

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

William R. Folks, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

The South Carolina House of
Representatives; The South Carolina Senate;
The Honorable James H. Lucas, Speaker of
the South Carolina House of Representatives;
The Honorable Harvey S. Peeler, Jr.,
President *Pro Tempore* of the South Carolina
Senate; and The State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40-04819

**ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS**

RECEIVED

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SC Court of Appeals

This matter comes before the Court upon several motions to dismiss filed by Defendants – by The South Carolina House of Representatives and The Honorable James H. Lucas on September 21, 2017; by The State of South Carolina on September 26, 2017; and by The South Carolina Senate and The Honorable Harvey S. Peeler, Jr.¹ on October 5, 2017 – pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure. A hearing on these motions was conducted at the Richland County Judicial Center on August 1, 2018. Plaintiff appeared along with his counsel; and Defendants (also referred to collectively as “the General Assembly”) were represented by their respective attorneys.

For the reasons set forth below, Defendants’ Motions to Dismiss are GRANTED, and this action is DISMISSED with prejudice.

¹ See “Order Substituting Defendant and Reforming Caption,” which was filed in this action on January 18, 2019.

FACTUAL AND PROCEDURAL BACKGROUND

On May 25, 2017, the General Assembly passed Act 40 of 2017 (“Act 40”), which addressed the effects of inadequate infrastructure financing and oversight. *See* 2017 S.C. Acts 40, §27. Soon after – on August 11, 2017 – Plaintiff filed the instant declaratory judgment action. In his Complaint, Plaintiff contends that Act 40 violates Article III, §17 of the Constitution of the State of South Carolina, which is commonly known as “the One Subject Rule.” Specifically, Plaintiff argues that Act 40 relates to forty-two subjects in contravention of the One Subject Rule, rendering it unconstitutional. He identifies the preamble to Act 40 as well as sections 5, 16 and 18 as examples of the alleged deficiencies. Finally, Plaintiff avers that he has standing to pursue this challenge (1) under the “public importance exception” to standing; and (2) “as a citizen, resident, taxpayer, and registered elector of the State of South Carolina.”

In lieu of filing an Answer to the Complaint, each defendant timely moved to dismiss this action pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure. In their motions, Defendants argue (1) that the issues in this action were rendered moot by the subsequent codification of Act 40; (2) that Plaintiff lacks standing to bring this action because the public importance exception does not apply here; and (3) that Plaintiff’s claim fails on the merits.

The Court heard arguments from all parties on these motions on August 1, 2018. Having considered the parties’ arguments, pleadings, motions, and memoranda of law – submitted both before and after the hearing – the Court finds that dismissal of this action is proper.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure requires a court to dismiss a party’s claims whenever their complaint fails to state facts sufficient to state a cause of action. *See, e.g., Gray v. State Farm Auto. Ins. Co.*, 327 S.C. 646, 650–51, 491 S.E.2d 272, 274 (Ct.

App. 1997). Although the factual allegations must be taken in the light most favorable to the plaintiff, the motion nevertheless “must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.” *Id.* at 651, 491 S.E.2d at 274–75.

A court must also dismiss a complaint when it lacks jurisdiction over the subject matter contained therein. Rule 12(b)(1), SCRCPP; *see also Edens v. Bellini*, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004). One requirement of subject matter jurisdiction is standing. *Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). A plaintiff has three avenues to prove standing: “(1) by statute; (2) through the rubric of ‘constitutional standing;’ or (3) under the ‘public importance’ exception.” *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). The party bringing a claim has the burden of establishing that he has standing. *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

I. Plaintiff Lacks Standing

Standing to sue is a “fundamental requirement” for any case. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Like subject matter jurisdiction, it cannot be waived by the parties. *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417-18, 498 S.E.2d 906, 908 (Ct. App. 1998). Whether a plaintiff has standing is a threshold question that must be answered *before* analyzing the merits of a claim. *See ATC*, 380 S.C. at 194-95, 669 S.E.2d at 339 (“We are obligated before reaching the merits of the rezoning question to determine whether ATC has standing to press its complaint. We conclude ATC does not have standing and that ends our inquiry.”).

In South Carolina, there are three ways to establish standing: “(1) by statute; (2) through what is called ‘constitutional standing’; and (3) under the public importance exception to standing.” *Bodman v. State*, 403 S.C. 60, 66–67, 742 S.E.2d 363, 366 (2013). The plaintiff bears the burden of proving standing, *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013), and cannot rely only on the Uniform Declaratory Judgments Act, which “is not an independent grant of jurisdiction.” *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013) (quoting *Brown v. Oregon State Bar*, 293 Or. 446, 648 P.2d 1289, 1292 (1982)).

First, while Plaintiff contends that he has standing to bring this action “as a citizen, resident, taxpayer, and registered elector,” this conclusory statement lacks merit. No statute provides him standing; he has not asserted constitutional standing; and his standing as a taxpayer is not availing. *See Bodman*, 403 S.C. at 66–67, 742 S.E.2d at 366 (“In *ATC*, we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer....”); *accord Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012). Therefore, the only avenue available to Plaintiff is the public importance exception.

Plaintiff’s contention that standing is conferred upon him by the public importance exception also fails. In order to establish the public importance exception to standing, a plaintiff must prove the issue raised is one of great public importance *and* the issue’s resolution is needed for future guidance. *ATC*, 380 S.C. at 199, 669 S.E.2d at 341. “The key to the public importance analysis is whether a resolution is needed for future guidance.” *Id.*; *see also Bodman*, 403 S.C. at 68, 742 S.E.2d at 367 (recognizing that *ATC* “tempered the application of the public importance exception somewhat”): This exception to standing must be carefully applied, “lest it swallow the

rule.” *Jowers v. S.C. Dep’t of Health & Envtl. Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018).

