held the District 41 seat for over thirty years before stepping down as the powerful Senate President Pro Tempore to fulfill his constitutional duty when former Lieutenant Governor Ken Ard resigned from office amid an ethics scandal. Adam Beam & Clif LeBlanc, *Ard Quits, Is Indicted, Gets Probation*, THE STATE, Mar. 10, 2012, at A1, available at <http://www.thestate.com/2012/03/10/2185468/lieutenant-governor-indicted-in.html>.

121. *See Tempel*, 400 S.C. at 382, 735 S.E.2d at 457.

122. *Id.* at 378, 735 S.E.2d at 455. In fact, Thurmond admitted that he did not file an SEI simultaneously with his SIC to run for Senate District 41, nor did he file an SEI for his position as a municipal prosecutor for the City of North Charleston. *Id.* at 376, 735 S.E.2d at 454.

123. *Id.* at 379, 735 S.E.2d at 455.

124. *Id.* at 379, 735 S.E.2d at 455–56. Ms. Andino said that the goal of the State Election Commission in this case, and throughout all of the litigation, was to protect the integrity of the process for elections in South Carolina. Interview with Marci Andino, *supra* note 33. In *Tempel*, the State Election Commission felt that Thurmond had been given “a second bite at the apple” because the Charleston County Republican Party had clearly ignored *Anderson* when it certified Mr. Thurmond. *Id.*

125. *Tempel*, 400 S.C. at 381, 735 S.E.2d at 456.

126. *Id.*

127. *Id.* at 381, 735 S.E.2d at 457.

for political parties to replace nominees prior to the general election.”¹²⁸ Moreover, the court said:

It is equally clear that the General Assembly would not have intended for “disqualified” to be interpreted so narrowly that a political party is prevented from conducting *any* special primary to replace its nominee due to the improper certification of a nominee. The dissent’s view of disqualification, based on our opinion in *Anderson*, would not only remove Thurmond from the ballot, but would prevent the Republican Party from holding *any* primary. We simply cannot infer that the General Assembly intended for the section which speaks directly to the issue of “disqualification,” to include the arbitrary distinctions that the dissent suggests.¹²⁹

Therefore, the court held that Thurmond was *disqualified* from the initial primary election for District 41 that was held on June 12, 2012, because he failed to comply with section 8-13-1356(B).¹³⁰ Since he was disqualified after being nominated through the initial Republican Party primary election for that seat, the court held that “the circuit court properly ordered a special primary election to be held pursuant to section 7-11-55.”¹³¹ The majority refused to declare the special election null and void because it said one of the purposes of statutory construction was to avoid an absurd result.¹³² The Chief Justice believed this result would be absurd, and she had enough votes on the court to write the narrow holding that avoided depriving Thurmond of the ability to run as the Republican nominee for District 41.¹³³

Justice Pleicones’ interesting dissent pointed out that the Charleston County Republican Party chose not to remove Thurmond from the ballot despite the court’s language in *Florence County Democratic Party*, which warned that parties who choose to ignore the decisions of the court do so “at their own peril.”¹³⁴ Additionally, the dissent argued that the court’s ruling in this case represented a departure from the clearly established law in *Anderson*.¹³⁵ However, the dissent disagreed mostly over the issue of whether Thurmond was “disqualified after his nomination.”¹³⁶ Justice Pleicones argued that

128. *Id.*

129. *Id.* at 381–82, 735 S.E.2d at 457.

130. *Id.* at 382, 735 S.E.2d at 457.

131. *Id.*

132. *See id.* at 381, 735 S.E.2d at 457.

133. *See id.* at 381–82, 735 S.E.2d at 457.

134. *Id.* at 383, 735 S.E.2d at 457 (Pleicones, J., dissenting) (quoting *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 130, 727 S.E.2d 418, 421 (2012) (per curiam)) (internal quotation marks omitted).

135. *See id.* at 383–84, 735 S.E.2d at 458.

136. *Id.* at 384–86, 735 S.E.2d at 458–59 (quoting S.C. CODE ANN. § 7-11-55 (Supp. 2012)) (internal quotation marks omitted).

disqualification did not exist *after* nomination; rather “it existed *at the time he filed as a candidate*” because he failed to follow the simultaneous filing requirement of section 8-13-1356(B).¹³⁷ Thus, the dissent would have declared the special primary election null and void.¹³⁸

