

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-00484

Appellate Case No. 2017-001638

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SEP 12 2017

SC Court of Appeals  
Appellants;

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

v.

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

**Motion to Dismiss the Appeal**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents the South Carolina Senate and the Honorable Hugh K. Leatherman, as President Pro Tempore of the South Carolina Senate (collectively "the Senate"), move to dismiss the above-captioned appeal based on Appellants failure to comply with the deadlines imposed by Rule 207(a)(1) and 208(a)(1), SCACR. Either failure requires dismissal of this appeal pursuant to Rule 260(a), SCACR.<sup>1</sup>

<sup>1</sup> The Senate likewise join in the motion to dismiss filed by The South Carolina House of Representatives; the South Carolina Senate; the Honorable James H. "Jay" Lucas, as Speaker of the House.

First, Appellants failed to order the transcript in this matter. Our appellate rules mandate that:

Appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered **within ten (10) days after the date of service of the notice of appeal.**

Rule 207(a)(1), SCACR (emphasis added). Appellants served the notice of appeal in this matter on July 25, 2017. Appellants failed to order the transcript in this matter by August 4, 2017, which was the deadline imposed by Rule 207, SCACR. Appellants also did not obtain consent of Respondents in writing to dispense with the requirement of ordering the transcript of the proceedings below.

Second, the appeal should also be dismissed because Appellants failed to timely file and serve their Initial Brief. Rule 208, SCACR, sets forth the deadline for filing and service of an appellant's initial brief, stating:

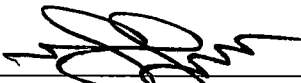
Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.

Rule 208(a)(1), SCACR. Appellants missed this deadline. As noted, Appellants filed and served the notice of appeal on July 25, 2017. Appellants had until August 24, 2017, to file and serve their Initial Brief. Appellant did not serve their Initial Brief until August 25, 2017. See Certificate of Service, attached hereto as Exhibit A.

Thus, Appellants failed to comply with our appellate court rules. This appeal should be dismissed. See Rule 260(a), SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”).

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  \_\_\_\_\_

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Kenneth M. Moffitt, Esquire  
Assistant Clerk  
South Carolina Senate  
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Attorneys for The South Carolina Senate and the  
Honorable Hugh K. Leatherman, as President Pro  
Tempore of the South Carolina Senate

Columbia, South Carolina

September 12, 2017

# Exhibit A



WHEN IT'S WORTH FIGHTING FOR

JAMES G. CARPENTER  
james.carpenter@carpenterlawfirm.net  
SERVING S.C. AND N.C.

August 25, 2017

The Honorable Jenny Abbott Kitchings  
Clerk of SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: *South Carolina Public Interest Foundation et al. vs. S.C. House of Representatives, et al*  
Case No. 2017-CP-40-00484

Dear Ms. Kitchings:

I enclose an original and one copy of the Appellants' Initial Brief and Certificate of Service in this matter. Please file-stamp the extra copy and return it to me in the enclosed postage paid envelope.

Thank you very much. If you need anything else, please telephone me.

Sincerely yours,  
THE CARPENTER LAW FIRM, PC

James G. Carpenter

Enclosures  
CC w/ enclosures: J. Emory Smith, Jr.  
Michael Anzelmo  
Paul D. Harrill

## CERTIFICATE OF SERVICE

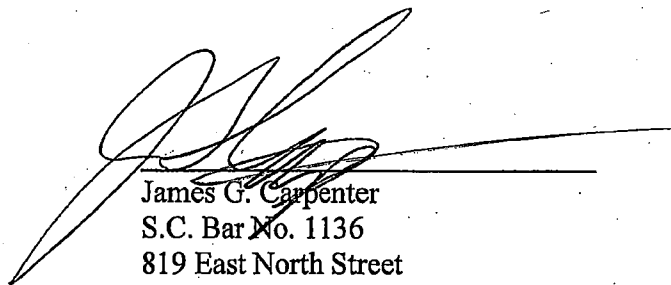
The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants' Initial Brief on opposing counsel by first class mail, postage prepaid, this August 25, 2017, addressed as follows:

J. Emory Smith, Jr.  
PO Box 11549  
Columbia, SC 29211

Michael Anzelmo  
Matthew A. Abee  
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Respectfully submitted,  
**THE CARPENTER LAW FIRM, PC**



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Attorney for the Plaintiffs

August 25, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-00484

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v.

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

Respondents.

**PROOF OF SERVICE**

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins  
Riley & Scarborough LLP, attorneys for The South Carolina Senate and the Honorable Hugh  
K. Leatherman, as President Pro Tempore of the South Carolina Senate, do hereby certify that  
I have served all counsel in this action with copies of the pleading(s) hereinbelow specified to  
the following address(es):

Pleadings:           **Motion to Dismiss the Appeal**

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SC Court of Appeals

Counsel Served:

**U.S. Mail**

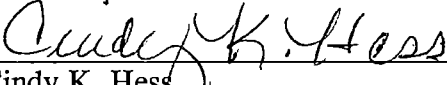
James G. Carpenter, Esquire  
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J. Emory Smith, Jr., Esq.  
South Carolina Attorney General's Office  
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Columbia, SC 29211

  
\_\_\_\_\_  
Cindy K. Hess  
Sr. Administrative Assistant

September 12, 2017



NELSON MULLINS

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ATTORNEYS AND COUNSELORS AT LAW

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September 12, 2017

**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: South Carolina Public Interest Foundation, et al. v. The South Carolina  
House of Representatives, et al.  
Civil Action No. 2017-CP-40-00484  
Appellate Case No. 2017-001638  
Our File No. 49622/01500

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven copies of a Motion to Dismiss the Appeal, along with our check for the filing fee. Please return a clocked-in copy to us via our courier.

By copy of this letter to all counsel, I am hereby serving them with a copy of this document.

Very truly yours,

Michael J. Anzelmo

MJA:ckh  
Enclosures

The Honorable Jenny Abbott Kitchings  
September 12, 2017  
Page 2

cc: James G. Carpenter, Esquire  
Jennifer J. Miller, Esquire  
L. Warren Clayton, III, Esquire  
Paul D. Harrill, Esquire  
Brad S. Wright, Esquire  
J. Emory Smith, Esquire