

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2017-CP-40-02523

RECEIVED
JAN 08 2018
SC Court of Appeals

State Media Company, The Post and Courier, Inc., Gannett GP Media, Inc.,
South Carolina Press Association, South Carolina Broadcasters Association,
The Associated Press.....Respondents

v.

South Carolina House Republican Caucus.....Appellant

MOTION TO DISMISS APPEAL

Respondents move to dismiss the within-captioned appeal on grounds that Appellant seeks to appeal orders denying a motion to dismiss, and such orders are interlocutory and not immediately appealable within the appellate jurisdiction of this court established by Section 14-3-330 of the South Carolina Code of Laws.

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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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South Carolina Press Association, South Carolina Broadcasters Association,
The Associated Press.....Respondents

v.

South Carolina House Republican Caucus.....Appellant

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL

BACKGROUND

Respondents, each of which is a news organization or an association of news organizations, filed and served an Amended Complaint seeking declaratory and injunctive relief providing access to records and meetings of appellant pursuant to the South Carolina Freedom of Information Act. S.C. Code Ann. §§30-4-10 *et seq.* (1976 rev. 2007). A copy of the Amended Complaint is attached hereto as Exhibit A and incorporated herein by reference. Appellant responded to the Amended Complaint by filing and serving a motion to dismiss pursuant to subsections (1) and (6) of Rule 12 of the South Carolina Rules of Civil Procedure. A copy of appellant's motion to dismiss is attached hereto as Exhibit B and incorporated herein by reference.

Following a hearing in open court the Circuit Court entered an order denying appellant's motion. A copy of the order denying the motion to dismiss is attached hereto as Exhibit C and incorporated herein by reference. Appellant next moved pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the order denying appellant's motion to dismiss. That motion was also denied. A copy of the order denying the motion to alter or amend the order denying the motion to dismiss is attached hereto as Exhibit D and incorporated herein by reference.

Appellant served a Notice of Appeal which was received by counsel for respondents on January 2, 2018. This motion is in response to the Notice of Appeal.

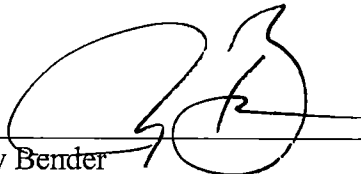
ARGUMENT

The appellate jurisdiction of this court is established by statute. S.C. Code Ann. §14-3-330 (1976). It has long been the law of South Carolina that an order denying a motion to dismiss is interlocutory and not immediately appealable within the appellate jurisdiction established by the General Assembly. *McLendon v. S.C. Dept. of Highways and Public Trans.*, 313 S.C. 525, 443 S.E.2d 539 (1994); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994); *see also, Levi v. Northern Anderson County EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App.2014). The interlocutory nature of an order denying a motion to dismiss is made clear by the requirement in the Rules of Civil Procedure that an Answer is to be filed within fifteen (15) days after notice of the court's action. Rule 12 (a)(1), SCRPC. Defendant neither filed nor served an Answer to the Amended Complaint, but has sought to appeal interlocutory orders denying its motion to dismiss the Amended Complaint.

CONCLUSION

Appellant's attempt to obtain appellate review of an order denying a motion to dismiss is outside the appellate jurisdiction of this court; therefore, the within appeal should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "JB", written over a horizontal line.

Columbia, South Carolina

January 8, 2018

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ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

STATE MEDIA COMPANY, THE POST)
AND COURIER, INC., GANNETT GP)
MEDIA, INC., SOUTH CAROLINA)
PRESS ASSOCIATION, SOUTH)
CAROLINA BROADCASTERS)
ASSOCIATION, THE ASSOCIATED)
PRESS.)

2017-CP-40-02523

ACTION FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF UNDER THE SOUTH
CAROLINA FREEDOM OF
INFORMATION ACT

PLAINTIFFS)

VS.)

