

# Johnson, Smith, Hibbard & Wildman

L A W F I R M , L . L . P

MILTON A. SMITH  
*Retired*

DONALD B. WILDMAN  
DOUG SMITH  
DONNA FAYE SHETLEY  
RANSOME A. COLEMAN  
STEVEN M. QUERIN  
KRISTIN BURNETT BARBER  
SHANE W. ROGERS

220 NORTH CHURCH STREET (ZIP CODE 29306)  
MAILING ADDRESS: P.O. DRAWER 5587  
SPARTANBURG, SOUTH CAROLINA 29304-5587  
TELEPHONE: 864-582-8121  
TELECOPIER: 864-585-5328  
[www.jshwlaw.com](http://www.jshwlaw.com)

EDWIN W. JOHNSON (1904-1979)  
PAUL R. HIBBARD (1941-2004)

---

JOSHUA O.C. LONON  
HOWARD R. KINARD  
REID WILDMAN<sup>^</sup>  
<sup>^</sup> also admitted in North Carolina

April 24, 2014

Sender's E-Mail Address:  
dsmith@jshwlaw.com

Via Facimile: 864-233-6591 and Email: tomervin@bellsouth.net

Tom Ervin  
619 N. Main Street  
Greenville, SC 29601

RE: Campaign Ads

Dear Tom:

Over the years, I've had occasion to represent the State Party on numerous legal matters. Today, I write on behalf of Chairman Matt Moore and the South Carolina Republican Party. It has come to their attention that your campaign advertisements refer to you as an "Independent **Republican** for Governor." With your recent withdrawal from the Republican primary election, you have forfeited the right to refer to yourself as a "Republican" candidate.

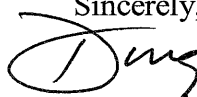
I am comfortable that, with your judicial background, you are aware the selection of candidates in South Carolina is strictly governed by a statutory framework wherein no one can be the candidate of a political party *except* through the method of nominating candidates set forth in SC Code Section 7-11-10 et seq. You chose to run as an independent. The use of the word "Republican" by a candidate who has chosen to withdraw from the Republican primary will undoubtedly confuse voters and create the false impression that you are actually a candidate of the Republican Party. While the First Amendment protects your right to promote and advertise the issues that concern you, it does not give you the right to lead the public to believe you are a Republican, **when you are not one.** Only Republican candidates have "the exclusive right to the use of the party's name and symbols."

This long standing rule was established in *Plonski v. Flynn*, 222 N.Y.S.2d 542 (1961), where the court said "(a)ny misrepresentation, either directly stated or indirectly made, orally or in literature or signs, through the use of misleading, confusing...statements, that a person not so chosen is a candidate of a particular party which is likely to do injury to that party or its candidates, must be regarded as fraud..."

The *Plonski* court went on to confirm that no candidate "would seek to lure party members from supporting their own party candidates by the utterance of that which is not the fact either as to party support or party label, and none but a demagogue would seek to delude his auditors by uttering that which is not his...true belief. No one is permitted to deceive the unwary interested party voter by falsely conveying to him the notion that a candidate is his party's choice when that is not the fact."

Tom, my days in your court, while many years ago, tell me that you are not about misleading the public, however this does. Based on the foregoing, please cease and desist from the use of the word "Republican" in your campaign advertising.

With best regards, I remain

Sincerely,  
  
Doug Smith

DS/dbh