

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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OCT 01 2013
SC Court of Appeals

Case No. 2012-CP-10-04969

Appellate Case No. 2013-001273

South Carolina Public Interest Foundation and Waring
S. Howe, Jr., individually, and on behalf of all others
similarly situated, Appellants,

v.

Robert W. Harrell, Jr., in his official capacity as
Speaker of the South Carolina House of
Representatives, Glenn McConnell, in his official
capacity as President of the South Carolina Senate,
Representative Harry B. "Chip" Limehouse III, Senator
George E. "Chip" Campsen, and the State of South
Carolina, Respondents.

**Speaker Harrell's Return to Appellants' Motion to
File Revised Appellants' Initial Brief**

Respondent Robert W. Harrell, Jr., in his official capacity as Speaker of the South Carolina House of Representatives ("Speaker Harrell"), files this Return to Appellants' Motion to File Revised Appellants' Initial Brief. Appellants use this motion to avoid the fact that Speaker Harrell previously moved to strike wholly improper arguments presented in the first Initial Brief served by Appellants on August 27, 2013. Appellants had the chance to present proper appellate arguments to this

Court in the August 27 Appellants' Initial Brief. They failed to do so. Now, Appellants ask this Court to ignore that fact and allow filing a revised Appellants' Initial Brief that completely alters the substance of the August 27 Appellants' Initial brief. This is improper. Therefore, this Court should deny this Motion and grant Speaker Harrell's pending Motion to Strike.

On September 6, 2013, Speaker Harrell filed a Motion to Strike Portions of Appellants' Initial Brief that improperly requested a ruling from this Court on the underlying merits of the case despite the fact that the order on appeal only addressed the Appellants' lack of standing to maintain the merits of the case. In the order on appeal, the circuit court expressly and unequivocally did not rule on the merits issues and limited dismissal to Appellants' lack of standing. See Motion to Strike p. 1-3. Nevertheless, Appellants asked this Court to go beyond the order on appeal and rule directly on the merits of the claims raised in the complaint. Appellants argued, for 18 pages, on the merits of their five constitutional claims. See Appellants' Initial Brief served August 27, 2013, at p. 24-42 and paragraphs 2-3 of the conclusion. Speaker Harrell maintained such argument was improper and must be removed from the Appellants' Initial Brief. See Motion to Strike p. 1, 2-4, 5; Reply to Appellants' Return to the Motion to Strike p. 2-3.

In response to that Motion to Strike, Appellants filed this Motion to File Revised Appellants' Initial Brief on September 21, 2013.¹ Appellants claim that instead of granting the Motion to Strike, the "better resolution" is to allow them to file a

¹ Appellants also filed a Return to the Motion to Strike on September 17, 2013. Speaker Harrell timely filed a Reply. That motion remains pending before this Court.

revised initial brief that re-writes the arguments presented in the original Appellants' Initial Brief served on August 27, 2013. See Motion p. 2. The revised brief completely alters the substance of their Initial Brief in order to overcome the shortcomings and improper arguments presented in their August 27 Initial Brief.² In short, Appellants ask to re-write their brief in an attempt to present new and refined arguments on the standing issue before this Court. That does not present a "better resolution" in this matter.

The "better resolution" would be for the Court to deny this motion and grant Speaker Harrell's pending Motion to Strike. As the parties initiating this appeal, Appellants had the ability to frame the issues on appeal via their Initial Brief. For some reason, Appellants did not focus their argument on the one issue on appeal, namely whether they lack the standing necessary to maintain the action. Instead, Appellants chose to include 18 pages of argument on other issues upon which the circuit court expressly and unequivocally did not rule in the order on appeal. When Speaker Harrell advised the Court of these improper arguments, Appellants analyzed Speaker Harrell's arguments and presented a new brief with substantively different and refined arguments on the seminal standing issue on appeal. This is improper. Appellants should not be afforded a second chance to present argument to this Court when it was Appellants

² This Court should note that in the revised brief submitted with this motion, Appellants no longer request any ruling on the merits of the underlying constitutional claims. Instead, the arguments presented in the revised brief seek reversal of the standing issue. Thus, should this Court grant this motion, then the only issue before the Court is the threshold issue of standing. The Court cannot issue any order reaching the merits of the constitutional issues upon which were not ruled on by the circuit court and that are not before this Court in this appeal.

failure to present proper arguments in the first place that necessitated the Motion to Strike.

Speaker Harrell would be prejudiced should Appellants be allowed to submit this revised brief. Speaker Harrell properly adhered to the Appellate Court Rules in filing the Motion to Strike. It was Appellants who failed to follow the rules in drafting the August 27 Initial Brief. Appellants should not be rewarded for their mistakes by being allowed to digest Speaker Harrell's argument in the Motion to Strike, refine their arguments on the key issue on appeal accordingly, and present a revised Initial Brief with new and improved arguments.


If this Court were to allow such a procedure, then it would render our Appellate Court Rule immaterial. All appellants would be afforded the opportunity to correct substantive deficiencies or eliminate improper arguments merely by asking this Court to accept a revised brief eliminating the errors and presenting new arguments. In addition, Appellants would be given two chances to refine their arguments to this Court. This would completely eliminate the motion to strike from practice. Moreover, it would create an unlevel playing field at the Court. Appellants would be allowed multiple chances to craft and refine arguments in initial briefs until they got it right. A respondent would not be afforded the same luxury. This cannot be allowed by this Court. This Court should deny this motion.

Lastly, Appellants' motion tacitly admits that the improper arguments in the August 27 Initial Brief should be struck as per Speaker Harrell's pending Motion to Strike. If Appellants truly believed that the arguments in the August 27 Initial Brief

were proper, then the filing of a revised brief that removes those arguments would be unnecessary. Thus, this Court should grant Speaker Harrell's Motion to Strike.

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Representatives, Ken Ard, in his official capacity as
President of the South Carolina Senate, Representative
Harry B. "Chip" Limehouse III, Senator Glenn
McConnell, and the State of South Carolina, Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Robert W. Harrell, in his official capacity as Speaker of the South Carolina House of Representatives, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Speaker Harrell's Return to Appellants' Motion to File
Revised Appellants' Initial Brief

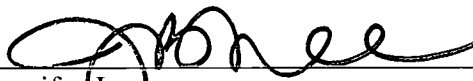
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October 1, 2013

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
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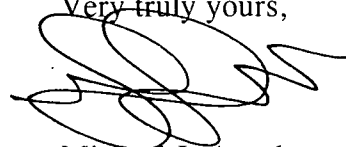
RE: South Carolina Public Interest Foundation, et al. v. Robert W. Harrell, Jr., in
his official capacity as Speaker of the S.C. House of Representatives, et al.
Civil Action No.: 2012-CP-40-1589
SC Court of Appeals Case No.2013-001273
Our file no.: 38955/01500

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Speaker Harrell's Return to Appellants' Motion to File Revised Appellants' Initial Brief in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing parties.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: James G. Carpenter
Michael R. Hitchcock
Robert E. Stepp
Robert E. Tyson, Jr.

Robert D. Cook
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