Applying the public importance exception “necessitates a cautious balancing of the competing interests presented.” *ATC*, 380 S.C. at 198, 669 S.E.2d at 341. On one hand, “[c]itizens must be afforded access to the judicial process to address alleged injustices.” *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). On the other hand, “standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014) (quotation omitted). Therefore, “a matter is deemed to be of public importance *only* where a resolution is needed for future guidance.” *Freemantle*, 398 S.C. at 194, 728 S.E.2d at 44. The important public matter must “be inextricably connected to the public need for court resolution for future guidance.” *Id.*

Plaintiff cannot establish the need for future guidance. Act 40 has been passed, so no future guidance is relevant to it. In addition, the one subject rule is not a novel question; rather, the law regarding the one subject rule is already well established. *See, e.g., S.C. Pub. Interest Found. v. Harrell*, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008); *Sloan v. Wilkins*, 362 S.C. 430, 438, 608 S.E.2d 579, 584–84 (2005). Even in recent years, the Supreme Court has ruled on the one subject rule many times. *See, e.g., Gianni v. S.C. Dep’t of Transp.*, 378 S.C. 573, 664 S.E.2d 450 (2008) (holding reenactment of Tort Claims Act caps were reasonably related to raising and spending of tax monies); *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 484 S.E.2d 104 (1997) (requiring local governments to remit real estate transfer fees to the state “inherently relates to the raising and spending of tax monies”); *see also Keyserling v. Beasley*, 322 S.C. 83,

470 S.E.2d 100 (1996); *State Farm Mutual Auto. Ins. Co. v. Smith*, 281 S.C. 209, 314 S.E.2d 333 (1984); *Powell v. Red Carpet Lounge*, 280 S.C. 142, 311 S.E.2d 719 (1984).

Moreover, those recent Supreme Court decisions relied on by Plaintiff are inapplicable, as the issue of standing is not discussed in those cases. *See American Petroleum Inst. v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *see also S.C. Pub. Interest Found. v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016).

The public importance exception does not apply here, and Plaintiff cannot establish standing in any other way. Therefore, this Court lacks subject matter jurisdiction, and this action must be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

II. Plaintiff's Claims Are Moot

Even if Plaintiff could establish the requisite standing to bring this action, it must be dismissed because the issues are moot.

Courts do not decide moot cases. *S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). A case is moot when "a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court." *Id.*

This case is moot because any procedural defect alleged by Plaintiff was cured when the General Assembly passed Act 129 of 2018 ("Act 129"). Act 129 codified revised versions of Volume 15A and Volume 18 of the South Carolina Code of Laws ("the Code") and all of the cumulative supplements, declaring them to be "the only general permanent statutory law of the State as of January 1, 2018." 2018 S.C. Acts 129, §3. Codification is the process of updating the Code so that recent acts are put into it, thereby making the Code easy to use for the people who must comply with it. *See Nexsen v. Ward*, 96 S.C. 313, 320, 80 S.E. 599, 601 (1914).

The Supreme Court has repeatedly held that codification cures any procedural defect that may have existed when an act was passed because a codification act is passed with the exact same constitutional formalities as any other legislation. See *S.C. 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. S.C. 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*, 96 S.C. 313, 80 S.E. at 601; *Park v. Laurens Cotton Mills*, 75 S.C. 560, 568, 56 S.E. 234, 237 (1907). Any contention by Plaintiff that these decisions are inapplicable is without merit. First, that this lawsuit was pending when Act 129 was passed is irrelevant; whether the litigation was pending does not impact Act 129's ability to cure the procedural defect about which Plaintiff complains. Also, the fact that the earlier cases involved decennial codification is also irrelevant. The decennial requirement was never mentioned by the Supreme Court as having any bearing on its decision. Finally, Plaintiff has not sought any tax refund, as was at issue in *Colonial Life, supra*, to trigger any issues of retroactivity, nor has he pointed to any specific parts of Act 40 in his Complaint that raise such concerns.

Act 129 cured any procedural defect that may have existed in the passage of Act 40. Therefore, the allegations made in Plaintiff's Complaint are moot, and this action must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by Defendants The South Carolina House of Representatives and The Honorable James H. Lucas on September 21, 2017 is GRANTED.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant The State of South Carolina on September 26, 2017 is GRANTED.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendants The South Carolina Senate and The Honorable Harvey S. Peeler, Jr. on October 5, 2017 is GRANTED.

IT IS FURTHER ORDERED that this action is DISMISSED with prejudice.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

February 7, 2019
Columbia, South Carolina.



Richland Common Pleas

Case Caption: William R Folks vs South Carolina House Of Representatives ,
defendant, et al
Case Number: 2017CP4004819
Type: Order/Dismissal

So Ordered

Jocelyn Newman



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2017CP4004819

Official File Stamp: 02-08-2019 09:04:07 AM
Court: CIRCUIT COURT
Common Pleas
Richland
Case Caption: William R Folks vs South Carolina House Of Representatives , defendant, et al
Document(s) Submitted: Order Granting Defendants' Motions to Dismiss
Filed by or on behalf of: Jocelyn Newman
Note from the Court: Judge, please approve and sign this document.

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Allen Mattison Bogan
William Grayson Lambert for South Carolina House Of Representatives, James H Lucas,
Speaker Of The House Of Representative
Matthew A. Abee for South Carolina Senate
J. Emory Smith, Jr. for State Of South Carolina
Helen Ann Siegling Thrower for William R Folks
Paul D. Harrill for South Carolina House Of Representatives, James H Lucas

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

President Pro Tempore Of The S C Senate
Harvey S Peeler