

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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JUN 21 2018

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

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Appellate Case No. 2016-000460

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Ex parte South Carolina Press Association, Movant

In re.

DomainsNewMedia.com, LLC, Respondent

Vs.

Hilton Head Island-Bluffton Chamber of Commerce, Appellant

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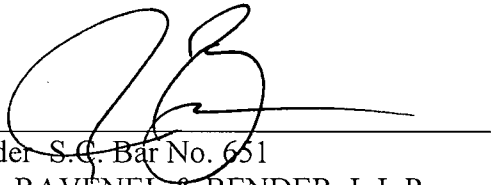
**MOTION OF SOUTH CAROLINA PRESS ASSOCIATION  
FOR LEAVE TO FILE ARGUMENT IN SUPPORT OF  
RESPONDENT'S PETITION FOR REHEARING**

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The South Carolina Press Association (SCPA) is a South Carolina not-for-profit corporation having as its members ninety-nine (99) newspapers published in South Carolina. From the adoption of the South Carolina Freedom of Information Act (FOIA) through the present SCPA has engaged in lobbying the General Assembly with respect to the FOIA, devoted resources to the education of the public and public officials regarding requirements of the Act,

and engaged in trial and appellate litigation to enforce the Act. SCPA was heretofore granted leave to file, and did file, a brief as amicus curiae in the within-captioned appeal.

SCPA believes that the opinion of the majority imposes a substantial impediment to the ability of citizens and their representatives to learn and report fully the activities of public officials and those receiving and expending public funds. It is for the purpose of serving an interest that the General Assembly of South Carolina has found to be “vital in a democratic society”—the conduct of public business in an open and public manner—that movant seeks leave to support the petition for rehearing with its argument which is filed provisionally herewith as allowed by Rule 213, SCACR.



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**ARGUMENT ON BEHALF OF SOUTH CAROLINA PRESS ASSOCIATION  
IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING**

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ISSUE PRESENTED

Did the Court's majority err in concluding that the reporting requirements for recipients of public funds contained in Section 6-4-10(3) of the South Carolina Code of Laws foreclosed application of the South Carolina Freedom of Information Act to those recipients of public funds?

ARGUMENT

The Court's majority erred in concluding that the reporting requirements for recipients of public funds contained in Section 6-4-10(3) of the South Carolina Code of Laws foreclosed application of the South Carolina Freedom of Information Act.

The majority's error was premised on the presupposition that the General Assembly intended by the adoption of minimal reporting requirements with respect to Accommodations Tax funds to relieve the recipients of those funds from the disclosure requirements of the Freedom of Information Act (FOIA). S.C. Code Ann. §§30-4-10, *et seq.* (1976, rev. 2007). In contrast to the reporting language relied upon by the Court's majority, the South Carolina Code is replete with language by which the General Assembly has exempted otherwise public records specifically from the Freedom of Information Act.

In Chapter 30 of Title 17 dealing generally with the interception of wire, electronic, or oral communications, the General Assembly has authorized the State Law Enforcement Division (SLED) to issue an administrative subpoena, in contrast with a judicially issued subpoena or warrant, to require a telephone company, Internet service provider, or communications entity to disclose specified subscriber information to SLED. The information obtained by SLED in response to the administrative subpoena is not subject to the FOIA by specific statutory language::

Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act. [emphasis supplied]

S.C. Code Ann. §17-30-125(G) (1976, rev. 2014).

SLED is also empowered to issue administrative subpoenas to obtain subscriber or customer information from a financial institution, public or private utility, or communications provider. In language identical to that quoted immediately above, the information obtained by SLED pursuant to an administrative subpoena is exempted from the FOIA by specific statutory language. S.C. Code Ann. §22-3-75(B) and (F).

Documents, materials or other information obtained by the South Carolina Department of Insurance in conducting an investigation into the cancellation of a producer's contract by an insurer are specifically exempted from the FOIA by language which states unambiguously that this material "is not subject to the Freedom of Information Act." S.C. Code Ann. §38-43-55(G)(1) (1976, rev. 2015).

