

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

RECEIVED

MAY 12 2015

Case No. 2012-CP-10-04969
Appellate Case No. 2013-001273

SC Court of Appeals

75957

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, Hugh K. Leatherman, Sr., in his
official capacity as President of the South Carolina
Senate, Representative Harry B. "Chip" Limehouse III,
Senator George Campsen, and the State of South
Carolina,

Respondents.

Motion to Dismiss Appeal

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents
James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House
of Representatives, Hugh K. Leatherman, Sr., in his official capacity as President of
the South Carolina Senate, Representative Harry B. "Chip" Limehouse III, and Senator
George Campsen jointly request that the Court dismiss Appellants' appeal with
prejudice and end the litigation in full by the issuance of the remittitur.¹ The basis for

¹ Even though this appeal centers on the issue of whether Appellants have standing to challenge the constitutionality of Act 130 of 2007, the issuance of the remittitur would end the action in full. No further action in the trial court would be necessary because the trial court's order finding Appellant's

this motion is that recent legislation has mooted the appeal and claims advanced in the complaint. Thus, no justiciable controversy exists for this Court to adjudicate. This Court should dismiss this appeal with prejudice and end the litigation in full.

In 2011, Appellants initiated this action solely to challenge the constitutionality of Act 130 of 2007 on various grounds. {R. 464}. After the Supreme Court denied original jurisdiction, Appellants filed a declaratory judgment complaint in circuit court² again only challenging the constitutionality of Act 130 of 2007. {R. 68}. Ultimately, the circuit court granted Respondents' motion for summary judgment, finding Appellants lacked standing to bring such an action. {R. 14}. This Court held oral argument in this matter on March 3rd on the standing issue, and the opinion remains pending at this time.

On May 7, 2015, the General Assembly ratified Senate Bill 376 ("S.376"). S.376 repealed Act 130 of 2007. Thus, S.376 renders this appeal moot and ends this litigation. S.376 provides in full:

(R22, S376) AN ACT TO AMEND SECTION 55-1-80, RELATING TO COUNTY AVIATION COMMISSIONS, SO AS TO ALLOW FOR INCREASED MEMBERSHIP ON CERTAIN COUNTY AVIATION COMMISSIONS, TO PROVIDE FOR THE APPOINTMENT OF THE NEW MEMBERS, TO PROVIDE THAT MAYORS OF CERTAIN MUNICIPALITIES SHALL SERVE EX OFFICIO ON CERTAIN AVIATION COMMISSIONS OR AUTHORITIES, AND TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO A MULTICOUNTY AVIATION COMMISSION OR AUTHORITY; AND TO REPEAL ACT 130 OF 2007

lacked standing would remain in place and preclude any further litigation on the merits of the constitutional challenge. Moreover, any challenge would be moot as set forth herein.

² Appellants initially filed the complaint in Richland County. {R. 68}. The action was later transferred to Charleston County. {R. 2}.

WHICH INCREASED THE CHARLESTON COUNTY AVIATION AUTHORITY BY TWO MEMBERS.

Be it enacted by the General Assembly of the State of South Carolina:

County aviation commissions and authorities

SECTION 1. Section 55-1-80 of the 1976 Code is amended to read:

“Section 55-1-80. (A) Any county aviation commission or like authority may be increased by two members, one of whom must be appointed by the House of Representatives’ delegation of the county and one of whom must be appointed by the Senatorial delegation of the county. The additional members shall serve terms of the same length as other members of the commission or like authority.

(B) Any county governing body who has the authority to appoint members to the aviation commission or like authority may add two members for terms as provided in this section.

(C) In counties that have two municipalities with a population in excess of fifty thousand persons according to the latest official United States Census, and the county has an aviation commission or like authority, then the mayors of such municipalities having a population in excess of the fifty thousand persons shall serve, ex officio, as members of the commission or authority.

(D) The provisions of this section do not apply in the case of any multicounty aviation commission or authority.”

Repeal

SECTION 2. Act 130 of 2007 is repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

See Copy of S.376 provided by the South Carolina Secretary of State, attached hereto as Exhibit A (emphasis added). The General Assembly ratified S.376 on May 7, 2015. Id. The Governor signed S.376 on May 7. Id. Relevant to this litigation, Section 2 of S.376 provides that “**Act 130 of 2007 is repealed.**” Id. (emphasis added).

