THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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

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 House; the Honorable Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore of the South Carolina Senate; and the State of South Carolina, ... *Respondents*.

Final Brief of the South Carolina Senate and the Honorable Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore of the South Carolina Senate

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STATEMENT OF THE ISSUES ON APPEAL

The South Carolina Constitution requires legislative acts "relate to but one subject, and that shall be expressed in the title." Legislative acts are presumptively valid and a person challenging any act must have standing in the context of a justiciable controversy. The questions presented on appeal are:

I. Whether Appellants properly alleged a valid basis for standing?

II. Whether Act 275 of 2016 relates to one subject expressed in the title?

III. Whether Appellants preserved their objection to the timeliness of the trial court's pre-answer dismissal?

STATEMENT OF THE CASE

A. Overview of Act 275 of 2016

The South Carolina General Assembly passed Act 275 of 2016 (the "Transportation Infrastructure Act") on June 1, 2016, and it was signed by the South Carolina Governor on June 8, 2016. (2016 S.C. Acts 275; R. at 118.) The title explains that the Transportation Infrastructure Act relates to the State's transportation infrastructure.[1] (2016 S.C. Acts 275; R. at 120.) The Act pertains to the agencies and directors of state government charged with governing, maintaining, and funding the state's transportation infrastructure system: the Commission of the Department of Transportation, the Secretary of Transportation, the Joint Transportation Review Committee, and the South Carolina Transportation Infrastructure Bank. (2016 S.C. Acts 275; R. at 120.) The title also sets forth the code sections to be amended relating to the fees or fines collected by the

[1] This differs from the summary of the bill provided by the Office of Legislative Council, which is not a part of the Act. (*See* 2016 S.C. Acts 275; R. at 118.)

Department of Motor Vehicles so as to direct those funds to the State Highway Fund for infrastructure improvements. (2016 S.C. Acts 275; R. at 121.)

The Transportation Infrastructure Act details the specific areas addressed: (1) "Governing the Improvement of the State's Transportation Infrastructure System," (2) "Funding the Improvement of the State's Transportation Infrastructure System," and (3) "Transition Provisions and Effective Date." (2016 S.C. Acts 275; R. at 122, 130, 164.) The Transportation Infrastructure Act states the subject it addresses:

> The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates 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.
>
> The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

(2016 S.C. Acts 275, § 89; R. at 165.)

B. Procedural History

Appellants South Carolina Public Interest Foundation and Edward D. Sloan, Jr. filed their complaint for declaratory judgment against the South Carolina Senate and the Honorable Hugh K. Leatherman, Sr., in his capacity as President *Pro Tempore* of the South Carolina Senate (collectively, the "Senate"),[2] the South Carolina House of Representatives and the Honorable James H. "Jay" Lucas, as Speaker of the South Carolina House of Representatives (collectively,

[2] Appellants initially named the Honorable Henry D. McMaster as President of the South Carolina Senate. (Compl.; R. at 21.) The trial court subsequently reformed the caption, substituting the Honorable Hugh K. Leatherman for Governor Henry D. McMaster. (Order at 1 n.1; R. at 11.)

the "House"), and the State of South Carolina (the "State"). Appellants' complaint alleges the Transportation Infrastructure Act violates Article III, Section 17 of the South Carolina Constitution (the "One Subject Rule"). (Compl. at 3; R. at 23.) Respondents all moved to dismiss for lack of standing and failure to state a claim. (Mots. Dismiss; R. at 24, 32, 42.)[3] The trial court granted the motions to dismiss for lack of standing, (Order at 2–4; R. at 3–5), and for failure to state a claim under Rule 12(b)(6), SCRCP, (Order at 4–9; R. at 5–8).

Appellants did not file a motion to alter or amend the trial court's order under Rule 59. Appellants served their notice of appeal on July 25, 2017. (Not. Appeal; R. at 64.) The Senate and the House moved to dismiss the appeal because Appellants failed to timely order the transcript and failed to timely file and serve their initial brief. The Court of Appeals denied the Senate and House's motions, instead granting Appellants' request to file their initial brief out of time. (Order, Oct. 18, 2017.) The State, the House, and Appellants then moved to transfer the case to this Court. The Court of Appeals granted the motion on December 4, 2017. (Order, Dec. 4, 2017.)

