

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

**RECEIVED**

APPEAL FROM RICHLAND COUNTY

SEP 25 2017

Court of Common Pleas

**SC Court of Appeals**

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-001683

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

v.

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, in his Capacity as President Pro Tempore of the South Carolina Senate, and The State of South Carolina, ..... Respondents.

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**APPELLANTS' RESPONSE TO  
MOTIONS TO DISMISS APPEAL**

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James G. Carpenter, S.C. Bar No. 1136  
THE CARPENTER LAW FIRM, PC  
819 E. North Street  
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(864) 235-1269  
Attorney for Appellants

Other Counsel of Record:

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Bradley S. Wright  
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Columbia, SC 29211

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

## STATEMENT OF THE CASE

Appellants South Carolina Public Interest Foundation and Edward D. Sloan, Jr. filed suit against the South Carolina House of Representatives, the South Carolina Senate, their presiding officers, and the State of South Carolina, alleging that Act 275 of 2016 violates S.C. Constitution Article III § 17: “Every Act . . . shall relate to but one subject, and that shall be expressed in the title”.

None of the Respondents filed an Answer. Respondents filed Motions to Dismiss under SCRCP 12(b)(1) and (6), asserting the Appellants lacked standing, that the Complaint does not present a justiciable controversy, and that Act 275 does not violate the Constitution. The Circuit Court granted the Motions to Dismiss, ruling that Appellants lacked standing, and that Appellants had “failed to state a claim under the One Subject Rule.” Order entered July 6, 2017, p. 4.

Appellants appeal, contending that the Circuit Court erred both in its ruling that the Appellants lacked standing and in its ruling that the Appellants had failed to state a claim for constitutional violation.

After Appellants filed their Initial Brief, the Senate Respondents moved to dismiss the appeal contending Appellants failed to order a copy of the Circuit Court transcript and that Appellants Initial Brief was a day late. The House Respondents moved to dismiss the appeal, alleging the failure to order a transcript. The State of South Carolina did not file a Motion to Dismiss the appeal.

Respondents’ motions should be denied.

## **DISCUSSION**

### **I. APPELLANTS ORDERED A TRANSCRIPT.**

In the Circuit Court, Respondents filed no Answers. The Circuit Court held no evidentiary hearing. Instead, the Circuit Court held a hearing on the Respondents' Motions to Dismiss on June 13, 2017. At the end of the hearing, the Circuit Court announced that it would grant the Motions to Dismiss.

After the hearing, the Circuit Court Judge strongly encouraged, and indeed arranged for the court reporter to transcribe the hearing, and encouraged the preparation and distribution of the transcript so that Respondents could use the transcript to draft the proposed Order. Appellants ordered a transcript that day. Accordingly, the court reporter quickly transcribed the hearing, certified the transcription two days later on June 15, 2017. On June 16, 2017, at 9:29 AM, the court reporter emailed the transcription to the undersigned counsel. The court reporter states he also provided a transcript to counsel for the Senate Respondents and the Circuit Judge June 16, 2017, but that the House Respondents and the State had declined to request a transcript. (See attached email string.)

If Respondents are suggesting Appellants must order another copy of the same transcript, that would be a senseless and unnecessary act. Accordingly, the Motions to Dismiss for failure to order a transcript should be denied.

Respondents' assertions that Appellants had failed to order a transcript seem to betray a lack of candor with the Court, and seem to violate Rule 269, SCACR (frivolous motions).

**II. THE COURT SHOULD DEEM APPELLANTS' INITIAL BRIEF AND DESIGNATION TIMELY SERVED OR ALLOW APPELLANTS PERMISSION TO SERVE THEM ONE DAY OUT OF TIME.**

After receiving a copy of the transcript, counsel for the Senate drafted the proposed order (without referencing anything in the transcript) and submitted it to the Circuit Court on July 5, 2017. The Circuit Court signed its Order dismissing this action July 6, 2017, and the Clerk of Court's office file stamped it on July 6, 2017. That same day, the Senate Respondents emailed a file-stamped copy of the Order to the Appellants, ensuring that Appellants received a file-stamped copy of the Order on July 6, 2017. The Clerk of Court's office emailed copies of the Order July 7, 2017.

Appellants served Notice of Appeal on July 25, 2017, by regular US mail, several days **before** the 30 day deadline for the Notice of Appeal. The Court of Appeals stamped the Appellants' cover letter and Notice of Appeal "RECEIVED August 2, 2017 SC Court of Appeals." Appellants believed that they had 30 days from August 2, 2017 to file and serve their Initial Brief and Designation of Matters for the Record on Appeal.

Appellants served their Initial Brief and the Designation of Matter to Be Included in the Record on Appeal by US mail in a letter dated August 25, 2017. The Court of Appeals stamped both matters "RECEIVED August 28, 2017 SC Court of Appeals." August 28 is fewer than 30 days from August 2.

Nevertheless, the Senate Respondents insist that the Appellants filed their Initial Brief one day late, and therefore the appeal should be dismissed. The House Respondents do not make this argument. The Attorney General did not join in this argument or the argument alleging failure to order the transcript.

