

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 24 2016

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

SC SUPREME COURT

CASE NO. 2016-001538

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

Respondents,

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

Petitioners.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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 Respondents

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TABLE OF AUTHORITIES

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QUESTION PRESENTED

1. Does an appellate court have jurisdiction to review an order when a party in whose favor the order was entered is not made a party to the appeal?
2. Did the Court of Appeals err in its construction of the mayor's authority to approve agenda items for all types of meetings?

STATEMENT OF THE CASE

The Respondent disagrees with portions of the Petitioner's statement of the case and submits the following:

Although this case arises out of a disagreement between and among members of Town Council, it is by no means a politically-motivated case. It is simply a case which turns on the construction of two ordinances of the Town of Chapin.

The Petitioner has included a significant amount of background unnecessary to the consideration of the Petition for a Writ of Certiorari. Moreover, the Petitioner has treated the Statement of the Case as a jury argument rather than a dispassionate recitation of the history of the case.

Judge Cooper's initial ruling was limited to the setting of agendas for a regular meeting. The Respondents deny that they ignored Judge Cooper's ruling. Once Judge Cooper ruled that the Mayor had the power to control the agenda for a regular meeting, the Respondents simply sought an alternative for consideration of issues confronting the Town.

Judge Cooper's letter of April 8, 2014, was no more than an "advisory" opinion. Ultimately, the Court of Appeals concluded that Judge Cooper's interpretation of the ordinances was in error.

Finally the that portion of the statement which deals with the omission of the Town of Chapin from the appeal is unnecessarily argumentative and somewhat misleading.

ARGUMENT

The Rule governing consideration of a Petition for Certiorari sets forth five criteria that the Court can consider in determining whether to grant the Writ. None of those factors

are present in this case. Moreover, the analysis by the Court of Appeals of the Chapin ordinances will be of little if any assistance to the bench and bar in future cases.

1. Does an appellate court have jurisdiction to review an order when a party in whose favor the order was entered is not made a party to the appeal?

The opinion of the Court of Appeals adequately addresses this ground.

All five of the members of Council were parties to the case and the appeal. The Town did not make an appearance in the action nor could it as it did not have an attorney. It is unclear to the Respondents what position the Town would have advanced that would have differed from that put forth by the Petitioners.

It is clear that Conner v. City of Forest Acres, 348 S.C. 460, 560 S.E. 609 is factually distinguishable from the case on appeal.

The Respondents express mock concern over possible "mischief" in the appeals process. The Town's interests were certainly advanced by both sides of this appeal. As officers of the Town, all of the parties would have to act in accordance with the opinion of the Court of Appeals. Since the Town can act only through its Mayor and Council, the arguments advanced by the Petitioners are specious at best.

The petitioners' arguments are without merit.

2. Did the Court of Appeals err in its construction of the mayor's authority to approve agenda items for all types of meetings?

The Court of Appeals did not err in its construction of the ordinances. As it found, to allow the Mayor to control the agenda of a meeting called by a majority of Council would essentially make the Mayor an autocrat subject to no controls whatsoever. To rule otherwise would render the remainder of Council superfluous. It is the Petitioners' analysis that is flawed, not the Court's.

Despite the alleged lack of instructions as to how to prepare an agenda for a special meeting, the Respondents managed to comply with all of the requirements of the Ordinances and the FOIA. The FOIA requires an agenda for a special meeting and the decision of the Court of Appeals did not render that requirement meaningless. Brock v. Town of Mount Pleasant 411 S.C. 106, 767 S.E.2d 203 (Ct. App. 2014)

The Petitioners' argument is without merit.

The Petitioners allege that the decision creates a vacuum. It simply does not. It should also be noted that the headings of Ordinances are expressly excluded from consideration. §2.206 applies only to regular meetings by its language.

The Petitioners finally point to the recent amendments to the FOIA as creating an ability to amend an agenda by a two thirds vote. That section applies to amending an agenda but not the establishment of one for a special meeting.

It should be noted that §2.202 requires three members of Council to call for a special meeting. Given a five member Council, this is 60% of council, more than a majority but less than the two-thirds vote (this would be four members) required for amending an agenda under the FOIA.

The Petitioners' arguments are again without merit.

CONCLUSION

The decision of the Court of Appeals on the merits of the Appeal is correct. The decision of the Court of Appeals on the procedural issue was also correct. None of the considerations set forth in Rule 242(b) are present. The arguments presented by the petitioners in support of the Petition are without merit. The Petition for a Writ of Certiorari should be denied.



Spencer Andrew Syrett, SC BAR 05459
Attorney for the Respondent
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950
syrettlaw@sc.rr.com.

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Attorney for the Respondent
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Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950
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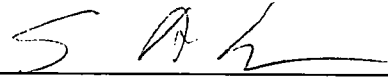
**PROOF OF SERVICE OF
RETURN TO PETITION FOR WRIT OF CERTIORARI**

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 August 24, 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

August 24, 2016



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 Respondents