

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2015-CA-00966**

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**CAROLYN MCADAMS**

**Appellant**

**vs.**

**SHERIEL F. PERKINS**

**Appellee**

*Appeal of Order of the Leflore County Circuit Court, Honorable Margaret Carey-McCray, in  
Sheriel F. Perkins v. Mayor & City Council of Greenwood, MS, et al.  
Cause No. 2014-0074(CM)(L)*

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**BRIEF OF APPELLANT CAROLYN MCADAMS**

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**EXPEDITED CONSIDERATION REQUESTED**

MARC A. BIGGERS, MB # 2533  
UPSHAW, WILLIAMS, BIGGERS  
& BECKHAM, LLP  
Post Office Drawer 8230  
Greenwood, Mississippi 38935-8230  
Telephone: 662/455-1613  
[mbiggers@upshawwilliams.com](mailto:mbiggers@upshawwilliams.com)

**ATTORNEY FOR APPELLANT  
CAROLYN MCADAMS**

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**CAROLYN MCADAMS**

**Appellant**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Carolyn McAdams, Appellant/Respondent
2. Sheriel F. Perkins, Appellee/Petitioner
3. Willie F. Perkins, Counsel for Appellee/Petitioner
4. Perkins Law Firm, Counsel for Appellee/Petitioner
5. Marc A. Biggers, Counsel for Appellant/Respondent
6. Upshaw, Williams, Biggers & Beckham, LLP, Counsel for Appellant/Respondent
7. City of Greenwood, Mississippi
8. Ronnie Stevenson, Respondent (Member, Greenwood City Council)
9. Johnny Jennings, Respondent (Member, Greenwood City Council)

10. Lisa Cookston, Respondent (Member, Greenwood City Council)
11. Andrew Powell, Respondent (Member, Greenwood City Council)
12. Charles McCoy, Respondent (Member, Greenwood City Council)
13. Carl Palmer, Respondent (Member, Greenwood City Council)
14. Butler Snow LLP
15. Mark W. Garriga, Butler Snow LLP
16. Lem E. Montgomery III, Butler Snow LLP
17. Kathleen Ingram Carrington, Butler Snow LLP

*s/ Marc A. Biggers*

MARC A. BIGGERS

Counsel for Carolyn McAdams

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### **STATEMENT OF THE ISSUES**

1. Whether Miss. Code Ann. § 25-1-47 authorizes a municipality to employ counsel to defend an election contest challenging the conduct of city officials carrying out their official duties during a city election.
2. Whether Miss. Code Ann. § 21-17-5, when read *in pari materia* with Miss. Code Ann. § 25-1-47 and as interpreted by the Mississippi Attorney General, authorizes a municipality to employ counsel to defend a city's interests in an election contest challenging the conduct of city officials carrying out their official duties during a city election.
3. Whether the Circuit Court committed reversible error when it substituted its judgment for that of the Greenwood City Council's by holding as a matter of law that the City "has no legitimate legal interest" in the election contest challenging the June 4, 2013 Greenwood mayoral election when the City resolved that it did have an interest.

### **STATEMENT OF THE CASE**

On June 4, 2013, the City of Greenwood conducted a general election for the office of Mayor. Appellant Carolyn McAdams was reelected to the office of Mayor by a margin of 206 votes. Appellee Sheriel Perkins, the losing candidate, then filed an election contest pursuant to Miss. Code Ann. § 23-15-951, naming Mayor McAdams as the defendant. In her Complaint and Amended Complaint,<sup>1</sup> Perkins alleged various violations of the Mississippi Election Code, including the handling of affidavit and absentee ballots, ballot boxes, and certain polling

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<sup>1</sup> Because the original Complaint alleged certain violations of federal law by the City and its election officials, Defendant McAdams removed it to federal court. Upon removal to federal court, Plaintiff Perkins amended her Complaint to abandon all federal claims. Accordingly, the United States District Court for the Northern District of Mississippi remanded the remaining claim, a state law election contest, to the Leflore County Circuit Court.

procedures. Although Mayor McAdams is properly named as the sole defendant,<sup>2</sup> the lawsuit challenges the actions of the Elections Commissioners, certain poll workers, and the Municipal Clerk and his employees while carrying out their official duties on election day.

