THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2001-UP-123 SC Farm Bureau v. Rabon (withdrawn & substituted)
(Kershaw, Judge James R. Barber, III)

2001-UP-254 State v. Glenn O. Meyers
(Charleston, Judge Donald W. Beatty)

2001-UP-255 State v. Altonia James
(Florence, Judge James E. Lockemy)

2001-UP-256 State v. Sandy Davis
(Orangeburg, Judge Luke N. Brown, Jr.)

2001-UP-257 State v. Christopher Darby
(Orangeburg, Judge James Carlyle Williams, Jr.)

2001-UP-258 State v. Bobby Miller
(Orangeburg, Judge Jackson V. Gregory)

2001-UP-259 State v. Neil Craig Bellinger
(York, Judge Henry F. Floyd)

2001-UP-260 In the Interest of Leslie Brian C.
(Florence, Judge Wylie H. Caldwell, Jr.)

2001-UP-261 Sans Souci Owners Association v. Miller
(Charleston, Judge Donald W. Beatty)

2001-UP-262 State v. James Gaunt
(Spartanburg, Judge Lee S. Alford)

2001-UP-263 State v. Timothy Scott Brown
(Spartanburg, Judge John W. Kittredge)

2001-UP-264 State v. Jimmy Short
(Dillon, Judge John M. Milling)

2001-UP-265 State v. Lee Andrew Singleton
(Sumter, Judge Gerald C. Smoak, Jr.)

2001-UP-266 Bowersox v. Narang
(Charleston, Judge J. Derham Cole)

2001-UP-267 State v. Florence Smith
(Spartanburg, Judge R. Markley Dennis, Jr.)

2001-UP-268 State v. Evelyn Brown
(Georgetown, Judge Howard P. King)

2001-UP-269 Wheeler v. Independent Publishing Co.
(Oconee, Judge Alexander S. Macaulay)

2001-UP-270 Cohen v. Bailey
(Anderson, judge Alexander S. Macaulay)

2001-UP-271 State v. Robert Thomas
(Spartanburg, Judge R. Markley Dennis Jr.)

2001-UP-272 State v. Neto Audric Dennison
(Horry, Judge Sidney T. Floyd)

2001-UP-273 State v. David Silva
(Oconee, Judge James W. Johnson, Jr.)

2001-UP-274 State v. Juan Jose Rivera
(Greenwood, Judge James W. Johnson, Jr.)

2001-UP-275 State v. Demont Blanding
(Clarendon, Judge Marc H. Westbrook)

2001-UP-276 State v. Tre' Quinton Fuller
(Greenville, Judge C. Victor Pyle, Jr.)

2001-UP-277 Anthony W. Panaccione v. State
(Greenville, Judge John W. Kittredge)

2001-UP-278 Harmon v. Abraham (Formerly Unpublished Op. 2001-UP-023)
(Orangeburg, Olin D. Burgdorf, Master-in-Equity)

2001-UP-279 Pioneer Co. of Lincolnton, Inc. v. Ryan's Family Steak Houses, Inc.
(Horry, Judge Sidney T. Floyd)

PETITIONS FOR REHEARING

3282 - SCDSS v. Basnight	Pending
3299 - SC Property & Casualty v. Yensen	(2) Pending
3321 - Andrade v. Johnson	(1) Pending
3323 - State v. Firetag Bonding	Denied
3324 - Schurlknight v. City of North Charleston	Denied
3327 - State v. John Peake	Denied
3329 - SC Dept. of Consumer Affairs v. Rent-A-Center	Pending
3330 - Bowen v. Bowen	Pending
3332 - SC Farm Bureau v. Kelly	Pending
3333 - State v. Dennis Zulfer	Pending
3335 - Joye v. Yon	Pending
3336 - SCDSS v. Cummings	Pending
3337 - Brunson v. Stewart	Pending
3338 - Simons v. Longbranch Farms	Pending
2001-UP-123 - SC Farm Bureau v. Rabon	(2) Denied
2001-UP-131 - Ivester v. Ivester	Pending
2001-UP-134 - Salters v. Bell	Denied
2001-UP-156 - Employers Ins. v. Whitakers Inc.	Pending

