THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-000360

Case No. 2018-CP-40-04819

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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 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, Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether Folks's One Subject Rule challenge to Act 40 of 2017 is moot because the provisions in Act 40 were codified in Act 129 of 2018.

II. Whether Folks has standing to bring this lawsuit, when no future guidance is needed on this subject and taxpayer standing has been abolished.

III. Whether Act 40 complies with the One Subject Rule, when its title is like others approved by the Supreme Court and each of its provisions relates to improving infrastructure financing and oversight.

INTRODUCTION

Our appellate courts are again confronted with a One Subject Rule challenge under Article III, § 17 of the South Carolina Constitution. This time, that challenge is to Act 40 of 2017, legislation that focused on "the effects of inadequate infrastructure financing and oversight" and took "a comprehensive approach to address" those effects. 2017 S.C. Acts No. 40, § 27 & Recitals.

In this case, the Court need not even reach the merits of this constitutional challenge, for two separate reasons. *See, e.g.*, *Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 387, 563 S.E.2d 651, 656 (2002) ("It is this Court's firm policy to decline to rule on constitutional issues unless such a ruling is required."). *First*, this case is moot. For more than a century, the Supreme Court has consistently held that any *procedural* defect in the passage of an act—such as violating the One Subject Rule—is cured by the act's subsequent codification. Codification is when the General Assembly passes an act (pursuant to all constitutional requirements) that compiles all of the acts it has passed into a code and declares that code to be the general permanent statutory law

of this State. The provisions of Act 40 were codified the next year by Act 129 of 2018, which cured any One Subject Rule violation in Act 40 and mooted this case.

Second, Folks lacks standing. The public importance exception to standing applies only in narrow circumstances when future guidance is needed on a question of public importance. This is not such a case, and applying the exception here would take the courts beyond their proper role in our constitutional system. Additionally, Folks cannot rely on taxpayer standing because the Supreme Court abolished that doctrine more than a decade ago.

But even if Folks somehow could overcome these two hurdles and the Court did have to reach the merits, the circuit court's judgment should still be affirmed. As for the subject of the Act, it is expressed in the title. And that title is the type of index-like title of which the Supreme Court has approved on multiple occasions. As for the specific provisions that Folks challenges, each provision is related to the single subject of Act 40, so the Act complies with the One Subject Rule.

STATEMENT OF THE CASE

The General Assembly passed Act 40 in 2017.

In 2017, the General Assembly passed Act 40. *See* 2017 S.C. Acts No. 40; (*see also* R. p. 19). The General Assembly explained that all of the act's provisions "relat[e] to the subject of the effects of inadequate infrastructure financing and oversight." 2017 S.C. Acts No. 40, § 27.

Governor McMaster vetoed Act 40 on May 9, 2017. The next day, the House overrode that veto by a vote of 95-18. *See* H. Journal 122d Gen. Assembly, 1st Sess.

(May 10, 2017). The Senate did the same later that day, by a vote of 32-12. *See* S. Journal 122d Gen. Assembly, 1st Sess. (May 10, 2017).

Thus, Act 40 became law. *See* S.C. Const. art. IV, § 21. Its provisions were included in various parts of the 2017 Cumulative Supplements to the South Carolina Code. (R. pp. 122–226).

The General Assembly passed Act 129 in 2018.

The next year, the General Assembly unanimously passed Act 129. *See* 2018 S.C. Acts No. 129; *see also* S. Journal 122d Gen. Assembly, 2d Sess. (Jan. 16, 2018); H. Journal 122d Gen. Assembly, 2d Sess. (Jan. 25, 2018). Governor McMaster signed that act into law.

Act 129 did two things. First, it adopted new versions of Volume 15A and Volume 18 of the South Carolina Code. *See* 2018 S.C. Acts No. 129, § 2(C). Second, and more importantly for this litigation, it adopted the 2017 Cumulative Supplements as part of the Code of Laws and declared those supplements to be part of "the only general permanent statutory law of the State." *Id.* § 3.

Folks challenges the constitutionality of Act 40.

Folks sued the State, the House, Speaker Lucas, the Senate, and Senator Leatherman (who was replaced as a defendant by Senator Peeler, after his election as president of the Senate (R. pp. 12–14)). Folks's sole claim was that Act 40 violates the One Subject Rule. (R. p. 25). The defendants moved to dismiss the complaint, arguing that codification cured any defect, Folks lacked standing, and the claims failed on the merits. (R. pp. 88–121).

The circuit court granted the motions to dismiss based on codification and standing. (R. p. 3–11). In line with the cases on avoiding unnecessary constitutional questions, the circuit court did not address the merits of the One Subject challenge.

Folks timely appealed. (R. p. 27).

STANDARD OF REVIEW

This Court reviews the grant of a motion to dismiss under the same standard as the circuit court. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014). A court must dismiss a complaint whenever it "fail[s] to state facts sufficient to state a cause of action." Rule 12(b)(6), SCRCP. Although a court must view the allegations and draw reasonable inferences in the light most favorable to the plaintiff, a court nevertheless must dismiss the complaint if "the facts alleged in the complaint do not support relief under any theory of law." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

The Court reviews questions of standing and mootness *de novo*. *See Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 354, 815 S.E.2d 446, 452 (2018) (justiciability); *Freemantle v. Preston*, 398 S.C. 186, 192–96, 728 S.E.2d 40, 43–45 (2012) (standing). But the Court "has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid." *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009). Thus, a "statute will not be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it violates some provision of the constitution," and "its repugnance to the constitution

is clear and beyond a reasonable doubt." *Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 118, 691 S.E.2d 453, 458 (2010).

ARGUMENT

I. The case is moot because any One Subject Rule violation in Act 40 was cured when the General Assembly codified those provisions in Act 129.

In an unbroken line of decisions, the Supreme Court has held that codification renders any procedural defect like a One Subject Rule violation moot. In Act 129, the General Assembly codified the provisions of Act 40. Therefore, any One Subject Rule defect in Act 40 is now cured, and this case is moot.

A. The process of codification has changed over time, but not its purpose.

The Supreme Court long ago recognized that codification "make[s] the general laws of the State easily accessible." *State v. Meares*, 148 S.C. 118, 124, 145 S.E. 695, 697 (1928). Without these laws being systematically collected and indexed into a code, "it would be necessary, in order to find [a] law on any subject, to examine every such volume of the statutes and every act applicable to the subject." *Id.* Such an undertaking "would require much time and labor." *Id.*

Codification was originally a constitutional requirement that had to be done once a decade. The General Assembly was required every ten years to adopt a code that was "the only general statutory law of the State" in legislation "passed according to the forms of this Constitution for the enactment of laws." *See* S.C. Const. art. VI, § 5 (1895).