Mayor McAdams retained the law firm of Butler Snow LLP to defend the case shortly after she was served with process. At the request of McAdams's attorneys, and upon determining that the City had an interest in the election contest, the Greenwood City Council voted to retain Butler Snow LLP at a rate of \$175.00 per hour "to defend the election contest in State Court to represent the City's interest in upholding the validity of the municipal election and the actions of its elections officials pursuant to Mississippi Code Ann. § 25-1-47 and as authorized by written opinion of the Mississippi Attorney General." R.E. 4.

On December 23, 2014, Perkins filed a bill of exceptions appealing the City's Resolution to the Circuit Court of Leflore County, Mississippi. R.E. 3. The Circuit Court heard Perkins's challenge on February 13, 2015. R.E. 6. By order dated May 11, 2015 (filed May 26, 2015), the Circuit Court reversed the City's Resolution, holding that the City of Greenwood "has no legitimate legal interest in the determination of [the] . . . election contest" and that the City was without statutory authority to retain counsel for any aspect of the defense. R.E. 2. Mayor McAdams noticed her appeal of the Circuit Court's decision to this Court on June 19, 2015.

### **SUMMARY OF THE ARGUMENT**

The Court's May 11, 2015 Opinion and Order reversing the Greenwood City's Council's Resolution is incorrect. Under Mississippi law, a municipality has full authority to retain counsel to defend "claims made" against election officials. Miss. Code Ann. § 25-1-47 authorizes and empowers a municipality to "provide legal counsel for the defense of any claim . . . *made* or

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<sup>2</sup> The Mayor has no official role in the conduct of a municipal general election. However, the Supreme Court has held that the only proper defendant in an election contest under the general election contest statute is the successful party in the election. *See Fisher v. Crowe*, 303 So. 2d 474, 475 (Miss. 1974).

brought against any . . . municipal officer . . . as a result of his actions while acting in the capacity of such officer . . . .” (emphasis added). The case *sub judice*, *Sheriel F. Perkins, et al. v. Carolyn McAdams*, although it correctly names only the mayor as a defendant, challenges the official actions of the Elections Commission, the poll workers, the municipal clerk, and the clerk’s employees during the June 4, 2013 mayoral election for the City of Greenwood. It therefore contains “claims” “made against” “municipal officers” acting in their “official capacities.”

In addition, the Home Rule, codified at Miss. Code Ann. § 21-17-5(1), reserves to the governing authorities of every municipality the “management and control of the . . . municipal affairs and its property and finances.” This includes the power to “adopt . . . resolutions . . . with respect to such municipal affairs . . . and finances . . . .” *Id.* The Mississippi Attorney General’s Office has consistently interpreted the Home Rule, *in pari materia* with Miss. Code Ann. § 25-1-47, as authorizing municipalities to retain legal counsel to defend claims, including election contest claims, in which the city has an interest. *See MS AG Op.*, Ellis (July 14, 1993). This is in keeping with Miss. Code Ann. § 21-15-25, which authorizes the “governing authorities” over every municipality to “employ counsel [other than the appointed city attorney] to represent the interest of the municipality, should the occasion require.” Miss. Code Ann. § 21-15-25. Thus, the Greenwood City Council, having determined that the City has an “interest in upholding the validity of the municipal election and actions of its elections officials,” R.E. 4, was authorized to retain outside counsel by virtue of the Home Rule and by Miss. Code Ann. § 21-15-25.