Some people were worried that by upholding the circuit court’s decision to hold the special primary election and allow the disqualified nominee to run, the court’s ruling in *Tempel* might invite lawsuits seeking special primary elections for other candidates removed from primary ballots for similar reasons.¹³⁹ The chairman of the state Democratic Party said that *Tempel* was just another twist in the road to November 6, 2012, for any candidate in South Carolina and predicted that the legal wrangling was not over.¹⁴⁰ Others, including Senator Larry Martin, Chairman of the Senate Judiciary Committee, were less skeptical of the legal controversy this decision sparked.¹⁴¹ Senator Martin believed that the court’s decision was so “narrowly written” that it would apply only to others in Thurmond’s situation—candidates who were disqualified after winning a primary.¹⁴² More importantly, since the court’s ruling was delivered on September 20, 2012—very close to the general election—the elections commission did not have enough time to set up more primaries even if the court had decided to clear them.¹⁴³

While the outcome of the South Carolina Supreme Court’s ruling in *Tempel* was difficult to predict, given the chaos that surrounded the 2012 primary season, it was evident that the court was ruling specifically on the narrow facts of that case.¹⁴⁴ The court did not change the law regarding the statutory filing requirements of running for office; in fact, it held that Thurmond was properly disqualified because he failed to file an SIC and SEI simultaneously.¹⁴⁵ The opinion focused narrowly on the facts of the case, and the court specifically distinguished the issue in *Tempel* from the issue in *Anderson*.¹⁴⁶ Thus, while some believed that this case might spark even more litigation, it would have been difficult for candidates to produce the same unusual facts of *Tempel* to validly argue that their situations were similar to that of Thurmond’s.

137. *Id.* at 385–86, 735 S.E.2d at 459.

138. *See id.* at 386, 735 S.E.2d at 459.

139. *See* Tim Smith, *Primary Ruling’s Impact Still Cloudy*, GREENVILLE NEWS (S.C.), Sept. 22, 2012, at A1.

140. *Id.*

141. *See id.*

142. *Id.*

143. *See id.*

144. *See id.*

145. *See Tempel v. S.C. State Election Comm’n*, 400 S.C. 374, 381–82, 735 S.E.2d 453, 457 (2012).

146. *See id.* at 381, 735 S.E.2d at 456.

IV. THE GENERAL ASSEMBLY'S [IN]ACTION ON PROPOSED ELECTION LAW REFORMS

With the exception of the relief granted in *Tempel*, the courts did not provide a remedy to any of the candidates who were removed from the primary ballots. Thus, after the South Carolina Supreme Court handed down the *Anderson* decision on May 2, 2012, many candidates turned to the General Assembly to fix the ambiguous election laws that led to the primary debacle.¹⁴⁷ Unfortunately, this push for legislative action came very late in the legislative session, and the proposed reforms hit major roadblocks, which are detailed below. Despite several attempts, the General Assembly failed to pass any legislative remedy for the removed candidates prior to adjournment.

Initially, after *Anderson*, both the state Senate and House of Representatives endeavored to pass joint resolutions to provide candidates removed from the primary ballots with the opportunity to file another SEI form.¹⁴⁸ The Senate Joint Resolution, S. 1512, received a first reading and was referred to the Judiciary Committee on May 3, 2012.¹⁴⁹ On May 9, 2012, Senator Chip Campsen issued a majority report with a favorable reading of S. 1512 leaving the Senate Judiciary Committee.¹⁵⁰ More importantly, Senator Jake Knotts and Senator Robert Ford issued a minority report, giving an unfavorable reading of S. 1512 leaving committee.¹⁵¹ Senate Rule 9 provides that any bill or resolution given a favorable report by a standing committee shall be set to receive a second reading.¹⁵² However, because two senators issued a minority report, S. 1512 was placed on the Senate's contested calendar, and this action could practically be overcome only with the unanimous consent of the body,¹⁵³ which is virtually impossible to obtain in such circumstances. Accordingly, due to the Senate Rules and the time pressures, the Senate Joint Resolution was effectively killed for that session.¹⁵⁴ Thus, despite taking up a reform that many political insiders

147. See Beam, *supra* note 1.

148. See S.J. Res. 1512, 119th Gen. Assemb., 2d Reg. Sess. (S.C. 2012), *reprinted in* [2012] 3 S.C. SENATE J. 2478; H.R.J. Res. 5216, 119th Gen. Assemb., 2d Reg. Sess. (S.C. 2012), *reprinted in* [2012] 3 S.C. HOUSE J. 3303.

149. See S.J. Res. 1512, *supra* note 148, at 2478.

150. See [2012] 3 S.C. SENATE J., *supra* note 148, at 2564–65.

151. See *id.*

152. See RULES OF THE SENATE 9, *reprinted in* 119TH GENERAL ASSEMBLY OF SOUTH CAROLINA, 2012 SOUTH CAROLINA LEGISLATIVE MANUAL 212–13 (Charles F. Reid ed., 93d ed. 2012) [hereinafter 2012 LEGISLATIVE MANUAL].