NON-JURY)

SOUTH CAROLINA HOUSE)
REPUBLICAN CAUCUS,)
DEFENDANT)

AMENDED COMPLAINT

Plaintiffs, complaining of defendant, allege:

1. Plaintiffs State Media Company, and The Post and Courier, Inc. are corporations organized and existing under the laws of the state of South Carolina in which they publish *The State* and *The Post and Courier* newspapers respectively. Plaintiff Gannett GP Media, Inc. is a corporation organized and existing under the laws of the state of Delaware with authority to conduct business in South Carolina where it publishes *The Greenville News* newspaper.
2. Plaintiff South Carolina Press Association is an organization of 101 member newspapers published in South Carolina, and is organized as a South Carolina not-for-profit corporation.
3. Plaintiff South Carolina Broadcasters Association is an organization of 170 radio and television stations broadcasting in South Carolina, and is organized as a South Carolina not-for-profit corporation.
4. Plaintiff The Associated Press is a news cooperative organized and existing under the laws of the State of New York and authorized to conduct business in South Carolina.

RICHLAND COUNTY
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GANNETT GP MEDIA, INC.
C.C.P. 40-02523

5. Defendant South Carolina House Republican Caucus is an association of Republican members of the South Carolina House of Representatives.

6. Defendant is committee of the House of Representatives under the provisions of Section 2-17-10(11) of the Code of Laws of South Carolina, supported in whole or in part by public funds, and is therefore a “public body” under the South Carolina Freedom of Information Act (FOIA), sections 30-4-10 *et seq.* of the South Carolina Code of Laws.

7. Defendant has in its control “public records” as defined in the FOIA.

8. Defendant from time to time holds “meetings” of its members as that term is defined in the FOIA.

9. Plaintiffs have requested the opportunity to inspect and copy public records of defendant, but defendant has failed and refused to allow inspection and copying of is public records as required by the FOIA.

10. As an example of defendant’s disregard of the public records requirements of the FOIA, a reporter for *The State* newspaper on March 29, 2017 requested in writing “any and all itemized payments the House Republican Caucus has made to Mail Marketing Strategies or Rick Quinn,” and “any and all itemized payments the House Republican Caucus has made to First Impressions or any and all affiliates of Richard Quinn & Associates.”

11. The records described in paragraph 10 above are records “specifically made public information” under the FOIA in that these records “contain information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies.”

12. The FOIA requires that upon receipt of a written request for public records, a public body must notify the person making the request “of its determination and the reasons therefor.”



13. Defendant, through its attorney denied the request for public records, stating, "...[Y]our requests are not appropriately directed to the SCHRC."

14. The FOIA requires that all meetings of all public bodies shall be public, and that persons be allowed to attend and record the meetings of public bodies.

15. Representatives of plaintiffs have consistently sought to attend meetings of defendant, but in each instance have been denied entry to the meetings in violation of the FOIA.

16. Plaintiffs are informed and believe that this court should issue its order declaring that defendant is a public body, that the records of defendant are public records subject to disclosure under the FOIA, and that the failure of defendant to allow inspection and copying of its records is a violation of the FOIA.

17. Plaintiffs are informed and believe that this court should issue its order declaring that defendant's meetings are to be public under the FOIA, that representatives of plaintiffs are allowed to attend and record the meetings, and that the failure of defendant to allow representatives of plaintiffs to attend and record its meetings is a violation of the FOIA.

18. Plaintiffs are informed and believe that the FOIA provides that a violation of the FOIA is an irreparable injury for which no adequate remedy at law exists, thereby establishing a threshold for the grant of injunctive relief.

19. Plaintiffs are informed and believe that this court should issue its order enjoining and restraining defendant from continuing to violate the FOIA by refusing to make its records public.

20. Plaintiffs are informed and believe that this court should issue its order enjoining and restraining defendant from continuing to violate the FOIA by refusing to allow representatives of plaintiffs to attend and record meetings of defendant.

