



## Election Statutes Make Headlines

Marshall Coleman Newton • Robinson McFadden & Moore, P.C.  
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The nuances of South Carolina election statutes hit the headlines recently when many candidates wanting to run for office were stricken from the primary ballots due to noncompliance with the technicalities of state laws. The statute at issue is primarily section 8-13-1356, and the controversy is over the filing of a Statement of Economic Interest (SEI) simultaneously with a Statement of Intention of Candidacy (SIC). Another state statute, section 8-13-365, requires aspiring candidates to separately and electronically file disclosures with the State Ethics Commission.

Section 8-13-1356(B) of the S.C. Code states that “[a] candidate *must file a statement of economic interests* for the preceding calendar year *at the same time and with the same official* with whom the candidate files a declaration of candidacy or petition for nomination,” while section 8-13-1356(E) states that “[a]n officer authorized to receive declarations of candidacy and petitions for nominations ... *may not accept a declaration of candidacy or petition for nomination unless the declaration or petition is accompanied by a statement of economic interests.*” (Emphasis added.)

On May 2, 2012, the S.C. Supreme Court interpreted these statutory directives as follows:

We hold the unambiguous language and expression of legislative intent of § 8-13-1356(B) and (E) require an in-



dividual to file an SEI at the same time and with the same official with whom an SIC is filed, and prohibit political party officials from accepting an SIC which is not accompanied by an SEI. Accordingly, the names of any non-exempt individuals who did not file with the appropriate political party an SEI simultaneously with an SIC were improperly placed on the party primary ballots and must be removed.

*Anderson v. S.C. Election Comm’n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) (Shearouse Adv. Sh. No. 16 at 27).

Moreover, the S.C. Supreme Court, in responding to a Petition for Rehearing by Way of Clarification, stated “[a]s to the re-

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A REPORT TO MEMBERS OF  
THE SOUTH CAROLINA BAR  
YOUNG LAWYERS DIVISION

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quest for clarification, the parties' contention that our opinion holds § 8-13-1356 is satisfied if an individual, when filing a Statement of Intention of Candidacy (SIC), provides the political party with a paper copy of a Statement of Economic Interest (SEI), whether previously filed or not, is correct. However, we reject the parties' contention that our opinion allows compliance with the statute in any other fashion." *Anderson v. S.C. Election Comm'n*, Order (S.C. Sup. Ct. filed May 3, 2012).

The controversy was again before the S.C. Supreme Court when a few candidates insisted that they were properly certified candidates because as "candidates," they were "public officials," who were exempt from the filing requirements of section 8-13-1356. See S.C. Code Ann. § 8-13-1300(4) (defining "candidate"); § 8-13-1300(28) (defining "public official").

On June 5, 2012, the Court ruled

again on the proper manner in which to certify candidates in its opinion, *Florence County Democratic Party v. Florence County Republican Party, et al.*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) ("*Florence County*"). In *Florence County*, the Court held that "[a]s decided by this Court in *Anderson*, § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC unless the candidate already holds the office and has an SEI on file with the appropriate supervisory office. This Court's decision in *Anderson* is clear." Continuing in its opinion, the Court admonished the Florence County Republican Party by stating the following:

The voters in this State rely on the political parties to ensure that only those individuals who are qualified candidates appear on the party primary ballots. We

are disappointed in the County Republicans for failing to diligently perform this duty and for preserving an inaccurate statement to this Court concerning their actions in certifying candidates for the party primary.

The Court then warned county political parties by stating that if parties have improperly certified candidates the parties "ignore the decisions of this Court at [their] own peril."

Since the *Anderson* and *Florence County* cases, many others have been filed challenging the state election laws on a variety of grounds including everything from their lacking due process to violating the Voting Rights Act. Many of the candidates removed from the primary ballots have garnered the requisite number of signatures and will now appear on the November ballot as petition candidates.