153. See RULES OF THE SENATE 32(B), *reprinted in* 2012 LEGISLATIVE MANUAL, *supra* note 152, at 236; *cf.* SOUTH CAROLINA'S LEGISLATIVE PROCESS 18–19 (Charles F. Reid ed., 13th ed. 2005) (explaining that a bill amended after a second reading may receive a third reading only by unanimous consent).

154. See Kevin Bryant, *S. 1512 Dead, but There's More Than One Way to Skin a Cat*, SENATOR KEVIN BRYANT (May 8, 2012), <http://www.kevinbryant.com/2012/05/08/s-1512-dead-but-theres-more-than-one-way-to-skin-a-cat/>.

thought would pass, the Senate failed to pass the measure that would have provided a remedy for the removed candidates.

On the other hand, the state House of Representatives successfully passed House Bill 3392—a bill that amended the deadline for parties to provide a written certification of candidates' names to the State Election Commission—and the bill then made its way to the Senate floor.¹⁵⁵ While discussing the bill, Senator Larry Martin, Chairman of the Senate Judiciary Committee,¹⁵⁶ made a "Sense of the Senate" motion that it be the position of the Senate that those who filed an SEI by April 15, 2012, be placed on the ballot.¹⁵⁷ However, Senator Phil Leventis objected to the motion on the grounds "that it was not related to the Senate's position on a point of procedure."¹⁵⁸ The Senate President agreed, and ruled the motion out of order.¹⁵⁹ Senator Martin then moved, under Senate Rule 43, to suspend Senate Rule 24A on House Bill 3392;¹⁶⁰ Rule 24A does not allow for changes to a bill that would "substantially alter the main amendment" of the bill.¹⁶¹ A motion to suspend the rule requires a two-thirds majority in favor of the motion,¹⁶² and unfortunately, this motion failed to pass by a very slim margin.¹⁶³ As a final effort, Senator Martin moved to recommit the bill to the Senate Judiciary Committee, but that motion failed as well.¹⁶⁴ Since all of Senator Martin's motions failed, so did the proposed statutory changes in House Bill 3392 and another potential legislative remedy for the removed candidates.¹⁶⁵

The final bill brought forth was Senate Bill 1516, which proposed changes to the statutory candidate qualifications by shifting the burden of collecting SEIs

155. See H.B. 3392, 119th Gen. Assemb., 1st Reg. Sess. (S.C. 2011), reprinted in [2011] 1 S.C. HOUSE J. 541, 1158–60.

156. Senator Martin was next in seniority to then-Senator McConnell, who held the chairmanship for many years in addition to being Senate President *Pro Tempore*, which many believe made him the most powerful man in state government. See *South Carolina Senate Must Select New Leader*, THE TANDD.COM (Mar. 12, 2012, 11:21 PM), http://thetandd.com/news/south-carolina-senate-must-select-new-leader/article_9ee05778-6cbb-11e1-a429-0019bb2963f4.html. Interestingly, Senator Martin was the leading voice for giving the removed candidates another chance to file their SEIs despite the fact that he faced a very serious primary challenge from former state representative Rex Rice. See Beam, *supra* note 1. Given the power that Senator Martin retained as Chairman of Senate Judiciary, many were surprised that he was unable to get the Senate to pass the bill. Compare Kirk Brown, *Key Vote Expected Wednesday on Placing Candidates Back on Election Ballots*, INDEPENDENTMAIL.COM, <http://www.independentmail.com/news/2012/may/08/key-vote-expected-wednesday-on-placing-back-on/> (last updated May 8, 2012, 7:16 PM).

157. See [2012] 3 S.C. SENATE J., *supra* note 148, at 2584.

158. See *id.*

159. See *id.*

160. See *id.* at 2585.

161. See RULES OF THE SENATE 24A, reprinted in 2012 LEGISLATIVE MANUAL, *supra* note 152, at 229.

162. RULES OF THE SENATE 43, reprinted in 2012 LEGISLATIVE MANUAL, *supra* note 152, at 244.

163. See [2012] 3 S.C. SENATE J., *supra* note 148, at 2585. The Senate vote was twenty-four "Ayes" to fifteen "Nays." See *id.*

164. See *id.* at 2586.

165. See *id.* at 2584–86.

from the county party committees to the State Election Commission.¹⁶⁶ Additionally, the bill would have amended section 8-13-1356 to require candidates to file their SEIs electronically on the State Election Commission's web site.¹⁶⁷ The bill passed the Senate unanimously and was sent to the House,¹⁶⁸ where that chamber referred the bill to the Judiciary Committee.¹⁶⁹ Unfortunately, because the bill was not referred to the Judiciary Committee until May 22, 2012, the committee never took up the bill prior to the General Assembly's adjournment on June 7, 2012.¹⁷⁰ The end result was that no legislative remedy was afforded to those candidates removed from the primary ballots by the ruling in *Anderson*.

