

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

SC SAFE ELECTIONS and )  
MICHAEL FUNDERBURK )

C.A. NO. 2022-CP- - \_\_\_\_\_

Plaintiff, )

vs. )

THE BOARDS OF ELECTIONS FOR )  
AIKEN COUNTY, BEAUFORT COUNTY, )  
CHARLESTON COUNTY, DORCHESTER )  
COUNTY, GREENVILLE COUNTY, )  
LEXINGTON COUNTY, SPARTANBURG )  
COUNTY, YORK COUNTY, and THE )  
SOUTH CAROLINA STATE ELECTION )  
COMMISSION, HOWARD KNAPP IN )  
HIS OFFICIAL CAPACITY )

**SUMMONS**

Defendant, )

**TO THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers hereunder at their offices located at Post Office Box 1286, Bluffton, South Carolina, 29910, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in said Complaint.

**Lauren Martel, Attorney at Law**

s/ Lauren Martel  
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COUNSEL FOR THE PLAINTIFFS

Beaufort, South Carolina  
August 26, 2022

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 COUNTY OF RICHLAND )  
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 SC SAFE ELECTIONS and )  
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 HIS OFFICIAL CAPACITY )  
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 Defendant, )  
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IN THE COURT OF COMMON PLEAS  
 C.A. NO. 2022-CP- - \_\_\_\_\_

**COMPLAINT AND  
 PETITION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 INJUNCTIVE RELIEF**

**TO DEFENDANTS ABOVE NAMED:**

Plaintiffs Michael Funderburk and SC Safe Elections (SCSE), by and through their undersigned counsel, complaining of the above-named Defendants would respectfully show to this Honorable Court:

**JURISDICTION AND VENUE**

1. Plaintiff, Michael Funderburk is a resident and citizen of Charleston County, South Carolina and has been during the course of the events which are the subject of this litigation.
2. Plaintiff, SC Safe Elections, is an organization and/or unincorporated association within the meaning of “person” as set forth in South Carolina Code §30-4-20(b) and §§30-4-10 et seq. known as the Freedom of Information Act.

3. The Defendant, Aiken County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law and. located in Aiken County South Carolina.

4. The Defendant, Beaufort County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Beaufort County South Carolina.

5. The Defendant, Charleston County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Charleston County South Carolina.

6. The Defendant, Dorchester County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Dorchester County South Carolina.

7. The Defendant, Greenville County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Greenville County South Carolina.

8. The Defendant, Lexington County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Lexington County South Carolina.

9. The Defendant, Spartanburg County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolin law located in Spartanburg County South Carolina.

10. The Defendant, York County Board of Elections is a South Carolina body politic and “public body” of the State of South Carolina organized and operating pursuant to South Carolina law located in York County South Carolina.

11. The Defendant, South Carolina State Election Commission (SCSEC) is a “public body” and a South Carolina body politic and political subdivision of the State of South Carolina organized and operating pursuant to South Carolina law, headquartered in Richland County South Carolina.

12. The events which form the basis for this Complaint are substantially related to and/or occurred in South Carolina.

13. This action is brought in part pursuant to the South Carolina Constitution, the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10 et seq., and the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 et seq. for declaration of the rights, status and other legal relations of the parties and other remedies as equitably reasonable and necessary.

14. The parties hereto and the subject matter herein are within the jurisdiction of this Court and venue is proper in Richland County South Carolina.

### **FACTUAL ALLEGATIONS**

15. Plaintiffs re-allege all of the preceding paragraphs above and incorporate the same herein by reference as if repeated verbatim.

16. As a “public body” as defined by S.C. Code. Ann. § 30-4-20(a), each named Defendant is bound by the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10 et seq.

17. The Plaintiff, Michael Funderburk, on or about April 5, 2022, in conformity with the method supplied to him by the Charleston County, submitted an emailed FOIA request to Charleston County (the Defendant) via the Executive Director of the County Board of Voter Registration and Elections in which he requested numerous things including the per ballot report known as the “Cast Vote Record” “ballot log” or “summary of ballots” (hereinafter referred to as “Cast Vote Records”) for Charleston County from the November 2020 (state and federal) elections. (Said Email Request is Attached as **Exhibit A**)

18. Upon information and belief The Cast Vote Records requested is a standard report that is easily generated and that shows the progression of votes over time for certain candidates, includes no personally identifiable information and does not include the scanned images of voted ballots.

