

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-000794
Case No. 2016-CP-40-2875

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NOV 07 2018

SC Court of Appeals

South Carolina Public Interest Foundation, Edward D. Sloan,
Jr., and William B. DePass, Jr., individually, and on behalf of
all others similarly situated,..... Appellants,

v.

Richland County,..... Respondent,

and

Central Midlands Regional Transit Authority,..... Intervenor-Respondent.

**RESPONDENT RICHLAND COUNTY'S RETURN TO
APPELLANTS' MOTION TO FILE AMENDED INITIAL BRIEF**

The Appellants have filed a Motion to File Amended Initial Brief in order to include in its Opening Brief a Statement of Issues on Appeal as required by Rule 208(b)(1)(B), SCACR, and a section addressing the standard of review as required

by Rule 208(b)(1)(D), SCACR. The Respondent Richland County opposes that motion.

The Appellants are seeking to file an Amended Initial Opening Brief *after* the Respondents have already filed their Initial Briefs and in order to correct issues that were highlighted and discussed by the Respondents in their briefs. The Respondent County is unaware of any provision in the Appellate Court Rules, and none is cited in the Appellants' motion, that would allow the Appellants to the relief requested. Moreover, if the Court were to allow the Appellants the opportunity to amend their Initial Opening Brief, then the Respondents will need to be given the opportunity to make appropriate revisions to their Initial Response Briefs to address the revisions allowed to be made by the Appellants.

With respect to the Appellants' proposed changes, the Respondent County disagrees with the Appellants' discussion of the standard of review and would need to be given the opportunity to respond. In the proposed section on the standard of review, the Appellants address more than just the applicable standard of review.

More importantly, the Appellants' proposed inclusion of a Statement of Issues on Appeal is problematic -- particularly the third issue on appeal which simply states: "Did Appellants plead and supported [sic] valid claims?" Frankly, that articulation of an appellate issue makes absolutely no sense whatsoever and fails to provide the appropriate notice to the Court and the opposing parties, in a

concise and direct manner, what specific error was made by the Circuit Court that the Appellants are challenging on appeal. The Circuit Court never ruled that the Appellants did not “plead” or “support” claims against the County. That issue was never addressed by the Circuit Court. In Footnote #11 of its Initial Response Brief, the County writes as follows:

In contravention of Rule 208(b)(1)(B), SCACR, the Appellants’ opening brief does not include a statement of issues on appeal. As a result, the County is unable to determine whether the Appellants are actually seeking judgment in this Court on the various claims asserted in their Amended Complaint for Declaratory Judgment. In Section III of the brief, they claim to have pled and supported “valid claims,” but it is unclear whether they are arguing that they are entitled to judgment as a matter of law (which they are not) or whether they are showing that summary judgment in the County’s favor would have been denied if the Circuit Court had reached those issues.

That lack of clarity is not addressed and certainly not resolved by the proposed Statement of Issues on Appeal that the Appellants now seek to insert into their Opening Brief. It remains just as unclear what is intended by Section III of their Opening Brief (and the third issue on appeal as now articulated in the proposed Amended Initial Brief). As the County argues, the Appellants are not entitled to a ruling on the merits of their claims against the County given that the merits were not adjudicated in the Circuit Court. In short, even with the proposed revisions, it remains absolutely unclear what error the Appellants are asserting was committed

by the Circuit Court that requires appellate review, and for that reason, the inclusion of the proposed Statement of Issues on Appeal is pointless and should be denied.

At any rate, if the Court allows the Appellants to now insert a Statement of Issues on Appeal, the Respondent County would need to be given an opportunity to revise its Initial Response Brief to discuss the inappropriateness of the third issue on appeal in greater detail.

Based on the foregoing, the Respondent Richland County respectfully requests that the Court deny the Appellants' Motion to File Amended Initial Brief.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

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Counsel for Respondent Richland County

Columbia, South Carolina

November 5, 2018

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondent Richland County, does hereby certify that service of the **Respondent Richland County's Return to Appellants' Motion to File Amended Initial Brief** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 5th day of November 2018:

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November 5, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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SC Court of Appeals

RE: South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass, Jr., individually, and on behalf of all others similarly situated v. Richland County
Appellate Case Number: 2018-000794
Civil Action Number: 2016-CP-40-2875
Claim Number: Legal
Our File Number: 314.9965

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Respondent Richland County's Return to Appellants' Motion to File Amended Initial Brief** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope. By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

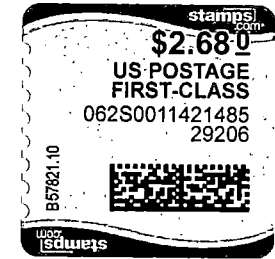
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November 5, 2018
Page Two

cc: (w/ Enclosure)

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