A. The Only Option Available to Candidates Removed from the Primary Ballots

Because the General Assembly failed to promptly change the state election laws at the end of its 2012 session, the only option left for removed candidates was to qualify to run as petition candidates.¹⁷¹ As one reporter noted, "The decertified candidates had only one way to get on November ballots: a tedious, little-used paper process that requires gathering the signatures of at least 5 percent of a district's registered voters."¹⁷² In fact, although around seventy state House and Senate candidates were removed from the primary ballots after the South Carolina Supreme Court's *Anderson* ruling,¹⁷³ only thirty-six individuals qualified to appear on the ballots as petition candidates in the November 6 general election.¹⁷⁴

166. See *id.* at 2850–51.

167. See *id.* The law should have been changed in 2010 when the General Assembly required candidates to file electronically with the State Ethics Commission. See Interview with Marci Andino, *supra* note 33. The fact that senators were able to draft the language of Senate Bill 1516 within a couple of days so that the wording was similar to the statute regarding the State Ethics Commission is even further proof that it would not have been hard to pass the two changes together in 2010. However, the ease of passing the bills together was not the issue in 2010; rather, the General Assembly failed to change section 8-13-1356 to comport with section 7-11-15 because legislators did not realize the two would conflict with one another. See *id.* Indeed, the state election code has been referred to as "Swiss cheese." See Interview with Marci Andino, *supra* note 33.

168. [2012] 3 S.C. SENATE J., *supra* note 148, at 2850–53.

169. [2012] 3 S.C. HOUSE J., 119th Gen. Assemb., 2d Reg. Sess., at 3492 (S.C. 2012).

170. See *id.*

171. See *supra* notes 56–66 and accompanying text. The candidates had to comply with the requirements of section 7-11-70 to qualify to run as petition candidates. See S.C. CODE ANN. § 7-11-70 (Supp. 2012).

172. Knotts, *Brady Lose Re-election Bids to Statehouse*, ASSOCIATED PRESS, Nov. 6, 2012, available at http://www.scnw.com/news/politics/article_cd0c195c-2999-11e2-9667-0019bb30f31a.html.

173. See *id.*

174. Interview with Marci Andino, *supra* note 33. For the state Senate, these candidates ran for Senate Districts 2, 6, 11, 15, 23, 24, 28, and 36. See 2012 *Petition Candidates*, S.C. STATE ELECTION COMM'N, http://scvotes.org/2012/07/12/2012_petition_candidates (last updated Aug. 15,

Traditionally, few people have succeeded in general elections running as a petition candidate; in fact, the last time a petition candidate successfully ran for state office was for a House seat in 1990.¹⁷⁵ However, in the 2012 general election, nine out of thirty-six petition candidates won seats in the General Assembly.¹⁷⁶ Still, in five of the state House and three of the state Senate victories for petition candidates, the petition candidates were either unopposed or did not face an incumbent.¹⁷⁷ Thus, although nine petition candidates ultimately won their elections, *only one petition candidate ran against and unseated an incumbent.*¹⁷⁸

Katrina Shealy, who ran as a petition candidate for state Senate District 23, made history by defeating veteran state Senator Jake Knotts in the November 6 election to become the only female in the South Carolina Senate.¹⁷⁹ The rest of the petition candidates who faced incumbents were typically trounced by twenty points or more in the general election.¹⁸⁰ Many believe that “[t]he biggest obstacle [facing] petition candidates was straight-party voting. Anyone who voted along a party line bypassed those candidates completely. In 2008 and 2010, *half of all voters chose the straight-party option.*”¹⁸¹ The 2012 election cycle proved to be no different. Rex Rice, a Pickens County petition candidate who lost to twenty-year incumbent Senate Judiciary Chairman Larry Martin by a 64-to-35 margin, said that “the percentage of straight-party voting was almost double what he expected and led to the defeat of all six petition candidates in Pickens County.”¹⁸² Rice noted that all of the county’s petition candidates

2012). For the state House of Representatives, petition candidates ran for House Districts 1, 2, 3, 8, 11, 13, 15, 26, 34, 36, 39, 44, 53, 56, 64, 81, 103, 105, 114, and 115. *See id.*

175. *See* Andrew Shain, *Petition Candidates Face Uphill Battle*, THE STATE, May 20, 2012, at A1, available at <http://www.thestate.com/2012/05/20/2282811/petition-candidates-face-uphill.html>.