19. Upon information and belief, historically this information has been available to the public until recently when for reasons unknown to the Plaintiffs it was removed from public access..

20. On or about April 5, 2022, the Defendant, via the Charleston County Board of Elections and Voter Registration Executive Director responded denying the request relying upon an South Carolina Attorney General’s (AG) opinion dated September 28, 2020 for such denial.

21. In the referenced September 28, 2020 AG opinion as to how the court would likely rule on the issue, the South Carolina AG, incorrectly assumed that the release of the cast ballots materials generally would lead to the identification of voters and would for that reason be improper and not subject to FOIA.

22. From approximately November 2021 until recently, multiple members of the SC Safe Elections association have sent FOIA requests to the named Defendant Board of Election Counties and the SCSEC requesting the Cast Vote Records, and all such requests to date have been denied by those public bodies.

23. On or about July 2022 Jane Pipkin, a member of SC Safe Elections, did send a FOIA request to Defendant Aiken County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

24. On or about April 2022, Plaintiff Michael Funderburk, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Beaufort County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

25. On or about April 2022, Plaintiff Michael Funderburk, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Charleston County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

26. On or about January 2022, Deborah Neal, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Dorchester County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

27. On or about April 2022, Plaintiff Michael Funderburk, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Greenville County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

28. On or about January 2022, Laura Scharr, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Lexington County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

29. On or about August 2022, Iris Shedlock, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant Spartanburg County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

30. On or about July 2022, Burl Smith, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant York County Board of Elections requesting the Cast Vote Records and was denied those records by that Defendant.

31. On or about November 2021, Burl Smith, individually and as a member of SC Safe Elections, did send a FOIA request to Defendant SCSEC requesting the Cast Vote Records and was denied those records by that Defendant.

32. To date the records requested in the FOIA requests have not been supplied to the Plaintiffs, and pursuant to 52 U.S.C. § 20701 said disputed records may be subject to being disposed of or destroyed on or after September 3, 2022.

**FOR A FIRST CAUSE OF ACTION**  
**(Violation of the S.C. FOIA)**

33. Plaintiffs re-allege all of the proceeding paragraphs above and incorporate the same herein by reference as if repeated verbatim.

34. As a public body as defined by S.C. Code Ann. § 30-4-20(a), Defendants are bound by the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10 et seq.

35. South Carolina Code Ann §30-4-30(a) gives any person the right to inspect or copy public records of a public body, including those of the Defendant.

36. South Carolina Code Ann §30-4-30(c) requires that, upon receiving a written request for records under FOIA, a public body such as Defendant must give the requesting party a written notification of the determination as to the availability of the requested public records within fifteen days, excepting Saturdays, Sundays and legal holidays.

37. Upon information and belief Defendant violated the FOIA, South Carolina Code Ann §30-4-10 et seq., in one or more of the following particulars to wit:

a. In failing to allow Plaintiff to inspect or copy Defendant's public records, as listed in Plaintiff's written FOIA requests and as described herein;

b. In failing to provide Plaintiff with the requested public records once Plaintiff's FOIA were deemed or considered approved after the fifteen-day time period had expired; and

c. In providing no, or only partial and/or redacted, responses or records without valid or proper basis for such refusal and/or redactions.

d. In improperly and unlawfully failing to produce documents by improperly claiming such materials are not public records subject to disclosure;

e. In other such particulars as will be proven at trial.

38. The Defendant has failed to turn over the materials required by the FOIA statute as described herein (without any reasonable basis for such failure), thereby violating the FOIA statute, the violation of which has caused an irreparable injury to the Plaintiff for which no adequate remedy at law exists.

39. The production of the materials requested by the Plaintiff in his FOIA requests, and withheld by the Defendant, have been found in numerous jurisdictions to be public

records subject to disclosure to FOIA type requests under nearly identical legal rules of disclosure.