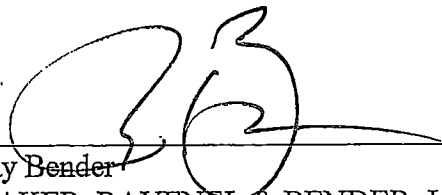
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21. Plaintiffs are informed and believe that the FOIA provides that should they prevail in whole or in part in this suit that they are entitled to an award of attorney fees and costs, and that this court should issue its order requiring defendant to pay attorney fees and costs to plaintiffs.

WHEREFORE, plaintiffs pray that this court issue its order declaring that defendant is a public body, that its records are public records subject to disclosure, that the meetings of defendant are meetings to which plaintiffs' representatives are entitled to attend and record, and that the failure and refusal of defendant to make its records public or allow persons to attend and record its meetings are in violation of the FOIA. Plaintiffs further pray that this court issue its order enjoining and restraining defendant from continuing to violate the FOIA by denying access to its records and meetings. Plaintiffs pray that this court award them attorney fees and costs together with such other relief as may be appropriate.

Columbia, South Carolina

May 2, 2017



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ATTORNEYS FOR PLAINTIFFS

#4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

STATE MEDIA COMPANY, THE POST
AND COURIER, INC., GANNETT GP
MEDIA, INC., SOUTH CAROLINA PRESS
ASSOCIATION, SOUTH CAROLINA
BROADCASTERS ASSOCIATION,
THE ASSOCIATED PRESS,

Civil Action No. 2017-CP-40-02523

PLAINTIFFS,

DEFENDANT'S MOTION TO DISMISS

vs.

SOUTH CAROLINA HOUSE
REPUBLICAN CAUCUS,

DEFENDANT.

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2017 JUN -2 PM 3:02
CLERK OF COURT
C.C.P. & C.S.


The Defendant, the South Carolina House Republican Caucus (the "Caucus"), by and through its undersigned counsel, moves the Court, pursuant to S.C.R.Civ.P. 12(b)(1) and (6), for an order dismissing the above-captioned action for lack of jurisdiction over the subject matter and failure to state facts to constitute a cause of action. Plaintiffs allege that the Caucus is a public entity that must respond to requests for documents and the open meeting requirements of the Freedom of Information Act, S.C. Code § 30-40-10 *et seq.* ("FOIA"). This cause of action, however, presents a nonjusticiable political question because the South Carolina House of Representatives (the "House"), pursuant to its powers under the South Carolina constitution, enacted a rule of procedure that exempts legislative caucuses from the FOIA. Therefore, this Court does not have the constitutional power to rule on this case. *State ex rel. Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625, 630 (1936) (holding that House rules are "absolute and beyond the challenge of any other body or tribunal" so long as they are constitutional and do not impact fundamental

Exhibit B

rights (quoting *United States v. Ballin*, 144 U.S. 1, 5 (1892)); see also *South Carolina Public Interest Foundation v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 632 S.E.2d 277 (2006). Nonjusticiability is a question of law and is therefore appropriate to address at the pleadings stage. Defendant South Carolina House Republican Caucus therefore respectfully requests that this case be dismissed as this Court is without jurisdiction to grant the relief sought by Plaintiffs.

In support of this motion, Defendant relies upon the complaint, the applicable law, and the memorandum of law filed herewith.

Respectfully submitted,



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*Attorneys for Defendant South Carolina House
Republican Caucus*

June 2, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

STATE MEDIA COMPANY, THE POST)
AND COURIER, INC., GANNETT GP)
MEDIA, INC., SOUTH CAROLINA)
PRESS ASSOCIATION, SOUTH)
CAROLINA BROADCASTERS)
ASSOCIATION, THE ASSOCIATED)
PRESS.)

2017-CP-40-02523

ORDER DENYING
DEFENDANT'S MOTION TO DISMISS

PLAINTIFFS)

VS.)

