

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
DeAndrea G. Benjamin, Circuit Court Judge  
Trial Court Case No. 2013-CP-40-05888

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Appellate Case No.: 2016-000788

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**RECEIVED**  
JUL 25 2017  
SC Court of Appeals

Clarence B. Winfrey, Jr., ..... Appellant,

v.

American Fire & Casualty Insurance Company  
c/o Liberty Mutual Group..... Respondent,

and

State of South Carolina..... Respondent.

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FINAL REPLY BRIEF OF APPELLANT  
TO RESPONDENT  
STATE OF SOUTH CAROLINA'S FINAL BRIEF

---

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STATEMENT OF THE RESPONSIVE/NON-RESPONSIVE ISSUES ON APPEAL

- I. DID APPELLANT HAVE STANDING TO BRING THIS ACTION SINCE NO RELIEF CAN BE GRANTED TO APPELLANT IN THIS PROCEEDING?
- II. IF APPELLANT HAD STANDING, DID THE CIRCUIT COURT ERR BY APPLYING THE DOCTRINE OF CONSTITUTIONAL ESTOPPEL AND GRANTING THE STATE'S RULE 12(C), SCRPC, MOTION DISMISSING THE DECLARATORY JUDGMENT ACTION CHALLENGING THE CONSTITUTIONALITY OF §42-9-260(B)(1-6) THAT ALLOWS CARRIERS TO TERMINATE CERTAIN PAYMENTS WITHOUT A HEARING?
- III. IF THE CONSTITUTIONAL ISSUE WERE PROPERLY BEFORE THE COURT, IS THE STATUTE CONSTITUTIONAL?
- IV. DOES THE STATE HAVE A RIGHT TO PARTICIPATE IN THIS CASE?
- V. DID THE COURT DENY APPELLANT DUE PROCESS BY NOT GRANTING A REHEARING AND BY WAITING 15 MONTHS TO ISSUE A DECISION?

AMENDED AND REPLY TO STATEMENT OF THE CASE

Based on the Respondent State of South Carolina's Initial Brief, its Statement of the Case, and the proceedings before this Court, this Amendment is made to the Statement of the Case.

The Respondent in this matter, American Fire and Casualty Insurance Company c/o Liberty Mutual Group, and per the Order of Judge Thomas Cooper, the State of South Carolina was added as a party. The Appellant's Initial Brief after an extension was due to be filed and was filed on December 12, 2016, thus making each Respondents' Brief due on or before January 12, 2017. After a Request for Extension by the State of South Carolina (hereinafter "State"), the State filed its Initial Brief on February 10, 2017. The Record will reflect that no request for an extension of the filing of the Initial Brief on behalf of Respondent American Fire and Casualty Insurance Company c/o Liberty Mutual Group has been filed with the Court and the Record will show that that Respondent, the initial, primary and only Defendant to the Declaratory Judgment action before the addition of the State by Court Order, has never filed an Initial Brief.

As to the Statement of the Case filed by the Respondent State, as the Respondent appropriately notes, the State was not a party prior to being added as a party pursuant to the Order of Judge Cooper which was issued on January 21, 2014. The Statement of the Case of the Respondent State however refers to three (3)

dates as part of the Statement of the Case prior to the filing of the Complaint on September 27, 2013 (Note: the State's Brief contains a scrivener's error noting that the Complaint was filed in 2014). Those dates and those references have absolutely nothing to do with the basis of the Court's decision and should be stricken.

Further, the Statement of the Case is inaccurate in that while it asserts a right on behalf of the Attorney General to participate in matters involving constitutional issues, the Statement of the Case fails to note that the Attorney General was served with the initial Summons and Complaint pursuant to Court Rule and statute and chose not to participate. Further and finally, the State's Statement of the Case is inaccurate referring to a challenge to SC Code §42-9-260 whereas the challenge is actually to SC Code §42-9-260(B)(1-6). The Statement of the Case refers to the Attorney General's right to participate under Rule 24, SCRCP, and SC Code §15-53-80 in support of the statement that the Attorney General, "elected to participate" in this case whereas the Attorney General was added by the Order of Judge Cooper as is challenged in the Arguments presented to the Court. Also, again there is no reference to the Attorney General having been duly and properly served with both the Complaint and the Amended Complaint pursuant to Rule 5, SCRCP; therefore where there is absolutely no challenge to the fact that the Attorney General's

Office was duly and properly served with the Complaint and the Amended Complaint as is required by the Rules and the Code Sections, and elected not to participate until being made a party by Order. The use of the word, "elected" in reference to this action by the Attorney General's office is simply wrong.

