

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-000360
Case No. 2018-CP-40-04819

RECEIVED
MAR 11 2019
SC Court of Appeals

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

Appellant,

v.

The South Carolina House of Representatives; The South Carolina Senate;
The Honorable James "Jay" Lucas, Speaker of the South Carolina House
of Representatives; The Honorable Harvey S. Peeler, Jr., President the
South Carolina Senate; and The State of South Carolina,

Respondents.

Joint Motion to Transfer to the Supreme Court

The 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 Appellant in this appeal is the constitutionality of a state law. 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

Appellant sued Respondents seeking to invalidate Act 40 of 2017 by arguing it is unconstitutional under Article III, § 17 of the South Carolina Constitution. Respondents moved to dismiss. The circuit court granted the motion and held Appellant lacks standing and that his claims are moot. (Order Granting Defs.’ Mot. Dismiss, Feb. 8, 2019.) Appellant filed his notice of appeal with this Court on March 5, 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.”).

Appellant raised a state constitutional challenge to a 2017 Act of the General Assembly. Therefore, transfer would appear to be proper under 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.”).

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.

For the foregoing reasons, the Respondents respectfully request that the Court transfer this case.

Respectfully submitted,

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w/ authorization
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Representatives*

Columbia, South Carolina
March 11, 2019

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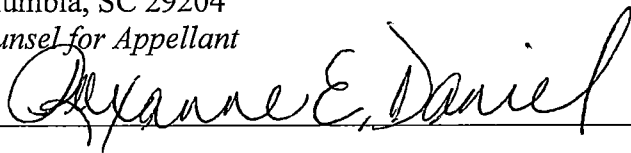
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The Honorable James "Jay" Lucas, Speaker of the South Carolina House
of Representatives; The Honorable Harvey S. Peeler, Jr., President the
South Carolina Senate; and The State of South Carolina,

Respondents.

Proof of Service

I certify that I have served counsel for Appellant with a copy of this **Joint Motion to Transfer to the Supreme Court** by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Helen Ann Siegling Thrower
3924 Forest Drive, Suite 1
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Counsel for Appellant



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: William R. Folks, individually and on behalf of all others similarly situated
v. The South Carolina House of Representatives, et al.
Appellate Case No. 2019-000360
Civil Action No. 2017-CP-40-04819
Our File No. 49622/01501

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 via our courier.

Respectfully,


Matthew A. Abee

MAA:rd
Enclosures
cc: Helen Ann S. Thrower, Esquire
Paul D. Harrill, Esquire
Bradley S. Wright, Esquire
J. Emory Smith, Jr., Esquire

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