

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

Appellate Case No. 2013-001273

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SC Court of Appeals

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

v.

James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, Hugh K. Leatherman, in his official capacity as President of the South Carolina Senate, Representative Peter M. McCoy, Jr., Senator George E. "Chip" Campsen, and the State of South Carolina, Respondents.

PETITION TO RECALL THE REMITTITUR

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Petitioners South Carolina Public Interest Foundation and Waring S. Howe, Jr., move and petition the Court, pursuant to SCACR 221 and 240 to recall the Remittitur in this action. In support of this motion, Petitioners would show the Court the following:

Petitioners filed suit to challenge the constitutionality of Act 130 of 2007, an act most of the Respondents admitted was unconstitutional. The Circuit Court ruled against Petitioners on standing. Petitioners appealed to the Court of Appeals and after oral argument, the Respondents in the General Assembly repealed Act 130 of 2007. Respondents moved to dismiss the appeal on the grounds of mootness. Petitioners consented to the dismissal, and moved for attorneys' fees under South Carolina Code Ann. § 15-77-300, contending they were prevailing parties. The Court of Appeals ruled that the Petitioners were not prevailing parties.

Petitioners petitioned the Court of Appeals for rehearing, citing *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711, S.E.2d 895 (2011), and *Sloan v. South Carolina Department of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014), as to the definition of prevailing parties. The Court of Appeals denied the Petition for Rehearing July 17, 2015. Petitioners received written notice of the denial on July 20, 2015.

Thirty days later, on August 19, 2015, Petitioners mailed a Petition for a Writ of Certiorari to the Supreme Court with a Certificate of Service by mail to the Court of Appeals and to counsel for all Respondents. Petitioners also served all counsel for the Respondents by email.

On August 20, 2015, the undersigned counsel received a copy of the Remittitur of this case to the Clerk of the Circuit Court for Charleston County.

The previous week, August 10-15, I, the undersigned counsel, was in Richland County Circuit Court attending at the criminal trial of the man who shot my niece, Martha Childress. The trial went all week and continued on into this past Monday evening, August 17, when the jury rendered a verdict. For nearly 2 years, I have been advising the family concerning this matter, and acting as the spokesman for the family, and handling inquiries and requests from various members of the news media.

I now understand that the Petition for Writ of Certiorari needed to have been filed by close of business on August 17, while I was still attending the criminal trial.

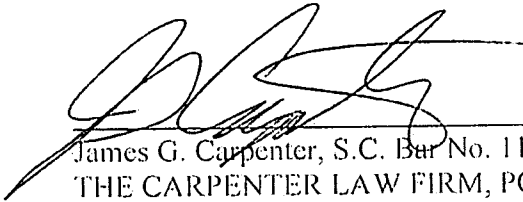
In the Petition for Writ of Certiorari, Petitioners raised the question of whether they were prevailing parties. Petitioners suggested in their Petition for Writ of Certiorari (as they had argued before this court) that this court's ruling conflicted with the two rulings from the South Carolina Supreme Court, cited above, concerning the definition of a "prevailing party," and that this alleged conflict provided a sound basis for granting the Petition for Writ of Certiorari under SCACR 242(b)(3). Finally, Petitioners suggested in that at a minimum, the issue seems to meet the standard of SCACR 242(b)(1), a "novel question of law" and provides an additional basis for the granting of the Petition for Writ of Certiorari.

Petitioners respectfully request the opportunity to present this issue to the Supreme Court.

CONCLUSION

Wherefore, Petitioners pray the Court to recall the Remittitur in this action, to enable the Petitioners to have the South Carolina Supreme Court consider their Petition for Writ of Certiorari.

Respectfully submitted,



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August 20, 2015

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Certificate of Service

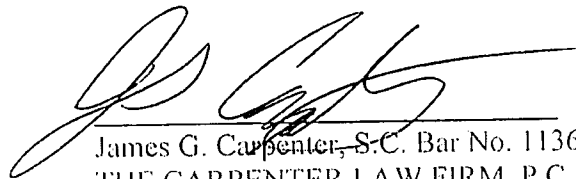
The undersigned attorney hereby certifies that he has served a copy of the foregoing Petition to Recall the Remittitur on counsel for Respondents by email and US Mail, postage prepaid, on Thursday, August 20, 2015 addressed as follows:

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