176. Katrina Shealy won state Senate District 23, Tom Young won Senate District 24, Greg Hembree won Senate District 28, Kevin Johnson won Senate District 36, Samuel Rivers, Jr. won House District 15, Raye Felder won House District 26, Mike Ryhal won House District 56, Robert L. Ridgeway, III won House District 64, and Kevin Hardee won House District 105. *See 2012 General Election*, S.C. STATE ELECTION COMM’N, <http://www.enr-scvotes.org/SC/42513/114557/en/summary.html> (last updated Jan. 11, 2013, 10:25 AM).

177. *See id.*; *see also* 119TH GENERAL ASSEMBLY OF SOUTH CAROLINA, 2011 SOUTH CAROLINA LEGISLATIVE MANUAL 19–141 (Charles F. Reid ed., 92d ed. 2011) [hereinafter 2011 LEGISLATIVE MANUAL] (identifying the 2011 members of the state House and Senate).

178. *See supra* notes 176–77 and accompanying text. Katrina Shealy was the only petition candidate to successfully oust an incumbent. *See* Adam Beam, *Shealy Knocks Off Knotts in Lexington to Become Only Woman in Senate*, THE STATE, Nov. 7, 2012, at AA8.

179. *See* Beam, *supra* note 178. No female had occupied a seat in the Senate chamber since 2008, when Senator Linda Short (D-Chester) retired and Senator Catherine Ceips (R-Beaufort) was defeated in a primary by current Senator Tom Davis. *See* Adam Beam, *Shealy Pledges Gun, School Reforms*, THE STATE, Nov. 8, 2012, at A4.

180. *See 2012 General Election, supra* note 177; *see also* 2011 LEGISLATIVE MANUAL, *supra* note 177, at 19–141 (identifying the 2011 members of the state House and Senate).

181. Knotts, *Brady Lose Re-election Bids to Statehouse, supra* note 172 (emphasis added).

182. Tim Smith, *Incumbents Fend Off Challengers*, GREENVILLE NEWS (S.C.), Nov. 7, 2012, at A1; *see also* 2012 LEGISLATIVE MANUAL, *supra* note 152, at 37 (noting that Senator Larry Martin began serving in the state Senate in 1993).

attempted to educate the electorate on how to vote for petition candidates, urging voters to resist voting a straight-party ticket; however, that “[i]t almost appeared to [him] that a lot of people didn’t realize those petition candidates were even out there.”¹⁸³

As in Pickens County, petition candidates lost to incumbents by large margins in counties throughout the state.¹⁸⁴ While all of the state House and Senate seats were up for reelection in 2012, the elections for “fewer than 20 of the 170 seats were considered competitive.”¹⁸⁵ Moreover, most of the races were uncontested, allowing a vast majority of incumbents an easy victory.¹⁸⁶ Although one-quarter of the petition candidates who qualified to appear on the general election ballots won their respective state Senate and House races, this statistic becomes less impressive when compared to the number of candidates who were removed from the primary ballot by *Anderson*.¹⁸⁷ Overall, only nine of the seventy decertified candidates won the general election after being removed from the primary ballots, and only one of those individuals beat an incumbent. Thus, the *only option* available for those removed candidates—filing a petition for nomination—was, for the most part, not a viable one.

B. The Exception to the Rule: How Katrina Shealy Won as a Petition Candidate

While Katrina Shealy was extremely successful running as a petition candidate, her experience is not indicative of the typical petition candidate’s experience during the 2012 election.¹⁸⁸ Katrina Shealy was one of nearly 200 individuals who were removed from the primary ballot by the South Carolina Supreme Court’s *Anderson* ruling.¹⁸⁹ In fact, many people have speculated that the two Lexington County voters who filed the petition in *Anderson* brought the lawsuit specifically to remove Shealy from the ballot to prevent her from running against incumbent Senator Jake Knotts in the primary.¹⁹⁰ Senator Knotts had narrowly defeated Shealy in the previous primary in 2008, when Shealy had the backing of then-Governor Mark Sanford, but she had a lot of momentum coming into 2012 as a result of Knotts’s numerous political gaffes, which garnered a lot

183. Smith, *supra* note 182 (internal quotation marks omitted).

184. See *supra* note 180 and accompanying text.

185. Knotts, *Brady Lose Re-election Bids to Statehouse*, *supra* note 172.

186. See *2012 General Election*, *supra* note 176. Thirty out of forty-six Senate Districts were uncontested, as were eighty-seven out of 124 House Districts. See *id.*

187. Nine out of thirty-six petition candidates won their respective Senate and House races, see *supra* note 176 and accompanying text, but nearly 200 candidates were removed from the ballot, see Beam, *supra* note 1.

