

**Strict Application  
of Campaign Filing Requirements**  
*Somers v. All Improperly Filed Candidates*  
*(3:12-cv-1191) and Smith v. South Carolina*  
*State Election Commission (3:12-cv-1543)*  
*(Cameron McGowan Currie, D.S.C.)*

On May 2, 2012, South Carolina’s supreme court adopted a strict interpretation of a candidacy filing statute, an interpretation that conflicted with common practice, so many candidates were disqualified from the state’s June 12 primary.<sup>1</sup> The statute requires candidates to “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 or petition for nomination.”<sup>2</sup>

On May 4, Amanda Somers, a candidate who was not disqualified, filed a federal complaint in Columbia on behalf of herself and on behalf of (1) all other properly filed candidates and (2) all persons entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).<sup>3</sup> In addition to South Carolina’s election commission and other election officials, Somers named as defendants all improperly filed candidates involved in the primary election.<sup>4</sup>

The court assigned the case to Judge Joseph F. Anderson, Jr.<sup>5</sup> Judge Anderson recused himself because of family connections to elective offices.<sup>6</sup> On May 7, the case was reassigned to Judge Cameron McGowan Currie.<sup>7</sup> On the following day, Judge Currie entered into the case’s docket sheet a text order reminding the plaintiff, “No decision on the merits may be made until all Defendants are served and have an opportunity to respond. Service is a responsibility which rests on Plaintiff and which Plaintiff is directed to accomplish as quickly as possible.”<sup>8</sup> The plaintiff subsequently dropped all improperly filed candidates as defendants.<sup>9</sup>

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1. [Anderson v. S.C. Election Comm’n](#), 397 S.C. 551, 725 S.E.2d 704 (S.C. 2012); see [Florence Cnty. Democratic Party v. Florence Cnty. Republican Party](#), 398 S.C. 124, 727 S.E.2d 418 (S.C. 2012) (rejecting arguments to relax the strict interpretation); see also Tim Flach, *50 Local Candidates May Be Off Ballot*, Columbia State, May 4, 2012; Tucker Mitchell, *Supreme Court Ruling Knocks Nearly 100 Off S.C. Ballots*, Florence Morning News, May 3, 2012.

2. [S.C. Code § 8-13-1356\(B\)](#) (emphasis added).

3. Complaint, [Somers v. All Improperly Filed Candidates](#), No. 3:12-cv-1191 (D.S.C. May 4, 2012), D.E. 1 [hereinafter *Somers Complaint*]; [Somers v. S.C. State Election Comm’n](#), 871 F. Supp. 2d 490, 491 (D.S.C. 2012); see [42 U.S.C. §§ 1973ff to 1973ff-7](#) (2010); see also *Candidate Sues, Lawmakers Offer Fix*, Greenville News, May 5, 2012.

4. *Somers Complaint*, *supra* note 3.

5. Docket Sheet, [Somers](#), No. 3:12-cv-1191 (D.S.C. May 4, 2012) [hereinafter *Somers Docket Sheet*] (D.E. 10).

6. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

7. *Somers Docket Sheet*, *supra* note 5; Transcript at 7, [Somers](#), No. 3:12-cv-1191 (D.S.C. May 10, 2012, filed May 11, 2012), D.E. 27 [hereinafter *Somers Transcript*].

Tim Reagan interviewed Judge Currie for this report by telephone on September 6, 2012.

8. *Somers Docket Sheet*, *supra* note 5; see *Somers Transcript*, *supra* note 7, at 9.

9. [Somers v. S.C. State Election Comm’n](#), 871 F. Supp. 2d 490, 495 (D.S.C. 2012).

Judge Currie held a status conference on the afternoon of May 10.<sup>10</sup> On the day of the conference, a candidate stricken from the ballot moved to intervene as a plaintiff.<sup>11</sup> Judge Currie granted intervention,<sup>12</sup> but the motion was withdrawn on the following day.<sup>13</sup> Also on May 11, the circuit's chief judge named a three-judge court to hear the plaintiff's claimed violation of section 5 of the Voting Rights Act.<sup>14</sup> South Carolina had decided to comply with UOCAVA by sending overseas absentee ballots for federal offices by the statutory deadline of 45 days in advance of the election and to send overseas absentee ballots for South Carolina offices later, after the repercussions of the state supreme court's decision had been worked out.<sup>15</sup> The plaintiff alleged that this was an election change requiring section 5 preclearance.<sup>16</sup>