2001-UP-158 - State v. Lavares M. McMullen	Denied
2001-UP-160 - State v. Elijah Price, Jr.	Denied
2001-UP-161 - Meetze v. Forsthoefel	Denied
2001-UP-176 - Ledbetter v. Ledbetter	Pending
2001-UP-186 - State v. Coy L. Thompson	Denied
2001-UP-192 - Mark Turner Snipes	Denied
2001-UP-199 - Summerford v. Collins Properties	Pending
2001-UP-201 - Pittman v. Hammond	Denied
2001-UP-207 - Patterson v. Perry	Denied
2001-UP-212 - Singletary v. La-Z-Boy	Pending
2001-UP-220 - State v. Jimmy Lee Brown	Pending
2001-UP-232 - State v. Robert Darrell Watson	Pending
2001-UP-235 - State v. Robert McCrorey, III and Robert Dimitry McCrorey	Pending
2001-UP-237 - Roe v. James	Pending
2001-UP-239 - State v. Billy Ray Jackson	Pending
2001-UP-248 - Thomason v. Barrett	(2) Pending
2001-UP-249 - Hinkle V. National Casualty	Pending
2001-UP-250 - State v. Stephen Glover	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3069 - State v. Edward M. Clarkson	Pending
3102 - Gibson v. Spartanburg Sch. Dist.	Pending
3215 - Brown v. BiLo, Inc.	Granted

3216 - State v. Jose Gustavo Castineira	Pending
3217 - State v. Juan Carlos Vasquez	Pending
3218 - State v. Johnny Harold Harris	Pending
3220 - State v. Timothy James Hammitt	Pending
3231 - Hawkins v. Bruno Yacht Sales	Pending
3242 - Kuznik v. Bees Ferry	Pending
3248 - Rogers v. Norfolk Southern Corp.	Pending
3250 - Collins v. Doe	Granted
3252 - Barnacle Broadcast v. Baker Broadcast	Pending
3254 - Carolina First v. Whittle	Pending
3255 - State v. Larry Covington	Pending
3256 - Lydia v. Horton	Pending
3257 - State v. Scott Harrison	Pending
3264 - R&G Construction v. Lowcountry Regional	Pending
3267 - Jeffords v. Lesesne	Pending
3270 - Boddie-Noell v. 42 Magnolia Partnership	Pending
3271 - Gaskins v. Souther Farm Bureau	Pending
3272 - Watson v. Chapman	Pending
3273 - Duke Power v. Laurens Elec. Coop	Pending
3274 - Pressley v. Lancaster County	Pending
3276 - State v. Florence Evans	Pending
3280 - Pee v. AVM, Inc.	Pending
3284 - Bale v. SCDOT	Pending

3289 - Olson v. Faculty House	(2) Pending
3290 - State v. Salley Parker & Tim Kirby	Pending
3292 - Davis v. O-C Law Enforcement Comm.	Pending
3293 - Wiedemann v. Town of Hilton Head	Pending
3294 - State v. Nathaniel Williams	Pending
3297 - Silvester .v Spring Valley Country Club	Pending
3398 - Lockridge v. Santens of America, Inc.	Pending
3300 - Ferguson v. Charleston/Lincoln	Pending
3307 - Curcio v. Catepillar	Pending
3311 - SC Farm Bureau v. Wilson	Pending
3314 - State v. Minyard Lee Woody	Pending
3315 - State v. Ronald L. Woodruff	Pending
3319 - Breeden v. TCW, Inc.	Pending
2000-UP-484 - State v. Therl Avery Taylor	Granted
2000-UP-503 - Joseph Gibbs v. State	Pending
2000-UP-595 - Frank Brewster v. State	Pending
2000-UP-601 - Johnson v. Williams	Pending
2000-UP-607 - State v. Lawrence Barron	Pending
2000-UP-613 - Norris v. Soraghan	Denied
2000-UP-627 - Smith v. SC Farm Bureau	Denied
2000-UP-653 - Patel v. Patel	(2) Pending
2000-UP-655 - State v. Quentin L. Smith	Pending
2000-UP-656 - Martin v. SCDC	Pending

