

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2014-001412

RECEIVED

MAY 25 2017

SC Court of Appeals

South Carolina Public Interest Foundation and William B. DePass, Jr., individually, and on behalf of all others similarly situated, Appellants,

vs.

Senator John E. Courson, Senator Darrell Jackson, Senator Joel Lourie, Senator John L. Scott, Jr. and The State of South Carolina, Respondents.

**RESPONDENTS' REPLY IN OPPOSITION TO APPELLANTS'
PETITION FOR REHEARING**

May 25, 2017

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Pursuant to Rules 240 and 221(a) of the South Carolina Appellate Court Rules, Respondents Senator John E. Courson, Senator Darrell Jackson, Senator Joel Lourie, and Senator John L. Scott, Jr. respectfully submit this Reply in Opposition to Appellants' Petition for Rehearing and ask the Court to deny Appellants' Motion for Rehearing.

ARGUMENT

I. APPELLANTS FAIL TO STATE THAT THE COURT OVERLOOKED OR MISAPPREHENDED POINTS DISCUSSED IN THIS CASE.

This Court held that the circuit court properly denied Appellants' motion for attorney's fees, as Section 15-77-300 of the South Carolina Code is not applicable to the Respondent Senators. *See S.C. Pub. Interest Found. v. Courson*, No. 2014-001412, 2017 WL 1957180, at *3 (S.C. Ct. App. May 11, 2017).

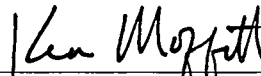
A party petitioning for a rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." SCACR 221(a). "The purpose of such a petition is to aid the court in deciding correctly a case heard by it." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). The purpose "is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time." *Id.*

In their petition, Appellants claim this Court overlooked or misapprehended the following points: (1) the State and its political subdivisions are "agencies"; (2) legislative immunity does not prohibit an award of attorneys' fees as costs; and (3) the Supreme Court has twice awarded petitioners attorneys' fees and costs against the members of the General Assembly. In 2012, the South Carolina Public Interest Foundation filed this action. *See S.C. Pub. Interest Found.*, 2017 WL 1957180, at *1. In 2013, the circuit court heard and decided this case. *See id.* In 2014, the circuit court denied Appellants' motion for costs and attorney's fees against Respondent Senators.

See *id.* Since 2014, this case has continued through the appellate process, and a hearing was held in 2016. Appellants are merely repeating points previously raised throughout the history of this case. The points presented by Appellants have been thoroughly questioned and considered by this Court. The fact that Appellants disagree with the Court's holding is not grounds for a rehearing. Should this Court grant Appellants' Petition for Rehearing, Appellants would just be trying this case a second time in an effort to receive a result they approve of, which is repugnant to the purpose of Rule 221(a) of the South Carolina Appellate Court Rules.

Accordingly, Respondents pray the Court to deny Appellants' Petition for Rehearing.

Respectfully submitted,



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Attorneys for Respondent Senators
Courson, Jackson, Lourie, and Scott,
in their official capacities as members
of the South Carolina Senate.

Columbia, South Carolina

May 25, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I have served Respondents Senator John E. Courson, Senator Darrell Jackson, Senator Joel Lourie, and Senator John L. Scott, Jr.'s **Reply in Opposition to Appellants' Petition for Rehearing and Motion to Withdraw and Substitute Counsel** on counsel for each of the other parties by mailing a copy to them at the addresses below via the United States Mail this May 25, 2017.

{Addresses on Following Page}

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Respectfully submitted,

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