The process also quickly became a statutory one, which had requirements mirroring the constitutional ones. *See* 1896 S.C. Acts No. 1 (codified at S.C. Code 1902

§§ 62–64). Over the years, additional statutory requirements were imposed, including one that the code commissioner prepare each year "a supplement to the then existing permanent code." 1931 S.C. Acts No. 127, § 7 (codified at S.C. Code 1932 § 2118).

About two decades later, a statutory change introduced a new way for a single volume to be codified, rather than an entire new code. This new provision provided that if a supplement became "too bulky for convenient use," the commissioner should submit a new volume to the General Assembly to be codified. 1953 S.C. Acts No. 178, § 1 (codified at S.C. Code 1962 § 1-307.1).

Codification became solely a statutory process in 1973. Following the recommendation of the Committee to Make a Study of the South Carolina Constitution of 1895, chaired by Senator John C. West, the Constitution was amended to remove codification. *See* 1973 S.C. Acts No. 78 (ratifying the amendment that moved Article VI to Article V, but without the provision on codification); 1973 S.C. Acts No. 132 (ratifying the amendment that adopted a new Article VI, without a provision on codification); *see also Report of the S.C. Election Commission for the Period Ending June 30, 1973* 413–16; *Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895* 45, 73 (1969).

More changes came the following decade. In 1982, the General Assembly removed the decennial requirement by repealing § 2-13-110, which included the requirement (originally found in the Constitution) that the General Assembly wait one year after receiving the commissioner's report proposing a new code before voting to adopt that new code. *See* 1982 S.C. Acts No. 344, § 11.

Today, codification is still governed by Title 2, Chapter 13. The commissioner still prepares and publishes supplements to the code each year. *See* S.C. Code § 2-13-80. Whenever any supplement "become[s] too bulky for convenient use," the commissioner proposes a revised volume for codification, which, if the General Assembly approves, it must do pursuant the normal constitutional process for adopting legislation. *Id.* § 2-13-90. Similarly, other changes—such as adoption of an entire new code or of supplements as part of the code—must also be done "by act passed under the formalities required in the Constitution." *Id.* § 2-13-170.

B. Codification cures any One Subject Rule violation.

Just as the purpose of codification has not changed, neither has the Supreme Court's consistent holding on codification's effect. Since it first took up this question more than a century ago, the Supreme Court has repeatedly held that codification can cure an act's procedural defects, like a One Subject Rule violation. Under this well-established rule, any problem with Act 40 is now moot.

1. The Supreme Court has consistently applied this codification rule.

Over the past century, the Supreme Court has addressed codification on five occasions.[1] Each time, the Supreme Court has held that codification cured any One Subject Rule violation.

[1] Codification was raised in *S.C. Public Interest Foundation v. S.C. House of Representatives*, 425 S.C. 407, 822 S.E.2d 805 (2019), but the Supreme Court held that the act in that case did not violate the One Subject Rule, so the Court did not rely on codification. It did, however, observe that the General Assembly, through codification, had taken "action to remedy the purported constitutional defect." *Id.* at 411 n.2, 822 S.E.2d at 807 n.2.

It first did so in *Parks v. Laurens Cotton Mill,* 75 S.C. 560, 56 S.E. 234 (1907). That case involved a challenge to an 1894 law regarding records of cotton purchases. *See* 1894 S.C. Acts No. 21. Laurens Cotton Mill asserted that the title of the act did not express its subject. 75 S.C. at 561, 56 S.E. at 235. The Supreme Court rejected that argument, explaining that the 1894 law "was incorporated in the Code of Laws . . . . and became part of the only statutory law of the state." *Id.* at 568, 56 S.E. at 237; *see also* S.C. Code 1902 § 1546.

The Supreme Court addressed codification again in *Nexsen v. Ward,* 96 S.C. 313, 80 S.E. 599 (1914), which held that a landlord's agricultural lien did not have to be in writing. The court first pointed to *Parks* and observed that the 1894 act there was "unconstitutional because of a defective title" but nevertheless "became a part of the law of the state when adopted as part of the Code." *Id.* at 319, 80 S.E. at 601.

The *Nexsen* court next turned to the logic of codification. It explained that "any matter which the legislature may constitutionally enact as law becomes such when it has been inserted into the Code, and adopted with it." *Id.* In other words, when the General Assembly passes a codification bill, it intends for every provision in the code to have the force of law, so that is the effect that courts must give each provision.

The court also explained what codification can fix, as well as what it cannot fix. It cannot fix a *substantive* constitutional defect in an act. *Id.* at 320, 80 S.E. at 601. For example, codification cannot make a statute requiring racial discrimination in public hiring (an equal protection violation) or prohibiting newspapers from criticizing elected officials (a First Amendment offense) constitutional.

But codification can fix a *procedural* constitutional flaw in an act. As the Supreme Court wrote, when "the defect is not inherent in the subject matter itself, but relates simply to its manner of passage" (such as a One Subject Rule violation), the General Assembly may correct the problem by passing a bill that does not have a procedural flaw. *Id.* (quoting *Cent. of Ga. Ry. Co. v. Georgia*, 31 S.E. 531, 539 (Ga. 1898)).

The Supreme Court next opined on codification in *State v. Freeland*, 106 S.C. 220, 91 S.E. 3 (1916), in which the defendant had been convicted of possessing cocaine. The defendant there challenged the constitutionality of the statute under which he was convicted based on the One Subject Rule. That statute was § 405 of the criminal code. *See* S.C. Criminal Code 1912 § 405. Section 405 was based on two acts, one from 1907, *see* 1907 S.C. Acts No. 256, and one from 1911, *see* 1911 S.C. Acts No. 85. These acts were codified as part of the 1912 Code.

Given this codification, the Supreme Court quickly rejected the defendant's One Subject Rule challenge. In a single sentence, the Supreme Court held that this argument "was properly overruled" by the trial court. *Freeland*, 106 S.C. at 222, 91 S.E. at 3 (citing *Parks*, 75 S.C. 560, 56 S.E. 234).

Codification came before the Supreme Court again in 1958. *See Colonial Life & Acc. Ins. Co. v. S.C. Tax Comm'n*, 233 S.C. 129, 103 S.E.2d 908 (1958). There, Colonial Life challenged license taxes for 1950-1953. One of its arguments was that the act imposing the tax in 1951 violated the One Subject Rule because the subject was not

expressed in the act's title. *Id.* at 137, 103 S.E.2d at 912; *see also* 1951 S.C. Acts No. 379, § 96.