REPLY TO STATEMENT OF FACTS

While the Statement of Facts of the Respondent State goes far afield from the basis for the Decision which was constitutional estoppel based on the 12(C) Motion filed by the State, the Appellant would point out several inaccurate factual statements.

After appropriately noting that the State was added by Order of Judge Cooper, the State makes the statement that the State elected to participate because of the constitutionality issue rather than, "challenge" Judge Cooper's Order. There is nothing in the Record to establish that the State elected to participate and in fact it was ordered to participate, which is an issue challenged on appeal as to whether or not that Order was appropriate and there is nothing to indicate that the State ever intended to or chose to participate instead of challenging Judge Cooper's Order.

The State also makes in an inaccurate statement that,

"the State only became involved by Order of Judge Cooper to defend the constitutionality of §42-9-260." (Emp. add.)

This is particularly inaccurate in that Judge Cooper's Order

specifically states that he was simply adding the State as a party to be involved and not to necessarily, "defend" the constitutionality of the statute. Judge Cooper specifically noted in his Order that the reason he was adding the State of South Carolina was he found that,

"having heard the arguments of Counsel and considered the parties, pleadings and memoranda of law, this Court has determined that Plaintiff has raised significant issues of law and/or fact concerning Plaintiff's claim that §42-9-260, SC Code of Laws, is unconstitutional." (Emp. add.)

Next, on pages 4 and 5 of the State's Fact Statement, the State goes over numerous issues of a factual nature prior to the State's involvement that are irrelevant and immaterial to the basis for decision, which was constitutional estoppel, which is the only issue before this Court. The State in fact criticizes the Appellant for including irrelevant matter but then goes on to include irrelevant matter in its Statement of Facts. The Appellant would point out that all actions as are referred to in the Appellant's Statement of Facts occurred on and after the initial Complaint was filed on September 27, 2013 with which the Attorney General's Office was properly served and chose ("elected") not to reply to and are specifically relevant to the issues raised in the three (3) issues presented to this Court for decision.

REPLY TO RESPONDENT STATE'S RESPONSIVE/NON-RESPONSIVE ARGUMENTS

- I. DID APPELLANT HAVE STANDING TO BRING THIS ACTION SINCE NO RELIEF CAN BE GRANTED TO APPELLANT IN THIS PROCEEDING?

This issue is not presented to the Court and the argument is non-responsive.

- II. IF APPELLANT HAD STANDING, DID THE CIRCUIT COURT ERR BY APPLYING THE DOCTRINE OF CONSTITUTIONAL ESTOPPEL AND GRANTING THE STATE'S RULE 12(C), SCRCP, MOTION DISMISSING THE DECLARATORY JUDGMENT ACTION CHALLENGING THE CONSTITUTIONALITY OF §42-9-260(B) (1-6) THAT ALLOWS CARRIERS TO TERMINATE CERTAIN PAYMENTS WITHOUT A HEARING?

- III. IF THE CONSTITUTIONAL ISSUE WERE PROPERLY BEFORE THE COURT, IS THE STATUTE CONSTITUTIONAL?

This argument is not before the Court and is non-responsive to the issues raised.

- IV. DOES THE STATE HAVE A RIGHT TO PARTICIPATE IN THIS CASE?

- V. DID THE COURT DENY APPELLANT DUE PROCESS BY NOT GRANTING A REHEARING AND BY WAITING 15 MONTHS TO ISSUE A DECISION?

By way of Reply as to the issues raised under Argument I and III they are not before the Court and are not responsive to the issues raised nor are they listed as an additional sustaining Ground and should not be considered by the Court.

By way of appeal, the Appellant has raised three (3) issues for review by the Court to which the State properly responded under Arguments under II, IV, and V of its Brief:

- I. Did the Circuit Court err in granting the State's Rule 12(C) Motion dismissing the Declaratory Judgment action on the basis of constitutional estoppel? (State II);

II. Did the Circuit Court err by ordering on its own Motion to where the issue was not before the Court that the State be added as a party? (State IV); and

III. Where the Court held a hearing on all remaining Motions and Declaratory Judgment action and then took the matter under advisement and did not rule on the Declaratory Judgment action for over fifteen (15) months, did the Court err by failing to grant a rehearing and/or did the delay deny the Plaintiff due process? (State V).

