

STATE OF NORTH CAROLINA  
COUNTY OF LEE

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 14 CVS 315  
2014 APR 11 AM 10  
LEE COUNTY, N.C.

JOSEPH CALENDINE, JR., )  
Plaintiff, )

Vs. )

THE BOARD OF COMMISSIONERS )  
FOR LEE COUNTY, NORTH )  
CAROLINA, and CHARLES PARKS, )  
KIRK SMITH, and ANDRE KNECHT, )  
individually and in their capacity as )  
Commissioners, AND LEE COUNTY, )  
NORTH CAROLINA, )  
Defendants. )

**MOTION TO STRIKE**


NOW COMES, the Defendants, by and through counsel, and moves the Court to strike the various portions of the Complaint and Motion for Injunctive Relief as shown below, pursuant to North Carolina Rule of Civil Procedure 12(f), in that the challenged language is irrelevant, immaterial and impertinent:

1. In Paragraph 14, the phrase “Mr. Jennings is known, however, to be an active participant in local politics. Mr. Jennings is the Chapter Leader for the Americans for Prosperity, an extreme right-wing political activism organization.”
2. In Paragraph 25, the phrase “A picture of said literature is attached hereto and incorporated herein by reference as Plaintiff’s 4.”
3. Paragraph 28 in its entirety that states, “Calendine, at this point, felt that he was attending a local Republican rally rather than a ‘Town Hall’ meeting with the Commissioners.”

4. In Paragraph 34, the phrase “At one point Representative Stone even handed one of the citizens a business card.”
5. Plaintiff’s Exhibit 4 in its entirety.

This the 11<sup>th</sup> day of April, 2104.

YARBOROUGH, WINTERS & NEVILLE, P.A.



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GARRIS NEIL YARBOROUGH  
State Bar # 8110  
Post Office Box 705  
Fayetteville, NC 28302  
Telephone: 910-433-4433  
E-mail: gnyesq@ywnlaw.com

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing Motion to Strike has been delivered by the office of the Postal Service to the individual named below:

**Mr. Kevin C. Foushee  
Doster, Post, Silverman, Foushee, Post & Patton, P.A.  
205 Courtland Drive  
Sanford NC 27330**

This the 11<sup>th</sup> day of April, 2014.



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GARRIS NEIL YARBOROUGH  
Attorney at Law  
Post Office Box 705  
Fayetteville, NC 28302  
Telephone: (910) 433-4433

STATE OF NORTH CAROLINA

FILED

COUNTY OF LEE

2014 APR 11 AM 10:18

IN THE GENERAL COURT OF JUSTICE  
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FILE NO.: 14 CVS 315

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Plaintiff, )

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THE BOARD OF COMMISSIONERS )  
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individually and in their capacity as )  
Commissioners, AND LEE COUNTY, )  
NORTH CAROLINA, )  
Defendants. )

**MOTIONS TO DISMISS**

NOW COMES, the Defendants, by and through counsel, and moves the Court to dismiss the Complaint and Motion for Injunctive Relief, hereinafter "the Action," pursuant to North Carolina Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7) and further shows the Court as follows:

**I. Motion to Dismiss Pursuant to Rule 12(b)(1)**

The Action should be dismissed as to all Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction in that the Plaintiff lacks sufficient standing to prosecute The Action.

**II. Motion to Dismiss Pursuant to Rule 12(b)(6)**

The Action should be dismissed as to all Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted in that the Plaintiff has failed to allege sufficient material facts to establish a claim and has pled facts which necessarily defeat Plaintiff's claims.



### **III. Motion to Dismiss Pursuant to Rule 12(b)(7)**

The Action should be dismissed as to the individual Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(7) for failure to join a necessary party, to wit: Commissioner Amy Dalrymple.

This the 11<sup>th</sup> day of April, 2104.

YARBOROUGH, WINTERS & NEVILLE, P.A.



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E-mail: gnyesq@ywnlaw.com

### **CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing Motions to Dismiss has been delivered by the office of the Postal Service to the individual named below:

**Mr. Kevin C. Foushee**  
**Doster, Post, Silverman, Foushee, Post & Patton, P.A.**  
**205 Courtland Drive**  
**Sanford NC 27330**

This the 11<sup>th</sup> day of April, 2014.



GARRIS NEIL YARBOROUGH  
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**NOTICE OF HEARING**

Please take notice that the undersigned attorney for the Defendants will bring its Motions to Dismiss and Motion to Strike for hearing before the Superior Civil Session of the Lee County Superior Court, Lee County Courthouse, on Monday, the 21<sup>st</sup> day of April, 2014 at 10:00 a.m., or as soon thereafter as the Court can hear it.

This the 11<sup>th</sup> day of April, 2014.

YARBOROUGH, WINTERS & NEVILLE, P.A.

  
\_\_\_\_\_  
GARRIS NEIL YARBOROUGH  
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Post Office Box 705  
Fayetteville, NC 28302  
Telephone: 910-433-4433  
E-mail: gnyesq@ywnlaw.com

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing Notice of Hearing has been delivered by the office of the Postal Service to the individual named below:

**Mr. Kevin C. Foushee  
Doster, Post, Silverman, Foushee, Post & Patton, P.A.  
205 Courtland Drive  
Sanford NC 27330**

This the 11<sup>th</sup> day of April, 2014.



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