40. Plaintiff, pursuant to S.C. Code Ann. § 30-4-100(a) hereby applies to, and asks the Court for, a declaratory judgment ordering that the Plaintiff is entitled to immediately receive all of the un-redacted public records listed in their FOIA requests as stated herein above at no cost to Plaintiff and for any additional equitable relief as the Court considers appropriate.

41. Plaintiff, pursuant to S.C. Code Ann. § 30-4-100(a), hereby asks and applies for the Court to award his attorney fees and all other costs associated with this litigation.

42. Plaintiff also asks for costs and attorney fees pursuant to S.C. Code Ann. § 15-77-300.

**FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment)**

43. Plaintiffs re-allege all of the proceeding paragraphs above and incorporate the same herein by reference as if repeated verbatim.

44. Plaintiffs also seeks an order that they are entitled to all of the information requested in their FOIA request and prays for an Order of this court, holding the complete information be produced un-redacted and without omissions to the Plaintiff and requiring the Defendants to pay for the costs and attorney's fees for this action pursuant to South Carolina Code Ann § 15-53-100.

45. Plaintiffs further ask for a determination by the court that "Cast Vote Records" are not exempt from public disclosure and are subject to disclosure pursuant to FOIA request for the same.

**REQUEST FOR AN IMMEDIATE TEMPORARY RESTRAINING ORDER**  
**AND INJUNCTIVE RELIEF**

46. Plaintiffs re-allege all of the preceding paragraphs above and incorporate the same herein by reference as if repeated verbatim.

47. The Plaintiffs further requests this court issue a Temporary Restraining Order (TRO) restraining the Defendants from destroying, or allowing the destruction of, the materials sought in the FOIA requests (namely the Case Vote Record images) during the pendency of this litigation or until a full hearing can be had on an injunction to the same purpose.

48. Immediate and irreparable harm will result if said order is not issued as the materials sought in the Plaintiffs' FOIA requests are likely to be destroyed on or about September 3, 2022 according to Federal retention laws, specifically 52 U.S.C. § 20701.

49. In the absence of an injunction the Plaintiffs will have no means of obtaining the requested data and persons and associations such as the Plaintiffs are beneficial, if not essential, to the public interest of maintaining election integrity in the State of South Carolina.

50. Therefore, the Plaintiffs request a TRO requiring the Defendants refrain from destruction of the CVR and that the Defendants take reasonable and appropriate measures to secure and hold the requested materials in a safe manner and location during the resolution of this action.

51. The Plaintiffs further request that the Court enjoin the Defendants from damaging or destroying, or allowing others to damage or destroy, the CVR requested for the pendency of the current action until such materials can be appropriately and safely transmitted or otherwise supplied to the Defendant in an appropriate manner.

52. Issuing a TRO and subsequent Injunction in this matter would result in no damages and no prejudice to the Defendants as an injunction would simply require the storage of a relatively small amount of ballots and digital data.

**Wherefore**, Plaintiffs prays for judgment against the Defendants and

a. For an Order that the Defendants have failed to comply with and violated FOIA in failing to provide the records requested by the Plaintiffs and directing the production of the same.

b. For an Order Granting declaratory judgment as to the FOIA requested materials, determining that CVR records are subject to FOIA disclosure, and requiring such materials be provided in full and un-redacted, and for all damages, attorneys' fees and costs allowed by law or equity;

c. Awarding attorney's fees and costs under South Carolina Code §15-77-300 as this is a matter in which the Plaintiff is contesting a state action

d. Alternatively, awarding attorney's fees and costs under South Carolina Code §15-53-100.

e. An award of attorneys' fees and costs pursuant to S.C. Code Ann. § 30-4-100 and all other equitable relief the court deems appropriate.

f. An immediate temporary injunction stopping the Defendant from destroying of the requested materials during the pendency of this action;

g. And that the Court enter such other and further relief as may be just and proper.

**Lauren Martel, Attorney at Law**

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Beaufort, South Carolina  
August 26, 2022