THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

FEB 28 2018

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-01638

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.

APPELLANTS' REPLY BRIEF

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorney for Appellants

Other Counsel of Record:

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

Matthew A. Abee
Kenneth M. Moffett
Allen Mattison Bogan
PO Box 11070
Columbia, SC 29211

Paul D. Harrill
Robert L. Widner
Bradley S. Wright
PO Box 11390
Columbia, SC 29211

Table of Contents

Table of Authorities

Cases

Constitution, Statutes & Rules

STATEMENT OF THE CASE

Appellants South Carolina Public Interest Foundation and Edward D. Sloan, Jr. submit this Appellants' Reply Brief to reply to the Respondents Briefs filed by the State of South Carolina, the South Carolina House of Representatives, the South Carolina Senate, and their presiding officers.

Appellants contend 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" (emphasis added). Respondents argue that Act 275 does not violate S.C. Constitution Article III § 17, and furthermore, that Appellants lack standing to bring this action. The Circuit Court agreed and granted Respondents' Motions to Dismiss.

There are many questions for this Court, but one of the most important is whether the General Assembly is free to ignore the plain language of the Constitution: "and that [one subject] **shall be expressed** in the title," *Id.* (emphasis added); or whether this constitutional provision is deemed "too insignificant to ensure the law is enforced." *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 119, 804 S.E.2d. 854, 859 (2017).

I. THE CIRCUIT COURT ERRED IN DISMISSING THIS ACTION UNDER RULE 12(b)(6).

The Circuit Court erred in dismissing the Complaint.

> Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995). The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to **any relief on any theory**.

Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

In another case, this Court expanded on the application of this rule.

> The question to be considered is **whether**, when viewed in the light most favorable to the plaintiff, **the complaint states any valid claim** for relief. Further, **the complaint should not be dismissed merely because the court doubts the plaintiff will prevail**. *Gentry [v. Yonce,* 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)]

Carolina Care Plan, Inc. v. United Healthcare Services, Inc., 361 S.C. 544, 549, 606 S.E.2d 752, 755 (2004) (emphasis added).

Furthermore, Rule 8(f), SCRCP, states that all pleadings are to be construed to do substantial justice to all parties. This Court has ruled that to ensure substantial justice to all parties, the pleadings must be liberally construed. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E. 2d 338 (1991).

Appellants alleged that an Act of the General Assembly violated the South Carolina Constitution. Accordingly, Appellants contend that their Complaint met the standard required by Rule 12(b)6, and it was improperly dismissed.

II. THE CIRCUIT COURT ERRED RULING THAT THE APPELLANTS SHOULD NOT BE GRANTED PUBLIC IMPORTANCE STANDING.

Respondents contend that Appellants lacked standing. The Circuit Court agreed with the Respondents and dismissed the Complaint for lack of standing. Under the law of standing, as recently articulated by this Court, Appellants should be granted public importance standing.

In the Complaint, Appellants clearly alleged a claim for public importance standing.

> 5. This Court possesses jurisdiction under . . . the South Carolina Constitution Article III § 17; S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*,

379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

(R. pp. 21-22). The decisions Appellants cited in paragraph 5 of their Complaint were multiple instances in which this Court and the Court of Appeals granted public importance standing to the Appellants when they alleged claims similar to the ones in this case. In addition, Appellants explicitly asserted their public importance standing in paragraph 6 of the Complaint: "Plaintiffs possess standing based on the great public importance of the issues they raise" (R. p. 22). Based on the authorities cited in the Complaint and the similarities to the case at bar, Appellants should have been granted public importance standing.

