

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2019-000360

Case No. 2017-CP-40-04819

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

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**FINAL REPLY BRIEF OF APPELLANT**

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SC Court of Appeals

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## ARGUMENTS

### I. CODIFICATION OF ACT 40 DID NOT RENDER APPELLANT'S CLAIMS MOOT

As Appellant argued in his Initial Brief, this Court is presented with a case clearly distinguishable from prior cases. None of the cases relied upon by Respondents involved an active, ongoing, constitutional challenge to an Act that was being codified. None involved the House and Senate as litigants. None involved a codification as a potential response to an active, ongoing, constitutional challenge. See S.C. Code § 2-13-90. In each case relied upon by Respondents, the General Assembly was given ample time to review the report of the code commissioner before the passage of the report. Lastly, none of the cases relied upon were decided subsequent to the amending of Section 2-13-90.

In the Initial Brief of Respondents, they attempt to distinguish between a procedural constitutional flaw and a substantive constitutional defect. (Initial Brief of Respondents, p. 8-9). Appellant asserts that a violation of the South Carolina Constitution, whether procedural or substantive, is still a violation and must be addressed by the Court.

Respondents go on to argue the codification rule “promotes finality, so that a procedural defect cannot be used to undermine a law on which the public has been relying.” (Initial Brief of Respondents, p. 12). The purpose of the adoption of the Code is “to bring together in a systematized body all the general statutory law of the state of force at the time of its adoption so that the people could rely upon it with certainty for their guidance.” *Nexsen v. Ward*, 96 S.C. 313, 80 S.E. 599, 601 (1914).

Since *Nexsen* was decided, the statute has been amended to give the Code Commissioner discretion to determine if the supplements are “too bulky”. The Code Commissioner also must publish annually cumulative supplements to the Code. Additionally, the updated Code is accessible to the general public on the legislature’s web site and is updated at the end of each session to reflect new or amended laws. Respondent has cited no South Carolina case law addressing codification curing constitutional defects since the amendment of the Code. Codification has evolved since the Court last considered this issue. Whether codification of Act 40 can cure any constitutional defect needs to be addressed by the Court.

## **II. APPELLANT POSSESSES PUBLIC IMPORTANCE AND TAXPAYER STANDING**

In their Initial Brief, Respondents argue the Court cannot provide future guidance on how to pass future legislation. They simultaneously rely upon the Court’s interpretation of codification. The Court is vested with the power to determine the constitutionality of legislation. Appellant is asking the Court to determine whether codification of Act 40 has remedied any constitutional defect. As Respondents stated, the Supreme Court has addressed codification on five occasions. (Initial Brief of Respondents, p. 7). This Court has jurisdiction to interpret the sections of the constitution in this case and to interpret the codification rule.

## **III. ACT 40 DOES VIOLATE THE ONE SUBJECT RULE**

Appellant brings to the Court’s attention that Respondents did not preserve this issue for appellate review. See *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012) (citation omitted) (“At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.”); *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780

(2004) (stating that if an issue or argument is raised, but not ruled upon by the trial judge, a party may file a Rule 59(e) motion to preserve it for appellate review). *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (S.C., 2014). Respondents did not file a Rule 59(e) motion to preserve this issue and it was not ruled upon by the trial judge.

However, should the Court deem it appropriate to consider this issue, the circuit court's judgment should be reversed because Act 40 violates the one subject rule.

SECTION 27 of Act 40 states that the subject of the Act is "the effects of inadequate infrastructure financing and oversight." This stated "subject" is not "expressed" in the Title of the Act. It is simply not there.

Furthermore, referenced SECTIONS in Act 40 do not directly relate to the underlying purpose of the Act, they are not necessary to effectuate the legislative intent expressed elsewhere in the Act and are not kindred in nature. They are not sufficiently related to infrastructure financing and oversight nor are they necessary to effectuate the intent to address the effect that the deteriorating transportation infrastructure system has on our State and its residents, tourists, and economy.

Lastly, the cases relied upon by Respondents are distinguishable from this case and the Court has not interpreted the one subject rule broadly enough to save Act 40 from constitutional challenge.

Respectfully submitted,



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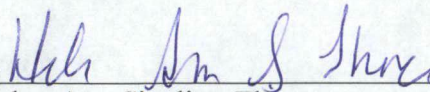
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CERTIFICATE OF COUNSEL

The undersigned attorney for Appellant hereby certifies that Appellant's Final  
Reply Brief complies with Rule 211(b), SCACR.



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January 30, 2020

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