

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

The South Carolina Public Interest  
Foundation and Edward D. Sloan, Jr.,  
individually and on behalf of all others  
similarly situated,

Civil Action No. 2017-CP-40-00484

Plaintiffs,

vs.

The South Carolina House of  
Representatives; The South Carolina  
Senate; the Honorable James H. "Jay"  
Lucas, as Speaker of the South Carolina  
House of Representatives; the Honorable  
Hugh K. Leatherman, Sr., in his capacity  
as President Pro Tempore of the South  
Carolina Senate; and the State of South  
Carolina,

Defendants.

Order Granting Motion to Dismiss

**RECEIVED**

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SC Court of Appeals

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JENNIFER W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

On January 27, 2017, Plaintiffs South Carolina Public Interest Foundation and Edward D. Sloan, Jr. filed their complaint for Declaratory Judgment claiming that Act 275 of 2016 ("Act 275") violates the one subject rule of the South Carolina Constitution. On March 3, 2017, the South Carolina House of Representatives and the Honorable James H. "Jay" Lucas, as Speaker of the South Carolina House of Representatives timely filed their motion to dismiss under Rule 12(b)(6), SCRCP. On March 14, 2017, the South Carolina Senate and the Honorable Hugh K. Leatherman, Sr., in his capacity as President *Pro Tempore* of the South Carolina Senate<sup>1</sup> timely filed their motion to dismiss under Rule 12(b)(6), SCRCP. On March 21, 2017, the Honorable

<sup>1</sup> The Senate simultaneously filed its motion to reform the caption, seeking to substitute the Honorable Hugh K. Leatherman for Governor Henry D. McMaster. This Motion has been granted by separate order and the caption above properly reflects the parties to this action.

Alan Wilson on behalf of the State of South Carolina timely filed its motion to dismiss under Rules 12(b)(1) and (6), SCRCF. The Court held a hearing on the motions on June 13, 2017. Present at the hearing was James G. Carpenter of the Carpenter Law Firm, PC on behalf of Plaintiffs, Michael J. Anzelmo and Matthew A. Abee of Nelson Mullins Riley & Scarborough LLP on behalf of the South Carolina Senate and President *Pro Tempore* Leatherman, Paul D. Harrill and Bradley S. Wright of McNair Law Firm, P.A. for the South Carolina House of Representatives and Speaker Lucas, and Deputy Solicitor General J. Emory Smith, Jr. on behalf of the State of South Carolina.

Defendants request the Court to dismiss the complaint due to Plaintiffs' failure to properly plead any valid basis for the standing necessary to maintain the action, and Plaintiffs' failure to plead facts to sufficiently state a cause of action. After review of the pleadings, the parties' filing, and the arguments of counsel, the Court grants Defendants' motions and dismisses the action as set forth herein.

#### **Plaintiffs Lack Standing**

"[S]tanding cannot be granted to every individual who is disgruntled by a governmental decision or policy; otherwise, the government would be forced to defend a constant barrage of lawsuits questioning its every move." Newman v. Richland Cnty. Historic Pres. Com'n, 325 S.C. 79, 79, 480 S.E.2d 72, 75 (1997). "Standing to sue is a fundamental requirement in instituting any action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). "Under our current jurisprudence, there are three ways in which a party can acquire this fundamental threshold of standing: (1) by statute; (2) through what is called 'constitutional standing'; and (3) under the public importance exception to standing." Bodman v. State, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013).

This Court finds that Plaintiffs failed to plead standing under any of the three recognized grounds. Plaintiffs do not allege that they possess standing under any statute. See Complaint ¶¶ 1–14. Thus, Plaintiffs cannot acquire standing under this rubric.

Plaintiffs instead allege that they “possess standing as a citizen, resident, and taxpayer” of South Carolina. See Complaint ¶ 7. This Court finds that Plaintiffs’ status as citizen taxpayers does not establish constitutional standing as a matter of law.

The Supreme Court has unequivocally foreclosed the ability to obtain constitutional standing via a plaintiff’s status as a taxpayer. See ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340–41 (2008 (“[Plaintiff] further relies on its status as a taxpayer to acquire standing. The injury to [plaintiff], however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he ‘suffers in some indefinite way in common with people generally.’”); Bodman, 403 S.C. at 66-67, 742 S.E.2d at 366 (“In ATC, we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer . . . .”); Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012). Thus, this Court finds that Plaintiffs’ status as a taxpayer is insufficient to provide a basis to possess the standing necessary to maintain this action.

Plaintiffs further claim application of the public importance exception to standing by alleging that they “possess standing based on the great public importance of the issues they raise” in the Complaint. See Complaint ¶ 6. This Court finds that this bare statement, however, fails to plead the elements necessary for application of the public importance exception in this matter.