SOUTH CAROLINA HOUSE)
REPUBLICAN CAUCUS,)
DEFENDANT)

RICHLAND COUNTY
FILED
2017 NOV -9 PM 1:15
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

BACKGROUND

Plaintiffs initiated the within-captioned action seeking a declaratory judgment and injunctive relief under the South Carolina Freedom of Information Act (FOIA). S.C. Code Ann. §§30-4-10 *et seq.* (1976). Prior to the time defendant responded to the Summons and Complaint, plaintiffs filed an Amended Complaint. Defendant responded to the Amended Complaint with the filing and service of a Motion to Dismiss pursuant to Rule 12(b)(1) and (6), SCRCF. Plaintiffs allege defendant is by statute recognized as a "committee" of the General Assembly, S.C. Code Ann. §2-17-10(11) (1976), and, therefore subject to the FOIA. S.C. Code Ann. §30-4-20(a) (1976).

Plaintiffs requested from Defendant records relating to activities of Defendant. Defendant responded to Plaintiffs' request stating it was not the appropriate entity from which to obtain the requested records, and taking the position that as a consequence of the adoption of a proviso in Rule 4.5 by the House of Representatives, it is exempt from the requirements of the

Exhibit C

FOIA. The underlying premise of Defendant's Motion to Dismiss is that this court is precluded from ruling on Plaintiffs' suit because once the House of Representatives adopted Rule 4.5, any challenge to that rule or any portion of that rule presents a non-justiciable political question.

A hearing was held in open court in Richland County on October 25, 2017 at which time the parties appeared through counsel.

DISCUSSION

The determination of whether a matter is a non-justiciable political question requires an evaluation of whether an adjudication of the matter would place a court in conflict with a coequal branch of government. *S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n.*, 369 S.C. 139, 632 S.E.2d 277 (2006). In an instance where there is "a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority," a court "is duty bound to review the actions of the Legislature" to determine if the actions taken are constitutional. *Alexander v. Houston*, 403 S.C. 615, 744 S.E.2d 517, 519 (2013), quoting *Segars-Andrews v. Judicial Merit Selection Comm'n.*, 387 S.E. 109, 122, 691 S.E.2d 453, 460 (2010). Plaintiffs argue that the proviso portion of House Rule 4.5 seeking to exempt Defendant from the disclosure requirements of the FOIA is unconstitutional.

Defendant, relying on *State ex rel. Coleman v. Lewis*, 181 S.C. 10, 186 S.E.625 (1936), argues that this court cannot consider whether the adoption by the House of Representatives of its Rule 4.5 is constitutional on grounds that such an inquiry would intrude on legislative prerogatives. Defendant overstates that decision's limitation on judicial inquiry. The Supreme Court of South Carolina explained that a court could not consider whether a rule adopted by the General Assembly could have been "better," "more accurate" or "more just," as such a consideration would put a court in conflict with the policy choice made by the Legislature.

Lewis, supra, 186 S.E.2d at 630. In contrast to this deferral to legislative policy choices, the Supreme Court in *Lewis* stated clearly that while our state's constitution "empowers each House [of the General Assembly] to determine its rules and proceedings[,] Neither House may by its rules ignore constitutional restraints or violate fundamental rights..." *Id.*

Rule 4.5 provides in its pertinent provision:

All meetings of all committees shall be open to the public at all times, subject always to the power and authority of the Chairman to maintain order and decorum with the right to go into Executive Session as provided for in the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. *Provided, a legislative caucus as defined by Section 2-17-10 of the 1976 Code of Laws of South Carolina, as amended, and its meetings are not subject to the provisions of Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. [Emphasis supplied.]*

This court is satisfied this case presents a bona fide controversy regarding whether the proviso portion of House Rule 4.5, highlighted above, which exempts Defendant from the requirements of the FOIA, is constitutional. If the adoption of the proviso is constitutional, no additional inquiry by the court is permitted. If the adoption of the proviso "ignore[s] constitutional restraints or violates fundamental rights..." this court, pursuant to the authority of *Lewis, supra*, may declare the proviso unconstitutional and void.