## D-Listed: One Candidate's Personal Account of the 2012 Primary Ballot Purges

By Blake Hewitt • Bluestein Nichols Thompson & Delgado, Conway

Once upon a time, I was one of six candidates in the Republican primary for a seat in the House of Representatives. After all five of my colleagues were disqualified in early May, I was the Republican nominee and only candidate, from either party, running for the office. I was disqualified—my wife likes to say "D-Listed"—about a month later, but as of last week, I am back on the ballot as a petition candidate. This article is a short account of parts of the primary election disputes in general and of parts of my specific experience. Those disputes ended up in the Supreme Court of South Carolina; my experiences led me to the campaign trail as a petition candidate. Nothing here is intended to come across as a complaint, and I hope it reads that way. Parts of this process were frustrating and disappointing, but I am grateful for the character and perspective the experience gave me. Some things in life are highly important, some things are less so. In my view, personal political aspirations

are of the latter category.

The procedures for filing to run in a political primary election are controlled by South Carolina statutory law. I am told that this is somewhat unusual. In some other states, the political parties set the rules, subject, of course, to a candidate's meeting the legal requirements for office. As everyone is probably aware, the seeds of the problem with this year's primaries were sown by two statutes that deal with a document called a "Statement of Economic Interests."

The principal information this statement is designed to elicit is the amount of money (if any) a candidate is paid by the State. Ironically, many people thrown off the ballot for not filing this document correctly receive no money whatsoever from the State and had nothing to disclose. One statute, section 8-13-365, requires a candidate to file this form electronically with the South Carolina State Ethics Commission. Another statute, section 8-13-1356, requires a candidate to file this form "at the same

time and with the same official" with whom the candidate files his candidacy declaration. Because you declare your candidacy in a partisan primary by filing papers with your political party, this meant that as a candidate you had to file this economic form with your local party's filing official.

Although these statutes are not in irreconcilable conflict—it is technically possible to comply with both—the filing procedure they create is interesting. The "same official" statute instructs that after a candidate files his or her economic statement with the political party, the political party has five business days to forward the economic statement to "the appropriate supervisory office," which is the State Ethics Commission. For its part, the electronic filing statute instructs that the economic statement can only be filed electronically. Here is what this meant in practice: If you wanted to run in the Democratic or Republican primary, you had to file your economic state-

ment online with the Ethics Commission, print that statement and take it down to your political party, your political party had five business days to forward the statement to Ethics Commission, and the Ethics Commission would then refuse to accept it because (a) paper filings are not allowed and (b) you had already filed the form online. These are the rules as they stood during the primaries, and these are the rules as they stand today.

Sensibilities of this procedure aside, if these are the rules, why didn't I follow them? That was the question I heard most often as I attempted to gather petition signatures, and the best answer I think I can give is "It was my fault, but I had help."

Failing to follow the rules was my fault. As a lawyer, I should know better. I spend a lot of my time at the office reading the law and trying to figure out how different sections of the law interact, and the fact of the matter is that I did not look at the relevant statutes before filing to run for office. I am embarrassed to have to admit that, but it is the truth. I do not know whether I would have been able to map out the filing process that I described two paragraphs ago, but I know it is my fault that I did not try. Chalk this up as a lesson learned: always take the time to read the law.

The help I found in failing to follow the rules came in the form of two state agencies. One was the State Ethics Commission, the other was the State Election Commission. These agencies published directions for filing to run for office, and those directions did not follow the terms of the relevant statutes. For example, the Election Commission published step-by-step instructions on its website. It told aspiring candidates to begin by completing their economic statements online with the Ethics Commission, then to print a receipt of that filing, and finally to take that receipt and the appropriate candidacy papers to the relevant political party. The political parties published similar directions; the Election Commission had told them the same thing. Though I have not seen any data breaking down decertified candidates by category, I expect this is a large

part of the reason why so many people filed improperly.