2000-UP-662 - Cantelou v. Berry	Denied
2000-UP-664 - Osteraas v. City of Beaufort	Pending
2000-UP-697 - Clark v. Piemonte Foods	Pending
2000-UP-706 - State v. Spencer Utsey	Pending
2000-UP-708 - Federal National v. Abrams	Pending
2000-UP-717 - City of Myrtle Beach v. Eller Media Co.	Pending
2000-UP-719 - Adams v. Eckerd Drugs	Pending
2000-UP-724 - SCDSS v. Poston	Pending
2000-UP-729 - State v. Dan Temple, Jr.	Pending
2000-UP-738 - State v. Mikell Pinckney	Pending
2000-UP-766 - Baldwin v. Peoples	Pending
2000-UP-771 - State v. William Michaux Jacobs	Denied
2000-UP-775 - State v. Leroy Bookman, Jr.	Pending
2001-UP-015 - Milton v. A-1 Financial Services	Pending
2001-UP-019 - Baker v. Baker	Pending
2001-UP-022 - Thomas v. Peacock	Pending
2001-UP-049 - Johnson v. Palmetto Eye	Pending
2001-UP-050 - Robinson v. Venture Capital	Pending
2001-UP-066 - SCDSS v. Duncan	Pending
2001-UP-069 - SCDSS v. Taylor	Pending
2001-UP-076 - McDowell v. McDowell	Pending
2001-UP-078 - State v. James Mercer	Pending
2001-UP-091 - Boulevard Dev. V. City of Myrtle Beach	Pending

2001-UP-092 - State v. Robert Dean Whitt		Pending
2001-UP-111 - State v. James Tice		Pending
2001-UP-114 - McAbee v. McAbee		Pending
2001-UP-122 - State v. Robert Brooks Johnston		Pending
2001-UP-124 - State v. Darren S. Simmons	(2)	Pending
2001-UP-125 - Spade v. Berdish		Pending
2001-UP-126 - Ewing v. Mundy		Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Glenn E. Kennedy, Charles Wolfe, Terry Knighton, and Jerry Landford, Individually and on Behalf of a Class of Persons Similarly Situated, Appellants,

v.

The South Carolina Retirement System and the South Carolina Budget and Control Board, Respondents.

Appeal From Newberry County
Luke N. Brown, Jr., Circuit Court Judge

Opinion No. 25133
Reheard December 5, 2000 - Refiled May 22, 2001

AFFIRMED

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ambiguous on its face because it is unclear at what point the General Assembly intended the unused annual leave to be added in the average final compensation equation.

The section can be read, as the Employees argue, that up to 45 days are added to the equation **after** the average is taken. The section can also be read as the Retirement System argues, adding up to 45 days of unused annual leave to the average final compensation equation **before** taking the average of the 12 highest quarters. The use of the phrase "average final compensation" in the section that defines "average final compensation" is confusing. Also, ambiguity arises from the General Assembly's use of the phrase "added to." In a statute, the word "to" can be read as a word of either inclusion or exclusion depending on the intent of the General Assembly. BLACK'S LAW DICTIONARY 1487 (6th ed. 1990).[5] The plain language of the section fails to reveal the General Assembly's intention with regard to the meaning of "added to."[6]

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[5]"**To.** While this is ordinarily a word of exclusion, when used in describing premises, it has been held that the word in a statute may be interpreted as exclusionary or inclusionary depending on the legislative intent as drawn from the whole statute. *Clark v. Bunnell*, 470 P.2d 42, 44 (Colo. 1970). It may be a word of inclusion, and may also mean 'into.'"

