

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

Case No. 2012-CP-10-04969

RECEIVED  
OCT 10 2013  
SC Court of Appeals

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.

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**APPELLANTS' REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO FILE REVISED APPELLANTS' INITIAL BRIEF**

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On or about August 28, 2013, Appellants filed Appellants' Initial Brief. On or about September 6, 2013, Respondent Harrell moved to strike large sections of the Appellants' Initial Brief (all the discussion of the substance of the claims), because the Circuit Court did not rule on the merits of Appellants' claims. On or about September 21, 2013, Appellants moved to file a Revised Appellants' Initial Brief that focused on the issue of standing. On or about October 1, 2013, Harrell filed a Response to Appellants'

Motion. Appellants now submit this Reply Memorandum in Support of their Motion to File the Appellants' Revised Initial Brief.

Harrell persists in misrepresenting the arguments in Appellants' Initial Brief. For the convenience of the Court, Appellants attach to this Reply Memo a copy of pages 6 and 7 of the Appellants' Initial Brief and quote portions below. Appellants' first argument (I.A.) addressed standing. It was "Appellants Possess Public Importance Standing Because They Have Presented Five Claims That the Authority Is Unconstitutionally Comprised, Which Could Marginalize the Important Decisions of the Authority" (p. 6). Appellants *referred specifically* to the sections of the Appellants' Initial Brief addressing the five Constitutional claims as part of the standing argument.

Appellants argued as follows:

Appellants have presented not one, but five "colorable claim[s] that the [Authority] is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the [Authority]." *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521, 524 (2013).

First, the House voted 12 to 0 to override the veto of Act 130, thereby lacking the necessary two-thirds of a quorum in the House. **See Section II. A. *infra*.**

Second, Act 130 is an unconstitutional special law enacted when a general law applies. **See Section II. B. *infra*.**

Third, Act 130 is an unconstitutional single county act. The Supreme Court ruled that legislation related solely to this District violates the Constitution. *Torgerson v. Craver*, 267 S.C. 558, 562, 230 S.E.2d 228, 229 (1976). **See Section II. C. *infra*.**

Fourth, the simultaneous holding of offices both in the General Assembly and on the CCAA violates the Dual Office Holding provisions of the South Carolina Constitution. **See Section II. D. *infra*.**

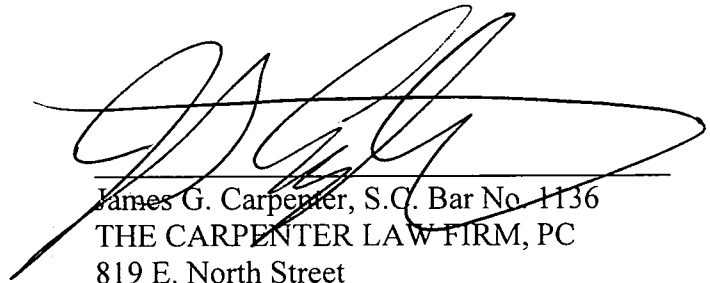
Fifth, Act 130 allows members of the General Assembly to serve in executive functions on the CCAA, in violation of the Separation of Powers provision of the South Carolina Constitution. **See Section II. E. *infra*.**

Appellants' Initial Brief, pp. 6-7.

Appellants supported their standing arguments by referring to other sections of their brief, rather than by unnecessary repetition. Harrell asked the Court to strike these sections to which Appellants referred in their standing argument. If they are simply stricken, Appellants have large portions of their standing argument stricken, granting Harrell unwarranted and unfair tactical advantage. Harrell would have the Court decide this case wearing blinders. A description and discussion of these claims is essential to Appellants' *standing argument*.

**WHEREFORE**, Appellants pray the Court to allow them to file their Revised Appellants' Initial Brief, in order to afford them a full and fair opportunity to present the issue of their standing, including public importance standing.