ARGUMENTS

BY WAY OF REPLY TO ARGUMENT I RAISED BY THE RESPONDENT

STATE OF SOUTH CAROLINA:

I. APPELLANT DID NOT HAVE STANDING TO BRING THIS ACTION SINCE NO RELIEF CAN BE GRANTED TO APPELLANT IN THIS PROCEEDING.

A. No Relief May be Granted to Appellant.

The issue of standing as raised by Argument I of the Appellant to bring the Declaratory Judgment is simply not an issue before the Court. The Appellant does not challenge the right of the Respondent State of South Carolina to argue an issue as a specific, "additional sustaining Grounds" under the Appellate Court Rules; see for example, Rule 208(b)(2), SCACR, but the Appellant would submit that this issue is not raised properly as an additional sustaining Ground and is not an issue raised by the Court's Order and its basis or as raised on appeal.<sup>1</sup>

If the Court chooses to address this issue, then the Appellant does have standing. Before the Circuit Court and apparently in the argument raised, the Respondent State does not challenge the first two (2) prongs of the three (3) prong test for standing but again challenges the third prong which is that it

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<sup>1</sup> It is amazing and beyond reason and belief that the Appellant, an injured worker, is having to respond to the Brief of the Attorney General with his legions of Assistants and his decades of Brief banks on special issues, constitutional issues, and appellate practice, when the very party, a wealthy and powerful insurance company whom Appellant alleged in the Declaratory Judgment action violated his constitutional rights to due process and equal protection under color of State law, has not even filed a Brief.

must be likely that the injury will be redressed by a favorable decision. Sea Pines Assn. for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 550 S.E.2d 289 (2001). In the Declaratory Judgment action, the Appellant sought to have §42-9-260(B)(1-6) declared unconstitutional and an Order of the Court ordering that benefits from the date that they were cut off be reinstated and continuing thereafter. The Respondent State makes the blanket statement, "Appellant is receiving his benefits" in the argument and that is simply not true. There is nothing in the Record to support that statement. The State notes that the underlying workers' compensation action is still on appeal but that it has been Awarded. While not in the Record since the Respondent State makes these statements and assertions, the Appellant will fill in the blank and would submit to the Court that the injured worker has never been paid benefits from the date that those benefits were stopped on or about September 13, 2013 through the date of appeal to the SC Court of Appeals. Therefore, the Appellant does have standing because the decision by the Circuit Court and the decision by this Court remanding this case for a trial on the Declaratory Judgment action would be likely to have the benefit if the statute is found to be unconstitutional of addressing the injury by that favorable decision. In other words, the Appellant would have to be paid his benefits under that Declaratory Judgment

action.

B. The Constitutionality Issue Need Not Be Reached.

The Appellant does not understand this argument in the sense that the issue before the Court is whether or not the Circuit Court erred by granting the Respondent State's 12(B)(C) Motion on the basis of constitutional estoppel. (Note: again the State not Liberty Mutual filed this Motion). The Court never reached the constitutionality issue of SC Code §42-9-260(B)(1-6). Therefore, the Appellant would agree that it is not necessary for the Court to reach that constitutional issue to make a decision on this appeal. However, in making this argument the State makes the statement that the Court is not in any position to grant relief, which is simply not true. If this Court overturns the constitutional estoppel argument and remands this case to the Circuit Court, the Circuit Court may order payment of the benefits which have not been paid to the Appellant, in addition to entering a declaration pertinent thereto as to the constitutionality of the statute.

C. The Merits as to Appellant's Compensation Case are Pending Before this Court on Direct Appeal from the Commission.

As was argued before the Circuit Court, this argument shows a blatant misunderstanding of our compensation laws on behalf of the Respondent State and actually the payment of such benefits on appeal. Further, this argument has absolutely nothing to do with

the issues before this Court.

First, if this Court finds that the concept of constitutional estoppel does not apply and remands to the Circuit Court for a hearing on the Declaratory Judgment action, the Court may grant relief by reinstating benefits and ordering those benefits paid through the date that they were reinstated (note: that is not in the Record before the Court as to whether or not they have been reinstated.) Therefore, a decision by the Circuit Court is likely to address the injury sustained, which is the failure to receive benefits in the form of weekly compensation payments.

