

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

CASE NO. 2014-CP-32-0697

2014-000829

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacities as members of the
Town Council of the Town of Chapin,

Appellants,

v.

James R. Wilson, Jr. in his official capacity
as Mayor of the Town of Chapin,
Gregg White in his official capacity as a
member of the Town Council of the
Town of Chapin and the Town of Chapin, Defendants

Of whom James R. Wilson, Jr. and Gregg White are

Respondents.

FINAL REPLY BRIEF OF APPELLANTS

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MAR 20 2015

SC Court of Appeals

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Power tends to corrupt and absolute power corrupts absolutely. Lord Acton.

Power does not corrupt men; fools, however, if they get into a position of power, corrupt power. George Bernard Shaw

ISSUES PRESENTED ON APPEAL

1. Did the Court err in dismissing the case pursuant to Rule 12(b)(6), SCRCP?
2. Did the Court err in denying the Appellants' Motion for Temporary Relief?
3. Did the Court err in dismissing the Second and Fourth Causes of Action on a Motion to Dismiss?
4. Did the Court err in finding that §2.206(b) of the Chapin Town Ordinances applies to Special Meetings called by a majority of Council pursuant to §2.202(3) of the Chapin Town Ordinances?
5. Did the Court err in invalidating the actions taken by the Appellants at the Special meeting?

RESPONDENTS' STATEMENT OF THE CASE

Appellants submit that Respondents' Statement patently violates Rule 208, SCRCP in that it contains assertion of contested matters as facts proved. This case has been decided based solely on affidavits submitted by the parties and arguments of counsel. There has not been a single witness testify much less be subject to cross-examination.

ARGUMENT

The goal of representative democracy is for leaders elected by the people to decide by a majority vote what the government should do for the betterment of the condition of the populace. In order for the system to work effectively, each representative must have a meaningful opportunity to present his or her ideas.

The Respondents have gone to great lengths to justify the total control of the engine of Chapin Town government by one man. Even if each individual element of their argument seems justified, the end result is a denial of the essence of a representative democracy.

It is undeniable that the Appellants constitute a majority of Town Council. How then, given the Orders of the Trial Judge can the majority have an issue presented for consideration by council? There are several alternatives, each of which is unavailable:

1. Have the item placed on the agenda for a regular meeting? No. §2.206 gives the Mayor the sole power to determine what items are to be placed on the agenda.
2. As suggested by the Trial Judge, present the item during “new business” at a regular meeting? No. Since the Mayor the Mayor has control over the agenda, he can simply omit new business. Since he presides at each meeting, he can refuse to recognize the majority. §2.201 empowers the Mayor to re-schedule regular meetings. Under §30-4-80(a) as interpreted by Lambries II, an agenda is required for all re-scheduled and special meetings. Once posted, the agenda cannot be amended. All the Mayor would have to do is simply re-schedule each regular meeting which would prevent the Appellants from adding any item to the agenda.
3. Call a special meeting pursuant to §2.203(3)? If the trial judges’s interpretation that §2.206(b) applies to all meetings, then the answer to that alternative is also no.

Since amending any ordinance requires such action be publicly noticed, that avenue is also closed.

The end result is that one person alone has sole control over town governance. He is subject to no supervision and cannot be called to account. He has sole control over Town finances, employees, and every other aspect of town activities. He can ignore the budget (he can spend funds on items not in the budget), ignore statutory requirements (he can refuse to appoint, or suspend, refuse to pay or terminate officials who serve at the pleasure of Council such as the Town Clerk, Town Attorney, Chief of Police and Town Judge) without challenge. He can create positions, establish salaries and benefits and hire without regard to enacted policies. In short, he can become “an autocrat, czar and a king.” Second Tr., page 33.

CONCLUSION

Even if the Mayor is allowed control over the agenda for a regular meeting, the majority of Council must have a reasonable means of being able to exercise control of and supervision over Town government.

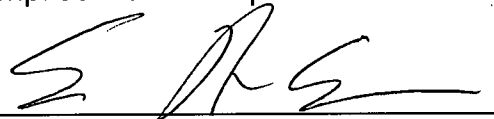
If the Trial Judge's decision is allowed to stand, not only will representative democracy be dead in the Town of Chapin but anyone seeking total control over the government of a South Carolina municipality will have a blue print on how to do it.

Respectfully Submitted



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The undersigned certifies that this Final Brief complies with the requirements of Rule 211(b).



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March 18, 2015

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**PROOF OF SERVICE OF
FINAL BRIEFS**


I certify that I have served the Final Brief and Final Reply Brief on the Respondents,
James R. Wilson, Jr. and Gregg White, by delivering two copies of each, on March 20,
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