Discussion of the first Supreme Court case really requires two stories; the story of what the case said and the story of how it has been applied in practice. Boiled down to low gravy, *Anderson v. South Carolina Election Commission* held that the word "must" really means "must." The parties had asked the Court to interpret whether the "same official" statute really meant that a person had to file an economic statement and candidacy papers at the same time and with the same official. The Court said "yes." Two things happened as a result of this. (1) The approximately 80 candidates who had not followed the Election Commission's directions—candidates who had not filed online and taken their receipt to the election office—were immediately decertified. I think almost everyone saw this coming. Some of those candidates had filed their economic statements days or weeks later; others had not filed them at all. (2) Those of us who had followed the Election Commission's directions got very nervous. I had not expected the Supreme Court to call the Election Commission's directions into question, but *Anderson* had clearly done so.

I survived *Anderson* because the Republican party, in my view correctly, read the law to provide that when I declared my candidacy by filing an economic statement with the Election Commission, I became a "candidate" and was therefore a "public official" under South Carolina law. That label is important because the "same official" statute does not apply to a "public official" who has an economic disclosure on file. No one in *Anderson* had argued the point about to whom the "same official" statute applied, and "candidates" were included in the definition of "public official" in not one but two definitional statutes. To me, it made perfect sense that a candidate would be included in the definition of public official and, by virtue of that inclusion, subject to South Carolina's ethics laws. Writing the law this way would have been designed to prevent someone from projecting himself or herself as a

candidate and raising money while never filing papers with any state agency and skirting the law. One might question the point at which someone becomes a "candidate" and is thus required to file an economic statement, but I thought that was remarkably similar to parts of federal campaign finance reform law which has led to litigation about when someone is and is not a "candidate" and when a communication is or is not an "electioneering communication." My personal opinion is that it makes sense for the definition of public official to be a bit overbroad. Sweeping more people in to the system that is designed to tell the general public how aspiring civic leaders get their money has got to be a good thing.

The Supreme Court did not share my view. In the court's view, interpreting the statutes this way meant that the "same official" statute would be meaningless. As you might expect, I disagreed with that interpretation. I did not think the same official statute was meant to require a purely mechanical act. I thought it was meant to ensure that the party official could, at the moment of filing, verify that a prospective candidate was qualified to be certified on the ballot. A receipt of an economic statement that was already filed allowed this. I also thought that requiring someone to print a form that was already filed with the appropriate state agency and to take that form to a political party was nonsensical when the political party's statutory instruction was to send the form back to the agency and the agency's statutory instruction was to refuse to accept it. It did not make sense to me then, and it does not now, but I have been able to temper my disappointment with time. Of course I was ecstatic when my candidacy survived *Anderson*, and I believed then and continue to believe now that my argument was correct, but I have to admit that I discovered my argument for certification "after the fact."

As I understand it, there are roughly a dozen election cases still working their way through the court system. Some cases are testing other parts of the "same official" statute's

“public official” exemption, other cases are testing the validity of certain petition candidates. Because of the “same official” requirement, petition candidates had to print out copies of their economic statements and turn them in to the Election Commission along with their petition signatures. I found this process absurd, but I have found a good rule

to live by in the principle “when in doubt, follow the law.”

For my part, I am glad not to be involved in any more of this litigation, because I think all of the parties involved have a little egg on their faces. I am certainly wearing some—I admitted that I did not read the law. I think the Election Commission is wearing some. It is the state agency

with the word “election” in its name, and its directions were certainly part of the problem. My hope is that we will all get our acts together between now and the next primary election. We deserve better in terms of statutory drafting, we deserve better from our state agencies, and we owe it to ourselves not to assume things that we can and should verify.

## S.C. Bar YLD Recognized with Awards of Achievement



Left to right: Edward Rawl (ABA YLD Council Member, Fisher & Phillips, LLP); Beth Palmer (S.C. Delegate to ABA YLD, Rosen & Hagood); Rebecca Roser (S.C. Bar YLD Immediate Past President, Robinson, McFadden & Moore, PC); Will Johnson (S.C. Bar YLD President-Elect, Haynsworth Sinkler Boyd, P.A.); Lynsey Kmetz (S.C. Bar YLD Secretary-Treasurer, Foster Law Firm, L.L.C.)