Finally, to the extent the Circuit Court’s May 11, 2015 Opinion and Order held as a matter of law that the City “has no legitimate legal interest” in the mayoral election, it constitutes an illegal usurpation of the City Council’s authority and an impermissible substitution of the Court’s judgment for that of the Council’s. The Circuit Court’s appellate review of a City’s



Resolution is restricted. The law affords the City Council broad discretion in determining the City's interests. The determination that the City has an interest in defending claims made against officials acting in their official capacities falls squarely within the discretionary decision-making power of a city council. So long as the Greenwood City Council's Resolution was reasonable and proper and does not conflict with statutory or constitutional law, the Resolution is legal. The Circuit Court's opinion that the City has no "legitimate legal interest" in the outcome of the June 4, 2013 mayoral election was reversible error.

### **ARGUMENT**

**I. Miss. Code Ann. § 25-1-47 authorized the Greenwood City Council to employ counsel for the defense of claims challenging the conduct of city officials carrying out their official duties during the June 4, 2013 mayoral election.**

The first issue on appeal simply calls for an interpretation of Miss. Code Ann. § 25-1-47. Miss Code Ann. § 25-1-47(1) authorizes a municipality to provide legal counsel for the defense of any "claim[s] . . . made or brought against any . . . municipal officer, agent, servant, employee, or appointee as a result of his actions while in the capacity of such officer, agent, servant, employee, or appointee . . . ." The Bill of Exceptions filed by Perkins argued that the City lacks the statutory authority to retain counsel for the election case for two reasons: (1) because Mayor McAdams was the only named defendant in the subject election contest, i.e. no city officials or elections commissioners were named defendants; and (2) because the election contest made no claims against Mayor McAdams in her "official capacity." See R.E. 3 at ¶¶ 4, 5, 9. The Circuit Court's decision in favor of Perkins adopted the exact same reasoning:

It is undisputed that *Sheriel F. Perkins v. McAdams*, 2013-0047-CI, is an election contest between private litigants. There are no city officials or election commissions named as defendants and the action asserts no claims arising out of McAdams' actions as mayor. Therefore, § 25-1-47 clearly prohibits the Council from authorizing the employment of legal counsel to defend the election contest.

R.E. 2 at 4. The competing interpretation of Miss. Code Ann. § 25-1-47 is found in the City Council’s Resolution, which reads:

[A]lthough the Mayor is named as the only defendant in the case, the claims in the present State Court Complaint also involve the actions of various City officials carrying out their official duties as members of the Elections Commission, poll workers, as well as the Municipal Clerk and his employees . . . .

R.E. 4. Thus, the question on appeal is whether the election contest complaint included “claim[s] . . . made or brought against any . . . municipal officer . . . as a result of his actions while acting in the capacity of such officer.” If so, Miss. Code Ann. § 25-1-47 authorizes the City Council to hire counsel to defend the case.

The language of Miss. Code Ann. § 25-1-47 is pivotal to the Court’s determination. When drafting the statute, our legislature chose the broader terms “*claim*, demand, or action . . . *made* or brought against” a municipal officer rather than the narrower terms “action filed” or “lawsuit brought.” The Circuit Court’s interpretation of the statute simply ignores the terms “claims . . . made” and interprets the statute to require formal litigation naming the city official whose conduct is in question before the City can hire counsel to defend the case. The Mississippi Attorney General has explicitly criticized and rejected this view:

It is our opinion that the use of the word “claim” in the statute [Miss. Code Ann. § 25-1-47] intended to express a broader range of authority to negotiate and settle than use of the word “litigation” would have entailed. We do not think the legislature intended to require a lawsuit be filed, with all the expenses attended to litigation, before a public body could avail itself of § 25-1-47 of the Mississippi Code of 1972. Any opinion of this office to the contrary heretofore issued is overruled.

MS AG Op., Shands (Oct. 22, 1990). The Circuit Court’s determination that “§ 25-1-47 specifically prohibits the employment of counsel in cases that do not result from official capacity *actions*” as applied, then, is simply wrong. R.E. 2 at 5 (emphasis added).