The Supreme Court agreed, noting that the title of the 1951 act "made no express reference to the tax provisions" in dispute. *Id.* at 144, 103 S.E.2d at 915. Although the subject of the 1951 act was "broadly viewed, state finances," the Supreme Court held that a permanent provision such as the disputed tax was not "so inherently a part of the ordinary fiscal affairs of the state as to justify, within the meaning of Article III, Section 17, its incorporation into a general appropriation act without reference to it in the title of the act." *Id.* at 145, 103 S.E.2d at 916. Thus, this provision violated the One Subject Rule. *Id.*

But that did not mean the provision was doomed. Turning to codification, the Supreme Court concluded that because this tax provision was incorporated into the 1952 Code, "the deficiency that had existed in the title of that act prior to the codification of that section of it thereupon became of no consequence."[2] *Id.* at 148, 103 S.E.2d at 917; *see also* S.C. Code 1952 §§ 65-931–65-936.

The Supreme Court's fifth decision on codification was *South Carolina Tax Commission v. York Electric Cooperative, Inc.*, 275 S.C. 326, 270 S.E.2d 626 (1980). The

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[2] The Supreme Court did note that the tax provision in the 1951 act was "invalid until its incorporation" into the 1952 Code. *Colonial Life & Acc. Ins. Co.*, 233 S.C. at 152 103 S.E.2d at 920. For the taxpayer in *Colonial Life*, this rule meant that the tax should not have been imposed in 1951, but after that, the taxpayer was liable for that tax.

Nothing in Folks's complaint seeks any sort of refund of a tax or demands relief for anything between when Act 40 was passed and when it was codified the next year. All he seeks is a declaration that Act 40 is "null and void." (R. p. 25). Thus, even if codification's fix is not absolute, this case does not raise issues of retroactivity.

Tax Commission sought to recover unclaimed property from the electric co-op, which the co-op resisted because it claimed the Uniform Disposition of Unclaimed Property Act was unconstitutional based on the One Subject Rule. That act was included in the General Appropriations Act of 1971. *See* 1971 S.C. Acts No. 410, Part II § 14.

Like the act with the tax provision in *Colonial Life*, the Supreme Court held that this act with the unclaimed-property provision violated the One Subject Rule. The appropriations act was about the "raising and expenditure of tax monies," 275 S.C. at 331, 270 S.E.2d at 628, whereas the unclaimed-property provision was "not to raise revenue" but rather to resolve who "takes custody" of unclaimed property, *id.* at 330, 270 S.E.2d at 628.

Yet once again, codification saved the provision in dispute. The Uniform Disposition of Unclaimed Property Act was codified in Chapter 17 of Title 27 in the 1976 Code. *See* S.C. Code § 27-17-10 *et seq.* (1976). The Supreme Court cited *Parks, Nexsen, Freeland*, and *Colonial Life* to "hold that the constitutional defect, under Article III, Section 17, in the enactment of the South Carolina Uniform Disposition of Unclaimed Property Act, was eliminated by the proper inclusion of that Act in the codification of the 1976 Code of Laws." 275 S.C. at 333, 270 S.E.2d at 629–30.

Abandoning this century-old body of decisions applying the codification rule would demand that the Court disregard not only the Supreme Court's holdings but also the rule that *stare decisis* shows "far more a respect for a body of decisions as opposed to a single case standing alone." *McLeod v. Starnes*, 396 S.C. 647, 654, 723 S.E.2d 198, 203 (2012).

2. The codification rule makes sense.

Stare decisis also takes into account the soundness of the decisions being challenged. *See Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 451, 790 S.E.2d 763, 770 (2016) ("adherence to precedent that is wrong serves no such laudable purpose"). The codification rule is well grounded for at least two reasons.

First, it promotes finality, so that a procedural defect cannot be used to undermine a law on which the public has been relying. *See Nexsen*, 96 S.C. at 320, 80 S.E. at 601 (allowing procedural defects to be cured by codification guarantees that people may "rely upon [the code] with certainty for their guidance"). In myriad contexts, courts have recognized the need for finality. *See, e.g., Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (law of the case); *Morris v. Mathews*, 475 U.S. 237, 250 (1986) (double jeopardy); *United States v. Fields*, 552 F.3d 401, 405 (4th Cir. 2009) (criminal sentencing); *Rouse v. Lee*, 339 F.3d 238, 251 (4th Cir. 2003) (habeas petitions); *Maressa v. A.H. Robins Co.*, 839 F.2d 220, 221 (4th Cir. 1988) (creditor claims in bankruptcy); *Brown v. Baby Girl Harper*, 410 S.C. 446, 454, 766 S.E.2d 375, 380 (2014) (adoption); *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005) (statutes of limitations). This need for finality is especially critical when it comes to the code. Legislators, lawyers, and laypeople should be able to trust that what law is included in the code is, in fact, the law that applies in South Carolina. *See Meares*, 148 S.C. at 124, 145 S.E. at 697.

Second, this rule respects that our Constitution vests legislative power in the General Assembly. *See* S.C. Const. art. III, § 1. It gives effect to the fact that a

codification bill is passed through the same process as every other bill (and can even be passed by a different General Assembly than the one that passed the bill being challenged). A codification bill has a title and a subject (which is adopting a code that harmonizes all acts passed by the General Assembly). *See id.* art. III, § 17. It must be read three times by both houses. *See id.* art. III, § 18. Like any other bill, a codification bill can be reviewed and amended by legislators before it is passed. *See Nexsen*, 96 S.C. at 320, 80 S.E. at 601. It then must be passed by a majority of each house. *See* S.C. Const. art. III, § 1. And finally it must be signed by the governor (or become law without his signature or over his veto). *See id.* art. IV, § 21. Any defect with how a previous bill was passed is therefore corrected by the codification bill, which has gone through the full constitutional process to become law.

