THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2019-000330

Joshua Hawkins and Floyd S. Mills, III,..... Appellants,

v.

Secretary of State Mark Hammond, South Carolina Secretary of State's Office,..... Respondents.

And

Harvey S. Peeler, Jr., in his capacity as President of the South Carolina Senate, and James "Jay" Lucas, in his official capacity as the Speaker of the South Carolina House of Representatives,..... Respondents.

REPLY BRIEF OF APPELLANTS

Joshua T. Hawkins (S.C. Bar No. 78470)
Helena L. Jedziniak, (S.C. Bar No. 100825)
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllcsc.com
helena@hjllcsc.com

Druanne D. White (S.C. Bar No. 5991)
Kyle J. White (S.C. Bar No. 101426)
Trevor B. White (S.C. Bar No. 100791)
White, Davis and White Law Firm
Post Office Box 1346
Anderson, South Carolina 29622
(864) 231-8090
(864) 231-8006 (Fax)
druanne@wdwlawfirm.com
kyle@wdwlawfirm.com
trevor@wdwlawfirm.com

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RULES

ARGUMENT IN REPLY

I. Affixation of the Seal 14 Years Later Does Not Create Compliance for 14 Years of Non-compliance.

Perhaps the most obvious reason the Respondents position is untenable is the fact that they rely on action after the fact – years after the fact – in an attempt to create compliance for a period everybody agrees there was no compliance. The defendants rely on *Smith v. Jennings*, 67 S.C. 324 (1903), but their reliance is misplaced. The facts of that case are not the facts of this. Stated plainly, the laws at issue before this Court did not have "the Great Seal of the State affixed to" them and were therefore were not effective for 14 years. Thousands of South Carolinians – at least – were injured as a direct result because the unconstitutional and harmful laws were treated as if they were effective. The harm would be irreparable except this Court has a chance to right the tremendous wrongs. The respondents did not "substantially comply," rather they simply did not comply. An effective law requires that everything required by the State Constitution be done. Without any one of them, there is no compliance. The substantial compliance argument fails out of the barn.

The respondents' argument that the Constitution's requirement that the Great Seal be affixed gives the Secretary of State a veto power is a policy argument that lacks roots in the plain language of the South Carolina Constitution. The Constitution's unambiguous requirement is that the Great Seal be affixed, which speaks for itself and compliance with this unambiguous requirement is a prerequisite to the validity of a law. The respondents rely on *State v. Long*, 406 S.C. 511 (2011), which explained Courts generally must avoid interpreting statutes to create absurd results. The most glaring problems with the respondents' reliance on *Long* are that: 1) adherence to the Constitution is not absurd and 2) the Constitution is not a statute.

Further, the respondents' substantial compliance argument demonstrates a glaring lack of clarity, which if adopted here could lead to a dangerous precedent. The argument rests on the notion that compliance with all constitutional requirements is not required in order for a law to become valid, but there is no clarity as to which requirements must be followed and which do not. For example, under the respondents' logic the application of the Great Seal could be enough to overcome noncompliance in all other areas. In which case, the Secretary of State would have something much greater than the veto power suggested by the Respondents. Substantial compliance is not compliance, especially when it comes to clear and unambiguous requirements in the South Carolina Constitution.

The respondents cite *State v. Toomer*, 41 S.C.L. (7 Rich.) (1854), a case from the 19th Century addressing a Court-appointed officer and a seal on his commission. As with the other cases on which the respondents rely, Toomer deals with issues other than the application of the Great Seal to legislation, and is factually and legally too inapposite to guide the Court in this case.

II. Since the appellant filed suit within days of the invalidity of the laws coming to light, it is impossible for a statute of limitations to bar the appellant' claims.

The respondents argue that a statute of limitations bars the appellant's claims, even though the appellant files suit within days of the invalidity of the laws at issues coming to light. In fact, at the time the appellant filed suit, the laws were probably still invalid because the Great Seal was probably still not affixed as required by the constitution. Through what amounts to an exercise in mental gymnastics, the respondents accuse the appellants of sleeping on their rights, citing *Moates v. Bobb*, 322 S.C. 172 (Ct. App. 1996). The Great Seal was affixed to the 2011 Act on November 7, 2017 at the earliest, and a year did not even elapse between then and when the appellant filed suit. Even without the application of the continuous tort rule, which was discussed in the opening

brief, the suit was timely under any conceivable statute of limitations.

III. The appellant has challenged the entire ruling of the lower court, and the respondent's reliance on the two-issue rule is misplaced.