Respectfully submitted,



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October 7, 2013

**Certificate of Service**

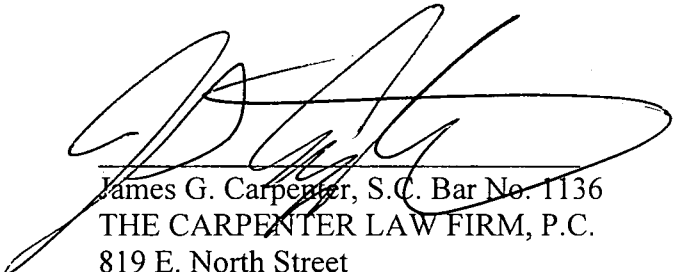
The undersigned attorney hereby certifies that he has served a copy of the foregoing Reply Memorandum of Law in Support of Appellants' Motion to File Revised Appellants' Initial Brief on counsel for Defendants by email and US Mail, postage prepaid on Monday, October 07, 2013 to the following persons:

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## ARGUMENT

### I. THE CIRCUIT COURT ERRED IN RULING THAT THE APPELLANTS LACKED STANDING.

The Circuit Court ruled that Appellants possessed neither taxpayer standing nor public importance standing in this case. Appellants contend that this was error.

#### A. Appellants Possess Public Importance Standing Because They Have Presented Five Claims That the Authority Is Unconstitutionally Comprised, Which Could Marginalize the Important Decisions of the Authority.

The Supreme Court recently granted public importance standing to Petitioners in *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013). The statute creating the South Carolina Transportation Infrastructure Bank Board allowed legislators to sit on the Infrastructure Bank Board, an executive body. Petitioners alleged that the statute violated the Separation of Powers and Dual Office Holding provisions of the Constitution. In granting Mr. Sloan and the Foundation public importance standing the Court reasoned as follows:

Sloan presents a colorable claim that the Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board. We find resolution of this question is certainly of importance and concern to the public and therefore hold Sloan has standing to bring this challenge.

*Id.* 744 S.E.2d at 524. This holding is the most recent authoritative statement of the standard for public importance standing. Under this standard, the Circuit Court erred in failing to grant the Appellants public importance standing.

Appellants have presented not one, but five “colorable claim[s] that the [Authority] is unconstitutionally comprised, casting a cloud of illegitimacy which could

marginalize the important decisions of the [Authority].” *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521, 524 (2013).

First, the House voted 12 to 0 to override the veto of Act 130, thereby lacking the necessary two-thirds of a quorum in the House. *See* Section II. A. *infra*.

Second, Act 130 is an unconstitutional special law enacted when a general law applies. *See* Section II. B. *infra*.

Third, Act 130 is an unconstitutional single county act. The Supreme Court ruled that legislation related solely to this District violates the Constitution. *Torgerson v. Craver*, 267 S.C. 558, 562, 230 S.E.2d 228, 229 (1976). *See* Section II. C. *infra*.

Fourth, the simultaneous holding of offices both in the General Assembly and on the CCAA violates the Dual Office Holding provisions of the South Carolina Constitution. *See* Section II. D. *infra*.

Fifth, Act 130 allows members of the General Assembly to serve in executive functions on the CCAA, in violation of the Separation of Powers provision of the South Carolina Constitution. *See* Section II. E. *infra*.

These five Constitutional violations require judicial guidance.

**1. The Appellants properly pled and requested public importance standing.**

The Circuit Court also ruled that Appellants lack public importance standing for failure to plead standing with specificity in the Complaint (Order, p. 8). This ruling is clear error. The Complaint cites a long list of cases recognizing public importance standing and alleges that this Court possesses jurisdiction as established in those cases (Complaint, par. 6). The issue of jurisdiction of the Court includes the granting of public



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October 7, 2013

The Honorable Jenny Abbott Kitchings  
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SC COURT OF APPEALS

Re: *South Carolina Public Interest Foundation et al. vs. Harrell, et al*  
Civil Action No. 2012-CP-10-04969

Dear Ms. Kitchings:

I enclose Appellants' Reply Memorandum in Support of Motion to file Revised Appellants' Initial Brief and a Proof of Service.

If you need anything else, please telephone me.

Sincerely yours,  
THE CARPENTER LAW FIRM, PC

James G. Carpenter

Enclosures  
CC w/enclosures: All opposing counsel