188. See *supra* notes 178–79 and accompanying text.

189. See Beam, *supra* note 1.

190. See, e.g., Beam, *supra* note 1 (noting the close relationship between Knotts and his supporters who filed the lawsuit in *Anderson*).

of negative attention.¹⁹¹ Assuming that the two voters' goal was for the South Carolina Supreme Court to remove Shealy for improperly filing an SEI, they certainly succeeded; however, their victory imposed an unprecedented amount of collateral damage on a number of races at virtually every level of government in South Carolina.¹⁹²

After her removal from the primary ballot, Shealy, like many of the decertified candidates, was hopeful that the General Assembly would pass a bill giving the candidates a second chance to file their SEI forms.¹⁹³ As discussed above, the bill essentially died in the Senate after two senators gave a minority unfavorable report to the bill coming out of the Judiciary Committee.¹⁹⁴ One of those senators was Shealy's opponent and political foe, Senator Knotts.¹⁹⁵ After the bill failed to pass the legislature, "The state Republican Party suspended its rules so it could endorse Shealy—an unprecedented move, especially against a sitting Republican."¹⁹⁶ Additionally, a political action committee linked to Governor Nikki Haley "poured money into the race for Shealy to defeat Knotts, a Haley critic and opponent."¹⁹⁷

With the backing of the state's Republican Executive Committee and Governor Haley's political machine, Shealy's general election fight proved to be very different from the contests the rest of the petition candidates encountered, since none of the other petition candidates running for state House or Senate received the big-time endorsements Shealy received.¹⁹⁸ In addition to not receiving specific endorsements from the state Republican Party, the other petition candidates did not receive the party's support to campaign against straight-party ticket voting, which was the biggest threat to the petition candidates' chances of winning.¹⁹⁹ The state Republican Party Chairman, Chad Connelly, said that "the GOP [would] not tell voters to avoid straight-party ticket voting."²⁰⁰ Thus, the rest of the petition candidates were forced to go door-to-door to educate voters and pray that, somehow, voters would choose not to click

191. See Beam, *supra* note 178. According to Beam, "Knotts, while beloved by many for his constituent services, was unable to overcome several high-profile stumbles, including a fine by the Senate Ethics [Committee] for violating state ethics laws and [for] referring to Haley, then a candidate for governor, as a 'rag head.'" *Id.*

192. See, e.g., Beam, *supra* note 1 ("[O]ne out of every five candidates has been removed from the June 12 primary ballot in one of the biggest election debacles in S.C. history.").

193. See *id.*

194. See *supra* notes 149–54 and accompanying text.

195. See *supra* note 151 and accompanying text.

196. See Beam, *supra* note 178.

197. *Id.*

198. See *id.* (noting the Republican Party's "unprecedented move" in its show of support for Shealy).

199. See *supra* note 181 and accompanying text. As stated above, petition candidates have no party affiliation next to their name on the ballot, which means if a voter hits the straight-party ticket option without looking at the candidates, the petition candidate automatically gets overlooked.

200. Adam Beam, *'Straight' Ticket Is Tangled This Year*, THE STATE, Oct. 7, 2012, at A1.

the straight-party button on election day.²⁰¹ Although these petition candidates had the *general support* of the Republican Party, and even the general support of Congressman Jeff Duncan, none of them received the major backing and specific endorsements that Katrina Shealy received.²⁰² These endorsements and the backing of the state Republican Party afforded Shealy more resources and exposure, which made it more likely that voters would know specifically about her race and choose not to vote a straight-party ticket on election day.

In summary, while Katrina Shealy successfully ousted an incumbent in her Senate race by running as a petition candidate, her success was contingent upon many unique factors that simply were not present in the other races involving petition candidates. First, Shealy was running against the candidate who essentially blocked the Senate from passing the bill that would have given the decertified candidates another chance to file their SEIs.²⁰³ Second, she nearly unseated Knotts the first time she ran against him in a bruising primary fight in 2008,²⁰⁴ and many observers expected the race to be very close in 2012 as well. Third, Shealy received the backing of Governor Haley and the state Republican Executive Committee because they believed Senator Knotts was responsible for the primary debacle.²⁰⁵ Finally, given the numerous political gaffes Senator Knotts had committed,²⁰⁶ Shealy could have arguably defeated him in the primary had she been given the opportunity to run as a Republican. Hence, her success is little more than a very narrow exception to the outcome of the 2012 general election: that running as a petition candidate was not an effective remedy for the candidates who were removed from the primary ballots in *Anderson*.