The Mississippi Attorney General's interpretation is bolstered in this instance because it is in keeping with our statutory requirement that "[t]he only proper defendant in an election contest . . . is the successful party in the election." *Fisher v. Crowe*, 303 So. 2d 474, 475 (Miss. 1974) (discussing Miss. Code Ann. § 23-5-187 (1972), recodified as Miss. Code Ann. § 23-15-951). Under the Circuit Court's interpretation, a city could *never* hire counsel to defend an election contest challenging the conduct of city officials carrying out their official duties during a city election. As there is no statute prohibiting the same, the Circuit Court's interpretation creates an impermissible limitation on the City's authority.

Based on the foregoing, the subject election contest includes "claim[s] . . . made or brought against . . . municipal officer[s] . . . while acting in the capacity of such officer[s]," i.e. the actions of the Elections Commissioners, poll workers, the Municipal Clerk, and the clerk's employees during the June 4, 2013 mayoral election for the City of Greenwood. The plain language of Miss. Code Ann. § 25-1-47 makes clear that the Greenwood City Council was empowered to retain counsel to defend the claims challenging the official actions of those officers. The Circuit Court's Opinion and Order overruling the December 16, 2014 "Resolution Appointing Butler Snow, LLP to Represent the City of Greenwood in Litigation" should, therefore, be reversed.

**II. Miss. Code Ann. § 21-17-5, when read *in pari materia* with Miss. Code Ann. § 25-1-47 and as interpreted by the Mississippi Attorney General, authorized the Greenwood City Council to employ counsel to defend the City's interests in the election contest challenging the conduct of city officials carrying out their official duties during the June 4, 2013 mayoral election.**

Not only did Miss. Code Ann. § 25-1-47 authorize the City to hire counsel to defend claims against city officials in the subject election contest, such action is also authorized by Miss. Code Ann. § 21-17-5, commonly known as the Home Rule. Under the Home Rule, the governing authorities of a municipality may adopt resolutions pertaining to municipal affairs and

finances so long as those actions are not inconsistent with the Mississippi Constitution or the Mississippi Code. *See* Miss. Code Ann. § 21-17-5(1).<sup>3</sup> On July 14, 1993, the Mississippi Attorney General issued an opinion authorizing the very action taken by the Greenwood City Council in its Resolution pursuant to the Home Rule:

[T]o employ legal counsel to represent and protect a municipality's interest in an election contest would not appear to conflict with the Mississippi Constitution of 1890 or any statutory provision. Therefore, it is our opinion that municipal governing authorities may authorize such employment pursuant to Mississippi Code Annotated § 21-17-5 (Revised 1990).

MS AG Op., Ellis (July 14, 1993). The Attorney General opinion relied upon by the Greenwood City Council in resolving to hire Butler Snow LLP is consistent with *Ellis* and construes the Home Rule *in pari materia* with Miss. Code Ann. § 25-1-47:

The governing authorities may employ counsel to defend the election contest in state court under its general authority found at Mississippi Code Annotated Section 25-1-47, provided that it is doing so in defense of claims made or brought against a municipal officer or employee as a result of his actions while acting in his official capacity. In addition, it may employ legal counsel in accordance with its home rule authority, found at Section 21-17-5, when it has determined that it has an interest in an election contest.

R.E. 5.

The Circuit Court's Opinion and Order rejects the *Ellis* and *Brock* opinions in part because unlike Miss. Code Ann. § 19-3-47, which pertains to the retention of counsel by county boards of supervisors, Miss. Code Ann. § 25-1-47 does not specifically state that a municipality

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<sup>3</sup> Miss. Code Ann. § 21-17-5(1) provides in relevant part:

The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition . . . , the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi . . . .

may employ counsel in cases in which it decides it has an “interest.” *See* R.E. 2 at 5. In addition to the Home Rule’s broad grant of authority, however, there is another statute that the Circuit Court ignores. Miss. Code Ann. § 21-15-25, titled “Municipal attorney; appointment and compensation,” provides in relevant part: “The governing authorities may annually appoint an attorney-at-law for the municipality, prescribe his duties and fix his compensation, *and/or they may employ counsel to represent the interest of the municipality, should the occasion require.*” (emphasis added). In addition to Miss. Code Ann. § 25-1-47 and the Home Rule, then, Miss. Code Ann. § 21-15-25 clearly authorizes a municipality to retain counsel in cases in which the city determines it has an interest.