The S.C. Bar Young Lawyers Division (YLD) was the winner of five prestigious Awards of Achievement at the American Bar Association Annual Meeting on Aug. 4 in Chicago, Ill. The awards included first place for Minority Service Project, Service to the Public and Newsletters, and second place for Service to the Bar and Comprehensive Projects and Programs.

“These honors recognize the hard work of an outstanding group of South Carolina’s young lawyers and are a testament to the leadership of our immediate past president, Rebecca Roser,” said Will Johnson, YLD president-elect. “We look forward to building upon this success to provide valuable benefits to our members and

continue our strong tradition of public service.”

The Color of Justice program placed first in the Minority Service Project category and was chaired by Chisa J. Putman, a sole practitioner in Rock Hill. The program allows interested students to interact with judges, practicing attorneys and law school faculty to learn about opportunities within the legal profession.

Chaired by Jennifer Ashburn of Columbia, the Habitat for Humanity Wills Clinic took home first place for the Service to the Public award. The clinic pairs Habitat for Humanity homeowners with S.C. young lawyer volunteers who provide wills targeted at addressing specific needs associated with the Habitat for Humanity

program.

*S.C. Young Lawyer* was awarded first place in the Newsletters category and was co-chaired by Marshall Coleman Newton, a Columbia attorney with Robinson, McFadden & Moore, PC, and Amanda K. Dudgeon, a Charleston attorney with Carlock, Copeland & Stair, LLP. The newsletter is a quarterly publication that includes both substantive articles and information on the S.C. Bar YLD’s ongoing events.

YLD programming during the S.C. Bar Convention placed second in the Service to the Bar category. Young lawyers led by Beth Palmer and Britt Kelly, Charleston attorneys with Rosen, Rosen & Hagood, organized a continuing legal education program titled “The Art of Negotiation,” which featured Tom Wills, Joel Collins and Johnny Hagins, and hosted an oyster roast at City Art. The event brought more than 300 young lawyers together and helped organize tactical planning meetings for the division’s leadership.

YLD also placed second in the Comprehensive Projects and Programs category, which recognizes the overall contributions of the S.C. Bar YLD. Under the leadership of Immediate Past President Rebecca Roser, a Columbia attorney with Robinson, McFadden & Moore, PC, YLD reached record levels of participation and attendance in a wide variety of service projects and member activities. Accepting the awards on behalf of YLD were President-Elect Will Johnson, a Columbia attorney with Haynsworth Sinkler Boyd, PA, and Edward Rawl, a Columbia attorney with Fisher & Phillips, LLP.

# S.C. to Host ABA YLD Fall Conference

Young lawyers are strongly encouraged to attend and can find additional information at [www.americanbar.org/yldfall](http://www.americanbar.org/yldfall). Sponsorship opportunities remain available, and anyone interested in sponsorship should email [rosoer@robinsonlaw.com](mailto:rosoer@robinsonlaw.com) or [wjohnson@hsblawfirm.com](mailto:wjohnson@hsblawfirm.com).

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The S.C. Bar Young Lawyers Division is preparing to host young lawyers from across the country at the American Bar Association Young Lawyers Division's 2012 Fall Conference in Charleston October 18-20, 2012. The event marks the culmination of several years of efforts by South Carolina Bar young lawyers, led by outgoing YLD President Rebecca Roser (Robinson, McFadden & Moore, PC), to secure a national conference in the state.

The recruiting effort escalated in late 2010, when then-ABA YLD chair David Wolfe and current ABA YLD chair Chris Rogers chose Charleston as the venue for tactical planning meetings. These events presented an opportunity for South Carolina's young lawyers to sell Charleston to the key decision makers within the ABA YLD organization. In early 2011, Rogers announced that he would hold his first national conference in Charleston.