Producers and importers of drycleaning solvent for sale or use are required to report the name, address, and quantity of solvent sold to each drycleaning establishment. The information in these reports is specifically and unambiguously exempted from the FOIA, "This information is not subject to the Freedom of Information Act." S.C. Code Ann. §44-56-460(C) (1976, rev. 2018).

The South Carolina Children's Code requires the Department of Social Services to classify reports of child abuse and neglect as "Suspected, Unfounded, or Indicated." S.C. Code Ann. §63-7-930 (1976, rev. 2010). Information regarding unfounded reports are exempt specifically from the FOIA:

Information concerning reports classified as unfounded contained in the statewide data system and records must be maintained for not less than five years after the finding. Information contained in unfounded cases is not subject to disclosure under the Freedom of Information Act as provided for in Chapter 4, Title 30. [emphasis supplied]

S.C. Code Ann. §63-7-940(A) (1976, rev. 2010).

These examples illustrate conclusively that in those circumstances in which the General Assembly wishes to exempt information or records from the FOIA, it creates the exemption with specific, unambiguous language. It is a fundamental rule of decision for appellate courts that the implied repeal of a statute is not favored. Likewise, given the General Assembly's direction that

the FOIA is to be construed in favor of disclosure, the majority erred by concluding that the superficial reporting provided by appellant satisfied the findings and purpose of the FOIA:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. [emphasis supplied]

S.C. Code Ann. §30-4-15 (1976, rev. 2007).

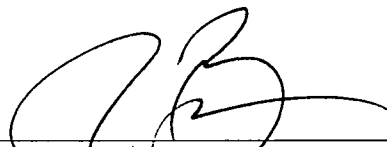
It seems beyond reason that appellant's reporting of an expenditure of \$263,792 for "Leisure Media & Promotions" (Record p. 139) comes anywhere close to satisfying the stated societal goal and policy that public business be conducted in an open and public manner. Reliance on the whims of local government officials to determine the level of accounting appropriate by appellant and other entities receiving millions of dollars of public funds yearly is anti-democratic and contrary to the command of Article I, Section 1 of the South Carolina Constitution that "All political power is vested in and derived from the people only...." If the only information the local governments received from appellant about its expenditure for "Leisure Media & Promotions" was the amount of the expenditure and this vague reference, it cannot be said that the majority was justified in finding that there was a legitimate process for "accountability." (Op. No. 27803, p. 6) In a democracy citizen oversight is the keystone of accountability in government. The majority erred in finding that the superficial accounting provided by appellant, apparently to the satisfaction of the state and local governments that had opened the public treasury to appellant, foreclosed citizen oversight through the FOIA.

## CONCLUSION

The majority erred in holding that the General Assembly intended to exempt appellant from the FOIA based on an illusory accounting scheme when the Code of Laws reveals that when the General Assembly intends to exempt information from the FOIA, it does so in specific, unambiguous language. No language is found in the statutory provisions relating to the accounting for millions of dollars transferred annually from the public treasury to a private organization supports the conclusion that citizens have no right of access to the records of the organization receiving and expending public funds. Had the General Assembly intended to exempt the recipients of Accommodations Tax funds and public grants from the FOIA, it would have so provided as demonstrated by the examples herein. To have found otherwise was in error.

Respondent's petition for rehearing should be granted.

Respectfully submitted,



Columbia, South Carolina

June 2, 2018

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**PROOF OF SERVICE**

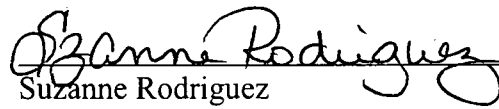
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I certify that I have served a copy of South Carolina Press Association's Motion for Leave to file Argument and Argument on June 21, 2018, by causing a copy of same to be deposited in the United States Mail, proper postage prepaid, addressed as follows:

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