The respondents indicate in their brief on page 6 that "[t]he word moot does not appear in the Appellant's brief a single time." The respondents have determined subjectively which words they think the appellant should use and then sought to have the Court enforce the rule they came up with. The whole point of the appeal is that the moot argument fails. The respondents even acknowledge that the appellants have already stated that "the trial court's decision that 'substantial compliance' validated the 2011 Act retroactively was error." The respondents want the issue to be unpreserved because of the obviousness that the ruling was error. This does not change the fact that the appellants appeals the entire ruling, including all issues on appeal, and that the appellant has demonstrated at length that the issue is timely, ripe for review, justiciable, and that the appellant has standing to pursue the action

IV. The appellants have standing because they both, like thousands of other South Carolinians, have been injured by the respondents' failure to comply with the unambiguous requirements of the South Carolina Constitution.

Both appellants have standing because they have both been injured, personally and professionally, by the Secretary of State's failure to affix the Great Seal to the laws at issue. *Joytime Distrib. & Amusement Co. v. Sate*, 338 S.C. 634 (1999). It is curious that the respondents have chosen as one of their arguments that two Plaintiffs have not been affected by this case. Nearly every medical negligence case in the last 14 years has been affected by the laws in question. Over the last 14 years, many verdicts have been improperly affected by punitive damages caps which were not valid laws. The respondents contend that "the injury of which Appellants complain does not

directly affect them in a concrete, individual way..." The appellants actually earn their living by representing plaintiffs in contingency cases. The amount they earn on cases has been improperly reduced over the past 14 years, as has the income of every other plaintiff's lawyer in the state and the ultimate outcome for many, many plaintiffs. Both plaintiffs, along with every other plaintiff and plaintiff's lawyer in the state, have "a personal stake in the subject matter of the lawsuit. *Sea Pines Ass'n. for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594 (2001). On page 9 of their brief, the respondents acknowledge that the appellants have been affected in a real and concrete way by referencing "[t]he reduction of money received by Appellants' clients."

The appellants have standing, but even if they lacked standing, the Court could decide the issues before it based on an exception because the invalid and unconstitutional laws are publicly important. *Sloan v. Dep't of Transp.*, 365 S.C. 299 (2005). The respondents' arguments that that the Court is unable to apply the public importance exception fails for several reasons. First, Court can do all things reasonably necessary to reach just results. *Ex Parte Dibble*, 310 SE 2d. 440 (Ct. App. 1983). Second, the entire case on appeal is about a matter of public importance – subjecting lawyers and parties to suits to the unconstitutional reduction of recovery based on invalid laws. Third, the appellants appealed the entire action and all issues contained therein.

V. Since the appellant's suit is the first to address the invalidity of the unconstitutional laws at issue, *res judicate* cannot apply and is inapplicable.

This is the first time the issues before this Court have ever been raised. *Res judicata* therefore does not apply, an no further analysis is need. If one looks further, *res judicata* cannot apply for additional reasons. *Res judicata* bars claims that have been fully and finally determined on their merits. *S.C. Pub. Interest Found. V. Greenville City*, 401 S.C. 377 (Ct. App. 2013). None of the claims in the appellants underlying suit were even partially determined because the suit was

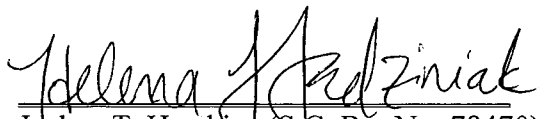
dismissed before any meaningful discovery was done and at the Rule 12(b)(6) stage.

CONCLUSION

The appellants respectfully request that the Court reverse the trial Court.

Respectfully submitted,

February 18, 2020



Joshua T. Hawkins (S.C. Bar No. 78470)
Helena L. Jedziniak, (S.C. Bar No. 100825)
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllcsc.com
helena@hjllcsc.com

Druanne D. White (S.C. Bar No. 5991)
Kyle J. White (S.C. Bar No. 101426)
Trevor B. White (S.C. Bar No. 100791)
White, Davis and White Law Firm
Post Office Box 1346
Anderson, South Carolina 29622
(864) 231-8090
(864) 231-8006 (Fax)
druanne@wdwlawfirm.com
kyle@wdwlawfirm.com
trevor@wdwlawfirm.com

Attorneys for the Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2019-000330

Joshua Hawkins and Floyd S. Mills, III,..... Appellants,

v.

Secretary of State Mark Hammond, South Carolina Secretary of State's Office,..... Respondents.

And

Harvey S. Peeler, Jr., in his capacity as President of the South Carolina Senate, and James "Jay" Lucas, in his official capacity as the Speaker of the South Carolina House of Representatives,..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

February 18, 2020

Druanne D. White (S.C. Bar No. 5991)
Kyle J. White (S.C. Bar No. 101426)
Trevor B. White (S.C. Bar No. 100791)
White, Davis and White Law Firm
Post Office Box 1346
Anderson, South Carolina 29622
(864) 231-8090
(864) 231-8006 (Fax)
druanne@wdwlawfirm.com
kyle@wdwlawfirm.com
trevor@wdwlawfirm.com

Joshua T. Hawkins, S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllcsc.com
helena@hjllcsc.com

Attorneys for the Appellants