A. The Bridge Inspection Case Supports the Granting of Public Importance Standing.

A few weeks after the Appellants filed their initial brief in this case, this Court issued its opinion in another case brought by the Appellants addressing public importance standing, *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d. 854 (2017), the Bridge Inspection case. The Bridge Inspection case is this Court's most recent statement on public importance standing. This Court ruled, "The issue of whether SCDOT may inspect bridges within private, gated communities is one of public importance as it involves both **the conduct of a government entity** and the expenditure of public funds, *Id.,* 421 S.C. 110, 119, 804 S.E.2d. 854, 859 (emphasis added). In the Bridge Inspection case, this Court ruled that several factors

weighed in favor of granting public importance standing including the fact that "the issue involved **implicates both statutory and constitutional provisions**." *Id.* 421 S.C. at 119, 804 S.E.2d. at 859 (emphasis added). The ruling from the Bridge Inspection case should be applied to the case at bar.

The Court further reasoned, "Accordingly, we hold Petitioners have public importance standing. A contrary holding would essentially render a law superfluous if we deem the conduct it prohibits **too insignificant to ensure the law is enforced**," *Id.* (emphasis added). In other words, this Court ruled that it could not deem unconstitutional activity so insignificant that the constitutional violation was unworthy of this Court's time and energy. In the Bridge Inspection case, the amount of money spent unconstitutionally was estimated to be about $1,400. This Court ruled that despite the modest sum, it could not deem the constitutional violation "too insignificant to ensure the law is enforced." Appellants respectfully suggest that if the $1,400 unconstitutional expenditure cannot be deemed "too insignificant," then a major Act of the General Assembly reorganizing one of the largest departments in State government in violation of Article 3, Section 17 likewise cannot be deemed "too insignificant to ensure the law is enforced."

Interpreting and upholding the Constitution is one of this Court's chief functions. In a footnote in the Bridge Inspection case, the Court noted that this Court had granted Sloan or the South Carolina Public Interest Foundation standing in at least six other cases in which these Appellants challenged violations of the State Constitution or statutes. *Id.* Each one of those cases alleged either violation of state law or a violation of the Constitution, and none of those instances was deemed "too insignificant to ensure the law is enforced."

In the case at bar, Appellants have alleged an issue that "implicates both statutory and constitutional provisions," *Id.*, namely, that an Act of the General Assembly violates the Constitution. Accordingly under the rationale of the Bridge Inspection case, this is an issue of great public importance, and Appellants should have been granted public importance standing.

B. The *Ultra Virus* Nature of Act 275 Supports the Granting of Public Importance Standing.

This Court has held that the allegations of an *ultra vires* act by governmental body is sufficient to create an issue of great public importance and sufficient to grant standing to plaintiffs under the public importance doctrine. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). In *Baird*, the Court focused on the *ultra vires* nature of the County's action and the "profound public interest—the public health and welfare," rather than the need for future guidance. *Id.*, 333 S.C. at 531, 511 S.E.2d at 75. Furthermore, the Court's declaration that an act is *ultra vires* would provide future guidance.

> In this case, Doctors have specifically alleged that County committed an *ultra vires* act by exceeding its statutory authority to issue the hospital bonds. Moreover, the issuance of the hospital bonds clearly impacts a profound public interest—the public health and welfare. In fact, the express purpose of the Act is to promote the public health and welfare. *See* S.C.Code Ann. § 44–7–1420 (1985). It is hard to conceive of any greater societal interest than this one. **Thus, as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature for funding hospital development.** Thus, by virtue of the immense public interest at stake here, Doctors have standing to bring the present action, and any further determination of imminent prejudice is unnecessary.

Id. 333 S.C. at 531, 511 S.E.2d at 75-76. Similarly, Appellants in the case at bar have alleged that the General Assembly committed an *ultra vires* act by enacting a statute contrary to the South Carolina Constitution, R, p. 23. Like the doctors in *Baird*, the

Appellants have "a significant interest in ensuring that their [General Assembly] acts within the legal parameters established" by the Constitution for enacting legislation.