The Supreme Court in analyzing and discussing the public importance exception has recognized that the key for application of this exception is a need for “future guidance.” Bodman, 403 S.C. at 68, 742 S.E.2d at 366; ATC, 380 S.C. at 199, 669 S.E.2d at 341. The Supreme Court noted that “[i]t is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.” ATC, 380 S.C. at 199, 669 S.E.2d at 341. In its most recent analysis of the exception, the Supreme Court reiterated this need for future guidance as the seminal aspect of the public importance exception, stating that “standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.” Bodman, 403 S.C. at 68, 742 S.E.2d at 366.

This Court finds that Plaintiffs do not adhere to the Supreme Court’s pronouncement because they fail to plead that this matter requires “resolution for future guidance.” See Complaint ¶ 6. Thus, this Court finds that Plaintiffs do not plead the required element necessary to allow standing under the public importance exception.

Based on the above, Plaintiffs have failed to properly plead a valid basis for standing necessary for Plaintiffs to maintain this action. Joytime, 338 S.C. at 639, 528 S.E.2d at 649 (“Standing to sue is a fundamental requirement in instituting an action.”). Therefore, Plaintiffs lack standing and this Court grants the motion to dismiss.

**Plaintiffs have failed to state a claim under the One Subject Rule**

Alternatively, as discussed below, the Court finds and concludes that this matter must be dismissed for Plaintiffs’ failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRPC. In considering a motion to dismiss, the Court must accept “well pled facts” as true, but it need not accept “unsupported conclusions” of law. See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 426, 559 S.E.2d 362, 364–65 (Ct. App. 2001). “The motion

must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.” Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997). The test for sufficiency of a declaratory judgment action “is not whether the complaint shows that the plaintiff is entitled to a declaration of rights according to his theory, but whether he is entitled to a declaration of rights at all.” See, e.g., Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977). This Court finds that Plaintiffs failed to plead facts sufficient to constitute a cause of action under the Declaratory Judgment Act for several primary reasons. As a result, this Court grants the motion to dismiss.

First, this Court finds that Plaintiffs have relied in error upon the holding in South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016), as the lynchpin of Plaintiffs’ entire allegation that the Act violates Article III § 17. See Complaint ¶ 10-14. Paragraph 13 of the Complaint states as follows:

The Supreme Court ruled that changing the Governor’s appointment power over the Secretary of Transportation is not “reasonably and inherently related to the raising and spending of tax monies.” South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016)

Plaintiffs cannot state a cause of action by merely citing to a legal opinion without alleging facts to support how the opinion applies to the present case. Here, Plaintiffs fail to do so. More importantly, the Lucas opinion is not applicable in this case, because Lucas is limited to cases involving a general appropriations act. This Court finds that Plaintiffs have not alleged that Act 275 relates in any way to the general appropriations act for 2016. In fact, Act 275 is not part of and does not relate in any way to the general appropriations act of 2016. Therefore, Act 275 is not a general appropriations act, and Plaintiffs’ reliance on Lucas is fatal to their pleading.

Second, even if Plaintiffs’ pleading could survive the fatal flaw of relying on Lucas to state a claim and the other failings noted above, the allegations of the Complaint, taken as true at this stage

of the litigation, establish that no controversy exists as to the subject of Act 275. Plaintiffs' Complaint at paragraphs 10, 11, and 12 attempts to summarize Parts I, II and III of the Act. Those three paragraphs read as follows:

10. Part I of Act 275 restructures the governance of the **Department of Transportation** and the State Transportation Infrastructure Bank
11. Part II of Act 275 addresses the funding of the **Department of Transportation** and provides for the issuance of \$2.2 billion of new bond funding for the DOT.
12. Part III makes other structural changes including transferring the Chief Internal Auditor of the **Department of Transportation**, all of his associated support staff, and all associated appropriations to the State Auditor's Office.

(emphasis added). As such, the Complaint plainly states that each section of Act 275 is related to transportation, and Act 275 is not in violation of the one subject rule. Plaintiffs' bare legal conclusion that the Act relates to more than one subject is insufficient to state a claim, and Plaintiffs' own summaries of Act 275, taken in the light most favorable to Plaintiffs, demonstrate that the facts and inferences reasonably deducible from their pleading show that Plaintiffs cannot prevail on any theory of the case.

Third, this Court finds that no justiciable controversy exists because Act 275 relates to only one subject. See, e.g., Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977) (holding that the test for sufficiency of a declaratory judgment action "is not whether the complaint shows that the plaintiff is entitled to a declaration of rights according to his theory, but whether he is entitled to a declaration of rights at all.")