STANDARD OF REVIEW

This Court reviews the issues in this appeal *de novo*. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011) (reviewing justiciability and the trial court's statutory construction *de novo*); *Freemantle v. Preston*, 398 S.C. 186, 192–96, 728 S.E.2d 40, 43–45 (2012) (reviewing dismissal for lack of standing *de novo*); *Doe v. Bishop of Charleston*, 407 S.C. 128, 134–35, 754 S.E.2d 494, 497–98 (2014) (reviewing 12(b)(6) motion to dismiss *de novo*).

The Court "has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render

[3] The Senate joined in the arguments of the remaining Respondents. (Hr'g. Tr. 41:24–42:3, June 13, 2017; R. at 107–08.)

them valid." *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009). "A statute will not be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it violates some provision of the constitution," and "its repugnance to the constitution is clear and beyond a reasonable doubt." *Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 118, 691 S.E.2d 453, 458 (2010).

ARGUMENT

The trial court correctly dismissed Appellants' action because they lacked standing and failed to state a claim. Moreover, Appellants' challenge fails because the Transportation Infrastructure Act relates to only one subject: improvement of the State's transportation infrastructure system. The Court should affirm for any of these reasons.

I. Appellants failed to plead and establish a valid basis for standing.

Appellants seek to argue the merits of their challenge to the Act before addressing their lack of standing. (App. Br. at 4–6.) Their analysis is backwards. South Carolina courts must determine whether a party has standing before addressing the merits. *See ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 194–95, 669 S.E.2d 337, 339 (2008) ("We are obligated before reaching the merits of the rezoning question to determine whether ATC has standing to press its complaint. We conclude ATC does not have standing and that ends our inquiry."). Indeed, courts generally must not entertain a constitutional question where another issue—such as Appellants' lack of standing—is dispositive. *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (reiterating "this Court's firm policy to decline to rule on constitutional issues unless such a ruling is required"). Because the trial court correctly concluded that Appellant's status as a taxpayer did not establish standing and Appellants failed to properly plead or establish the public importance exception to standing, this Court should affirm.

A. Appellants do not have constitutional standing as taxpayers.

"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).[4] "A party seeking to establish standing bears the burden of proving it." *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013).

Appellants argue that they "possess standing as a citizen, resident, and taxpayer" of South Carolina. (Compl. ¶ 7; R. at 22.) They spend roughly half of their brief discussing the "long history" of taxpayer standing in South Carolina. (App. Br. 10–20.) Their brief fails to address the last nine years of South Carolina jurisprudence, however, in which this Court has unequivocally foreclosed the ability to establish constitutional standing by merely being a taxpayer:

> [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."

ATC, 380 S.C. at 198, 669 S.E.2d at 340–41.

Since *ATC*, this Court has twice held that a party's status as a taxpayer—or even a citizen, resident, and registered elector—cannot establish the necessary prerequisite of standing. *Bodman*,

[4] Appellants concede that they do not have standing under any statute but are only relying on "the equitable principles of the common law." (App. Br. at 16; Pl.'s Mem. Opp. Mot. Dismiss at 11; R. at 56.)

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*, 398 S.C. at 193, 728 S.E.2d at 44 (rejecting taxpayer standing to challenge county employee's severance package).

Appellants do not address *ATC*, *Bodman*, or *Freemantle*. Instead, Appellants argue that the trial court "simply refused" to consider the older taxpayer standing cases. (App. Br. at 19.) Appellants are correct; the trial court did refuse to consider the cases. It did so because all the cases Appellants cited to the trial court (and repeat in their brief) predate this Court's abrogation of taxpayer standing in *ATC*, as confirmed in *Bodman* and *Freemantle*. Because Appellants' status as taxpayers alone is no longer sufficient to establish standing, the Court should affirm.

B. The public importance exception to standing does not apply.

An exception to standing applies where the issue raised is one of great public importance *and* the issue's resolution is needed for future guidance. *ATC*, 380 S.C. at 199, 669 S.E.2d at 341. A party cannot only raise an important issue to establish standing, though. "The key to the public importance analysis is whether a resolution is needed for future guidance." *Id.*

Appellants failed to plead the need for future guidance and cannot otherwise establish this exception. Therefore, the Court should affirm Appellants' lack of standing.