[6]Plaintiff Wolfe's unused annual leave had a value of $5,875. Under the Retirement System's approach, Wolfe's average final compensation would be calculated as follows:

$$\frac{\$96{,}190 \text{ (the total of his 12 highest quarters)} + \$5{,}875}{3} = \mathbf{\$34{,}022}$$

As a retired police officer, Wolfe's average final compensation would then be put into section 9-11-60 (.0214 x "Average Final Compensation" x Years of Service = Annual Retirement Allowance)

.0214 x $34,022 x 30 = $21,842.13 (Annual Retirement Allowance)

$21,842.13 / 12 = $1,820.18 (monthly benefits payment to Wolfe)

be applied as argued by the Employees, they would have been dramatically increasing the payments to retirees.

If the General Assembly intended to add the leave **after** the average was taken, it is reasonable to assume the history and circumstances surrounding the amendment would indicate the General Assembly intended to increase benefits, thereby adding $1.177 billion in liability to the State Retirement System. The history in no way indicates the legislature intended to make such a dramatic increase in benefits. First, the title of the 1986 Appropriations Act, which included the amendment to section 9-1-10, did not reference an increase in benefits.[11] *See Ex Parte Georgetown County Water & Sewer Dist.*, 284 S.C. 466, 468-69, 327 S.E.2d 654, 656 (1985) ("The purpose of Article III, § 17 is to prevent the General Assembly from being misled into the passage of bills containing provisions not indicated in their titles.") The title to the 1986 Appropriations Act provides, in relevant part:

> To amend sections 9-1-10 and 9-11-10 of the 1976 Code, relating to the South Carolina Retirement System and the South Carolina Police Officers Retirement System, so as to change the definition of average final compensation from average annual earnable compensation of a member during three consecutive fiscal years to twelve consecutive quarters.

The plain language of the title gives no indication or notice that the amendment would triple the dollar value for unused annual leave.

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only to the Employees as plaintiffs in this case, but also to all state employees who have retired and who will retire in the future.

[11]The dissent argues the title of a bill has never been a factor in determining legislative intent. In interpreting a statute in *Whetstone v. South Carolina Dep't of Highways and Pub. Transp.*, 272 S.C. 324, 327, 252 S.E.2d 35, 37 (1979), this Court stated its interpretation was supported by the ". . . underlying legislative history as exemplified by the original title of the pre-codified Act."

Secondly, had the General Assembly intended to increase benefits and spend $1.177 billion, it is reasonable to assume they would have engaged in floor debate. They did not.[12] Furthermore, no fiscal impact analysis was undertaken. *See* S.C. Code Ann. § 2-7-72 (Supp. 1999) (Bills and resolutions requiring expenditure of funds shall have impact statements).[13] Finally, the legislature did not determine whether the increase would impact the actuarial soundness of the State Retirement System as a whole. While we hold the amendment to section 9-1-10(17) does not violate S.C. Const. art. X, § 16, the fact that the legislature has never funded the increase as required by article X, § 16 is further evidence the legislature did not intend to bestow such an increase when it amended section 9-1-10(17).

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[12]Upon reviewing the Legislative History surrounding the 1986 Appropriations Act, we find no evidence of floor debates, or any meaningful discussion of the amendment to section 9-1-10(17), although there are numerous other debates surrounding the 1986 Appropriations Act. The dissent suggests the lack of debate only means there was little controversy surrounding the amendment's enactment. However, it is hard to imagine, especially in light of the numerous amicus briefs filed in this case, there would have been little debate or controversy had everyone been aware the amendment would mean a dramatic increase in retirement benefits for a defined group.

[13]For example, in the same year section 9-1-10(17) was amended, the General Assembly passed House Bill No. 3637, which amended the Police Officers Retirement System so as to include National Guard and Reserve Service in the Retirement calculation. House Bill 3637 was accompanied by a fiscal impact statement. The dissent argues this Court has never used the lack of a fiscal impact statement as a factor in statutory interpretation. Financial bills almost always include an impact statement, and, therefore, this Court has most likely not been confronted with the absence of such a statement in a financial bill. The amendment to section 9-1-10(17), if interpreted as the Employees argue, would add an enormous increased cost to the South Carolina Retirement System. It is far from unreasonable to assume our legislature would have undertaken an impact analysis had they intended to bestow such a great increase in retirement benefits.

ambiguity or some uncertainty in the language used, *resort cannot be had to the opinions of legislators or of others concerned in the enactment of the law,* for the purpose of ascertaining the intent of the legislature." *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 371, 20 S.E.2d 813, 817 (1942)(emphasis added). In the current matter, the Retirement System claims that Collins' testimony is admissible because it only addressed "problems surrounding the 1978" version of the statute and not the legislative intent. The record does not support the Retirement System's position.

