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S.C. SUPREME COURT

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. 2017-001638

South Carolina Public Interest Foundation and
Edward S. 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.

**PROPOSED
SUPPLEMENTAL BRIEF OF RESPONDENTS THE SOUTH CAROLINA HOUSE OF
REPRESENTATIVES AND THE HONORABLE JAMES H. "JAY" LUCAS, AS
SPEAKER OF THE HOUSE OF REPRESENTATIVES**

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ATTORNEYS FOR RESPONDENTS THE SOUTH CAROLINA
HOUSE OF REPRESENTATIVES AND THE HONORABLE
JAMES H. "JAY" LUCAS, AS SPEAKER OF THE SOUTH
CAROLINA HOUSE OF REPRESENTATIVES

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STATEMENT OF ISSUES

1. Any defect in Act 275 of 2016 under Article III, Section 17 of the South Carolina Constitution (the One Subject Rule) is rendered moot and eliminated by Act 129 of 2018 incorporating Act 275 into the Code of Laws and making Act 275 part of the only general permanent statutory law of the state.

STATEMENT OF THE CASE

Appellants and all Respondents filed their initial briefs in this appeal. All parties except these Respondents have recently filed their Final Briefs. Respondents requested and were granted an extension until Friday, March 9, 2018 to file their Final Brief. Respondents are moving for permission to file this supplemental brief due to the very recent incorporation of the challenged Act (Act 275 of 2016) into the Code of Laws, which renders moot Appellants' challenge under the One Subject Rule.

ARGUMENT

- I. **Any alleged defect in Act 275 of 2016 under the "One Subject Rule" of Article III, Section 17 of the South Carolina Constitution has been eliminated by its codification into the Code of Laws of South Carolina on February 5, 2018.**

Appellants challenged the Constitutionality of Act 275 of 2016 under the "one subject" rule set out in Article III, Section 17 of the South Carolina Constitution. Appellants' case was dismissed by the Circuit Court, and Appellants filed this appeal. Respondents filed their initial brief on December 18, 2017. Respondents fully briefed the alleged one subject violation and all issues that were known at the time, including the fact that Act 275 of 2016 does not violate Article III, Section 17 in any way.

Subsequent to the filing of the parties' initial briefs, however, during the current 2018 legislative session, the General Assembly passed Act 129 of 2018. That recodification act revised two volumes of the Code of Laws of 1976 and adopted all cumulative supplements into the Code. As a result, the entirety of Act 275 has been incorporated into the Code of Laws and declared part

of the general statutory law of South Carolina. This Court has made clear that including Act 275 in the codification act of 2018 eliminates any defect under Article III, Section 17 and should be dispositive of Appellants' appeal. *See, e.g., South Carolina Tax Comm'n v. York Elec. Coop., Inc.*, 275 S.C. 326, 331-33, 270 S.E.2d 626, 629-30 (1980).

Section 2-13-90 of the 1976 Code of Laws authorizes the Legislative Council and the Code Commissioner to contract in their judgment for the publication of revised volumes of the Code from time to time. The revised volumes must be submitted to the General Assembly for consideration and approved by a bill passed under the formalities for the passage of laws under the Constitution. The result is that the replacement volume shall "to the extent of its contents" be the only general permanent statutory law of the State. *Id.*

Similarly, Section 2-13-170 provides that the Code as prepared by the Commissioner shall be declared by the General Assembly, by an act passed under the formalities for the passage of laws under the Constitution, to be the only general permanent statutory law of the State.

On January 10, 2018, the South Carolina Senate initiated Bill 882 to codify and adopt the revised volumes 15A and 18 of the 1976 Code and to adopt all cumulative supplements as part of the Code of Laws. Volume 18 of the Code of Laws of 1976 contains Titles 56 and 57. Bill 882 followed all the formalities for the passage of laws under the South Carolina Constitution. Senate Bill 882 was approved unanimously by the South Carolina Senate and then by the South Carolina House of Representatives. On February 5, 2018, Governor McMaster signed the bill, and it became the law of the state.

By revising volumes 15A and 18 and adopting the cumulative supplements to all other volumes into the Code of Laws, Act 275 was made a part of the only general permanent statutory law of the State of South Carolina. Accordingly, if there was any defect to Act 275 under the one

subject rule, it was eliminated by the passage of Act 129 of 2018 codifying the provisions of Act 275 of 2016 into the Code. *See, South Carolina Tax Comm'n v. York Elec. Coop., Inc.*, 275 S.C. 326, 331-33, 270 S.E.2d 626, 629-30 (1980); *Colonial Life & Accident Ins. Co. v. South Carolina Tax Comm'n*, 233 S.C. 129, 145-48, 103 S.E.2d 908, 916-17 (1958); *State v. Freeland*, 106 S.C. 220, 222, 91 S.E. 3, 3 (1916); *Nexsen v. Ward*, 96 S.C. 313, 80 S.E. 599 (1914); *Park v. Laurens Cotton Mills*, 75 S.C. 560, 56 S.E. 234 (1907).