V. PROPOSED CHANGES TO THE STATE'S VAGUE ELECTION LAWS

Although some petition candidates were successful on November 6, the general election results, as a whole, confirmed the critical need for South Carolina to reform its election laws. As stated above, under the state's current election and ethics regime, candidates' disclosure forms must be filed electronically with the State Ethics Commission, but must be filed in person with the State Election Commission; if this process is not strictly followed, candidates receive the "death penalty" and are removed from the ballot.²⁰⁷ Such statutory requirements caused nearly 200 people to be removed from the primary ballot, which, consequently, had an adverse effect on the democratic process as a whole.²⁰⁸ The state Senate and House Judiciary Committees have both debated

201. *See id.*

202. *See id.*

203. *See supra* notes 194–95 and accompanying text.

204. *See supra* note 191 and accompanying text.

205. *See supra* notes 196–98 and accompanying text.

206. *See Beam, supra* note 178.

207. *See supra* Part III.

208. *See Beam, supra* note 1.

bills that would amend the filing requirements for individuals running for public office, but such bills did not pass in the last legislative session.²⁰⁹ Those bills were taken up at the very end of session when legislators, for obvious reasons, were trying to rush the bills through to provide relief to the decertified candidates.²¹⁰ A new session began in January 2013, and senators and house members must take the time to carefully develop comprehensive reforms that will change the current, antiquated system.

First, section 8-13-1356 must be amended to strike subsection (a), which provides incumbents with a “get-out-of-jail-free-card” by not requiring them to file a new SEI form when they are seeking reelection. Some have argued that incumbents do not need to file a new SEI form because their economic disclosures are already on file and that having more forms would simply clutter up file cabinets.²¹¹ However, the old argument about not wanting to clutter up file cabinets is no longer forceful in light of modern technological advances. Similar to the process used by the State Ethics Commission, if the State Election Commission used an electronic filing method, it could keep candidates’ forms in a database maintained by the State Election Commission. Keeping such records in a database would make them more easily accessible, thereby increasing the amount of transparency and accountability in the elections process. Moreover, the decrease in paperwork clutter would negate any problems associated with incumbents filing new SEI forms for each election. Incumbents’ economic interests can change significantly over the course of the year, and new laws should eliminate the political cover afforded to incumbents by the current statutory regime. Thus, section 8-13-1356 should be amended to require prospective candidates *and* incumbents running for office to file their SEI forms for the preceding calendar year *electronically* prior to filing an SIC with the appropriate officials. Incumbents and public officials should be required to update their SEIs with the State Election Commission annually to reflect any changes from the preceding calendar year.

Second, with regard to filing with the appropriate officials, the General Assembly needs to add new language to all of the relevant statutes that require individuals to file their SEIs and SICs with the county and state party committees to make sure that they are consistent. Specifically, section 8-13-1356 must be consistent with section 7-11-15. In 2010, the General Assembly enacted a law allowing candidates to file their SEIs electronically with the State Ethics Commission.²¹² While implementing an electronic filing method for the State Ethics Commission was a step in the right direction, legislators failed to change any of the other relevant qualification or filing requirement provisions in

209. See *supra* Part IV.

210. See *supra* note 170 and accompanying text (noting that, because Senate Bill 1516 was not referred to the Judiciary Committee until seventeen days before the Senate’s adjournment, disqualified candidates were afforded no relief before the primaries).

211. See Beam, *supra* note 1 (quoting Sen. Larry Martin).

212. See *supra* notes 68–70 and accompanying text.

Title 7 and Title 8 of the South Carolina Code. The legislature should amend section 7-11-15 by adding language that says the state party executive committee or county party executive committee, depending on the level of office being sought, must not accept an SIC unless the committee verifies that the candidate electronically filed an SEI pursuant to section 8-13-1356. Adding such language to the statute would give the parties a better, more concrete framework, and it would also eliminate any confusion as to parties' roles in following the statutory requirements for candidates filing to run for public office.

Third, as illustrated by the 2012 election cycle, voters cannot always rely on the political parties to truthfully and quickly compile a list of candidates who have followed the law. Thus, the turnover time between candidates filing disclosure forms with the parties and the parties transmitting such forms to the election commissions should be reduced from ten days to five days in section 7-11-15. The process would be more efficient if county and state election commissions have the ability to quickly certify candidates to run for public office who have lawfully complied with the statutory filing requirements, and to promptly notify candidates and their respective parties of any filing mistakes. After the candidates and their respective parties are notified, the county election commissions and the State Election Commission should give the candidates another chance to properly file.

Fourth, while the candidate should have another opportunity to file if a mistake is made the first time around, this mistake should not be without consequence. Instead of giving the "death penalty" and removing the candidate from the ballot altogether, the State Election Commission should levy a \$1,000 fine on the candidate and the party and allow the candidate another opportunity to file. Holding the candidate and the party jointly responsible for failing to comply with the statutory filing requirements would serve as an incentive for candidates and parties to be completely sure that they comply with state law. Although the argument that people who cannot follow the law should not be writing laws has some merit, removing a candidate for a minor technical error seems to be too harsh of a punishment. The \$1,000 fine would serve both as an incentive to follow the law and as a deterrent to simply filing without any regard for the statutory requirements.

