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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2019-000330  
Case No. 2018-CP-04-00955

**RECEIVED**  
MAR 11 2019  
SC Court of Appeals

Joshua Hawkins and Floyd S. Mills, III,

Appellants,

v.

Secretary of State Mark Hammond; South Carolina Secretary of State's Office; Harvey S. Peeler, Jr., in his capacity as President the South Carolina Senate; and James "Jay" Lucas, in his official capacity as the Speaker of the South Carolina House of Representatives,

Respondents.

**Motion to Transfer to the Supreme Court**

The Honorable Harvey S. Peeler, Jr., in his capacity as President of the South Carolina Senate, the Honorable James "Jay" Lucas, in his capacity as the Speaker of the South Carolina House of Representatives, and the Secretary of State and his Office ("Respondents") move to transfer this appeal under S.C. Code Ann. §§ 14-8-260, 14-8-200(b)(3), and Rules 204 and 203(d)(1)(a)(ii), SCACR. The principal question raised by Appellants in this appeal is the constitutionality of two separate state laws. Thus, the adjudication of the appeal may be proper in the South Carolina Supreme Court in the first instance. S.C. Code Ann. § 14-8-200(b)(3); Rule 203(d)(1)(a)(ii), SCACR.

## Background

Appellants are two attorneys practicing in Anderson County who sued the South Carolina Secretary of State seeking to invalidate two pieces of legislation. Appellants allege (1) 2005 Senate Bill 83, enrolled as 2005 S.C. Acts 32 (the “2005 Act”) and (2) 2011 House Bill 3375, known as the South Carolina Fairness in Civil Justice Act, enrolled as 2011 S.C. Acts 52 (the “2011 Act”) are unconstitutional and violate, among other rights, their federal due process rights. Respondents moved to dismiss. The circuit court granted the motion and held the: (1) complaint is barred by *res judicata*; (2) Appellants lack standing; (3) claims are moot; and (4) federal due process claim is time barred. (Order Granting Defs.’ Mot. Dismiss, Jan. 25, 2019.) Appellants filed their notice of appeal with this Court on February 25, 2019.

## Analysis

When an appeal presents a constitutional question, the appeal must be filed first in the Supreme Court. S.C. Code Ann. § 14-8-200(b)(3); *see also* Rule 203(d)(1)(a)(ii), SCACR. If such an appeal is improperly filed in the Court of Appeals, the Court “shall issue an order transferring the case to the Supreme Court.” S.C. Code Ann. § 14-8-260; *see also* Rule 204(a), SCACR (“In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.”).

Appellants raised a state constitutional challenge to two acts of the General Assembly. Therefore, transfer would appear to be proper pursuant to section 14-8-260.

This Court recently followed a similar procedure in an appeal filed by the South Carolina Public Interest Foundation and Edward D. Sloan, Jr. *See S.C. Pub. Interest Found. v. S.C. House of Representatives*, -- S.C. --, 822 S.E.2d 805, 806–07 (2019). There the South Carolina Attorney General asked the Court to transfer the case under Rule 203(d)(1)(A)(ii) because the appeal raised

significant constitutional issues. This Court transferred the case to the Supreme Court. *Id.* (“We certified this case from the court of appeals pursuant to Rules 203(d)(1)(A)(ii) and 204(a), SCACR.”).

Respondents file this motion to point out the issues on appeal to the Court in the event transfer is warranted given that Appellants have not yet ordered a transcript, nor have they filed their Notice of Appeal with the Anderson County Clerk of Court. As a result, the parties have not yet filed their initial briefs. Thus, the Court could transfer this case without interrupting the current briefing deadlines set by Rule 208, SCACR, should transfer be necessary. Respectfully submitted,

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permission*

*Attorney for Secretary of State Mark Hammond and the South Carolina Secretary of State’s Office*

Columbia, South Carolina  
March 11, 2019

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Respondents.

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**Proof of Service**

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I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Honorable Harvey S. Peeler, Jr. and the Honorable James "Jay" Lucas, certify that I have served all counsel in this action with a copy of the document(s) specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

<b>Document</b>	Motion to Transfer to Supreme Court
<b>Counsel of Record</b>	Karl Smith Bowers, Jr. Bowers Law Office P.O. Box 50549 Columbia, South Carolina 29250

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Kim Smith  
Administrative Assistant

March 11, 2019



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March 11, 2019

**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Joshua Hawkins v. Secretary of State Mark Hammond, South Carolina Secretary  
of State's Office  
Appellate Case No. 2019-000330  
Civil Action No. 2018-CP-04-00955  
Our File No. 045547.01504

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**SC Court of Appeals**

Dear Ms. Kitchings:

Enclosed for filing please find an original and six copies of Respondents' Motion to Transfer to the Supreme Court in the above-referenced matter. Also enclosed is our check for the filing fee. Please return a file-stamped copy to our courier.

Respectfully,

Matthew A. Abee

MAA:krs

Enclosures

cc: Karl Smith Bowers, Jr., Esquire  
Joshua T. Hawkins, Esquire  
Helena L. Jedziniak, Esquire  
Kyle J. White, Esquire  
Druanne D. White, Esquire