This Court addressed the specific issue presented here in *South Carolina Tax Comm'n v. York Elec. Coop., Inc.* In *York* the Court addressed an Article III, Section 17 constitutional challenge to the “South Carolina Uniform Disposition of Unclaimed Property Act.” The Court found that the Unclaimed Property Act violated the “one subject rule” because it was included in the General Appropriations Act of 1971 and was not related to the raising and expenditure of tax monies. *Id.* at 330-31, 270 S.E.2d at 628-29. This Court found the challenged act “violates the provisions of Article III, Section 17, of the South Carolina Constitution, and is, therefore, unconstitutional.” *Id.* at 331, 270 S.E.2d at 629

Despite expressly finding that the Unclaimed Property Act was unconstitutional under the one subject rule, this Court found that the unconstitutionality “at the time of its enactment . . . is now of no consequence, since it was reenacted as a part of the codification of the 1976 Code of Laws.” *Id.* at 331, 270 S.E.2d at 629. The Court further found that “[s]ince the Unclaimed Property Act . . . was properly incorporated into the 1976 Code, and declared by the General Assembly to be a part of the general statutory law of the State, the constitutional objection that it originally violated Article III, Section 17, must be overruled.” *Id.* at 331-32, 270 S.E.2d at 629.

The Court in *York* noted that Section 2-13-170 provides for the enactment of the Code, and pursuant thereto the codification act of the 1976 Code provided that it would constitute the general

statutory law of the State as of January 1, 1978. Similarly Senate Bill 882 (now Act 129 of 2018) provides that the revised volumes and the cumulative supplements being incorporated into the Code shall be the “only general permanent statutory law of the State as of January 1, 2018.”

The Court ultimately held as follows:

We, therefore, hold that the constitutional defect, under Article III, Section 17, in the enactment of the South Carolina Disposition of Unclaimed Property Act, was eliminated by the proper inclusion of that Act in the codification of the 1976 Code of Laws, and is a part of the general statutory law of the State.

Id. 275 S.C. at 333, 270 S.E.2d at 629-30.

The *York* Court relied heavily on this Court’s prior decision in *Colonial Life & Accident Ins. Co. v. South Carolina Tax Comm’n*, 233 S.C. 129, 145-48, 103 S.E.2d 908, 916-17 (1958). In that case, the Court addressed a constitutional challenge under Article III, Section 17. *Id.*, 233 S.C. at 142-45, 103 S.E.2d at 914-16. The challenged section was included as part of the 1951 appropriations act. *Id.* at 142, 103 S.E.2d at 914. The challenged section also was included in a codification bill in the next session of the General Assembly. *Id.* at 147, 103 S.E.2d at 917. The codification bill was approved by the Senate and House of Representatives and signed by the Governor adopting the 1952 Code of Laws. *Id.*

The *Colonial Life* Court found that the challenged section was unconstitutional under Article III, Section 17 because it was not sufficiently referenced in the title to the general appropriations act. The Court in *Colonial Life* then addressed this issue:

Did such codification validate this legislation, which had been invalid, for the reasons before stated, when it existed only as a part of the act? If it was properly incorporated into the 1952 Code, it became, without reference to the title of the act of which it had been a section, and therefore despite the inadequacy of that title, a part of the only general statutory law of the state. *Park v. Laurens Cotton Mills*, 75 S.C. 560, 56 S.E. 234; *Nexsen v. Ward*, 96 S.C. 313, 80 S.E. 599; *State v. Freeland*, 106 S.C. 220, 222, 91 S.E. 3.

Colonial Life, 233 S.C. at 145, 103 S.E.2d at 916.

Relying upon the Court's decision in *Nexsen v. Ward*, 96 S.C. 313, 80 S.E. 599 (1914), and emphasizing the importance of the codification bill going through the formalities prescribed for the passage of laws, the Court held that the constitutional defect under Article III, Section 17 was cured by the inclusion of the challenged section in the codification bill that was passed. *Colonial Life*, 233 S.C. at 147-48, 103 S.E.2d at 917. Thus, this Court held that:

We conclude, therefore, that the provisions of the 1951 act before mentioned were duly incorporated into the 1952 Code, and that the deficiency that had existed in the title of that act prior to the codification of that section of it thereupon became of no consequence.

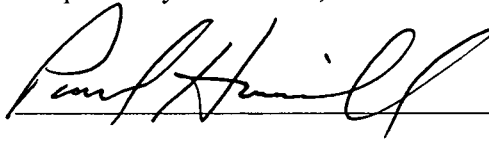
Id., 233 S.C. at 148, 103 S.E.2d at 917.

Act 275 does not violate the one subject rule in any way as set forth in its prior briefing. However, based upon well-settled precedents, even if Act 275 violated Article III, Section 17 when originally passed, proper inclusion of Act 275 in the recent recodification act eliminates any defect and renders it of no consequence. *York*, 275 S.C. at 333, 270 S.E.2d at 629-30; *Colonial Life*, 233 S.C. at 148, 103 S.E.2d at 917. Accordingly, the circuit court should be affirmed.

CONCLUSION

Based on the foregoing, this Court should affirm the circuit court's order dismissing Appellants' Complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul D. Harrill", written over a horizontal line.

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