Defendant argues the adoption of the proviso to exempt it from compliance with the FOIA is authorized by Art. III, section 12 of the South Carolina Constitution which provides:

Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Defendant also argues that the adoption of the proviso to Rule 4.5 is supported by Art. III, section 23 of the South Carolina Constitution which states:

EL-3

The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

It seems clear that Art. III, section 23 of the South Carolina Constitution has no application to this matter as Plaintiffs' allegation is that Defendant, as a committee of the House of Representatives, is acting in conflict with the FOIA, not that the House of Representatives as a body is closing its doors in violation of the law. Defendant is not the branch of the General Assembly "styled" the "House of Representatives," S.C. Const. Art. III, section 1, and, the House of Representatives is not the defendant here.

Plaintiffs assert that the proviso language in Rule 4.5 is a unilateral attempt by the House of Representatives to limit the application of a duly enacted law, and is thus unconstitutional. Adoption of a law by the General Assembly requires approval by each the Senate and the House of Representatives after three readings on three separate days, the placement of the Great Seal of the State and the signatures of the President of the Senate and the Speaker of the House of Representatives. S.C. Const. Art. III, section 18. After approval by both houses of the General Assembly, a bill becomes law only upon approval by the Governor, except in those instances when the passage of time without action after receipt of the bill by the Governor indicates approval as a matter of law. S.C. Const. Art. IV, section 21. The South Carolina Constitution also requires that all laws shall be styled, "Be it enacted by the General Assembly of the State of South Carolina." S.C. Const. Art. III, section 16. The rules of the House of Representatives are not subject to the same formalities and requirements as legislation, and may be amended by a simple majority vote of the members at any time during the month of January. Rule 4.15, Rules of the House of Representatives of South Carolina.

Plaintiffs directed the court's attention to Act. No. 593 of 1978 by which the FOIA was adopted. As reflected in the 1978 *Acts and Joint Resolutions of the General Assembly*, the Act

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starts with "Be it enacted by the General Assembly of the State of South Carolina," Act No. 593, 1978 Acts 1736, as required by Article III, section 16 of the South Carolina Constitution. The report of the action of the General Assembly with respect to Act 593 closes with "Approved the 18th day of July, 1978" as required by Article IV, section 21 of the South Carolina Constitution. *Id.* In other words, the FOIA was adopted as an Act in conformity with the South Carolina Constitution and codified as a statute. In contrast the House Rule which seeks to amend that Act does not comply with the constitutional requirements for the adoption of legislation.

The portion of Rule 4.5 that precedes the proviso makes clear that the House of Representatives acknowledges that its committees are subject to the FOIA. This acknowledgement is consistent with both the definition of "public body" in the Code of Laws, and the decision of the Supreme Court of South Carolina holding that committees of public bodies are themselves public bodies under the FOIA. S.C. Code Ann. §30-4-20(a) (1976); *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). The General Assembly by statute has also acknowledged that a political caucus of either house of the General Assembly is "a committee of either house of the General Assembly." S.C. Code Ann. §2-17-10(11) (1976). Absent the proviso in Rule 4.5, Defendant would without question be a public body and subject to the FOIA.

Defendant points to an opinion of the Attorney General of South Carolina which, after concluding that a political caucus and a "Majority Caucus" would be public bodies under the FOIA, noted the General Assembly could enact legislation to exempt political caucuses from FOIA, or, in the alternative, that South Carolina courts would probably defer to a legislative rule exempting a caucus from FOIA requirements. Op. S.C. Atty. Gen. 5/19/2006 (2006 WL 1574910). It is undeniable that the General Assembly could enact legislation through the



constitutional process which would exempt Defendant from the FOIA, which it has not done. The suggestion by the Attorney General that an exemption to the FOIA could be created by a rule and not legislation is not persuasive. The Opinion of the Attorney General stated that courts in other jurisdictions have accepted rulemaking by a legislative body as a device to exempt caucuses from FOIA in those states, but provides no analysis of the constitutional provisions supporting those actions in other states. This court is charged with evaluating the action of the House of Representatives in the context of the South Carolina Constitution which restricts rulemaking to "rules of procedure." S.C. Const. Art. III, section 12. Opinions of the Attorney General are not precedent, and a forecast by the Attorney General as to how a court might reach a decision is simply a prediction. Nothing in the language of the opinion relied upon by Defendant discusses the constitutionality of a rule adopted by only one house of the General Assembly which seeks to amend with respect to that house the reach of a duly enacted Act.