Finally, in addition to the proposed changes stated above, drafters would clearly need to perform a fine-tooth-comb analysis of *all* South Carolina state election and ethics laws to ensure that no provisions are conflicting, or could be construed as conflicting, and after amending existing laws, that the new laws will not conflict with one another. State agencies should not be left to speculate as to the intent of the General Assembly for the electoral process, which is such a fundamental aspect of a democratic society.

VI. CONCLUSION

Many people have been quick to assign blame for the primary debacle that had such a profound effect on South Carolina elections in 2012. However, while

vague state election laws were the underlying problem with the primary debacle, a number of identifiable actions and actors were responsible for creating the problem and preventing its remedy. Although the South Carolina Supreme Court's ruling in *Anderson* had the practical effect of removing nearly 200 candidates from the primary ballots, the court was obligated to rule on the issue because Barger and Anderson, two Knotts supporters, filed the lawsuit to remove Katrina Shealy and other candidates from the ballot.²¹³ Thus, while the supreme court's ruling did not provide a desirable result for the removed candidates and while the court did not agree with the State Election Commission and the State Ethics Commission, the court did properly harmonize section 8-13-1356 with section 7-11-15 in its statutory construction.²¹⁴

Some may blame the State Election Commission for misinforming the parties regarding the instructions to be provided to the county party committees, but this blame is misplaced. Had the General Assembly changed the filing requirements for the State Ethics Commission and the State Election Commission at the same time, those agencies would not have been forced to interpret these vague laws. Moreover, it was reported that county party officials, disregarding the advice of the State Election Commission, were telling candidates that they did not have to file any SEL.²¹⁵ Regardless, it was ultimately up to the General Assembly to remedy the debacle that unfolded over its failure to address every aspect of the election laws when it amended them in 2010.

When presented with a bill that would give the decertified candidates a second chance to file their SELs, the legislature failed to provide a remedy for those individuals.²¹⁶ Specifically, Senator Knotts effectively killed the bill because he believed that candidates who do not follow the law should not be trusted to write laws for the state.²¹⁷ However, some would argue that this was a smokescreen for Senator Knotts's broader objective, which was to make sure that his opponent, Katrina Shealy, was unable to effectively challenge him again in a primary.²¹⁸ Whatever Knotts's motive, this entire debacle arguably had its roots in the sour relationship between Shealy and Knotts, which led to the initial lawsuit, the ensuing litigation, the failure of the General Assembly to provide a remedy, and ultimately, to ousted candidates being forced to run as petition candidates.

Ironically, Shealy was able to defeat Knotts in the November 6 general election after receiving support from Governor Haley and the state Republican

213. See Beam, *supra* note 1.

214. See *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 557–58, 725 S.E.2d 704, 707–08 (2012) (per curiam); see also *supra* notes 72–75 (distinguishing the South Carolina Supreme Court's harmonization of the statutes with that of the State Ethics and Election Commissions).

215. Interview with Marci Andino, *supra* note 33.

216. See *supra* Part IV.

217. See Beam, *supra* note 1.

218. See *id.*

Party's Executive Committee.²¹⁹ Some may see this result as justice or sweet revenge for Shealy after enduring the exhausting process of filing to run as a petition candidate, but this view ignores the larger issue. Because of Knotts's and Shealy's icy relationship, candidates were removed from the ballot at nearly every level of government in South Carolina. Furthermore, the only remedy for those individuals who were removed from the ballots was to run as petition candidates, and everyone but Shealy did so unsuccessfully when running against incumbents.²²⁰ Thus, the "remedy" of running as a petition candidate did not prove to be a remedy at all, unless one was running unopposed or against fellow petition candidates.

To avoid another primary debacle like the one South Carolina experienced in 2012, the state's election and ethics laws must be changed. First, individuals *and incumbents* should be required to file their SEI online prior to filing their SIC with either their county or state election commission. Incumbents' and public officeholders' SEIs should be updated each year with the State Election Commission. The State Election Commission should penalize candidates and their respective parties with a \$1,000 fine for improper filings, but the candidates should also be given an opportunity to cure any mistakes. Finally, the General Assembly needs to look all of the state's ethics and election laws to make sure they are consistent. More importantly, the General Assembly needs to make sure these reforms are in place before the 2014 primary elections, when the Governorship and two United States Senate seats will be in play, so that South Carolina is not forced to endure another inexcusable primary debacle like that which occurred in 2012.

Vordman Carlisle Traywick, III

219. See Beam, *supra* note 178.

220. See *supra* note 178 and accompanying text.