

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

RECEIVED

APR 04 2016

SC Court of Appeals

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.

RETURN TO PETITION FOR REHEARING

Spencer Andrew Syrett SC BAR 05459
712 Richland Street Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
syrettlaw@sc:rr.com
Attorney for Appellants

ARGUMENT

The Respondents, James R. Wilson and Gregg White, seek to have the Court Rehear this appeal. For the reasons stated below, the Petition should be denied.

STANDARD FOR CONSIDERATION

Rule 221, SCACR provides that the Petitioner set forth with particularity the points supposed to have been overlooked or misapprehended by the Court.

The Appellants believe that the Court correctly dealt with every issue on appeal and correctly rejected the Respondents' positions. Extensive re-argument of Appellants' position and their response to respondents' position is not warranted. The Appellants respond to the following arguments of the respondents.

LAW OF THE CASE

Respondents' reliance on Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002) is misplaced. All of the Respondents in Conner had appeared and participated in the case. To omit them from the appeal was fatal. The Town, however, never appeared and could not appear as it had no attorney. Respondent Wilson refused to put the appointment of a Town Attorney on the agenda for a regular meeting. Although state statute might not require the appointment of a Town Attorney, Chapin Ordinance 2.601 does.

If the Respondents' position is adopted, the appointment of a Town Attorney will not occur unless the Mayor decides to put it on an agenda. It would be absolutely unconscionable for the Mayor to be able to ignore his duties under Ordinances without any ability of a majority of Council to address his dereliction of duty.

CHAPIN ORDINANCE 2.206.

Chapin Ordinance 2.206(b) clearly refers back to 2.206(a) which by its terms is limited to regular meetings. Ordinance 2.202 provides the Mayor an unfettered ability to call a special meeting on his own at any time. Consideration of a matter thought important enough for consideration by a majority of Counsel should not be blocked by giving the Mayor sole authority over all agendas. This is contrary to the intent of the ordinance and the fact that Council and not the Mayor is the governing body of the Town.

The Court's decision does not create a vacuum nor does it create an absurd result.

It is the Respondents' position that would create the absurd result.

McCONNELL v. HALEY

The Respondents' reliance on McConnell v. Haley, 393 S.C. 136, 711 S.E.2d 886 (2011) is misplaced. The holding of the case is centered on the separation of powers between the executive branch and the legislative branch. The footnote is mere dicta but relates to the separation of powers provided under the South Carolina Constitution.

In town governance, the executive and legislative functions of government are not separate but rather are unified in one body, the Town Council. The Town Council is the governing body of the Town. §5-7-30. In the strong mayor form of government, the Mayor is given extra administrative powers but that power is circumscribed and is certainly not omnipotent. §5-9-30. Therefore it was the Council itself calling the special meeting and not a separate branch of government. It is an absurd result to adopt the Respondents' assertion that a majority of Council cannot set the agenda for a special meeting it called.

The argument that the Mayor should have the power to block Council from considering matters he deems a waste of taxpayers' money is specious at best. Council has the power to determine the qualifications of its members, including whether the Mayor is qualified to serve. It would be ridiculous to allow the Mayor to determine on his own whether he is qualified by allowing him to block consideration of the issue. It should be noted that although the issue was under discussion, Council did not place this issue on the agenda of either of the special meetings it held before Judge Cooper issued his order.

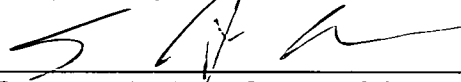
The Mayor has expended over \$50,000.00 of Town money in litigating this issue. He is hardly the person to turn to for decisions of how to save taxpayer funds.

CONCLUSION

The irony of the Respondents' arguments is not lost on the Appellants. This appeal is about the Mayor's assertion that he has absolute control over all activities of the Town government.

This nation long ago rejected the idea that one man should have absolute authority. The Petition for Rehearing should be denied.

Respectfully Submitted



Spencer Andrew Syrett SC BAR 05459
Attorney for the Appellants
712 Richland Street Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX 803-765-9950

240. The undersigned certifies that this Return complies with the requirements of Rule



Spencer Andrew Syrett
712 Richland Street Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX 803-765-9950
Attorney for the Appellant

April 4, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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

APR 04 2016

SC Court of Appeals

CASE NO. 2014-CP-32-0697

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacity 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.

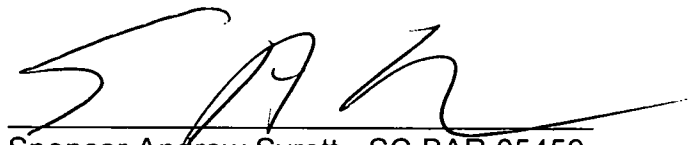
**PROOF OF SERVICE OF
RETURN TO PETITION FOR REHEARING**

I certify that I have served the Appellants' Return to Petition for Rehearing on the Respondents, James R. Wilson, Jr. and Gregg White, by depositing a copy of it in the United States Mail, postage prepaid, on April 4, 2016, addressed to the attorney of record as follows:

Matthew Todd Carroll
Womble, Carlyle, Sandridge & Rice, LLP
1727 Hampton Street
Columbia, SC 29201
Todd.Carroll@wcsr.com

SC BAR 74000

April 4, 2016

A handwritten signature in black ink, appearing to read 'S.A. Syrett', written over a horizontal line.

Spencer Andrew Syrett SC BAR 05459
712 Richland Street Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
syrettlaw@sc.rr.com
Attorney for Appellants