1. Appellants failed to plead the need for future guidance necessary to establish the exception.

Appellants bear the burden of proving both elements to the public importance exception to standing—public importance and the need for future guidance—apply in this case. *S.C. Transp. Infrastructure Bank*, 403 S.C. at 645, 744 S.E.2d at 524. They have not done so. Like their complaint, Appellants' brief is devoid of any analysis on why the case is necessary for future guidance. (App. Br. at 7–10.) They instead take the position that because the constitutionality of the Transportation Infrastructure Act is at issue, the Court may ignore the standing requirement

altogether. (App. Br. at 10.) Accepting Appellants' argument would permit the public importance exception to "swallow the rule." *S.C. Transp. Infrastructure Bank*, 403 S.C. at 646, 744 S.E.2d at 524. Appellants' position would essentially allow any plaintiff to establish standing merely by filing a constitutional challenge.

The Court does not permit such broad challenges. As this Court stated in *Bodman*:

> In an era of frequent litigation, class actions, sweeping injunctions with prospective effect, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal rules of standing, not less so. Making the . . . standing inquiry all the more necessary are the significant implications of constitutional litigation, which can result in rules of wide applicability that are beyond Congress' power to change.

403 S.C. at 68–69, 742 S.E.2d at 367 (quoting *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011)).

This Court has steadfastly held that a plaintiff must establish more than the mere existence of an important public interest for the exception to apply. Less than a month before Appellants filed their initial brief, this Court again addressed the public importance exception to standing. *Jowers v. S.C. Dep't. Health and Envtl. Control*, Op. No. 27725 (S.C. Sup. Ct. filed July 19, 2017) (Shearouse Adv. Sh. No. 27 at 39), *reh'g granted* (Sept. 28, 2017). The Court again noted that the exception has a second, critical element. *Id.* Besides establishing an important public interest, a plaintiff must also show that future guidance on the question before the court is needed. *Id.*; *see also ATC*, 380 S.C. at 199, 669 S.E.2d at 341 ("It 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."). Despite the Court confirming that "future guidance" remains an integral part of the exception so close in time to the filing of Appellants' brief, Appellants fail to even address that element.

Appellants cannot take refuge in the fact that the public importance exception has been applied in their favor in prior, unrelated cases. They must show how the exception applies to this particular case. Their failure to plead the need for future guidance in their complaint or their brief requires the Court to affirm the dismissal of their action.

2. Resolution of this case is not needed for future guidance.

Even had Appellants addressed the issue, they cannot establish that future guidance is needed here. The Court has resolved cases involving the One Subject Rule six times in the last ten years. *See S.C. Pub. Interest Found. v. Lucas*, 416 S.C. 269, 272, 786 S.E.2d 124, 126 (2016); *S.C. Transp. Infrastructure Bank*, 403 S.C. at 645–46, 744 S.E.2d at 524; *Sea Cove Dev., LLC v. Harbourside Cmty. Bank*, 387 S.C. 95, 102, 691 S.E.2d 158, 161 (2010); *Am. Petroleum Inst. v. S.C. Dept. of Revenue*, 382 S.C. 572, 576, 677 S.E.2d 16, 18 (2009); *Giannini v. S.C. Dept. of Transp.*, 378 S.C. 573, 585, 664 S.E.2d 450, 456 (2008); *S.C. Pub. Interest Found. v. Harrell*, 378 S.C. 441, 445–46, 663 S.E.2d 52, 54–55 (2008). The Court has also previously addressed the issues of Department of Transportation Commissioner appointments, *see Sloan v. Hardee*, 371 S.C. 495, 500, 640 S.E.2d 457, 460 (2007), appointment of the Secretary of the Department of Transportation, *see Lucas*, 416 S.C. at 271, 786 S.E.2d at 126; *S.C. Pub. Interest Found. v. Rozier*, Op. No. 2016-MO-019 (S.C. Sup. Ct. filed May 18, 2016), whether the State Transportation Infrastructure Bank is properly constituted to avoid "casting a cloud of illegitimacy which could marginalize the important decisions" of its board of directors, *see S.C. Transp. Infrastructure Bank*, 403 S.C. at 646, 744 S.E.2d at 524, and the proper use of public funds by the Department of Transportation, *see S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 122, 804 S.E.2d 854, 861 (2017). Thus, similar issues have already been addressed by this Court—no future guidance would be provided by addressing Appellants' One Subject Rule challenge.