The signature of the Governor on S.376 removed any controversy that would be appropriate for judicial determination by this Court. Regardless of this Court’s decision on the issue on appeal, namely whether Appellants’ have standing to challenge the constitutionality of Act 130 of 2007, the merits of Appellants’ various claims of constitutional infirmity of Act 130 of 2007 are now immaterial and academic because Act 130 of 2007 no longer exists as of May 7, 2015. Thus, Appellants’ constitutional challenges have been rendered moot by the repeal of Act 130 of 2007 by S.376. See, e.g., Sloan v. Wagner, Memorandum Op. No. 2007-MO-027 (S.C. Sup. Ct. filed May 7, 2007) (dismissing an appeal as moot because “the general rule is that the repeal or amendment of a statute during an appeal renders the appeal moot”); Peterson Outdoor Advertising Corp. v. Beaufort Cnty., 291 S.C. 533, 535, 354 S.E.2d 563, 564 (1987) (holding that the general rule is that the repeal of an ordinance during an appeal renders the appeal moot); Willis v. Wukela, 379 S.C. 126, 128, 665 S.E.2d 171, 172 (2008) (holding a case becomes moot when a ruling will have no practical effect upon the existing controversy).

Likewise, the repeal of S.376 moots the standing issue before this Court. Any opinion from this Court on the standing would have no practical effect on the constitutional controversy raised by Appellants because Act 130 of 2007 no longer

exists. The issue of standing is moot, and this appeal warrants dismissal by this Court. See, e.g., Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (“A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.”); id. (“A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.”); id. at 137–38, 561 S.E.2d at 637 (“A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy.”) (citation and internal quotation marks omitted); Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 788 (2013) (holding that actions brought under the Declaratory Judgment Act do “not require the courts to give purely advisory opinions as to the issues sought to be raised”).

In conclusion, the appeal has been rendered moot by the passage of S.376. Any issuance of an opinion from this Court would constitute an advisory opinion and have no practical effect on Act 130 of 2007. Instead, this Court should dismiss the appeal as moot and end this action by the issuance of the remittitur.

{Signature Page Follows}

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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803.799.2000

Attorneys for James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives

And with the consent to sign on behalf of counsel for Respondents Representative Harry B. "Chip" Limehouse III, Hugh K. Leatherman, Sr., in his official capacity as President of the South Carolina Senate, and Senator George Campsen

Columbia, South Carolina

May 12, 2015

EXHIBIT

A

76

No. R 22
CLERK OF THE SENATE

No. _____
CODE COMMISSIONER

AN ACT

TO AMEND SECTION 55-1-80, RELATING TO COUNTY AVIATION COMMISSIONS, SO AS TO ALLOW FOR INCREASED MEMBERSHIP ON CERTAIN COUNTY AVIATION COMMISSIONS, TO PROVIDE FOR THE APPOINTMENT OF THE NEW MEMBERS, TO PROVIDE THAT MAYORS OF CERTAIN MUNICIPALITIES SHALL SERVE EX OFFICIO ON CERTAIN AVIATION COMMISSIONS OR AUTHORITIES, AND TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO A MULTICOUNTY AVIATION COMMISSION OR AUTHORITY; AND TO REPEAL ACT 130 OF 2007 WHICH INCREASED THE CHARLESTON COUNTY AVIATION AUTHORITY BY TWO MEMBERS.

I Certify that the Within Originated in the Senate.

[Signature]
Clerk of the Senate

Correctly Enrolled _____

[Signature]
James H. Harrison, Director
Legislative Council

FILED

Delivered to the Governor this MAY 07 2015
day of _____, A.D. 20 _____

[Signature]
Clerk of the Senate


Delivered to the Secretary of State this _____
MAY 07 2015
day of _____, A.D. 20 _____

[Signature]
SECRETARY OF STATE

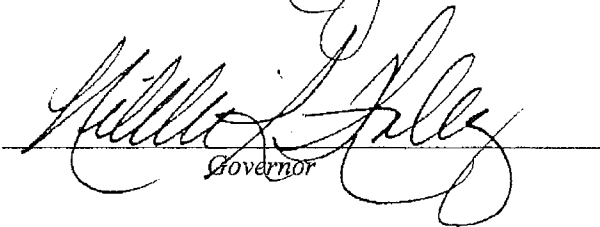
MAY 07 2015

In the Senate House


President of the Senate


Speaker of the House of Representatives

Approved the 7th day of May 2015.