Further, the Respondent State makes the blatant assumption that the Appellant has not only been paid benefits from September 14, 2013 through February 27, 2014, but thereafter obviously the State does not have a clue what happens where benefits are denied and then awarded by the Single Commissioner and Full Commission and then the "Award" of those benefits and the denial is maintained by the insurance carrier who appeals that "Award" to the Court of Appeals. In that factual scenario, the defendants do not have to pay and do not pay under current law from the date that those benefits were stopped through the time that the appeal is filed in the SC Court of Appeals. (SC Code §42-17-60 provides that thirty (30) days after and only after the appeal is entered from the "Award of the Commission" does the defendant insurance carrier have to reinstate weekly compensation benefits. Under

current law, they do not have to go back and pay all the benefits due from the time of improper stop payment through the time that they are required by law to reinstitute temporary total.

While it is not relevant to the issues raised in this appeal, since this issue has been brought up again, this basic misunderstanding of the Workers' Compensation Act and the payment of benefits under the Act is recurrent throughout all of the arguments made by the Respondent State concerning the constitutionality of the statute before the Circuit Court. The Respondent State appears to not even understand that benefits are not paid to an injured worker under SC Code §42-9-260 but are in fact paid to an injured worker under SC Code §42-17-10, §42-1-120, and §42-9-10. This has already been addressed in Appellant's Initial Brief because it goes to the heart of why the issue of constitutional estoppel does not apply in this case wherein the Appellant is challenging one section of the Act but was being paid benefits under other sections of the Act.

D. The Workers' Compensation Claim Has Been Fully Litigated.

This argument is not only non-responsive to any of the issues on appeal but whether or not the workers' compensation has been fully litigated before the Commission has absolutely nothing to do with whether or not the challenged section is unconstitutional and also whether or not the Circuit Court under

the Declaratory Judgment action can, in light of a favorable decision for the plaintiff, address an injury sustained; i.e., the benefits to which he has not been paid but is compensation and medical. Apparently, the Attorney General forgot about the Supreme Court Opinion in Travelscape, LLC v. SC Dept. of Revenue, 391 S.C. 109, 705 S.E.2d 28 (2011), quoting from Judge Lee's Order:

"However, regarding the Declaratory Judgment action, this Court does have jurisdiction over the issue of whether §42-9-260 is facially unconstitutional. The Supreme Court stated in Travelscape, LLC v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011), that the Administrative Law Court is unable to decide facial challenges to a Statute. Instead, such challenges are 'legal questions that are properly raised for the first time on appeal or in a Declaratory Judgment action before the Circuit Court.'" Travelscape, LLC v. S.C. Dept. of Revenue, 391 SC at 109, 705 S.E.2d at 39 (Emp. add.)

D. (sic) The constitutionality of 42-9-260 is not subject to collateral attach in this case.

Without citing to any reference in the Record on Appeal, the Respondent State alleges that the constitutionality is not raised in the direct appeals pending before the SC Court of Appeals. As is argued in the Initial Brief of Appellant and was as argued before the Circuit Court, while this issue is not before the Court, the Workers' Compensation Commission has absolutely no authority to address the constitutionality of a

statute. See: Travelscape, LLC, supra. Also, the Appellant is not barred from using the Declaratory Judgment action as a mechanism to challenge the constitutionality of the statute involved. Travelscape, LLC, supra. While the Appellant does not think this is appropriate and that the Appellant has every right to challenge the constitutionality of the statute through the Declaratory Judgment action versus bringing it up on direct appeal, wherein it could not have been addressed by either the Single Commissioner or the Full Commission, it cannot be addressed until it would have been in the Court of Appeals; and while the Appellant has absolutely no idea where the Respondent State is getting its information from in reference to preservation and that it has not been raised, the Respondent State of South Carolina is simply wrong. While the Appellant would take the position that this challenge is highly inappropriate, the Court will note that there was a challenge made by Appellant before the Circuit Court to the fact that the Respondent State filed the 12(C) Motion but yet allowed the Respondent insurance carrier to write the Order based on its Motion, and in addition during argument at the hearing the Appellant questioned the involvement of an attorney representing the Workers' Compensation Commission who conferred with the State during argument in the hearing on the Declaratory Judgment action before the Circuit Court. The Court will also find (even again, though the Appellant thinks this is

totally improper), upon a review of the Record that the pleadings in the Declaratory Judgment action were filed with the Workers' Compensation Commission by Appellant and then were made part of the Record of the Commission by Respondent Liberty Mutual Group in the underlying workers' compensation action noting that the constitutional challenge had been made and was proceeding under the Declaratory Judgment action. Case law supporting the Appellant's right to bring this as a Declaratory Judgment action will not be further reiterated here.