II. The Transportation Infrastructure Act does not violate the One Subject Rule.

Because Appellants do not have standing, the Court need not address their One Subject Rule claim. *ATC*, 380 S.C. at 194–95, 669 S.E.2d at 339 (requiring standing precede analysis of the merits of a claim), nor should it, *see McCracken*, 346 S.C. at 92, 551 S.E.2d at 238 (explaining general policy of constitutional avoidance). But if it does, the Court should affirm the trial court's determination that the Transportation Infrastructure Act complies with the One Subject Rule because the Act addresses one subject—the state's transportation infrastructure.

A. The trial court correctly found the Act related to only one subject.

Appellants seek a declaration from the Court that the Transportation Infrastructure Act violates the One Subject Rule. 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." *Dimukes v. Carletta*, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977). Appellants are not entitled to a declaration that the Act violates the One Subject Rule.

"Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." S.C. Const. art. III, § 17. A legislative act complies with the One Subject Rule when "the topics in the body of the act" are "kindred in nature." *Harrell*, 378 S.C. at 445, 663 S.E.2d at 54. Those topics must have a "legitimate and natural association with the subject of the title . . . ." *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 64, 467 S.E.2d 739, 741 (1995). The One Subject Rule is to be liberally construed so as to uphold a challenged act if practicable. *See McCollum v. Snipes*, 213 S.C. 254, 261, 49 S.E.2d 12, 14 (1948).

Each provision of the Transportation Infrastructure Act seeks to accomplish the General Assembly's goal of improving the state's infrastructure system. Not only does the Act allocate

additional revenue to fund infrastructure projects, (2016 S.C. Acts 275, §§ 8–85; R. at 130–63), but it also streamlines governance of the agencies tasked with using state funds to maintain, repair, and modernize the infrastructure, (2016 S.C. Acts 275, §§ 1–3; R. at 122–27). The Transportation Infrastructure Act also establishes auditing and oversight procedures to ensure that the allocated funds properly accomplish the goal of improving the transportation infrastructure, (2016 S.C. Acts 275, §§ 4–5; R. at 128–29), and mandates priorities for infrastructure projects, (2016 S.C. Acts 275, §§ 6–7; R. at 130). While each of these topics are necessarily addressed by different agencies across state government, they are all "kindred in nature" because each relates to improving the state's infrastructure system. *Harrell*, 378 S.C. at 445, 663 S.E.2d at 54.

Appellants erroneously rely on *S.C. Pub. Interest Found. v. Lucas* to argue that the changes to the governance of the relevant state agencies are not related to the raising and spending of public funds on transportation infrastructure. (App. Br. at 6.) In *Lucas*, this Court determined that a budget proviso regarding the appointment of the Secretary of the Department of Transportation violated the One Subject Rule because the proviso did not reasonably and inherently relate to the raising and spending of taxes, which is the necessary subject of a general appropriations act. 416 S.C. at 277, 786 S.E.2d at 129. As the trial court correctly found, however, *Lucas* is limited to cases involving a general appropriations act. (Order at 5; R at 6.) Here, the Transportation Infrastructure Act relates to the improvements of the state's transportation infrastructure system. Though it may include the use of tax funds to do so, the Act is not a general appropriations act, so *Lucas* provides Appellants no support.

The One Subject Rule does not convert the Court into a "superlegislature to second guess the wisdom or folly of decisions of the General Assembly." *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996). Nor does it require each detail necessary to accomplish an act's

subject be passed piecemeal. "It would be impractical and time-consuming to require the legislature to pass a separate act on every separate branch of a subject." *S.C. Pub. Serv. Auth. v. Citizens & S. Nat. Bank of S.C.*, 300 S.C. 142, 162, 386 S.E.2d 775, 787 (1989). The One Subject Rule prohibits the General Assembly from combining unrelated issues into a single act to prevent its members and its citizens from being informed and active participants in the legislative process. Because the Transportation Infrastructure Act does not violate this purpose, the court should affirm.

B. The Transportation Infrastructure Act's title expresses the subject.

Appellants claim that the Act also fails to express its subject in the title.[5] They are wrong. Contrary to Appellants' assertion, the title of an act "need not be an index to every provision of the act" to satisfy the One Subject Rule. *Am. Petroleum*, 382 S.C. at 577, 677 S.E.2d at 18 (quoting *Carll v. S.C. Jobs–Economic Dev. Auth.*, 284 S.C. 438, 442, 327 S.E.2d 331, 334 (1985)). The purpose of the title requirement of the One Subject Rule "is to prevent the General Assembly from being misled into passing bills containing provisions not indicated in their titles, and to apprise the people of the subject of proposed legislation and thus give them an opportunity to be heard if they so desire." *Keyserling*, 322 S.C. at 86–87, 470 S.E.2d at 102. The Act's actual title accomplishes both purposes. It explains each method by which the Act is to improve the state's infrastructure system, and these topics all relate to that single subject. (2016 S.C. Acts 275; R. at 120–21.) The title refers to transportation and the state agencies that govern, maintain, and fund the state's transportation infrastructure. (*Id.*) Legislators and citizens alike could easily make that