C. Two Cases on Which Respondents Rely Are Distinguishable.

The Respondent State of South Carolina argues that the Appellants lack public importance standing, and relies primarily on two cases, *ATC South, Inc., v. Charleston County,* 380 S.C. 191, 669 S.E.2d 337 (2008), and *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). Both of these cases are factually distinguishable from the case at bar. In *ATC*, the plaintiff asserted that it was a competitor to a company in the business of erecting cell phone towers. It was not an adjacent landowner, and thereby lacked standing under the statute related to zoning. The Court found that as a mere competitor, it did not have a concrete interest in the subject matter of the lawsuit or the zoning issue, and therefore it lacked what the Court termed "Constitutional standing."

Furthermore, the Court found that as a mere competitor to the entity erecting the cell phone tower, the plaintiff, in its limited role as a competitor, did not qualify as eligible for a grant of public importance standing. The Court reasoned:

> There is nothing *public* about ATC's concern with a competing cell-phone tower. Here, **a local government followed proper procedure** and rezoned a single piece of property for a narrow purpose and the only complaint comes from a nonadjoining landowner which just happens to be a competitor. ATC's efforts to cloak its zoning challenge as a matter of "public importance" for the purpose of acquiring standing finds no traction in this record.

Id. 380 S.C. 191, 199-200 669 S.E.2d 337, 341-42 (emphasis added). The plaintiff in *ATC* did not allege any illegality, and certainly not a constitutional violation. The fact that Charleston County "followed proper procedure" readily distinguishes *ATC* from the case at bar. Accordingly, this Court properly ruled that the plaintiff would not be granted public importance standing. That case demanded a result different from the case at bar.

The Attorney General also relies on *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012), to argue that the Appellants lacked public importance standing. Like the other cases in which the Attorney General relies, *Freemantle* is distinguishable from the case at bar. The biggest distinction is that Freemantle sought to recover damages for himself, based on an injury to the citizens of Anderson County as a whole. This Court ruled,

> This nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. **That Appellant sought monetary damages for himself** in his common law causes of action, while claiming to represent the taxpayers of Anderson County, **directly conflicts with the purpose and spirit of the public importance exception**.

398 S.C. 186, 194, 728 S.E.2d 40, 44 (emphasis added). Accordingly, *Freemantle* is readily distinguishable from the case at bar, in that the Appellants herein do not seek money damages for themselves, but rather seek only declaratory judgment addressing the constitutionality of an Act of the General Assembly.

D. *Bodman* Supports the Grant of Public Importance Standing.

The State of South Carolina also relies on *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013), but *Bodman* supports the grant of public importance standing. In *Bodman*, the plaintiff asked the Court to rule that the sheer number of statutory caps and exemptions from the state sales tax was unconstitutional and was an issue of great public importance that he should be entitled to litigate. This Court had agreed to accept the case in its original jurisdiction. *Id.*, 403 S.C. 60, 66, 742 S.E.2d 363, 365. This Court can accept cases in its original jurisdiction "if the public interest is involved." Rule 245 (a), SCACR.

This Court ruled that *Bodman* failed on its merits. Plaintiff argued that the caps and exceptions violated the Equal Protection Clause of the South Carolina Constitution,

and that they also violated the Constitutional prohibition on special legislation. The Court rejected both challenges. Fundamentally, *Bodman* was a broadside attack on a very political question, which was properly within the province of the General Assembly, and not a legal question for the judiciary.

In concluding its discussion on standing, the Court in *Bodman* ruled as follows: "However, we need not revisit the requirements for the public importance exception today because even if Bodman does have standing under it, his claims fail on the merits." *Id.*, 403 S.C. 60, 69, 742 S.E.2d 363, 367. The Court essentially assumed that the constitutional challenge to the statutory caps and exemptions from the state sales tax was an issue of great public importance. Only one justice, in dissent, would have ruled that Bodman should not be granted public importance standing.

Like *Bodman*, the case at bar makes a Constitutional challenge to an Act of the General Assembly. In *Bodman* this Court accepted the challenge its original jurisdiction, presumably because of the great public importance the Constitutional issue raised, and after hearing argument, assumed without explicitly ruling that the issue was of great public importance and addressed the merits of the case. Like *Bodman*, the case at bar raises an issue of great public importance, a Constitutional issue, and as this Court did in *Bodman*, this Court should also address the merits of this issue of great public importance, a constitutional challenge to an Act of the General Assembly.