BY WAY OF REPLY TO ARGUMENT II (APPELLANT I) RAISED BY THE  
RESPONDENT STATE OF SOUTH CAROLINA:

II. IF APPELLANT HAD STANDING, THE CIRCUIT COURT DID NOT ERR BY APPLYING THE DOCTRINE OF CONSTITUTIONAL ESTOPPEL AND GRANTING THE STATE'S RULE 12(C), SCRPC, MOTION DISMISSING THE DECLARATORY JUDGMENT ACTION CHALLENGING THE CONSTITUTIONALITY OF §42-9-260(B) (1-6) THAT ALLOWS CARRIERS TO TERMINATE CERTAIN PAYMENTS WITHOUT A HEARING.

The Circuit Court erred by applying the doctrine of constitutional estoppel where the Appellant was not receiving benefits under §42-9-260 which is the challenged section/statute in the Act but was receiving benefits under other provisions of the Act.

First, by way of Reply, the Appellant would submit that when the Court reviews all of the cases cited and relied on by both parties, Appellant and State (Respondent Liberty Mutual Group has submitted no cases on this issue) the Court will find that the

concept of constitutional estoppel has rarely been applied to deny a litigant's right to challenge a statute.

While briefed in Appellant's Initial Brief, the Respondent State of South Carolina's Initial Brief shows a basic lacking of misunderstanding of weekly benefits payable to an injured worker under the SC Workers' Compensation Act. Weekly benefits for disability are not paid under SC Code §42-9-260. The payment of weekly benefits are provided for under SC Code §42-9-10 for all periods of total disability with disability being defined under SC Code §42-1-120. Those benefits are payable by agreement reached under §42-17-10. As it is captioned in our Code, §42-9-260 in general as to all of its subparts is commonly referred to as the, "stop payment statute". §42-9-260 in its totality establishes the rights of an insurance carrier to stop payment of benefits payable under various fact scenarios and the other provisions of the Act; see references to statutes in §42-9-260. Therefore, again, the Appellant would respectfully submit that this goes to the heart, and the difference between the argument being made by the Respondent State and the Appellant. The United States Supreme Court and this Court have repeatedly held that a litigant is not barred from challenging one section of an Act wherein he is receiving benefits under another section or other sections of an Act.

The Appellant would ask the Court to note that the Respondent State actually agrees with the Appellant but misstates the Appellant's position in reference to the Supreme Court case law. The Respondent State states that the Appellant cites to the case of Hurley v. Commissioner of Fisheries, 257 U.S. 223, 42 S.Ct. 83, 66 L.Ed. 206 (1921) in support of his position, which is actually not true. The Appellant actually relied on the case of Buck v. Kuykendall is quoted as part of a quote from Buck wherein Hurley distinctly sets out that difference in the application of constitutional estoppel wherein if a party is availing himself of benefits under a section and then challenges that section, the party cannot do that; but if he is receiving benefits under one section of an Act and is assailing another section of that Act, he can do that and that is not subject to constitutional estoppel. As set out above, the Appellant was not receiving benefits under the statute and challenged section of that statute, §42-9-260(B)(1-6). The Respondent State actually in its Initial Brief recognizes and makes Appellant's argument because as the State argues it is the insurance carrier that availed itself of the benefits of §42-9-260. Quoting from the Respondent State of South Carolina's Brief:

"However, carrier clearly relied on this statute to pay temporary total benefits so the carrier could start benefits shortly after the accident without being prejudiced in its compensation defense." (Emp. add).

The Respondent State of South Carolina is exactly correct. The carrier clearly relied on this statute not the Appellant.

BY WAY OF REPLY TO ARGUMENT III RAISED BY THE RESPONDENT

STATE OF SOUTH CAROLINA:

III. EVEN IF THE CONSTITUTIONAL ISSUE WERE BEFORE THE COURT, THE STATUTE IS CONSTITUTIONAL.

The issue of whether or not the statute is constitutional is not before the Court.