Supporting the conclusion that this rule is well founded is the fact that this is the majority rule in the United States. At least nineteen other states have adopted it. *See Alabama ex rel. Sossaman v. Stone*, 178 So. 18, 21 (Ala. 1937); *Specht v. Colorado*, 396 P.2d 838, 840 (Colo. 1964); *Warnock v. Fla. Hotel & Restaurant Comm'n,* 178 So.2d 917, 919 (Fla. Dist. Ct. App. 1965); *Heaton v. Georgia*, 4 S.E.2d 98, 99 (Ga. Ct. App. 1939); *Federal Reserve Bank v. Citizens Bank & Trust Co.*, 23 P.2d 735, 738–39 (Idaho 1933); *Iowa v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990); *Bond v. Bd. of Cty. Comm'rs*, 290 P.2d 1013, 1015 (Kan. 1955); *Falender v. Hankins*, 177 S.W.2d 382, 383–84 (Ky. 1944); *Maryland, for Use of Emerson, v. Poe*, 190 A. 231, 237 (Md. 1937); *Montana v. Rice*, 329 P.2d 451, 453 (Mont. 1958); *Peterson v. Vasak*, 76 N.W.2d 420, 424 (Neb. 1956); *Abruzzese v. Oestrich*, 47 A.2d 883, 889 (N.J. Ch. Ct.

1946); *Lapland v. Stearns*, 54 N.W.2d 748, 752 (N.D. 1952); *Atlas Life Ins. Co. v. Rose*, 166 P.2d 1011, 1014 (Okla. 1946); *South Dakota v. Barr*, 232 N.W.2d 257, 259 (S.D. 1975); *Int'l Harvester Co. v. Carr*, 466 S.W.2d 207, 214 (Tenn. 1971); *Skaggs v. Grisham–Hunter Corp.*, 53 S.W.2d 687, 688 (Tex. Civ. App. 1932); *West Virginia v. Chesapeake & Potomac Tel. Co.*, 4 S.E.2d 257, 258 (W. Va. 1939); *Wyoming v. Pitet*, 243 P.2d 177, 186 (Wyo. 1952).

3. Act 129 mooted any One Subject Rule violation in Act 40.

Even assuming that Act 40 violated the One Subject Rule, Act 40 is not "null and void," as Folks insists. (R. p. 25). The provisions of Act 40 were put into the 2017 Cumulative Supplements. (R. pp. 122–226). And the 2017 Cumulative Supplements were codified in Act 129 and declared by the General Assembly to be part of the only general statutory law of this State. *See* 2018 S.C. Acts No. 129, § 3.

Just as the codification of the challenged acts in *Parks*, *Nexsen*, *Freeland*, *Colonial Life*, and *York Electric Cooperative* cured any One Subject Rule violation in those acts, codification of Act 40 cures any One Subject Rule violation in it. Therefore, the circuit court correctly dismissed this case as moot. *See S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758–59 (2013) (holding that courts may not decide moot cases).

C. Folks offers no compelling reason to disregard this long line of jurisprudence.

Folks offers various reasons to overturn the codification cases (if that were something the Court could even do, *see Am. Fast Print Ltd. v. Design Prints of Hickory*, 288 S.C. 46, 47, 339 S.E.2d 516, 517 (Ct. App. 1986)), but none are persuasive.

1. Courts do not question the motives of legislators.

Folks's primary argument is that if the Court allows codification to cure "an active, ongoing, Constitutional challenge," the Court will have "immunize[d]" the General Assembly to violate the One Subject Rule with impunity. App. Br. 3; *see also* App. Br. 9, 10, 12.

As a starting point, the concept that codification can "immunize" the General Assembly is wrong. To stick with the medical analogy, codification is like an antibiotic. It can cure a particular (procedural) ailment in an act, but nothing more. It cannot, like an immunization, prevent anything in the future. In other words, the General Assembly can be sued in the future if Folks or any other person (assuming that plaintiff has standing) believes the One Subject Rule has been violated, despite the fact that the General Assembly cured any One Subject Rule defect in Act 40.

Second, and more fundamentally, this argument is premised on the idea that the General Assembly would do something nefarious by deliberately violating the One Subject Rule and then passing a codification act to evade a legal challenge. The Supreme Court, however, has refused to impugn the motives of legislators, as Folks has done. *See, e.g.*, *Nexsen*, 96 S.C. at 320, 80 S.E. at 601 ("The court must assume that the members have done their duty."); *State v. Cardozo*, 5 S.C. 297, 312 (1874) ("Public and proper motives are alone to be attributed to the Legislature."); *cf. S.C. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1258 (4th Cir. 1989) ("the cases uniformly hold that facially constitutional legislation may not be stricken because of suspect legislative motivation"). In addition to divining legislators' intentions being virtually

impossible, *see, e.g.*, *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *Douglas v. City Council of Greenville*, 92 S.C. 374, 75 S.E. 687, 688 (1912), trying to do so is antithetical to the respect that co-equal branches of government must show each other, *see, e.g.*, *Marshall Field & Co. v. Clark*, 143 U.S. 649, 673 (1892); *Horry Tel. Co-op., Inc. v. City of Georgetown*, 408 S.C. 348, 354, 759 S.E.2d 132, 135 (2014).

Folks's argument in fact has actually already been rejected by the Supreme Court. In *Nexsen*, the court recognized that "mischief" might exist in the codification process. 96 S.C. at 320, 80 S.E. at 601. Even so, the Supreme Court cautioned that such mischief "is a matter for legislative, rather than judicial, consideration." *Id.* Put differently, courts will not peek behind the metaphorical curtain at a codification bill. If the bill is passed with all the constitutional formalities, that is the end of the matter. *Cf. Med. Soc. of S.C. v. Med. Univ. of S.C.*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999) (discussing how the enrolled-bill rule prohibits courts from looking to the legislative process and limits courts to looking only at the bill enrolled by the secretary of state in evaluating a One Subject Rule challenge).

Moreover, Folks's speculation that codification could lead to deliberate unconstitutional actions by the General Assembly has no basis in law or fact. He points to no case in which the "potential for abuse" is sufficient to prohibit the General Assembly from exercising its constitutional power to legislate. Nor does he point to any actual abuse in practice. The General Assembly has passed codification acts regularly over the past few decades, without any credible accusations of any improper conduct. Nor has Folks pointed to any malfeasance by the code commissioner (who

prepares the proposed volumes and supplements) or of the governor (who signs codification acts into law), who are both also involved in this process. Instead, codification ensures that the General Assembly carries out its statutory obligation to provide the people with a usable code of laws. *See* S.C. Code § 2-13-10 *et seq.*

Finally, even if the General Assembly had passed Act 129 for the express reason to cure the procedural defects in Act 40, it still would not be problematic. The General Assembly has the constitutional power to legislate. *See* S.C. Const. art. III, § 1. The filing of a lawsuit does not deprive the General Assembly of that power.