E. The Prior Rulings of This Court Support the Granting of Public Importance Standing.

The Senate Respondents argue that because this Court has decided other cases involving South Carolina Constitution, Art. 3, § 17, Respondents have all the guidance they need, and no future guidance could be provided by addressing the same Constitutional

provision in this case. Brief of the South Carolina Senate, p. 8. They argue that this Court has addressed South Carolina Constitution, Art. 3, § 17 six times in the last ten years. Brief of the South Carolina Senate, p. 8. From that fact, they assert that no more guidance is needed.

The Senate seems to argue that once the Supreme Court has ruled on one case under South Carolina Constitution, Art. 3, § 17, the Respondents can violate the law at their whim, and the Appellants should not be granted public importance standing to seek review of repeated or similar violations. Appellants respectfully submit that the argument cuts the other way, and the opposite conclusion should be reached: that the Respondents continue to enact legislation in violation of this provision, despite the repeated instructions from this Court. Accordingly, future guidance continues to be necessary.

Because this Court has ruled several times on the application of South Carolina Constitution, Art. 3, § 17, and **yet the Respondents continue to violate that section**, it is apparent that additional, continuing guidance is needed. Furthermore, these prior decisions demonstrate that compliance with the Constitution is an issue of great public importance. Appellants' Complaint cited the decisions from this Court that applied this section. Those cases establish the public importance of this issue for the case at bar.

Furthermore, the Senate's argument is contrary to the practice of this Court. This Court accepted the *Bodman* case in its original jurisdiction even though it had rejected an identical argument ten years earlier in *Ed Robinson Laundry & Dry Cleaning Inc. v. South Carolina Department of Revenue*, 356 S.C. 120, 588 S.E.2d 97 (2003). *See Bodman*, 403 S.C. 60, 71, 742 S.E.2d 363, 368. Accordingly, this Court's previous rulings on address Art. 3, § 17 should not prevent public importance standing in this case.

F. Respondent's New Rules of Pleading Are Unfounded.

Finally, Respondents contend that Appellants failed to specifically plead that this case raises issues which required judicial guidance, and that this alleged pleading omission was fatal to the complaint. By this argument, Respondents seek to impose new rules of pleading not required heretofore. Appellants specifically cited this Court's decision in *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016), along with many other cases. This Court's archives undoubtedly include the Appendix to *Lucas*. Page 71 contains the Complaint for Declaratory Judgment filed in the original jurisdiction of this Court. The *Lucas* complaint is crafted very similarly to the complaint in the case at bar. Neither complaint specifically and overtly pled the need for future guidance. However, both the complaint in *Lucas* and the complaint in the case at bar allege a constitutional violation of Article III, § 17 and pray the Court for declaratory judgment that the Act in question violated that Constitutional provision. This Court in *Lucas* found the Petitioners' allegations to be sufficient and did not require a specific pleading of the need for future guidance, as these Respondents would impose. This Court should find the similar complaint in this case to be sufficient.

III. THE CIRCUIT COURT ERRED RULING THAT THE APPELLANTS HAD NOT ALLEGED FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR VIOLATION OF SOUTH CAROLINA CONSTITUTION ART. III, SECTION 17.

As to the merits of the case, Appellants specifically cited the *Lucas* case as authority for finding a violation of Article III, § 17 in the case at bar. Accordingly, an examination of the *Lucas* case should prove instructive for the issues in the case at bar.