[5] Appellants argued to the trial court that the pertinent section of the Transportation Infrastructure Act for this analysis is the summary prepared by the Office of Legislative Services. (Tr. 15:8–20; R. at 81.) They argued that the summary stating the Act is about the South Carolina Transportation Infrastructure Bank establishes a constitutional violation. (*Id.*) Their argument to the trial court and their modified argument to this Court both fail.

determination from reading the title notwithstanding the absence of the exact phrase, "improving the state's infrastructure system." Thus, the Court should reject Appellants' argument that the title fails to express the subject of the bill.

III. Appellants failed to preserve their timeliness argument.

In a three-sentence argument in their Brief, Appellants claim that the trial court prematurely dismissed the action because "Respondents did not even file Answers to the Complaint." (App. Br. at 20.) This argument is not preserved for review.[6]

This Court has emphasized that each argument "must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). It is not enough that a party merely presents an argument to the trial court if the judge does not enter a specific ruling on the issue. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 407, 422, 526 S.E.2d 716, 724 (2000). Under those circumstances, where "the losing party has raised an issue in the lower court, but the trial court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *Id.*; *see also Hill v. S.C. Dep't. of Health and Envtl. Control*, 389 S.C. 1, 22 n.11, 698 S.E.2d 612, 623 n.11 (2010) (holding rule 59(e) "motions are required to preserve issues for appeal where the circuit court fails to rule on an issue.").

Although Appellants included the same three-sentence argument in their memorandum of law below that they include in their brief, the trial court did not address that issue in its order granting dismissal. (*See* Order; R. at 2.) When the trial court failed to address Appellants'

[6] Further, Appellants have abandoned this argument on appeal. This Court has held that a party who fails to argue or provide supporting authority for his arguments in his brief is deemed to have abandoned the issues. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Appellants' three conclusory sentences in their brief can hardly be considered an argument and they lack any support. (*See* App. Br. at 20.)

argument, Appellants had to move under Rule 59(e) to alter or amend the judgment to preserve the issue. *See I'On*, 338 S.C. at 422, 526 S.E.2d at 724. Instead of filing a Rule 59(e) motion though, Appellants filed their notice of appeal. (Not. Appeal at 1–2; R. at 64–65.) Appellants have, therefore, failed to preserve the issue for appeal.

CONCLUSION

Appellants rely on the same taxpayer standing arguments this Court has rejected time and again. Appellants also failed to plead the public importance exception to standing. The trial court properly dismissed this action for lack of standing. If the Court ignores the standing deficiency, the trial court properly dismissed Appellants' action for a failure to state a claim because the Transportation Infrastructure Act relates to only one subject.

This Court should affirm the dismissal.

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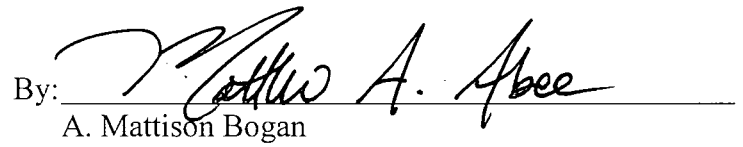
By: 

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Certificate of Compliance

Counsel certifies that this Final Brief complies with Rule 211(b), SCRCP.

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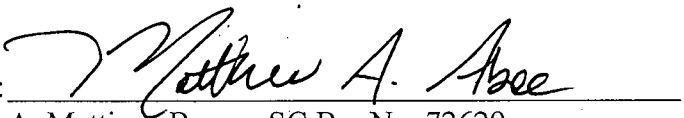
By: 

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Proof of Service

This Final Brief was served on all counsel of record by mail on February 27, 2018.

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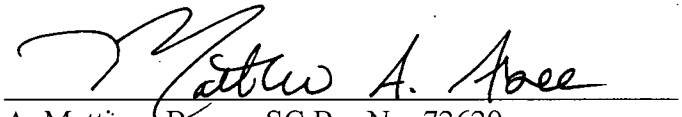
By: 

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