Article III, § 17 is to be liberally construed so as to uphold an Act if practicable. See, e.g., McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948). Doubtful or close cases are to be resolved in favor of upholding an Act's validity. See, e.g., Alley v. Daniel, 153 S.C. 217, 150 S.E. 691 (1929). Article III, § 17 does not preclude the legislature from dealing with several branches of one general subject in a single act. See, e.g., Keyserling v. Beasley, 322 S.C. 83, 470

S.E.2d 100 (1996). The statute complies with the one-subject rule when “the topics in the body of the act” are “kindred in nature.” South Carolina Pub. Interest Found. v. Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008). “[A]ll statutes are presumed constitutional and, if possible, will be construed to render them valid.” Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). Accordingly, we will not find a statute unconstitutional unless “its repugnance to the Constitution is clear beyond a reasonable doubt.” *Id.* at 570, 549 S.E.2d at 597. Abbeville County School Dist. v. State, 410 S.C. 619, 628, 767 S.E.2d 157, 161 (2014).

Here, this Court finds that Act 275 meets the standards of the “one subject” clause because each section relates directly to or in conjunction with other sections to the subject of improving the state’s transportation infrastructure system. Therefore, the “thing legislated about,” see McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948), the express subject of the Act, is improvement of the State’s transportation infrastructure system. All parts of Act 275 are pertinent to that subject.<sup>2</sup>

The “one subject” clause does not require the Court to “second guess” the Legislature regarding an Act that clearly pertains to the subject of transportation. Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996). Going beyond the requirements of the Constitution and the authority of this Court, the effect of Plaintiffs’ argument would be to require that the different parts of this Act be fragmented and passed separately. Fortunately, the Constitution does not require such action. As stated in South Carolina Public Service Authority v. Citizens and Southern Nat. Bank of South Carolina, 386 S.E.2d 775, 787, 300 S.C. 142, 162 (1989):

The Court recognized the breadth of this constitutional provision:

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<sup>2</sup> Moreover, the Act itself states that the subject is “improving the state’s transportation infrastructure system.”

[T]here is a marked distinction between the object of a law and the subject of a law. Very few enactments have but one object or purpose in mind....

[T]he constitutional provision here invoked does not preclude the Legislature from dealing with several branches of one general subject in a single Act.

It would be impractical and time-consuming to require the legislature to pass a separate act on every separate branch of a subject.”

(quoting *DeLoach v. Scheper* 188 S.C. 21, 28-29, 198 S.E. 2d 409, 412 (1938)).

Therefore, the General Assembly has properly dealt with the subject of transportation in the several parts of Act 275. In another “one subject” case, the Supreme Court stated that it “did not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” Keyserling v. Beasley, *supra*. The Court stated that it “must . . . follow the law and decisions heretofore set forth in this state. Doing so, [it reached] the inevitable conclusion that the “One-Subject” provision of Article III, § 17 was not violated in [that] case.” *Id*. Applying the above standards here, this Court finds that Act 275 is completely consistent with the one subject clause. Plaintiff’s challenge to the Act fails.

Although Plaintiffs further argue that the subject of Act 275 is not expressed in the title as required by Article III, § 17, that claim, too, is meritless. This issue was not clearly raised in the Complaint, but even if raised, Act 275 meets the title standards of that article.

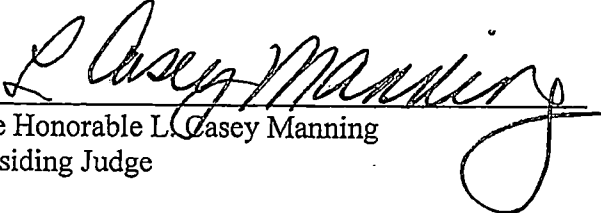
“The purpose of Article III, § 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself.” Sloan v. Wilkins, 362 S.C. 430, 438, 608 S.E.2d 579, 583 (2005); South Carolina Pub. Interest Found. v. Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008) Article III, § 17 is “complied with if the

title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose.” Harrell, 378 S.C. at 445-46, 663 S.E.2d at 583.

The title to Act 275 clearly apprises the General Assembly of the contents of the Act and informs the people of South Carolina of the matter with which the General Assembly was concerning itself in passing Act 275. The title to Act 275 is replete with references to “Transportation” and matters directly relating to transportation, i.e., “highway fund,” “resurfacing program,” “road and bridge projects,” etc. The title to Act 275 also specifically apprises the General Assembly and informs the people of the state of each statute that will be affected or amended by Act 275. In fact, as noted above, the Act, itself, states that the sections of the Act “relate[] directly to or in conjunction with other sections to the subject of improving the state's transportation infrastructure system as clearly enumerated in the title.”

This Court finds that not only have Plaintiffs failed to overcome the presumption that Act 275 is unconstitutional, but this Court also finds that the statute satisfies the standards of art III, § 17. The title of Act 275 complies with the one subject rule and each of the topics in the body of Act 275 are “kindred in nature” and “branches of the general subject” of Act 275— transportation. Therefore, the motions are granted with prejudice pursuant to Rule 12(b)(6), SCRC. See Dimukes, 269 S.C. at 112, 236 S.E.2d at 422.

IT IS SO ORDERED.

  
The Honorable L. Casey Manning  
Presiding Judge

Columbia, South Carolina

July 6, 2017