Collins' testimony goes well beyond any limited role claimed for it by the Retirement System. Collins testified extensively about how he drafted the amendment and what he intended the amendment to accomplish. Such testimony of what he intended as "author" of the amendment, as well as what problems he intended the amendment to address, are not proper legislative history for a court to take into account. *See Tallevast v. Kaminski*, 146 S.C. 225, 143 S.E. 796 (1928).

Collins' testimony is not completely inadmissible. In his role as the head of the South Carolina Retirement System, Collins' testimony is relevant, although not controlling, to the extent that it discusses how the executive branch interpreted the amendment after its enactment. *See Nucor Steel v. South Carolina Public Serv. Comm'n*, 310 S.C. 539, 426 S.E.2d 319 (1992). For the reasons discussed, we find the executive agency's interpretation does reflect the legislative intent of the section.

In light of our holding, we do not need to address the Employees' claims concerning the class certification and statute of limitations.

CONCLUSION

Based on the foregoing, we **AFFIRM** in result the decision of the trial court.

MOORE, WALLER and PLEICONES, JJ., concur. BURNETT, J., concurring in part and dissenting in part in a separate opinion.

suburb of Rochester.

At Detective Gordon's request, Rochester police spoke briefly with appellant about the Charleston murder after obtaining a waiver of his Miranda rights. Appellant denied being in Charleston at the time of the murder. Appellant was then asked and consented to take a polygraph test. He was again given Miranda warnings before the polygraph test was administered. The polygraph indicated deception.[2]

After receiving the results of the polygraph, Detective Gordon flew to Rochester, arriving later that evening. Detective Gordon questioned appellant along with two Rochester police officers. Appellant admitted his involvement in the robbery of the Citgo and identified his accomplice, Lanard Vanderhorst, in a photo line-up.

Appellant's statement indicates he and Vanderhorst went to the Citgo station together. Vanderhorst asked appellant to go into the store to see if anyone was in there, which appellant did. Appellant came out of the store and reported to Vanderhorst that the only person in the store was the cashier. Vanderhorst told appellant to wait outside while he went into the store. Vanderhorst was in the store a few minutes when appellant heard a single gun shot. Appellant ran away. He told police he did not receive any money from the robbery and he did not know Vanderhorst was going to rob the station until he heard the shot.

Appellant's statement was admitted at trial and a witness placed appellant at the scene of the murder.

ISSUE

Does New York state law apply to suppress appellant's statement?

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[2]No evidence regarding the polygraph was admitted at trial.

The Supreme Court of South Carolina

RE: Rule 421, SCACR

O R D E R

Pursuant to Article V, §4, of the South Carolina Constitution, the South Carolina Appellate Court Rules are amended by adding the following rule:

RULE 421
CERTIFICATION OF ATTORNEYS
IN DEATH PENALTY CASES

(a) Classes of Certified Attorneys. There shall be two classes of attorneys certified to handle death penalty cases: lead counsel and second counsel.

(b) Lead Counsel. Lead counsel shall have at least five years experience as a licensed attorney and at least three years experience in the actual trial of felony cases. The application for certification to act as lead counsel shall be on a form designated by the Supreme Court.

(c) Second Counsel. Second counsel shall have at least three years experience as a licensed attorney. Second counsel is not required to be

further certified to be eligible for appointment.

This rule shall be effective September 1, 2001, and shall supersede this Court's order dated September 10, 1993, relating to the same subject matter.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina
May 29, 2001