The Circuit Court cited no authority inconsistent with *Ellis* and *Brock*, nor did it cite any law suggesting a city is without power to hire counsel to defend an election contest case challenging the conduct of city elections officials in their official capacities. As the basis for Circuit Court’s Opinion and Order is incorrect, it must be reversed.

**III. The Circuit Court committed reversible error when it substituted its judgment for that of the Greenwood City Council’s by holding as a matter of law that the City “has no legitimate legal interest” in the election contest challenging the June 4, 2013 Greenwood mayoral election when the City resolved that it did have an interest.**

Perkins appealed the Greenwood City Council’s Resolution through Miss. Code Ann. § 11-51-75, which requires the Circuit Court to determine the propriety of the City Council’s decision “on the case as presented by the bill of exceptions.” As the Circuit Court’s Opinion and Order correctly states, judicial review of “the case as presented by the bill of exceptions” is limited to determining whether the decision (1) exceeds the scope of the City Council’s power, (2) violates a constitutional or statutory right of the appealing party, (3) is not supported by substantial evidence, or (4) is arbitrary or capricious. *See* R.E. 2 at 3 (citing *Baymeadows, LLC v. City of Ridgeland*, 131 So. 3d 1156, 1159 (Miss. 2014)). In making this determination, however, the Circuit Court is limited even further:

[O]ur standard of review prevents the substitution of our judgment in place of the council's wisdom and soundness used in reaching their decision. *Faircloth v. Lyles*, 592 So. 2d 941, 943 (Miss. 1991)]; *Currie v. Ryan*, 243 So. 2d 48, 52 (Miss. 1970). The governing body is free to use "their own common knowledge and familiarity" of the area in making its decision, in addition to the testimony and debate provided at the hearing. *Faircloth*, 592 So. 2d at 943. So long as the governing body's decision is "fairly debatable," we are without authority to supplant the municipality's legislative action. *McWaters v. City of Biloxi*, 591 So. 2d 824, 827 (Miss. 1991)].

*Matthis v. City of Greenville*, 724 So. 2d 1109, 1112 (Miss. Ct. App. 1998). Before the Circuit Court, by way of Perkins's Bill of Exceptions, was the Greenwood City Council's Resolution setting forth its reasoning and ultimate determination that the City had an interest in the subject election contest:

WHEREAS, the Plaintiff contends that various violations of the Mississippi Election Code occurred, the handling of affidavit and absentee ballots, ballot boxes and certain polling procedures; and

WHEREAS, although the Mayor is named as the only defendant in the case, the claims in the present State Court Complaint also involve the actions of various City officials carrying out their official duties as members of the Elections Commission, poll workers, as well as the Municipal Clerk and his employees; . . .

. . . .

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF GREENWOOD MISSISSIPPI, . . . that [it] has determined that the City of Greenwood has an interest in the election contest and finds it necessary to employ counsel . . . in defense of claims made or brought against various City officials carrying out their official duties as members of the Elections Commission, poll workers, as well as the Municipal Clerk and his employees . . . .

R.E. 4. The Circuit Court exceeded the scope of its appellate review when it ruled as follows, substituting its own judgment for that of the Council's:

In this case, what the City of Greenwood has resolved to do is financially assist Mayor McAdams in marshaling evidence and retaining legal services to defend against Ms. Perkins' claim that she (Perkins) received the greatest number of legal votes cast in the June 4, 2013 general election. The City of Greenwood has no legitimate legal interest in the determination of this ultimate issue and bears no liability in the election contest.

R.E. 2 at 6. In reaching this decision, the Circuit Court completely ignored the City Council's findings and formulated its own opinions about the City Council's decision. The Circuit Court's determination that the City "has no legitimate legal interest" in the mayoral election is an illegal usurpation of the City Council's authority and impermissible substitution of the Court's judgment for that of the Council's. So long as the Greenwood City Council's Resolution was reasonable and proper and did not conflict with statutory or constitutional law, the Resolution is legal.

