

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM RICHLAND COUNTY

JUN 22 2015

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated,

*Appellants,
Petitioners,*

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering,..... Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Reply in Support of Petition for Writ of Certiorari

Several things are clear from the Return to the Petition for Certiorari filed in this action by the Respondent, South Carolina Department of Transportation.

1. The Court of Appeals erred in thinking Respondents admitted wrongdoing.

Respondents continue to argue that their conduct in expending public funds for a private purpose was a legitimate exercise of executive discretion. Respondents argue that their actions did not violate the Constitution. Respondents' contention validates the Petitioners' argument that all of the Court of Appeals conclusions (based upon the Respondents' admission of wrongdoing) are simply wrong. The Court of Appeals should have addressed the standing of the Petitioners and the merits of the case. This ongoing dispute about the constitutionality of the bridge inspections (spending public funds for private purposes) is an issue of great public importance.

Respondents contend that the Deputy Secretary of Transportation for Engineering, had difficulty in determining whether the request for assistance came from the City of Aiken or from a private citizen. They contend that the Deputy Secretary reasonably believed that the request for assistance came from the City, even though the materials clearly demonstrate otherwise. In stark contrast to Respondent's alleged difficulty, all of the people under him knew that the inspection of these private bridges was outside of Departmental Policy and wrong. The Deputy Secretary proceeded with the inspections, despite their many articulated objections, and despite having been warned that the conduct was wrongful.

2. The expenditure was unconstitutional, regardless of who requested it.

In addition to being wrongful, the conduct was **unconstitutional**. The inspection of privately owned bridges in a private, gated community was an unconstitutional expenditure of public funds for private purposes whether the request came from a representative of the City of

Aiken, or from a private party seeking assistance in his private lawsuit against the privately-owned developer. If the City had made the request, it would have been an improper and unconstitutional request, to which the Respondents should have replied, as did the City of Aiken itself, that the matter was a private dispute between Ebner and the developer of Woodside Plantation. Expending public money in this private dispute was unconstitutional, **regardless of the identity of the requester.**

3. Petitioners should be granted standing as taxpayers and because of the great public importance of Respondents' unconstitutional conduct.

The arguments of the Petitioners and the arguments of the Respondents create a clear and distinct difference of opinion on the meaning and application of the Constitution. Despite this clear Constitutional conflict, Respondents continued to argue that these Petitioners should not be granted public importance or taxpayer standing to raise these issues of their unconstitutional misconduct. Respondents' argument that would deny standing to Petitioners is contrary to a long line of cases emanating from this Court addressing violations of the Constitution brought by these same Petitioners.

4. The case qualifies for all three exceptions to the doctrine of mootness.

Respondents argue that case is moot and that no recognized exception to the doctrine of mootness applies. Ironically, Respondents predicate their argument, in part, on the **brevity** of their unconstitutional actions. The swiftness of the unconstitutional conduct argues strongly that the issue is capable of repetition yet evading review, the first exception to the doctrine of mootness.

Second, this Constitutional issue is an issue of great public importance; it involves the application of the Constitutional provisions to this set of facts. In addition, there is no other case law in South Carolina addressing the application of these Constitutional provisions to an executive

decision to expend public tax monies for private purposes. As Petitioners mentioned in the Petition for Writ of Certiorari, the Attorney General has addressed this issue on several occasions, but, to the knowledge of the undersigned, no appellate court in South Carolina has addressed the issue. Hence there is a significant need for judicial guidance.

Finally, a decision in this case will have collateral consequences; it will provide guidance not only for the Department of Transportation, but also for the other state agencies and subdivisions of the State on the issue of whether an executive official is free to ignore the Constitution and expend public funds for a private purpose. Petitioners respectfully suggest it is high time for such a ruling, and for such judicial guidance.

CONCLUSION

The inspection and report of these three privately built, privately owned bridges on private property in a private, gated community did not serve a public purpose, and their inspection at public expense violated South Carolina Constitution Article X, §§ 5 and 11. The Circuit Court erred in ruling that the City had requested assistance from the DOT. Clearly, a private party in a private dispute requested the assistance.

The Court of Appeals mistakenly believed that the Respondents had admitted their conduct to be unlawful, and the Court of Appeals erred in failing to rule on the unconstitutionality using public funds to inspect privately constructed, privately owned, and privately maintained bridges in a private, gated community. Respondents have not admitted their unconstitutional conduct, but rather, they have consistently maintained that their unconstitutional behavior was perfectly lawful and legitimate.

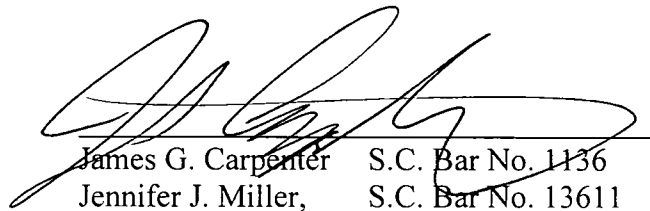
The wrongful and illegal expenditure of public funds by a state agency is a matter of great public importance, and supports Petitioners' "public importance" standing. Mr. Sloan also

possesses taxpayer standing to challenge unconstitutional expenditures. All three longstanding exceptions to the doctrine of mootness apply to this case. The Court should rule on these important questions, despite the Respondents' claim of mootness.

WHEREFORE, Petitioners pray the Court to:

1. Issue a writ of certiorari to the Court of Appeals,
2. Reverse the judgment of the Circuit Court,
3. Rule for the Petitioners on issues of standing and mootness, and
4. Rule on the merits of the constitutional violation, or remand for trial on the merits.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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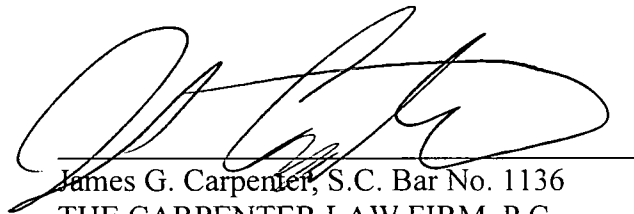
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PROOF OF SERVICE

The undersigned attorney hereby certifies that he served a copy of Appellant's **REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI** upon counsel for the Respondents by US Mail, postage prepaid this Wednesday, June 17, 2015, addressed as follows:

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