2. A pending lawsuit challenging an act is irrelevant.

Folks tries to distinguish the codification cases by contending that none of those cases "involved an active, ongoing" lawsuit. App. Br. 3.

But that this lawsuit was filed before Act 129 was passed does not save this case from being moot. None of the holdings in *Parks, Nexsen, Freeland, Colonial Life,* or *York Electric Cooperative* even mentioned when the complaints were filed. Nor is the logic of those decisions impacted by the timing of the codification act. Codification, whenever it occurs, promotes finality and is an exercise of the General Assembly's legislative power.

3. The House and the Senate as parties is of no import.

Folks next attempts to distinguish these codification decisions by observing that neither the House nor the Senate was a party in those cases. *See* App. Br. 3.

That does not matter. As with the timing of the codification acts, the identity of the litigants has no bearing on the holdings or the logic of the Supreme Court's

decisions. Put another way, a codification act cures a procedural defect, no matter when it is passed or who is party to a lawsuit.

4. Changes to decennial codification and the one-year waiting period do not save Folks's challenge to Act 40.

Folks takes another shot at distinguishing the codification cases by pointing out that the decennial codification, with its one-year waiting period to study the code commissioner's report, is no longer required. *See* App. Br. 3–6.

This one-year waiting period was required when the General Assembly still had to adopt a new code every ten years. The sheer volume of that work necessitated a greater length of time to review the proposed code than codifying only a volume or two or the supplements. (Notably, codification of less than the entire code has never required a one-year waiting period. *See, e.g.*, 1953 S.C. Acts No. 178, § 1.) Although a clear legislative record does not exist, presumably the elimination of decennial codification was the reason the one-year waiting requirement was also eliminated in 1982. *See* 1982 S.C. Acts No. 344, § 11 (eliminating § 2-13-110, which required decennial codification and a one-year waiting period).

Moreover, the purpose of that waiting period (to give legislators time to ensure that the new code included only acts already adopted) is irrelevant here. Folks has never claimed that the codified provisions are not identical to the ones in Act 40.

In none of the five codification cases did the Supreme Court's holding turn on the one-year waiting period. Although in *Nexsen* and *Colonial Life* the court mentioned the requirement in describing the codification process, the court did not rely on that requirement in its holdings.

Folks also wrongly equates a one-year waiting period with more carefully considered legislation. Some issues may have been considered for a long time before a bill is introduced. Some bills may languish without consideration for a long time. Trying to discern the thought that legislators put into an act by looking to the time it took to pass that act is just one "hazard[]" of looking beyond the act itself. *S.C. Educ. Ass'n*, 883 F.2d at 1262. Ultimately, what matters is that the bill is passed, not how long it took to pass.

D. No mootness exception applies.

Unable to avoid the codification cases, Folks next insists that, even if his challenge to Act 40 is moot, the three exceptions to that doctrine allow the Court to consider this case. No exception, however, saves his challenge.

The first exception is for an issue that is capable of repetition yet evading review. *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Folks's argument here hinges on his insistence that the General Assembly will deliberately violate the One Subject Rule and then rush to codify the act to avoid a lawsuit. But, of course, courts cannot accept that premise, and instead, they must attribute "proper motives . . . alone" to the General Assembly. *Cardozo*, 5 S.C. at 312.

The second exception is for matters of great public importance. This exception applies only when there is both "public importance" and "imperative and manifest urgency." *Greenville Cty.*, 380 S.C. at 535, 670 S.E.2d at 667. Neither exists here. The codification issue arises only as a defense. If the question were so important, it would presumably arise on the face of the lawsuit itself. Additionally, our Supreme Court

has already offered clear guidance on the effect of codification on any One Subject Rule violation, and Folks's attempt to frame the question here more narrowly does not change the fact that the Supreme Court's decisions speak directly to this case.

The third and final exception is for cases that "may affect future events, or have collateral consequences for the parties." *Id.* A decision here will have no effect on these parties; after all, Act 40 has been codified, and any procedural defect cured. Nor will a decision impact future events. Case law on the One Subject Rule and on codification is well established, and reaffirming those decisions is unnecessary. Further, nothing needs to be "reiterated" to the General Assembly, which Folks (once again) accuses of deliberately violating the South Carolina Constitution. App. Br. 12.

II. The trial court correctly concluded that Folks lacks standing.

A. Using the public importance exception to provide future guidance to the General Assembly here would violate Article I, § 8 of the South Carolina Constitution.

South Carolina courts have recognized a "public importance exception" to the standing requirement. *Sloan v. Dep't of Transp.*, 365 S.C. 299, 304, 618 S.E.2d 876, 878 (2005). Folks bears the burden of proving that future guidance is needed here because it is an element of the exception he asks the Court to apply. *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). The Court should decline Folks's invitation to apply this exception broadly and instead should follow Supreme Court precedent that makes clear the exception does not apply here.

In *ATC South, Inc. v. Charleston County*, the Supreme Court explained that the "key to the public importance analysis is whether an opinion is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). In *ATC*, the Supreme Court concluded that the question presented did not warrant application of the exception because "the matter of importance must . . . be inextricably connected to the public need for court resolution for future guidance." *Id.*

Since that decision, the Supreme Court has continued to hold that the exception should be applied only in narrow situations, explaining that it "tempered the application of the public importance exception somewhat in *ATC*." *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013); *see also Freemantle*, 398 S.C. at 193, 728 S.E.2d at 44. The Supreme Court has consistently refused to expand the narrow circumstances that permit the use of the public importance exception. *See Jowers*, 423 S.C. at 360, 815 S.E.2d at 455; *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014). In so doing, the Supreme Court has cautioned against an expansive view of the "exception, lest it swallow the rule." *Jowers*, 423 S.C. at 360, 815 S.E.2d at 455.

An expansive view of this exception would improperly allow courts to exceed their "limited constitutional function of the 'judicial power.'" *Carnival Corp*, 407 S.C. at 81, 753 S.E.2d at 853 (quoting S.C. Const. art. V, § 1). Courts must decide only the case or controversy before them. Giving guidance to the General Assembly on how to

pass future legislation goes beyond exercising that judicial power and violates the separation of powers that is central to our Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinction from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge duties of any other.").

Here, the General Assembly found that the legislation advances its chosen policy goals. *See* 2017 S.C. Acts 40, § 27. Folks disagrees with that policy. That, of course, is his right. But he cannot ask this Court (or any court, for that matter) to strike down Act 40 because he disagrees with the policy the General Assembly chose to advance. After all, courts are not "bodies for the resolution of public policy and generalized grievances." *Carnival Corp*, 407 S.C. at 81, 753 S.E.2d at 853.