As set forth above, the City Council's decision to employ counsel to defend claims made against city officials while acting in their official capacities is authorized by Mississippi statute. *See* Miss. Code Ann. §§ 25-1-47, 21-17-5, 21-15-25. Further, because the Circuit Court's Opinion and Order concludes without reason that the Resolution constitutes "the expenditure of public funds for private purposes in clear violation of the Mississippi Constitution," R.E. 2 at 6, it is an unsubstantiated, conclusory determination unsupported by the record. There is no evidence, then, to support that the Resolution exceeds the scope of the City Council's power or violates a constitutional or statutory right of Perkins. *See Baymeadows*, 131 So. 3d at 1159. And as the Circuit Court did not hold that there was insufficient evidence to support the Resolution or that the Circuit Court's decision was arbitrary or capricious, *see id.*, there are no grounds remaining to support the Circuit Court's Order.<sup>4</sup>

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<sup>4</sup> In the final two sentences of the Circuit Court's Opinion and Order, the Court finds the Resolution further unauthorized because it allegedly authorizes the reimbursement of legal expenses previously incurred by Mayor McAdams in the election contest. The Circuit Court makes this

The law affords the City Council broad discretion in determining the City's interests, and the determination that the City has an interest in defending claims made against officials acting in their official capacities falls squarely within its discretionary decision-making power. The Circuit Court improperly substituted its judgment for that of the Greenwood City Council's, and the Circuit Court's Order and Opinion must, therefore, be reversed.

### **CONCLUSION**

The Greenwood City Council had statutory authority to hire counsel to defend the City's interests in the subject mayoral election contest. The Opinion and Order of the Leflore County Circuit Court, which concluded otherwise, was based on an incorrect interpretation of the relevant statutes, and it reached beyond the scope of the Court's appellate review. Accordingly, and for the reasons set forth herein, Appellant Carolyn McAdams respectfully asks that the decision of the Leflore County Circuit Court be reversed along with such other relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED, this the 27th day of January, 2016.

UPSHAW, WILLIAMS, BIGGERS & BECKHAM, LLP

By: s/ Marc A. Biggers

MARC A. BIGGERS, MB # 2533

*Counsel for Appellant Carolyn McAdams*

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assumption because the Resolution states that the employment of counsel should be effective November 12, 2014 even though the Resolution was not passed and adopted until December 16, 2014. The plain language of the Resolution, however, states that the employment of counsel effective November 12, 2014 is for the "defense of claims made or brought against various City officials carrying out their official duties as members of the Elections Commission, poll workers, as well as the Municipal Clerk and his employees . . . ." R.E. 4 at 1. As there is nothing in the record supporting the Circuit Court's assumption, this provides no basis for reversing the Greenwood City Council's Resolution.



**CERTIFICATE OF SERVICE**

I, Marc A. Biggers, counsel for Appellant Carolyn McAdams, do hereby certify that I have this day served a true and correct copy of the above and foregoing document by mailing same by United States Mail with postage fully prepaid thereon to the following:

Hon. Margaret Carey-McCray  
P.O. Box 1775  
Greenville, MS 38072-1775

*Leflore County Circuit Court Judge*

Willie Perkins, Esq.  
Perkins Law Firm  
612 W. Washington Street  
Greenwood, MS 38935-4242

*Counsel for Appellee Sheriel F. Perkins*

SO CERTIFIED this the 27th day of January, 2016.

s/ Marc A. Biggers  
MARC A. BIGGERS

**CERTIFICATE OF FILING**

I, Marc A. Biggers, counsel for Appellant Carolyn McAdams, hereby certify that I have this date electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification to all registered users, including the opposing party's counsel.

SO CERTIFIED this the 27th day of January, 2016.

s/ Marc A. Biggers

MARC A. BIGGERS