

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

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Case No.: 2015-CP-24-00514

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**RECEIVED**

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**S.C. SUPREME COURT**

State of South Carolina, Henry McMaster, Lt. Governor and  
President of the South Carolina Senate, Jay Lucas, Speaker of  
the South Carolina House of Representatives, and Alan Wilson,  
Attorney General of South Carolina,

.....Respondents,

v.

Thomas Waller, Larry Jackson, P. Dale Kittles, Charles L. Maus,  
and Terry C. Weeks,

.....Appellants.

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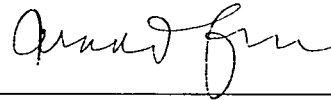
**NOTICE OF APPEAL**

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Thomas Waller, P. Dale Kittles, Charles L. Maus, and Terry C. Weeks (hereinafter "Appellants") appeal the order and final judgment of The Honorable Frank R. Addy, Circuit Court Judge, dated November 14, 2018. Said Order vacated the May 18, 2018 Order on the grounds of mootness and constituted a final judgment because it further decreed that "this litigation is concluded." The order and final judgment being appealed from involves and rules on a challenge to the constitutionality of a state law, S.C. Code Ann. § 10-1-165, the South Carolina Heritage Act. Appellants received notice of the entry of this order on November 19, 2018.

(SIGNATURE PAGE TO FOLLOW)

December 12, 2018



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Filed CP 5th JUDGE Greenwood, SC  
2018 NOV 14 PM 2:55

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENWOOD )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2015-CP-24-514

THOMAS WALLER, LARRY JACKSON, )  
P. DALE KITTLES, CLAUDE L. MAUS, )  
and TERRY C. WEEKS, )  
Plaintiffs, )

ORDER OF VACATUR

vs. )

THE STATE OF SOUTH CAROLINA )  
KEVIN L. BRYANT, Lt. Governor )  
of the State South Carolina, )  
JAY LUCAS, Speaker of the South )  
Carolina House of Representatives, and )  
ALAN WILSON, Attorney General of )  
South Carolina, )  
Defendants. )

THIS MATTER CAME BEFORE THE COURT pursuant to Defendants' motion to vacate the Court's order of May 18, 2018.

In its Order dated May 18, 2018, the Court essentially found that the Memorial in question was the private property of the American Legion and was not, by virtue of its placement on public land, automatically and/or unequivocally dedicated to public use. Based upon the specific facts of this case, the Court ruled that Section 10-1-165 does not apply to the Memorial; therefore, ruling upon the constitutionality of Section 10-1-165 was unnecessary. In its Order, the Court granted Plaintiffs partial summary judgment.

After the Court issued its Order, Defendants filed motions to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure but did not move for a stay under Rule 62.

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While those motions were pending, the plaques on the Memorial were changed in the manner sought by Plaintiffs. Defendants maintain that the individual who changed the Memorial is not a party to this action, and subsequent pleadings are silent as to the existence of any association or agency relationship between the individual and the parties to this action. Defendants request that the Court vacate the May 18, 2018 Order as being rendered moot by subsequent events.<sup>1</sup>

After reviewing the motions, facts, and applicable law, the Court finds that its previous Order has been rendered moot. The plaques at the heart of this litigation have in fact been changed; therefore, a “live controversy” between the parties no longer exists. The previous Order “no longer [has] any practical legal effect upon an existing controversy because an intervening event render[ed] any grant of effectual relief impossible.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

Although the Court is comfortable that the findings made in the May 18, 2018 Order comport with established legal principles and dictate the result reached, the Order has clearly been rendered moot by subsequent events. Accordingly, the Court grants Defendants' motion, and the Order of May 18, 2018 is vacated.<sup>2</sup> All pending motions for reconsideration are also rendered moot for the above stated reasons.

**WHEREFORE**, the May 18, 2018 Order is hereby vacated, and this litigation is concluded.

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<sup>1</sup> The Court notes that nowhere in their motions do Defendants seek or request restoration of the original plaques.

<sup>2</sup> Of course, to the extent any party, individual, interested person, or organization may have relied upon the May 18, 2018 Order in the interim, any actions in reliance are protected from further scrutiny. *See generally United States v. Moore*, 586 F.2d 1029, 1033 (4<sup>th</sup> Cir. 1978); *United States v. Brady*, 710 F. Supp. 290, 295 (D. Colo. 1989); *Davis v. Virginia*, 68 Va. App. 725, 732-33, 813 S.E.2d 547, 550-51 (2018).

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Frank R. Addy, Jr.", written over a horizontal line.

Frank R. Addy, Jr.  
Resident Judge  
Eighth Judicial Circuit

November 14, 2018  
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENWOOD COUNTY  
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and Terry C. Weeks,

.....Appellants.

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**PROOF OF SERVICE**

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I certify that I have served Appellants' Notice of Appeal on Respondents State of South Carolina, Henry McMaster, Lt. Governor and President of the South Carolina Senate, Jay Lucas, Speaker of the South Carolina House of Representatives, and Alan Wilson, Attorney General of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2018, properly addressed to their attorney(s) of record as follows:

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December 12, 2018



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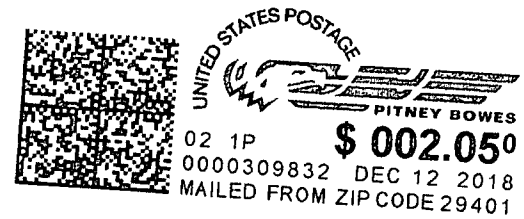
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& A L T M A N



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