A careful reading of Rule 208(a) does indicate that the 30 days starts with the date of service, not the date the Court received the Notice of Appeal. Accordingly Appellants

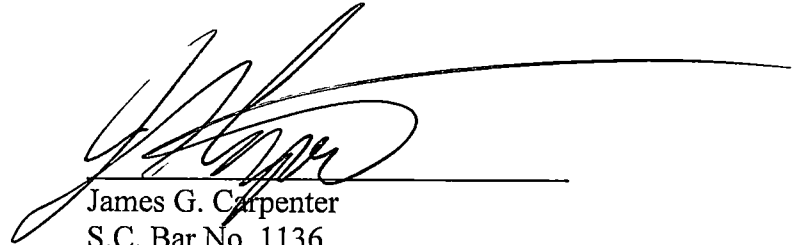
pray the Court to *deem* their Initial Brief and Designation timely served, and in the alternative, grant them permission to serve them one day out of time (August 24 to August 25).

### CONCLUSION

Appellants pray the Court to overrule the Motions to Dismiss the Appeal for lack of a transcript, because it is factually erroneous.

Appellants further pray the Court to deem their Initial Brief and Designation timely served, and in the alternative to grant them permission to serve the Initial Brief and Designation one day out of time.

Respectfully submitted,  
**THE CARPENTER LAW FIRM, PC**

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line. The signature is stylized and cursive.

James G. Carpenter  
S.C. Bar No. 1136  
819 East North Street  
Greenville, SC 29601  
(864) 235-1269  
Attorney for the Appellants

## James Carpenter

---

**From:** LeBlanc, Steven <sleblanc@sccourts.org>  
**Sent:** Wednesday, September 20, 2017 11:19 AM  
**To:** James Carpenter  
**Subject:** Re: S.C. PUBLIC INTEREST V. S.C. HOUSE OF REPS.

I sent a copy to you, to Michael Anzelmo and to Judge Casey Manning on 6/16/17. No one else requested a copy.

---

**From:** James Carpenter <james.carpenter@carpenterlawfirm.net>  
**Sent:** Wednesday, September 20, 2017 7:33 AM  
**To:** LeBlanc, Steven  
**Subject:** RE: S.C. PUBLIC INTEREST V. S.C. HOUSE OF REPS.

Mr. LeBlanc,

An issue has come up about this transcript of hearing in relation to the appeal of this case. I need to get a response to the Court of Appeals.

Can you confirm that you sent copies of this transcript, not only to me, but also to counsel for the House, counsel for the Senate, and the SC Attorney General's office, and that you sent the transcripts to everyone on the same day, June 16, 2017?

Thanks,

Jim Carpenter

-----Original Message-----

**From:** LeBlanc, Steven [mailto:sleblanc@sccourts.org]  
**Sent:** Friday, June 16, 2017 9:29 AM  
**To:** james.carpenter@carpenterlawfirm.net  
**Subject:** S.C. PUBLIC INTEREST V. S.C. HOUSE OF REPS.

Mr. Carpenter, I will send signed cert. page to you in the mail.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants' Response to Motions to Dismiss Appeal on opposing counsel by email and by first class mail, postage prepaid, this September 20, 2017, addressed as follows:

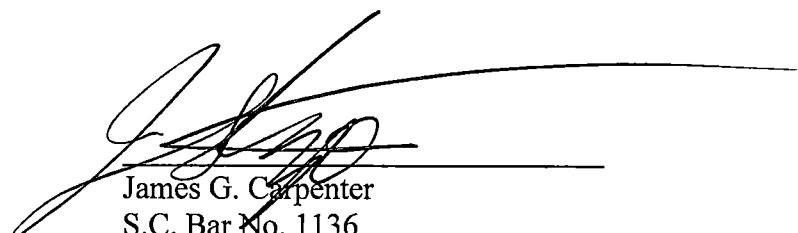
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Respectfully submitted,  
**THE CARPENTER LAW FIRM, PC**



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Attorney for the Plaintiffs

September 20, 2017



WHEN IT'S WORTH FIGHTING FOR

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

September 20, 2017

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

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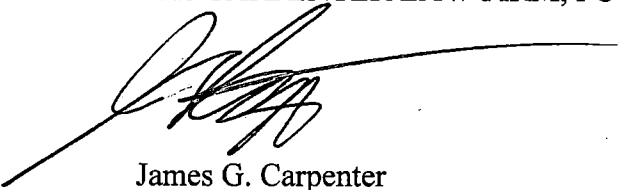
Re: *South Carolina Public Interest Foundation et al. vs. S.C. House of Representatives, et al*  
Appellate Case No. 2017--001683

Dear Ms. Kitchings:

I enclose an original and one copy of the Appellants' Response to Motions to Dismiss Appeal and 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.

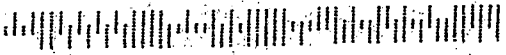
Sincerely yours,  
THE CARPENTER LAW FIRM, PC




James G. Carpenter

Enclosures

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



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