A. No Part of the Constitution Is "Too Insignificant a Matter" to Warrant This Court's Attention.

Justice Pleicones, writing for the Court in *Lucas* stated, "We agreed to hear this constitutional challenge to the 2015-16 Appropriations Act in our original jurisdiction." *Id.,* 416 S.C. 269, 270, 786 S.E.2d 124, 125. In footnote 1, the Court stated, "The dissent would hold that whether the 2015–16 Appropriations Act violates the State Constitution is **too insignificant a matter** to warrant this Court's exercise of its original jurisdiction, and would therefore dismiss the petition. . . . **Unlike the dissent, we find that the public interest requires we exercise our original jurisdiction** to decide this case in an expeditious manner" *Id.* (emphasis added). Obviously, this Court ruled that the argument that an Act of the General Assembly violated the Constitution was not "too insignificant a matter" to invoke the original jurisdiction of the Court, and it did so over the protests of the dissent.

In *Lucas*, this Court ruled that the suspension of an appointment power of the Secretary of Transportation was "neither germane to nor does it provide the means, methods, or instrumentalities for effectuating the purpose of the General Appropriations Act, i.e. the raising or expenditure of revenue." *Id.*, 416 S.C. at 272-73, 786 S.E.2d at 126.

B. Act 275 Relates To More Than One Subject.

Act 275 relates to more than one subject. Part I of the Act, Section 1, restructures the Commission of the Department of Transportation (R. pp. 122-127). Section 2 changes the process of appointment of the Secretary of Transportation (R. p. 127). Section 3A changes the Joint Transportation Review Committee (R. pp 127-128). Section 4 changes the process of the outside financial audit of the DOT (R. pp. 128-129). Sections 5, 6, and

7 change the process of the State Transportation Infrastructure Bank (R. pp. 129-130). None of these Sections is related to one subject.

Part II of the Act, Sections 8 through 84 change the State Highway Fund (R. pp. 130-163). Section 85 changes the sales tax on motor vehicles (R. pp. 163-164).

Part III of the Act, Sections 86-87 (R. pp. 164-165), transfers the Chief Internal Auditor of the Department of Transportation (formerly employed by the Commission of the DoT) and his support staff and appropriations to the State Auditor's Office, under the State Fiscal Accountability Authority. The Internal Auditor in this case was created by the General Assembly as a part of the Commission of the DOT. Any implication that the Chief Internal Auditor was a part of the DOT is inaccurate and improper. To protect the independence of an auditor, the scope of work of independent auditors is usually defined by their charter, created by the creator of the auditor. The charter of this Internal Auditor was not created by the DOT. This transfer of the Chief Internal Auditor was a significant change not related to any one subject of the Act.

Act 275 makes changes to the Commission of the Department of Transportation, the Secretary of Transportation, the Joint Transportation Review Committee, and the State Transportation Infrastructure Bank, four agencies of the State, in addition to the Department of Transportation. These changes are not related to "but one subject."

C. The Transfer of the Chief Internal Auditor Is a Subject Different from the Rest of Act 275.

The significance of the changes related to the Chief Internal Auditor might not be readily apparent from a mere reading of the Act. Appellants suggest that a review of the Bridge Inspection case would assist the Court in understanding the significance of the changes. As mentioned above, the Bridge Inspection case opinion was issued after

Appellants filed their Initial Brief. In the Bridge Inspection case, both the Circuit Court and the Court of Appeals were under the mistaken impression that the Chief Internal Auditor who found the inspections of privately owned bridges to be improper was working for the Department of Transportation, and by this audit, the Department of Transportation had admitted its own wrongful conduct, thereby obviating the need for judicial guidance. This Court, however, understood the true relationship between the Commission of the Department of Transportation and the Department of Transportation; they were two separate entities. This Court's opinion in the Bridge Inspection case bears this out.

Reciting the Factual and Procedural History, this Court stated,

> Following the inspection, the **Office of the Chief Internal Auditor ("OCIA") for the Commission** on the Department of Transportation investigated the propriety of Respondents' actions. In a report to former Secretary of Transportation Robert St. Onge, OCIA made several findings.