Since that time, a host committee co-chaired by Roser and Will Johnson (Haynsworth Sinkler Boyd, P.A.) has worked to secure more than \$45,000 in sponsorships that will support the S.C. Bar YLD's efforts to provide an outstanding conference. The S.C. Bar YLD anticipates that more than 400 young lawyers will attend the conference, based at the Francis Marion Hotel, and will pump tens of thousands of dollars into the local economy. The conference will feature some of the state's most distinguished and colorful attorneys, including Chief Justice Jean Hoefler

Toal, the 2004 recipient of the Margaret Brent Women Lawyers of Achievement Award from the ABA's Commission on Women in the Profession. Events will culminate with a dinner dance on Friday, October 19, at the Charleston Aquarium.

The S.C. Bar YLD leadership is excited about the opportunity to showcase our state and highlight the programming and service work of the state's young lawyers. The conference also provides a cost-effective way for the state's young lawyers to attend a national event and interact with fellow young lawyers from across the country. With a statewide effort, the gracious support of numerous sponsors and the enthusiasm of the overall S.C. Bar YLD community, the ABA YLD 2012 Fall Conference promises to be a great success. We look forward to seeing you in Charleston!

## ABA FALL CONFERENCE 2012 HOST COMMITTEE

Will Johnson (co-chair)  
Rebecca A. Roser (co-chair)  
Amanda Dudgeon  
Blake A. Hewitt  
Jenny Honeycutt  
Britt Kelly  
Lynsey T. Kmetz  
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Ryan Neville  
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Tommy Preston  
Edward Rawl  
Reid T. Sherard  
Taylor H. Stair  
Harry Cooper Wilson III



## Stars of the Quarter

### Paul H. Hoefler

Robinson McFadden & Moore,  
Columbia

### Britt Kelly

Rosen Hagood, Charleston

### Chisa Putman

Chisa J. Putman, Attorney at Law  
LLC, Rock Hill

### Patrick Wooten

Nelson Mullins, Charleston

Thank you to Paul Hoefler, Britt Kelly and Chisa Putman for their commitment to the Backpack Drive, and to Patrick Wooten for his hard work in organizing the CLE in Charleston for young lawyers.

# Letter From the President

Trey Mills • Trammell & Mills Law Firm, P.A.



Fellow Young Lawyers,

As USA's Olympians competed triumphantly for the most medals in England, so

too did your representatives of the S.C. Bar Young Lawyers Division at the ABA YLD Annual Meeting in Chicago. Congratulations are in order for the awards and achievements earned by our local Olympians for bringing home three gold medals and two silver medals (first place for Minority Service Project-Color of Justice, Service to the Public-Habitat for Humanity Wills Clinic and Newsletter; second place for Service to the Bar-Bar Convention

and Comprehensive Application.)

Just as the athletes endured years of intense training to win in their individual and team medals, your fellow young lawyers have been working hard for years within their respective committees and circuits. These accolades and accomplishments are not achieved overnight and take the work of many.

If you want to be involved, there is no better time than the present. There is no doubt we are making a difference within our great state of "Smiling Faces. Beautiful Places" but our good deeds, hard work and talented leaders have now garnered national attention. You are all part of something special, but we encourage you to be an active part versus a silent majority.

From Thursday, October 18, through Saturday, October 20,

Charleston, South Carolina will be the host of the ABA YLD Fall Conference. We have been given the opportunity to showcase our beautiful state, reward our members with a local ABA conference and have limitless networking and educational opportunities available. Please make every effort to attend this conference but more importantly to partake in this opportunity to advance yourself professionally, personally and sp ... ok maybe not spiritually but you never know. Come one, come all and start engaging yourself within the S.C. Bar Young Lawyers Division today.

Sincerely,

Trey

# Backpack Drive Provides Supplies for Students in Need

By Paul Hoefler, Robinson McFadden & Moore, Columbia



More than 30 young lawyers from across the state recently volunteered to organize and participate in the YLD Backpack Drive. Law firms and agencies in Charleston County, Richland County and York County served as collection sites for local supply drives. Committee members in each circuit collected and then distributed donations to local students in need.

In Richland County, donations included nearly 150 brand new backpacks loaded with school supplies.

