

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. 2013-001273

**RECEIVED**  
MAR 02 2015  
**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.

James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, John Courson, 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' MEMORANDUM OF LAW IN OPPOSITION TO  
RESPONDENTS' MOTION TO CANCEL ARGUMENT AND STAY APPEAL**

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Respondents have moved the Court to Cancel Argument and Stay Appeal. Oral argument is scheduled for Tuesday, March 3, 2015 at 11:20 AM. Respondents report that the Senate has passed legislation that might moot this appeal and the underlying litigation. Respondents report that the same or similar legislation is under consideration in the House of Representatives.

Appellants oppose Respondents' Motion and submit this Memorandum of Law in Opposition to the Motion to Cancel Argument and Stay Appeal. First, enactment of the

legislation is not a sure thing. The House of Representatives has not enacted proposed the legislation, and will not do so by the time of oral argument. Even if the proposed legislation passes the House of Representatives, it will be sent to the Governor for her approval. Finally, if the proposed legislation addresses only the Charleston County Aviation Authority, it might be unconstitutional special and single county legislation.

Respondents' Motion to Stay Oral Argument seems to be another in a long line of delays and maneuvers to enable Respondents to continue to operate under an unconstitutional act and to avoid addressing Appellants' claims that the legislation at issue is unconstitutional for five separate reasons: two of which the Attorney General agrees render the act unconstitutional; and two more which the Senators agree make the act unconstitutional.

Appellants believe it is a travesty of justice that our elected officials continue to defend the case, when the majority of the Respondents have admitted that the act is unconstitutional for four separate reasons.

Appellants claim standing both as taxpayers and fee payers to the Charleston County Aviation Authority, as a former chairman of the Aviation Authority, and based upon the great public importance of the issues, namely the multiple reasons that show the Act unconstitutional. Appellants explained in their brief:

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.*

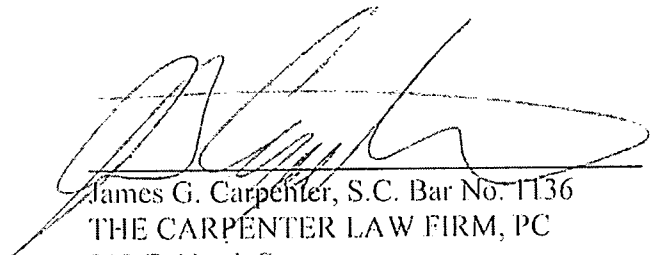
Fifth, Act 130 allows members of the General Assembly to serve in executive functions on the CCAA, in violation of the Separation of Powers provision of the South Carolina Constitution. *See Section II. E. infra.*

Appellants' Initial Brief, pp. 6-7.

Under the circumstances, the better course of action is for this Court to issue a summary reversal of the Circuit Court's ruling, and grant standing to the Appellants.

**WHEREFORE**, Appellants pray the Court to deny the Respondents' Motion to Cancel Argument and Stay Appeal, reverse the judgment the Circuit Court, rule that the Appellants possess standing, and remand the case for a ruling on the merits.

Respectfully submitted,



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March 2, 2015

**Certificate of Service**

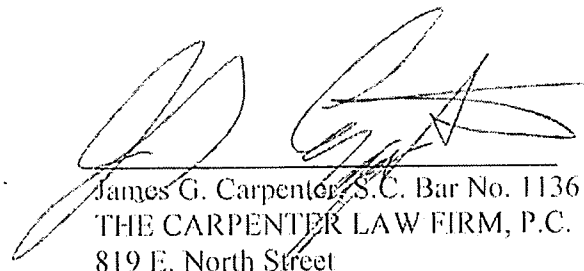
The undersigned attorney hereby certifies that he has served a copy of the foregoing Memorandum of Law in Opposition to Motion for to Cancel Argument and Stay Appeal on counsel for Respondents by email and US Mail, postage prepaid, on Monday, March 02, 2015 addressed as follows:

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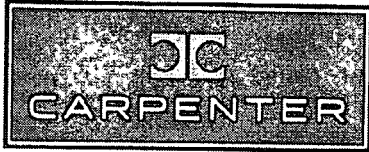


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March 2, 2015

Via email and US mail

V. Claire Allen, Deputy Clerk  
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Re: *South Carolina Public Interest Foundation et al. vs. Harrell, et al*  
Court of Appeals Case No. 2013-001273

Dear Ms. Allen:

I enclose the original and seven copies of Appellants' Memorandum of Law in Opposition to Respondents' Motion to Cancel Argument and Stay Appeal. Please file the originals and return a clocked in copy to me in the enclosed, postage paid envelope.

Thank you very much.

Sincerely yours,  
THE CARPENTER LAW FIRM, P.C.

James G. Carpenter

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MAR 02 2015  
SC Court of Appeals

Enclosure  
CC w/encl: all opposing counsel