Governor

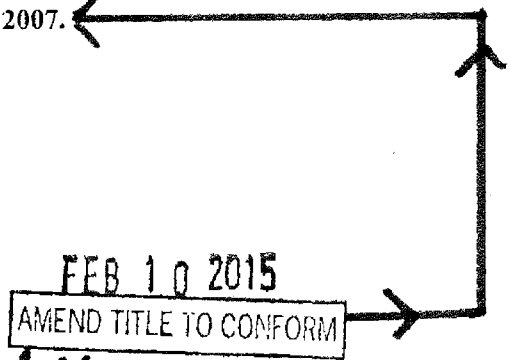
IN THE SENATE

S. 376

Introduced by Senator Grooms, *Campsen*

A BILL

TO AMEND SECTION 55-1-80, RELATING TO THE GENERAL PROVISIONS CONCERNING AERONAUTICS, TO RESTORE THE PREVIOUS PROVISIONS OF THIS SECTION, TO PROVIDE FOR INCREASES OF THE MEMBERSHIP ON AN AVIATION AUTHORITY, TO PROVIDE FOR THE APPOINTMENT OF THE MEMBERS; AND TO REPEAL ACT 130 OF 2007.



Jeffrey Gossett

Jeffrey S. Gossett, Clerk of the Senate

That the title be changed to that of an Act and the same be enrolled for ratification of the HOUSE OF REPRESENTATIVES.

In the Senate

First Reading JAN 28 2015

And Ordered Referred to Transportation

Reported FEB 04 2015

Second Reading FEB 10 2015 *Amended*

Third Reading FEB 11 2015

Ordered sent to the House of Representatives
Jeffrey Gossett
Clerk of the Senate

In the House of Representatives

242015 First Reading FEB 12 2015

And Ordered Referred to *EL*

Reported 0006 Fav. with Amdt. APR 21 2015

Second Reading APR 23 2015

Third Reading APR 24 2015

By order of the House of Representatives
[Signature]
Clerk of the House

South Carolina Legislature

May 12, 2015, 09:51:51 am

Session 121 - (2015-2016)

S*0376 (Rat #0022) General Bill, By Grooms and Campsen

Similar (H 3341)

Summary: Aeronautics

AN ACT TO AMEND SECTION 55-1-80, RELATING TO COUNTY AVIATION COMMISSIONS, SO AS TO ALLOW FOR INCREASED MEMBERSHIP ON CERTAIN COUNTY AVIATION COMMISSIONS, TO PROVIDE FOR THE APPOINTMENT OF THE NEW MEMBERS, TO PROVIDE THAT MAYORS OF CERTAIN MUNICIPALITIES SHALL SERVE EX OFFICIO ON CERTAIN AVIATION COMMISSIONS OR AUTHORITIES, AND TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO A MULTICOUNTY AVIATION COMMISSION OR AUTHORITY; AND TO REPEAL ACT 130 OF 2007 WHICH INCREASED THE CHARLESTON COUNTY AVIATION AUTHORITY BY TWO MEMBERS. - ratified title

01/28/15 Senate Introduced and read first time (Senate Journal-page 12)
01/28/15 Senate Referred to Committee on Transportation (Senate Journal-page 12)
02/04/15 Senate Committee report: Favorable Transportation (Senate Journal-page 44)
02/10/15 Senate Amended (Senate Journal-page 12)
02/10/15 Senate Read second time (Senate Journal-page 12)
02/10/15 Senate Roll call Ayes-33 Nays-0 (Senate Journal-page 12)
02/11/15 Senate Read third time and sent to House (Senate Journal-page 16)
02/12/15 House Introduced and read first time (House Journal-page 24)
02/12/15 House Referred to Committee on Education and Public Works (House Journal-page 24)
04/21/15 House Committee report: Favorable with amendment Education and Public Works (House Journal-page 5)
04/23/15 House Requests for debate-Rep(s). RL Brown, Whipper, Forrester, GA Brown, Clyburn, Hosey, Hodges, Gilliard, Mack, McKnight, McEachern, Douglas, WJ McLeod, Rutherford, Williams, Stavrinakis, Merrill, Crosby, Daning, Hart, Henegan, Anderson (House Journal-page 23)
04/23/15 House Read second time (House Journal-page 109)
04/23/15 House Roll call Yeas-96 Nays-0 (House Journal-page 110)
04/23/15 House Unanimous consent for third reading on next legislative day (House Journal-page 113)
04/27/15 House Read third time and enrolled (House Journal-page 1)
05/07/15 Ratified R 22
05/07/15 Signed By Governor