The three-judge court heard the action on May 14;<sup>17</sup> two days later, it dismissed the case for lack of standing.<sup>18</sup> "Counsel for Somers failed to articulate any concrete and particularized injury that Somers has incurred or was likely to incur as a result of the transmission of separate federal and state ballots. Somers, therefore, has no standing as a candidate to pursue a Section 5 claim."<sup>19</sup> Nor had she shown a relationship with UOCAVA voters close enough to sue on their behalf; the courts were open for them to seek relief on their own.<sup>20</sup> Judge Currie observes that standing is often an important issue in an election case and one that the court should consider early in the case.<sup>21</sup>

A second action was filed on June 11, the day before the primary.<sup>22</sup> Five candidates stricken from the ballots alleged that the state supreme court's decision was without current effect because it had not received section 5 preclearance and that the statute in question violated equal protection.<sup>23</sup> The statute exempted incumbents: "This section does not apply to a public official who has a current dis-

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10. *Somers* Transcript, *supra* note 7.

11. Intervention Motion, *Somers*, No. 3:12-cv-1191 (D.S.C. May 10, 2012), D.E. 17; *Somers* Transcript, *supra* note 7, at 3, 11–12.

12. *Somers* Docket Sheet, *supra* note 5 (D.E. 18).

13. Intervention Withdrawal, *Somers*, No. 3:12-cv-1191 (D.S.C. May 11, 2012), D.E. 20.

14. Order, *id.* (May 11, 2012), D.E. 21; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2011) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge court); *see also* *Somers* Transcript, *supra* note 7, at 56 (statement by Judge Currie that she would request a three-judge court).

15. *Somers v. S.C. State Election Comm'n*, 871 F. Supp. 2d 490, 493–94 (D.S.C. 2012).

16. *Id.* at 494.

17. *Somers* Docket Sheet, *supra* note 5 (D.E. 31).

18. *Somers*, 871 F. Supp. 2d 490.

19. *Id.* at 496–97 (footnote omitted).

20. *Id.* at 497–98.

21. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

22. Docket Sheet, *Smith v. S.C.*, No. 3:12-cv-1543 (D.S.C. June 11, 2012) [hereinafter *Smith* Docket Sheet].

23. Complaint, *id.* (June 11, 2012), D.E. 1; *Smith v. S.C. Election Comm'n*, 874 F. Supp. 2d 483, 491 (D.S.C. 2012).

closure statement on file . . . .<sup>24</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order.<sup>25</sup>

The court assigned this case to Judge Currie as related to the *Somers* case.<sup>26</sup> Filing errors by the plaintiff's attorney caused a delay in the clerk's office's opening of the case, so there was a delay in Judge Currie's learning that she had the case.<sup>27</sup> The clerk's office has since then established procedures by which assigned judges are notified more promptly of emergency cases assigned to them even if there are delays in the processing of the cases' filings.<sup>28</sup>

On the day the case was filed, the circuit's chief judge referred it to the same three-judge court for the section 5 claim as he empaneled for the first case: Judge Currie, Circuit Judge Clyde H. Hamilton, and District Judge J. Michelle Childs.<sup>29</sup> With Judges Hamilton and Currie in the courtroom and Judge Childs appearing by telephone midway through the hearing, after conducting a court proceeding in another case, the three-judge court conducted a telephonic hearing that same day.<sup>30</sup> The court denied the plaintiffs immediate relief.<sup>31</sup> The court concluded that the state court's interpretation of the statute comported with the statute's plain meaning, so it could not be a change requiring preclearance.<sup>32</sup> The court found no equal protection violation in different financial filing requirements for incumbents and non-incumbents,<sup>33</sup> and the plaintiffs' claim for immediate relief was further burdened by the doctrine of laches.<sup>34</sup> An amended complaint filed on September 21<sup>35</sup> did not persuade the court to reach a different result.<sup>36</sup>

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24. S.C. Code § 8-13-1356(A).

25. Motion, *Smith*, No. 3:12-cv-1543 (D.S.C. June 11, 2012), D.E. 4.

26. *Smith* Docket Sheet, *supra* note 22; Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

27. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

28. *Id.*

29. Order, *Smith*, No. 3:12-cv-1543 (D.S.C. June 11, 2012), D.E. 7; Transcript at 3, *id.* (June 11, 2012, filed Aug. 8, 2012), D.E. 12 [hereinafter *Smith* Transcript].

30. *Smith* Transcript, *supra* note 29.

31. *Smith v. S.C. Election Comm'n*, 874 F. Supp. 2d 483.

32. *Id.* at 495.

33. *Id.* at 497.

34. *Id.* at 498–99.

35. Amended Complaint, *Smith v. S.C.*, No. 3:12-cv-1543 (D.S.C. Sept. 21, 2012), D.E. 18.

36. Opinion, *id.* (Oct. 3, 2012), D.E. 42, available at [2012 WL 4741636](#) (dismissing the case).