While it is true that the South Carolina Constitution gives each house of the General Assembly the power to adopt rules, that rulemaking power is restricted to "rules of procedure." S.C. Const. Art. III, section 12. "Procedure" is commonly defined as:

1. A way of performing or effecting something.
2. A course of action.
3. A set of established forms or methods for carrying on the affairs of a business, legislative body, or court of law.

Webster's II *New College Dictionary* (Houghton Mifflin Co. 1995).

Black's Law Dictionary distinguishes procedure as a mode of proceeding from the law which gives or defines a right. *Black's Law Dictionary* (Rev. 4th ed. 1968). In other words, process versus product. In this vein, as of the date of this order, the House of Representatives had adopted 10 rules with numerous subparts. No rule or part thereof, other than the proviso in Rule 4.5, seeks to avoid or negate a requirement of a state law. The proviso in Rule 4.5 contrasts

CP 6

sharply with other rules of the House which relate to procedure, for example, specifying the method by which votes are to be cast, the steps necessary to recall a bill from committee, or specify those persons who are allowed access to the legislative chamber.¹ Of pertinence to this dispute is House Rule 10.3 which contains definitions, including the definition of an "Act":

3. "Act" An act is the term applied to a bill that has passed both Houses, been ratified by the presiding officer of each House and signed by the Governor or passed over his veto. It is a permanent measure, having the force of law until repealed. [emphasis supplied].

As discussed above, the FOIA was adopted as Act 593 of 1978. Under House Rule 10.3.3, "It is a permanent measure, having the force of law until repealed." An attempt by the House of Representatives unilaterally to repeal or amend a "permanent measure, having the force of law" by adopting a rule ignores the restraint contained in the Constitution of South Carolina that limits legislative rulemaking to "rules of procedure." S.C. Const. Art III, section 12. Defendant cannot, consistent with the Constitution, accomplish by rule that which must be accomplished by legislation adopted by both houses of the General Assembly and approved by the Governor.

CONCLUSION

Both houses of the General Assembly have the constitutional authority to adopt rules of procedure, and courts will not exercise judicial power with respect to a rule adopted by a legislative body beyond a determination of whether the rule is within the restraints of the South Carolina Constitution. However, a court is never barred from considering a controversy merely

¹ Other examples of rules of procedure adopted by the House of Representatives include: Rule 1.4 "Speaker shall decide all points of order;" Rule 2.3 Clerk shall cause to be kept a correct journal of the proceedings of the House; Rule 3.8 No member shall speak more than twice on the same question without leave of the House; Rule 4.4 Committees shall meet regularly to consider pending legislation; Rule 5.2 Every bill before presentation shall have its title endorsed; Rule 6.3 establishes the daily order of business; Rule 7.2 establishes procedures for voting; Rule 8.1 No motion shall be debated until it shall have been stated by the Speaker; Rule 9.4 a proposed amendment shall be in order regardless of the number of changes proposed. Rules of the South Carolina House of Representatives.



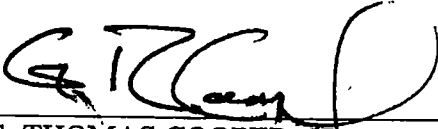
because it is characterized as "political." Based on the foregoing, the proviso in Rule 4.5 is inconsistent with the power of the houses of the General Assembly to adopt rules of procedure because the proviso in Rule 4.5 is not a procedural rule, but a unilateral effort by one house of the General Assembly to amend state law. The FOIA cannot be amended except by legislation in the form of an "Act" meeting the requirements of the Constitution, and as described in House Rule 10.3.3.

For the reasons stated above, IT IS HEREBY ORDERED that defendant's motion to dismiss the Amended Complaint in the within-captioned action be, and the same hereby is, DENIED.

AND IT IS SO ORDERED.