Id. 421 S.C. at 115, 804 S.E.2d. at 857 (emphasis added). Later the Court recited:

> The Court of Appeals affirmed, concluding Petitioners did not have standing and the action did not fall under any exception to the mootness doctrine. *S.C. Pub. Interest Found.*, 412 S.C. at 24-28, 770 S.E.2d at 402-04. The Court of Appeals based its conclusion **solely on its belief that SCDOT "conducted its own audit** and concluded its own actions were improper." *Id.* at 24, 770 S.E.2d at 402.

Id. 421 S.C. at 116-17, 804 S.E.2d. at 858 (emphasis added). Later in the opinion this Court reasoned:

> The Court of Appeals' finding hinged on its understanding that SCDOT "conducted its own audit and concluded its own actions were improper." *S.C. Pub. Interest Found.*, 412 S.C. at 24, 770 S.E.2d at 402. **In reality, OCIA, a division of the Commission on the Department of Transportation, conducted the audit.** While it found that certain SCDOT employees thought the inspection of the bridges was against SCDOT's policy, it stopped short of concluding SCDOT's actions were wrongful. Further, on appeal, **Respondents [the DOT] admit that they disagree with the findings** in OCIA's report. Instead, they maintain their inspection of the bridges was lawful because their actions served a public purpose and because they believed they were assisting a municipality. Accordingly, we

> conclude the Court of Appeals erred in finding Respondents admitted their conduct was improper.

Id. 421 S.C. at 120-21, 804 S.E.2d. at 860 (emphasis added). Accordingly, this Court understood that the Chief Internal Auditor was working for the Commission, and not the Department. He had produced an audit that was no doubt embarrassing for the Department.

The significance of this recitation to the case at bar is as follows: after this Chief Internal Auditor for the Commission of the Department of Transportation issued this audit which was not a standard financial audit, the General Assembly, by Act 275, transferred the Chief Internal Auditor for the Department of Transportation, (who actually worked for the Commission) and all of his support staff to be under the supervision of the State Auditor's Office. The Chief Internal Auditor would serve at the pleasure of the State Auditor. Act 275, Section 1, S.C. Code Ann. § 57-1-360(A) (R. pp. 124-125). Further, Act 275 authorized the State Auditor to name a successor to the Chief Internal Auditor of the Department of Transportation. Act 275, Section 87 (R. pp. 164-165).

Appellants respectfully submit that this change was as much a "subject" of Act 275 as was the funding of road and bridge improvements. This was a structural change related to the Commission, the Department of Transportation, and the State Auditor's Office; it was not something dedicated to the improvement of roads and bridges, as articulated in Section 89 of Act 275; it was designed to limit future embarrassment for the Department.

The General Assembly included this structural change both in Part I of Act 275, which made changes to the statutes governing the Commission of the Department of Transportation, and in Part III of Act 275, which may changes to S.C. Code Ann. § 1-3-240(C)(1)(b), and changes to Title XI, Chap. 7, the State Auditor.

This Court in *Lucas* ruled that the suspension of the appointment power was a structural subject different from the raising and expenditure of revenue. Applying that reasoning to the case at bar demonstrates that Act 275 relates to more than one subject, the structural change related to the Chief Internal Auditor, and the funding of roads and bridge improvements. The rationale of *Lucas* compels a ruling in this case that Act 275 violates Article III, § 17, in that it relates to more than "one subject."

IV. RESPONDENTS FAILED TO ADDRESS THE SECOND CLAUSE OF SOUTH CAROLINA CONSTITUTION ART. III, SECTION 17.

The Article III, § 17 requires not only that every Act relate to but "one subject," but also that the "one subject" be "**expressed** in the title." The three Respondents' Briefs chose not to address this issue in any detail. Perhaps they deemed this clause of the Constitution "too insignificant to ensure that the law is enforced." *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 119, 804 S.E.2d. 854, 859 (2017); or "too insignificant a matter" for this Court. *Lucas*, 416 S.C. 269, 270, 786 S.E.2d 124, 125, n. 1. On the contrary, Appellants respectfully suggest that no phrase or clause of the Constitution is "too insignificant." Unfortunately, up until this case, this clause has not received the judicial attention that the "one subject" clause has received. Appellants respectfully suggest that this case provides an important opportunity for this Court to address the clause requiring that the "one subject" be "expressed in the title."