Moreover, this challenge also implicates the General Assembly's plenary power to tax. *See Gunter v. Blanton*, 259 S.C. 436, 441, 192 S.E.2d 473, 474 (1972) ("The power of the Legislature to provide for the imposition of taxes is unquestioned."). Though Folks may disagree with the fees or taxes imposed in Act 40, Article I, § 8's separation-of-powers mandate prevents a court from sitting as a "Council of Revision, conferring on itself the power to invalidate laws at the behest of anyone who disagrees with them."[3] *Bodman*, 403 S.C. at 68, 742 S.E.2d at 367. Once again, Folks's objection

[3] The Supreme Court distinguished fees from ordinary taxes in *Brown v. Horry County*, 308 S.C. 180, 417 S.E.2d 565 (1992). At the same time, the Supreme Court has also recognized that, in a more general sense, any revenue-raising measure enacted by the government is a tax. *See Columbia Gaslight Co. v. Mobley*, 139 S.C.

to the policy underlying Act 40 must "be remedied by the legislative and executive branches," not by the courts. *Carnival Corp*, 407 S.C. at 81, 753 S.E.2d at 853.

Folks's claim that future guidance is needed to determine how to implement Act 40 is not sufficient to meet the standard set by *ATC*. *See* App. Br. 16. The only future guidance the Court could give here is to the General Assembly because any administrative agencies that would implement the challenged act are not parties to this lawsuit. *See, e.g.*, 2017 S.C. Acts 40, § 15 (directing the Department of Revenue to administer refundable tax credit for preventative maintenance). Courts, however, do not issue decisions to nonparties. *Langford v. McLeod*, 269 S.C. 466, 474, 238 S.E.2d 161, 164 (1977) (explaining that a court cannot bind nonparties). Thus, the Court should reject Folks's attempt to avoid the separation-of-powers issue by shifting the supposedly needed guidance from being directed to the General Assembly to nonparties.

By applying the exception here, the Court would not only be stepping outside its judicial function but also would be expanding courts' jurisdiction beyond their constitutional limits. The Constitution gives this Court and circuit courts jurisdiction over "cases" only. S.C. Const. art. V, §§ 9, 11; S.C. Code § 14-8-200(a). This "case" requirement means that a court's jurisdiction may only be invoked by a justiciable controversy. *See Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417–18, 498 S.E.2d 906, 908 (Ct. App. 1998) ("South Carolina courts, like the federal courts, require a

107, 137 S.E. 211, 212 (1927); *see also Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 231, 464 S.E.2d 113, 121 (1995) (Finney, J., dissenting).

justiciable case or controversy before any decision on the merits can be reached."). That jurisdictional limit is set by the Constitution, so only the people of this State may expand that limit to allow courts to give the type of future guidance that application of the public importance exception here requires.

Disguising the future guidance sought by Folks as a claim for declaratory relief still does not authorize the Court to give the General Assembly future guidance. *See Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81–82, 742 S.E.2d 371, 374 (2013) ("The Uniform Declaratory Judgments Act does not require the Court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when the occasion might arise, or license litigants to fish in judicial ponds for legal advice." (alterations and quotations omitted)). Courts cannot give these types of advisory opinions. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) (dismissing an appeal for non-justiciability and explaining that the "Declaratory Judgments Act does not require the court to give a purely advisory opinion").

And in any event, future guidance is not needed. Just earlier this year, the Supreme Court reviewed the law on the One Subject Rule. *See S.C. Pub. Interest Found.*, 425 S.C. at 411–13, 822 S.E.2d at 807–08. In so doing, the court held that the General Assembly did not transgress that constitutional requirement. *Id.* Given that recent opinion on this subject, another judicial examination of it is unnecessary.

Despite Folks's assertion to the contrary, the Supreme Court has never applied the public importance exception to give guidance to the General Assembly in a One

Subject Rule challenge. Folks's reliance on *American Petroleum Institute v. S.C. Department of Revenue*, 382 S.C. 572, 576, 677 S.E.2d 16, 18 (2009), on this point is misplaced.

American Petroleum does not discuss standing, much less the public importance exception or future guidance. *See id.* at 576, 677 S.E.2d at 18. This is because the petitioners in the Supreme Court' original jurisdiction did not mention the public importance exception in their petition or complaint but relied instead on the traditional injury-in-fact, or "constitutional," standing. *See* Pet. Orig. Jurisdiction 1 n.1, *Am. Petroleum Inst. v. S.C. Dep't Revenue* (June 26, 2008); Compl. ¶¶ 1–2, 34–41, *Am. Petroleum Inst. v. S.C. Dep't Revenue* (June 26, 2008). The Supreme Court determined that the petitioners in *American Petroleum* had suffered an injury-in-fact by preliminarily enjoining the implementation of the challenged legislation while the merits of the act were considered. *See Am. Petroleum Inst.*, 382 S.C. at 576, 677 S.E.2d at 18; *see also Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) (requiring an irreparable injury to be entitled to a preliminary injunction).

By relying on *American Petroleum*, Folks conflates the public importance exception to standing with the public interest standard for invoking the Supreme Court's original jurisdiction. *See* App. Br. 14. As the Supreme Court has explained, the standard for accepting a case in the original jurisdiction requires the case be of "public interest," Rule 245(a), SCACR, which differs significantly from the standard applicable to the public importance exception, *see Carnival Corp.*, 407 S.C. at 80, 753

S.E.2d at 853. In fact, the Supreme Court itself has made clear that the standard for original jurisdiction and the public importance exception to standing "aim to answer different questions—whether the public interest requires expeditious resolution of a case versus whether the public interest requires resolution of a dispute for future guidance despite the lack of standing" and that "the grant of the petition for original jurisdiction has no effect upon whether the public importance exception applies." *Id.* Thus, *American Petroleum* offers Folks no support here.

B. Taxpayer standing has been abolished by our Supreme Court.

"Standing to sue is a fundamental requirement in instituting any action." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). To meet this fundamental requirement, Folks also relies on his status as a taxpayer. Since 2008, taxpayer standing is no longer recognized in South Carolina. *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*, 398 S.C. at 193, 728 S.E.2d at 44.

Despite citing cases from 1890 to 2000, *see* App. 18–20, Folks ignores *ATC*'s rejection of taxpayer standing and the cases that have followed in the eleven years since, never addressing what the Supreme Court said in *ATC*, *Bodman*, or *Freemantle* about taxpayer standing. Presumably, this is because those cases establish that Folks's status as a taxpayer is insufficient to establish standing. Therefore, the trial court correctly dismissed his complaint for lack of standing.