South Carolina General Assembly
121st Session, 2015-2016

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

R22, S376

STATUS INFORMATION

General Bill

Sponsors: Senators Grooms and Campsen

Document Path: I:\s-res\lkg\015aero.ls.lkg.docx

Companion/Similar bill(s): 3341

Introduced in the Senate on January 28, 2015

Introduced in the House on February 12, 2015

Last Amended on February 10, 2015

Passed by the General Assembly on April 27, 2015

Governor's Action: May 7, 2015, Signed

Summary: Aeronautics

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/28/2015	Senate	Introduced and read first time (<u>Senate Journal-page 12</u>)
1/28/2015	Senate	Referred to Committee on Transportation (<u>Senate Journal-page 12</u>)
2/4/2015	Senate	Committee report: Favorable Transportation (<u>Senate Journal-page 44</u>)
2/10/2015	Senate	Amended (<u>Senate Journal-page 12</u>)
2/10/2015	Senate	Read second time (<u>Senate Journal-page 12</u>)
2/10/2015	Senate	Roll call Ayes-33 Nays-0 (<u>Senate Journal-page 12</u>)
2/11/2015	Senate	Read third time and sent to House (<u>Senate Journal-page 16</u>)
2/12/2015	House	Introduced and read first time (<u>House Journal-page 24</u>)
2/12/2015	House	Referred to Committee on Education and Public Works (<u>House Journal-page 24</u>)
4/21/2015	House	Committee report: Favorable with amendment Education and Public Works (<u>House Journal-page 5</u>)
4/23/2015	House	Requests for debate-Rep(s). RL Brown, Whipper, Forrester, GA Brown, Clyburn, Hosey, Hodges, Gilliard, Mack, McKnight, McEachern, Douglas, WJ McLeod, Rutherford, Williams, Stavrinakis, Merrill, Crosby, Daning, Hart, Henegan, Anderson (<u>House Journal-page 23</u>)
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4/23/2015	House	Unanimous consent for third reading on next legislative day (<u>House Journal-page 113</u>)
4/27/2015	House	Read third time and enrolled (<u>House Journal-page 1</u>)
5/7/2015		Ratified R 22
5/7/2015		Signed By Governor

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL1/28/20152/4/20152/10/20154/21/2015

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

NOTE: THIS COPY IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL PUBLISHED IN THE ADVANCE SHEETS TO THE ACTS AND JOINT RESOLUTIONS. WHEN THIS DOCUMENT IS PUBLISHED IN THE ADVANCE SHEET, THIS NOTE WILL BE REMOVED.

(R22, S376)

AN ACT TO AMEND SECTION 55-1-80, RELATING TO COUNTY AVIATION COMMISSIONS, SO AS TO ALLOW FOR INCREASED MEMBERSHIP ON CERTAIN COUNTY AVIATION COMMISSIONS, TO PROVIDE FOR THE APPOINTMENT OF THE NEW MEMBERS, TO PROVIDE THAT MAYORS OF CERTAIN MUNICIPALITIES SHALL SERVE EX OFFICIO ON CERTAIN AVIATION COMMISSIONS OR AUTHORITIES, AND TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO A MULTICOUNTY AVIATION COMMISSION OR AUTHORITY; AND TO REPEAL ACT 130 OF 2007 WHICH INCREASED THE CHARLESTON COUNTY AVIATION AUTHORITY BY TWO MEMBERS.

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(D) The provisions of this section do not apply in the case of any multicounty aviation commission or authority."

Repeal

SECTION 2. Act 130 of 2007 is repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 7th day of May, 2015.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2015.

Governor

---XX---

This web page was last updated on May 8, 2015 at 5:00 PM

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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MAY 12 2015

SC Court of Appeals

Case No. 2012-CP-10-04969

Appellate Case No. 2013-001273

South Carolina Public Interest Foundation and Waring
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official capacity as President of the South Carolina
Senate, Representative Harry B. "Chip" Limehouse III,
Senator George Campsen, 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:

Motion to Dismiss Appeal

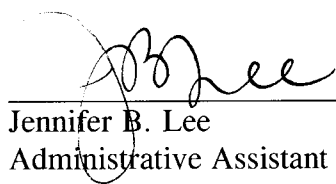
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Administrative Assistant

May 12, 2015

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May 12, 2015

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

MAY 12 2015

SC Court of Appeals

RE: South Carolina Public Interest Foundation, et al. v. James H. "Jay" Lucas, 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 a Motion to Dismiss Appeal in the above-referenced matter. The required filing fee is enclosed as well. 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	Jennifer J. Miller
Kenneth M. Moffitt	Edward H. Bender
John P. Hazzard, V	Robert E. Stepp
Alexis K. Lindsay	Robert E. Tyson, Jr.
J. Emory Smith	