Columbia, South Carolina

~~November 9~~, 2017


G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP4002523

State Media Company

South Carolina House Republican Caucus

Post And Courier Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

FILED
 2017 NOV 13 PM 12:33
 RICHLAND COUNTY
 CLERK OF COURT

ORDER INFORMATION

This order ends does not end the case. Additional information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2126 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Nov, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Jerry Jay Bender

Mark Carroll Moore

Russell Thomas Burke

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Grider

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 State Media Company, The Post and)
 Courier, Inc., Gannet GP Media, Inc.,)
 South Carolina Press Association, South)
 Carolina Broadcasters Association, The)
 Associated Press,)
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 Plaintiffs,)
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 v.)
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 South Carolina House)
 Republican Caucus,)
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 Defendant.)
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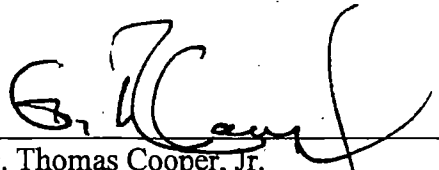
IN THE COURT OF COMMON PLEAS
 C/A No. 2017-CP-40-02523

**ORDER DENYING DEFENDANT'S
 MOTION TO ALTER OR AMEND
 THE JUDGMENT**

RICHLAND COUNTY
 FILED
 2017 DEC 13 AM 10:41
 JEANNETTE W. HOSBORN
 C.C.P. & G.S.

After careful consideration of the Defendant's Motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Defendant's Motion pursuant to Rule 59(e) SCRPC to Alter or Amend Judgment of this Court's Order entered on or about November 9, 2017. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


 G. Thomas Cooper, Jr.
 Presiding Judge, Fifth Judicial Circuit

December 14, 2017

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP4002523

State Media Company

South Carolina House Republican Caucus

Post And Courier Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2126 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Dec, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Jerry Jay Bender

Mark Carroll Moore
Jennifer Joan Hollingsworth

Russell Thomas Burke

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2017-CP-40-02523

RECEIVED

JAN 08 2018

SC Court of Appeals

State Media Company, The Post and Courier, Inc., Gannett GP Media, Inc.,
South Carolina Press Association, South Carolina Broadcasters Association,
The Associated Press.....Respondents

v.

South Carolina House Republican Caucus.....Appellant

PROOF OF SERVICE

I, Suzanne Rodriguez, employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 8th day of January 2018, served counsel below with Respondents Memorandum in Support of Motion to Dismiss Appeal by mailing a copy of same via United States Mail, postage pre-paid, with the return address clearly indicated on the envelope, to counsel as shown below:

Mark C. Moore
Jennifer J. Hollingsworth
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia, SC 29202

William W. Wilkins
Andrew A. Mathias
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Post Office Drawer 10648
Greenville, SC 29601

A handwritten signature in cursive script that reads "Suzanne Rodriguez". The signature is written in black ink and is positioned above a horizontal line.

Suzanne Rodriguez

Legal Assistant

BAKER, RAVENEL & BENDER, L.L.P.

3710 Landmark Dr., Suite 400

Post Office Box 8057

Columbia, SC 29202

RECEIVED
JAN 08 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2017-CP-40-02523

State Media Company, The Post and Courier, Inc., Gannett GP Media, Inc.,
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v.

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PROOF OF SERVICE

I, Suzanne Rodriguez, employee of Baker, Ravenel & Bender, L.L.P., hereby
certify that I have, on this 8th day of January 2018, served counsel below with
Respondents Motion to Dismiss Appeal by mailing a copy of same via United States
Mail, postage pre-paid, with the return address clearly indicated on the envelope, to
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Greenville, SC 29601

A handwritten signature in black ink that reads "Suzanne Rodriguez". The signature is written in a cursive style with a horizontal line extending to the right across the end of the name.

Suzanne Rodriguez

Legal Assistant

BAKER, RAVENEL & BENDER, L.L.P.

3710 Landmark Dr., Suite 400

Post Office Box 8057

Columbia, SC 29202