Although he failed to raise the argument below (much less get a ruling on it from the trial court), Folks now attempts to analogize his claim of taxpayer standing to a claim that he has suffered an injury-in-fact sufficient to establish traditional standing. *See* App. Br. 18, 20. This argument is not preserved.

As this Court has repeatedly held, an argument on appeal must be raised and ruled upon by the trial court to preserve it for appeal. *See, e.g., Fisher ex rel. Shaw-Baker v. Huckabee*, 415 S.C. 171, 181, 781 S.E.2d 156, 161 (Ct. App. 2015) (holding a plaintiff had waived alternative ground for standing by failing to raise it below), *aff'd as modified sub nom., Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 242, 811 S.E.2d 739, 743 (2018); *see also Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014).

Folks tacitly recognizes he did not raise this argument below by failing to include any citation to the record in his brief to support the claim he raises for the first time on appeal that he "contributed to the general tax funds of the State." App. Br. 20. He failed to argue that he paid any taxes related to Act 40 at the motion to dismiss hearing, (R. p. 45, lines 23–25; p. 67, lines 8–9; p. 69, lines 14–15), or in the briefing below, (R. pp 228–32, 248–49). Nor did Folks plead what he "contributed" to the general tax fund. Instead, his sole allegation in the complaint is that he is "a citizen, resident, taxpayer, and registered elector of the State of South Carolina." (R. p. 20). By failing to raise this argument below, it is not preserved for review, and the Court need not entertain it. *See Fisher*, 415 S.C. at 181, 781 S.E.2d at 161.

And even if the Court did consider this argument, it is unpersuasive. To accept this argument that paying taxes under an allegedly illegal statute constitutes an injury-in-fact would, in effect, ignore the Supreme Court's holding in *ATC*.

III. Act 40 does not violate the One Subject Rule.

Even if Folks could overcome his mootness and standing problems, his claim still fails on the merits.[4] Folks attacks Act 40 in two ways, first on its title and then on several of its provisions. But Act 40 complies with the Supreme Court's explanation of what Article III, § 17 requires. *See* S.C. Const. art. III, § 17 ("Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.").

A. The Supreme Court has consistently approved of titles just like the one here.

The Supreme Court has held that the "title requirement is satisfied if the title states the subject in general terms or indexes the key provisions of an act." *S.C. Pub. Interest Found.*, 425 S.C. at 412, 822 S.E.2d at 807; *see also, e.g.*, *Sea Cove Dev., LLC v. Harbourside Cmty. Bank*, 387 S.C. 95, 101, 691 S.E.2d 158, 161 (2010). Ultimately, the title must "convey reasonable notice of the subject matter to the legislature and the public." *Hercules Inc. v. S.C. Tax Comm'n*, 274 S.C. 137, 142, 262 S.E.2d 45, 48 (1980).

The title of Act 40 does just that. It is an index of every provision in the act. (R. pp. 123–26). The Supreme Court has approved of such index-like titles on multiple

[4] This Court may affirm for any reason in the record. *See* Rule 220(c), SCACR.

occasions. *See, e.g.*, *S.C. Pub. Interest Found.*, 425 S.C. at 412, 822 S.E.2d at 807 ("Act 275's extremely lengthy title indexes all of its key provisions. Therefore, Act 275's title puts the General Assembly and public on notice, satisfying the title requirement of the One Subject Rule." (citation omitted)); *Am. Petroleum Inst.*, 382 S.C. at 577, 677 S.E.2d at 18 (approving of a title that was "an index to each of the three provisions" in the act), *holding modified by S.C. Pub. Interest Found. v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016). The title of Act 40 therefore complies with the constitutional mandate of Article III, § 17.

B. Act 40 relates to one subject: infrastructure financing and oversight.

1. The Supreme Court has taken a broad view of Article III, § 17.

For decades, the Supreme Court has repeatedly held that the One Subject Rule does not preclude the General Assembly from dealing with several branches of one general subject in a single act. *See, e.g.*, *Keyserling v. Beasley*, 322 S.C. 83, 86–87, 470 S.E.2d 100, 102 (1996). As long as the topics in an act are "kindred in nature," the act complies with the One Subject Rule. *Hercules, Inc.*, 274 S.C. at 141, 262 S.E.2d at 48.

This approach to Article III, § 17 ensures that the General Assembly can effectively govern while still giving effect to the long-held threefold purpose of the One Subject Rule: "(1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself." *Sloan v. Wilkins*, 362 S.C. 430, 438, 608 S.E.2d 579, 583 (2005); *see also, e.g.*,

State v. O'Day, 74 S.C. 448, 54 S.E. 607, 608 (1906). As long as an act relates to the same general subject (even if it addresses different aspects of that subject), the public or the General Assembly are unlikely to be misled, and the risks of logrolling are diminished.

Hand in hand with its broad view of what constitutes a "subject," the Supreme Court has held that Article III, § 17 is to be liberally construed so as to uphold an act if possible. *See, e.g., McCollum v. Snipes*, 213 S.C. 254, 261, 49 S.E.2d 12, 14 (1948). Thus, doubtful or close cases are to be resolved in favor of upholding an act. *See, e.g., Alley v. Daniel*, 153 S.C. 217, 150 S.E. 691, 692 (1929). That is because courts make "every presumption" that statutes are constitutional and will strike them down only if the act's transgression of that social compact is "clear and beyond a reasonable doubt." *Bodman*, 403 S.C. at 66, 742 S.E.2d at 366.

2. Each provision Folks challenges passes constitutional muster and relates to infrastructure financing and oversight.

Folks does not challenge every provision of Act 40, but rather targets only Sections 5, 16, and 18. (R. p. 22).

i. The Education Improvement Act Fund has long been supported by revenue related to motor vehicles and infrastructure.

The relationship between Education Improvement Act Fund and revenue related to motor vehicles and infrastructure is a long one, and any change to financing for infrastructure can impact the Education Improvement Act Fund. Thus, it should be no

surprise that the Education Improvement Act Fund is included in Act 40, which focuses on infrastructure financing.

Section 5 imposes an "infrastructure maintenance fee" when vehicles are registered with the Department of Motor Vehicles. 2017 S.C. Acts No. 40, § 5(A); *see also id.* § 5(B), (C). Given the subject of Act 40, that fee itself easily satisfies Article III, § 17. So too does § 5's requirement that part of that fee be transferred by the DMV to the Department of Transportation for road resurfacing. *See id.* § 5(E)(1)(a).