The issue of the constitutionality under the issues raised is not before the Court. Again, the issues before the Court are whether or not the Circuit Court properly granted the 12(C) Motion of the State of South Carolina dismissing the Declaratory Judgment action on the basis of constitutional estoppel. If the Court decides that it wants to hear the constitutional issues, the Appellant upon request will be more than happy to file an additional Brief on those issues. In addition, those issues are already more than adequately briefed in the Briefs and the arguments made and submitted to the Circuit Court.

Also, as a matter of judicial economy and to prevent further delay, the Appellant would welcome Certification of these issues and the entire appeal to the Supreme Court for decision.

BY WAY OF REPLY TO ARGUMENT IV (APPELLANT II) RAISED BY THE  
RESPONDENT STATE OF SOUTH CAROLINA:

IV. THE STATE DID NOT HAVE A RIGHT TO PARTICIPATE IN THIS CASE.

By way of Reply to the argument made by the Respondent State first it does not actually address the issue presented to the Court for review which is whether or not Judge Cooper erred by ordering the State of South Carolina be made a party when that issue was not before him nor had a request been made for the Respondent State of South Carolina to be added as a party, and when the Respondent State had previously been properly served and chose not to appear. The Respondent State of South Carolina simply does not address this issue in its Initial Brief.

In response to the argument made, it is ironic that in arguing that the Respondent State of South Carolina had a right to appear, the State refers to the various statutes under which the Appellant initially served the Attorney General. The Appellant agrees that SC Code §15-53-80 allows the Attorney General to appear when he thinks it is necessary when a statute is being challenged as being unconstitutional. The same is true for Rule 25, SCRPC (Appellant does not think that Rule applies since it is talking about interpleader), and Rule 4(d)(4)(D), SCRPC, which requires service on the Attorney General's office when the constitutionality of a statute is challenged which is what the Appellant did in this case. The Attorney General does not

challenge the fact that the Attorney General was appropriately and properly served with the initial Summons and Complaint and there is absolutely no disagreement that the Attorney General presumably did its job and reviewed the Complaint and decided not to appear in this matter.

Then the Attorney General in argument alleges that when Judge Cooper added the State as a party when that issue was not before him; and when they were given no notice of that decision, nor were they allowed to state a position prior to that decision that they, "elected" (even though it was by Order) to appear and defend the constitutionality of the statute in favor of an out of state insurance company and contrary to an individual citizen of this State.

In fact, in Respondent State of South Carolina's Answer and Motion, the Attorney General took the position that the State was not a necessary party to this litigation.

For all of these reasons, and particularly because the Respondent State does not address the arguments made and because Judge Cooper added the State as a party when that issue was not before him, when the State was not given an adequate opportunity to appear before him and advise him as to whether or not they felt they should be made a party and when they were not asked for their position on the constitutionality of the statute, nor required to submit a Memorandum to that effect, for all these reasons the

Court should find that the Respondent State of South Carolina should not have been added as a party.

BY WAY OF REPLY TO ARGUMENT V (APPELLANT III) RAISED BY THE  
RESPONDENT STATE OF SOUTH CAROLINA:

V. THE COURT DID DENY APPELLANT DUE PROCESS WHEN THE COURT DID NOT GRANT A REHEARING AND BY WAITING 15 MONTHS AFTER HEARING TO ISSUE A DECISION.


By way of Reply, this issue is adequately briefed in the Appellant's Initial Brief with the exception that Appellant would submit that no rehearing was granted. A clear review of the Record will establish that the hearing that was held before Judge Benjamin was limited to and was for the strict purpose of addressing the Appellant's concerns over the Notes for decision that the Judge had previously issued. As is set forth in the Record, there had been multiple Law Clerks involved; and there were clear indications from the Law Clerk that forwarded the Notes for decision, which Law Clerk had not been involved in the decision; and there were substantial questions as to who had been involved in reviewing all the substantive law and was working with and advising the Court on its decision. The process and the Notes were also contrary to the Judge's directions and initial decision after the initial hearing in this matter wherein she requested proposed Orders and had those Orders before her but yet in the Notes for decision requested an additional Order be drafted raising further questions, at least

circumstantially, that the Court was unaware that proposed Orders from all parties were already before the Court for review. Why the need for additional Order? Clearly, the Court should have granted a rehearing and this is idiomatic as to how the fifteen (15) month delay between the time of hearing and the time of decision denied the Petitioner due process of law as argued in Appellant's Initial Brief.

CONCLUSION

Having fully replied to the Arguments, the Decision should be reversed and this worker provided hearing on the constitutional challenge.

Respectfully submitted,



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