Appellants pointed out that rather than expressing the "one subject" that the Act "relates to," as defined by Section 89 of the Act, namely "improving the state's transportation infrastructure system," the title of Act 275 uses the term "relating to" 10 different times for at least nine different subjects that the Act "relates to," and not once

does the title "express" the subject of the Act as defined by Section 89 of the Act. Respondents submitted three different Responsive Briefs, and not one of them made a substantive response to Appellants' argument that title use the phrase "relating to" 10 different times, or that the title of Act 275 states that it "relates to" nine different subjects. Nor did the Respondent's address in any meaningful way the failure of the "one subject" to be "expressed" in the title. The express language of the Constitution must mean something. "Expressed" means more than just implied.

Appellants respectfully suggest that neither the General Assembly nor this Court is free to ignore the plain language of the Constitution, but rather when General Assembly or this Court determines the "one subject" that an Act "relates to," that "one subject" must the "expressed" in the title of the Act, as required by the plain language of the Constitution.

> When this Court is called to interpret our Constitution, it is guided by the principle that both the citizenry and the General Assembly have worked to create the governing law. *See Miller v. Farr,* 243 S.C. 342, 346, 133 S.E.2d 838, 841 (1963) (noting that the Constitution is construed in light of the intent of its framers and the people who adopted it). The Court will look at the "**ordinary and popular meaning** of the words used," *Richardson v. Town of Mount Pleasant,* 350 S.C. 291, 294, 566 S.E.2d 523, 525 (2002), keeping in mind that amendments to our Constitution become effective largely through the legislative process. *Miller,* at 347, 133 S.E.2d at 841. For this reason, the Court applies rules of construction similar to those used to construe statutes. *Fraternal Order of Police v. South Carolina Dept. of Revenue,* 352 S.C. 420, 574 S.E.2d 717 (2002).

State v. Long, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014) (emphasis added).

Accordingly, this Court should enforce the plain language, the "ordinary and popular meaning" of the Constitution and rule that the General Assembly violated the Constitution when it failed to "express" the "one subject" of Act 275 in its title.

CONCLUSION

The Circuit Court erred in dismissing this action under Rule 12(b)(6). The Circuit Court erred in refusing to grant Appellants public importance standing. The Circuit Court erred in ruling that the Appellants had failed to state facts sufficient to constitute a cause of action for violation of Article III, Section 17 of the South Carolina Constitution.

Finally, the Respondents failed to address the violation of the second clause of Article III, Section 17 of the South Carolina Constitution, which requires that the "one subject" be "expressed in the title."

For these reasons, Appellants pray the Court to reverse the judgment of the Circuit Court, rule that Act 275 violates Article III, Section 17 of the South Carolina Constitution, and to grant Appellants such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

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

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-01638

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.

Certificate of Compliance with Rule 211(b)

The undersigned attorney certifies that this Appellants' Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C
James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269

Attorneys for Appellants

February 22, 2018

CERTIFICATE OF SERVICE

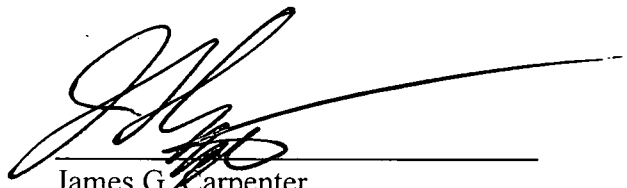
The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants Final Reply Brief on opposing counsel by first class mail, postage prepaid, this February 26, 2018, addressed as follows:

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

Matthew A. Abee
Kenneth M. Moffitt
Allen Mattison Bogan
PO Box 11070
Columbia, SC 29211

Paul D. Harrill
Robert L. Widner
Bradley S. Wright
PO Box 11390
Columbia, SC 29211

Respectfully submitted,
THE CARPENTER LAW FIRM, PC



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