Indeed, Folks seems to object only to the requirement that the remaining 20 percent (but only up to $60) be transferred to the Education Improvement Act of 1984 Fund under § 5(E)(1)(b). In essence, his claim is that, even if the General Assembly can impose this infrastructure maintenance fee and direct most of it to the DOT, it cannot, in the same act, dictate what happens to the rest of it, if that portion is going to something seemingly less directly connected to infrastructure than the DMV or DOT.

But Folks's objection to § 5(E)(1)(b) fails for multiple reasons. *First*, it ignores how the Education Improvement Fund has historically benefited from this type of revenue source. Before 2013, South Carolina imposed a tax, capped at $300, on the sale, use, or titling of motor vehicles. *See* S.C. Code § 12-36-2110(A)(1). Eighty percent of that revenue went to the general fund, while 20 percent (that is, up to $60) went to the Education Improvement Act Fund. *See id.* § 59-21-1010.

Then, in 2013, the General Assembly passed Act 98. That act changed where the 80 percent of this tax went. Half of that money was shifted to the State Non-Federal Aid Highway Fund, for use on "highway, road, and bridge maintenance, construction,

and repair." 2013 S.C. Act No. 98, § 5(B). This act did not change the 20 percent of the $300 that went to the Education Improvement Act Fund.

More change came in 2016 with the passage of Act 275 to where the 80 percent of this tax went. *See* 2016 S.C. Acts No. 275, § 85(A). But once again, the General Assembly did not touch the 20 percent that went to the Education Improvement Act Fund.

And then in Act 40 in 2017, the General Assembly excluded motor vehicles from that tax and established the infrastructure maintenance fee. *See* 2017 S.C. Acts No. 40, §§ 5(A), 7(D). Act 40 increased the amount of the motor vehicle fee from the old $300 tax to $500, and it established where 80 percent (plus the $200 increase) went.

Yet again, the General Assembly did not change anything about the money that went to the Education Improvement Act Fund. *See id.* § 5(E)(1)(b). As has long been the case, 20 percent of $300 goes to that fund. In other words, this provision keeps things the way they have been for decades. It does not even direct 20 percent of the increased fee (that is, 20 percent of the $200 increase from $300 to $500) to the Education Improvement Act Fund. Folks did not challenge any of these acts, nor can he now.

Thus, § 5(E)(1)(b) ensures that changes to one tax do no negatively impact education funding, and it is something the General Assembly has done before, including in Act 275, which the Supreme Court recently held did not violate the One Subject Rule. *See* 2016 S.C. Acts No. 275, § 85; *S.C. Pub. Interest Found.*, 425 S.C. 407, 822 S.E.2d 805.

Second, Folks's argument undermines purposes of the One Subject Rule. If the General Assembly can impose a particular fee in a bill, it certainly can direct where that fee goes in the same bill. In fact, requiring a separate bill to send the 20 percent of the infrastructure maintenance fee to the Education Improvement Act Fund would undercut the goals of Article III, § 17. If Folks were right, the public would have to search for multiple bills to determine how the fee would be used and to decide whether to support or oppose those bills. Looking to a single bill for how a particular fee is used is much simpler for the public, as well as for the General Assembly. Additionally, requiring separate bills could lead to an absurd result in which a fee was imposed (if one bill passed) but how all of that revenue was to be used was never established (if the other bill did not pass).

Third, this objection to § 5(E)(1)(b) disregards what the Supreme Court has previously said about the connection between education and economic development. In *Wilkins,* the Supreme Court upheld much of the Life Sciences Act, which included provisions related to education, life sciences, and economic development. *See* 362 S.C. at 440–41, 608 S.E.2d at 584–85. There, as is the case with Act 40, the General Assembly utilized the connection between improving education and a growing economy, which necessarily results in greater revenue for the subject of that act. Connecting education and the economy here merely applies the Supreme Court's precedent faithfully and increases revenue for improving infrastructure financing and oversight, the subject of Act 40.

ii. The tax credits in § 16 and § 18 do not violate the One Subject Rule.

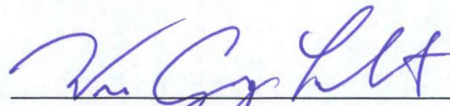
Just as § 5 is related to the subject of Act 40, so are § 16 and § 18. Starting with § 16, this provision enables the people most impacted by the motor vehicle user fee's increase to be able to afford it. *See* 2017 S.C. Acts No. 40, § 2 (increasing the fee by two cents per year for six years). Section 16 provides a nonrefundable tax credit on a person's income tax up to a certain amount of the federal earned income tax credit. *Id.* § 16. This credit in § 16, of course, is available to only taxpayers with the lowest incomes, and it fits neatly with the earned income tax credit's goals of "provid[ing] relief for low-income families." *Sorenson v. Sec'y of Treasury of U.S.*, 475 U.S. 851, 864 (1986). The credit ensures that its recipients will still be able to put gas in their cars to use the infrastructure that is essential to their daily lives—to be able to drive to work, church, family, and the grocery store, to name just a few examples.

As for § 18, it provides a refundable tax credit for tuition paid for higher education. *See* 2017 S.C. Acts No. 40, § 18. This connection between education and economic development—and hence a stronger economy with greater revenue for infrastructure improvement and oversight—is, again, one that the Supreme Court has already recognized. *See Wilkins*, 362 S.C. at 440–41, 608 S.E.2d at 584–85.

CONCLUSION

The circuit court's judgment should be affirmed.

Respectfully Submitted,



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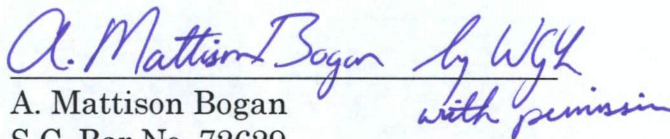

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-000360

Case No. 2018-CP-40-04819

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SC Court of Appeals

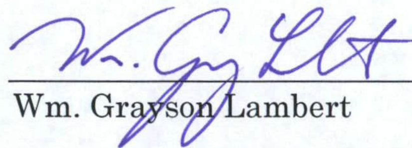
William R. Folks, individually and on behalf of all others similarly situated, ... Appellant,

v.

The South Carolina House of Representatives; The South Carolina Senate; The Honorable James H. 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.

CERTIFICATE OF COUNSEL

I certify that this FINAL BRIEF OF RESPONDENTS complies with Rule 211(b), SCACR.



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