The donations were delivered from 12 collection sites to the SC Bar Building, where young lawyers stuffed the backpacks with notebooks, loose-leaf paper, binders, folders, scissors, colored pencils, crayons, index cards and other necessary school supplies. On August 17, young lawyers hand-delivered the stuffed backpacks and boxes of supplies to Watkins-Nance Elementary School, W.A. Perry Middle School and The Cooperative Ministry.

In Charleston County, young

lawyers coordinated efforts with the City of Charleston's 2012 First Day Festival school supply drive. Eight law firms volunteered their offices as drop off locations for supplies. Donations included nearly 12 boxes full of school supplies and new backpacks. These donations were delivered to the City of Charleston to be distributed at its First Day Festival on August 19.

In York County, volunteers solicited donations for several weeks from the YLD and the York County Bar. As a result of the 16th Circuit's generosity, the committee collected enough supplies and monetary donations to stuff 20 brand new backpacks filled with school supplies. Volunteers delivered the donations to Sunset Park Elementary School on August 20.

The Backpack Drive's contribution enables many students in need to be prepared with the necessary school supplies at the beginning of the school year. The YLD is excited about the continued growth of the Backpack Drive and hopes to expand its efforts to even more circuits in the future.

# Young Lawyers in Action

## Pub Olympics

The 13th Circuit and the Greenville Young Lawyers Club joined forces this year to host the seventh annual pub Olympics on July 19 at Corner Pocket Tavern & Oyster Bar in Greenville. A large group of summer law clerks gathered to compete in games such as pool, darts and foosball.

This year Columbia attorneys Charles Appleby and Carmen Thomas organized the Midlands inaugural event. On June 14, law clerks, law students and YLD members met at the Hair of the Dog Tavern where they fiercely competed in corn hole, Wii games and other athletic events to see who would take home the golden prizes of a free bar tab for the top three teams. More than 75 people attended, including about 50 law clerks and students.



Left: The Professional Development Committee planned a networking event in Columbia on May 30 with the Young Bankers Association to hear President and CEO of City Center Partnership Matt Kennell speak about development in downtown Columbia.

Right: Lucy Grey McIver, Assistant General Counsel of BlueCross BlueShield, presented during the Supreme Court Healthcare Decision program on June 6 at the Bar Conference Center.



## Nominees Sought

The **Young Lawyers Division** of the South Carolina Bar invites nominations for its positions of President-Elect, Secretary-Treasurer, Out-of-State Representative, and Odd-Numbered Judicial Circuit Representatives. These positions will become available June 30, 2013.

For nomination criteria and instructions, please visit [www.scbare.org/younglawyers.aspx](http://www.scbare.org/younglawyers.aspx).

**The deadline to submit nominations is October 31, 2012.**

To submit items for the next issue of the *South Carolina Young Lawyer*, please contact:

Rebecca Roser  
[rrosier@robinsonlaw.com](mailto:rrosier@robinsonlaw.com)

or

Marshall Coleman Newton  
[mnewton@robinsonlaw.com](mailto:mnewton@robinsonlaw.com)

For a list of the YLD Ex. Council, circuit representatives and upcoming events, please visit [www.scbare.org/yld](http://www.scbare.org/yld).

### Volunteers Needed for Career Services Program

The Office of Career Services at the USC School of Law is interested in speaking with attorneys who are willing to spend time discussing their practice with individual or small groups of USC Law students. Volunteers are needed for informational interviews, mock interviews, networking breakfasts and a small firm information program. Attorneys interested in volunteering their time should contact Jill Kunkle, Associate Director of Career Services, at [kunklej@law.sc.edu](mailto:kunklej@law.sc.edu) or (803) 777-6917.

# 2012 YLD Fall Conference

**October 18-20**  
**Francis Marion Hotel**  
**Charleston, SC**

Register today!

ABA Members — \$135

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Thursday Only Rate — \$25

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Featuring distinguished speakers including Chief Justice Jean Toal and Charleston Mayor Joe Riley.



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