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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

APPEAL FROM THE COURT OF APPEALS

Appellate Case No.: 2022-001494

**Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill,
Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, Petitioners.**

v.

City of Columbia Respondent.

and

Larry Strickland, Denious L. Dimery and Baily G. McClinton, Petitioners,

v.

City of Columbia Respondent.

**RETURN TO
PETITION FOR WRIT OF CERTIORARI**

Respondent City of Columbia (“City”) respectfully submits this Return to Petitioner’s petition for writ of certiorari. As addressed herein, Petitioners’ assertion that the Court of Appeals misconstrued this Court’s precedent addressing promissory estoppel claims, misread the record, and that a novel issue requires this Court’s consideration are without merit. Accordingly, the petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Procedural Background

Petitioners were formerly employed by the Respondent, City of Columbia (“City”). At the

time of their various retirements, City policy provided individual health coverage without charge for employees and retirees; however, a premium was charged for spouse and dependent coverage.

Due to increasing costs and the obligation to prefund benefits, in 2009 City Council announced that it was considering a change in policy that would require all participants in its group health plans to pay a premium. Committees were formed and public meetings were called to address this change. As a result of this process, Council voted to charge a premium for all active and retired members under 65 who chose to continue participating in the City's group health insurance plan, effective July 1, 2009. The cost to individual participants was set at \$33.18/month, with the City contributing \$800.00/month for each member. (R. p. 869.)

On August 10, 2009, a group of retirees under 65 years of age filed suit asserting the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge James R. Barber, III granted summary judgment in favor of the City on all claims. (R. p. 1.)

On January 23, 2013, the Court of Appeals affirmed summary judgment on all claims except promissory estoppel. *Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013). That claim alone was remanded to determine: (a) whether "promises" of future benefits were authorized; and (b) whether Petitioners could reasonably rely upon "promises" of future benefits. The Court of Appeals' opinion in *Bishop* made no ruling on whether Petitioners could establish damages, and had no reason to rule on whether Petitioners met their burden of proof on the elements of their claim or the applicability of the City's affirmative defenses, including legislative/sovereign immunity, separation of powers, and political question.

In January 2013, the City extended the premium requirement to its Medicare supplemental coverage for post-65 retirees. On August 27, 2013, Petitioners Strickland, Dimery, and McClinton

filed a class action suit on behalf of all post-65 retirees, alleging that the City was estopped from charging this premium. By order dated August 2, 2016, the late Tanya A. Gee denied class certification. (R. p. 22.) On April 19, 2017, former Chief Justice Jean H. Toal denied Petitioners' motion to reconsider. (R. p. 27.)

The two cases were consolidated for nonjury trial on August 18, 2018. The only claim remaining in each case was Petitioners' assertion that the City was estopped from imposing any charge for their continuing participation in group health coverage and sought reimbursement of any insurance premiums paid. Following a two-day bench trial, the Honorable R. Scott Sprouse held that Petitioners failed to prove reliance damages. Accordingly, judgement was issued in favor of the City. On appeal, the Court of Appeals ruled that Petitioners had failed to satisfy the "unambiguous promise" and "reasonable reliance" criteria necessary to obtain relief. *Cruz v. City of Columbia*, 437 S.C. 204, 215-18, 877 S.E.2d 479, 484-86 (Ct. App. 2002). Following denial of their request to reconsider, Petitioners filed the present petition.

B. Statement of Facts

Each of the Petitioners participates in the City's group health insurance program. Petitioners testified that during their employment fellow employees, including city managers, supervisors and human resources staff, informed them that retirees receive group health coverage without cost. Petitioners also introduced newsletters available to employees and retirees. (R. pp. 633-82.) None of the newsletters expressed any "promise" that retirement benefits would be permanent or remain free of charge. Instead, the newsletters reported information that was accurate when published. (R. pp. 565-66.)

While employed and during retirement, Petitioners received written notice through group health booklets regarding "escalating health care costs" and "the possibility of contribution

increases.” (R. pp. 872-899; R. pp. 695, 697, 699, 701, 703, 705, 707; R. pp. 486-487, 505-507, 517-518, 533-535, 541-542, 579, 587-588, 592-593, 618-620.) Petitioners acknowledged that health care benefits are determined by City Council on an annual basis as part of the Citywide budget. (R. pp. 483-484, 507-508, 520-521, 523-524, 531-532, 591-592, 620.) Petitioners further conceded that no supervisor, department head, or City manager has the authority to spend funds that are not budgeted by City Council. (R. pp. 483-484, 508, 514, 521-522, 578, 580, 589, 592.) Petitioners were also on notice by way of state law, ordinance, and City handbooks issued during their employment that the City reserves the right “to revise, supplement or rescind any policies . . . in its sole and absolute discretion.” In the same fashion, Petitioners were advised that the City reserves the right to “alter its rules, policies, and procedures from time to time.” (R. p. 910.)

As firefighters, Petitioners participate in the State’s retirement system with full pension benefits available upon twenty-five (25) years of service. The pension does not include health insurance. Instead, Petitioners voluntarily participate in the City’s group health plan under the same conditions offered to the City’s active employees. Exhibits admitted without objection and Petitioners’ testimony confirms that they signed applications for group health insurance during employment and as retirees confining their participation to the same terms and benefits as other participants. (R. p. 912 (p-q)); (R. p. 914 (a)(c)); (R. p. 916 (e)(o)); (R. p. 918 (e)(l)); (R. p. 920 (b-d)(g-j)); (R. p. 927 (d)(m)); (R. p. 929 (a-b)); (R. p. 931(i-j)(n-o)); (R. p. 935(c)(e)(g)(p)); (R. p. 939 (a)(c)(e)); (R. pp. 489-490, 522, 535-536, 594-596, 620). Similarly, exhibits and Petitioners’ testimony establish that they were informed—in writing—by the City’s benefits administrator that “current policy” provided retirees health insurance without charge. (R. pp. 707, 713-716); (R. pp. 496, 526, 593.) Petitioners conceded that the term “current” means “now” or “at

the present.” (R. pp. 488-489, 156.) Petitioners also knew that the benefits administrator could not personally guarantee future benefits. (R. pp. 494, 497-498, 589-590.)

Even in asserting reliance upon various representations regarding future benefits, Petitioners expressed disagreement and changed their testimony as to the nature of the representations relied upon. For example, Petitioner Joseph A. Floyd, Sr. testified in his deposition that his insurance benefits were frozen at retirement and subject to no reduction regardless of plan changes. (R. pp. 942-944.) Petitioner Alma C. Hill shared this belief; however, Petitioner Barry N. Martin testified that he was entitled to more expensive individual coverage without charge. (R. pp. 945-946; 947-949.) At trial, Floyd conceded that personally designed policy terms are not practical. (R. pp. 581-583.) In contrast, Petitioner Cam Gillam testified that he is entitled to a “high quality” policy, even though he could not articulate the policy terms. (R. pp. 492-493.) Petitioner Cruz stated that his service as a firefighter prohibited the City from ever reducing his coverage, regardless of changes in the group health plan. (R. pp. 606-607.) Cruz admitted, however, that neither he nor any of his supervisors made personal commitments to fund benefits. (R. pp. 607-608.)

The City offered the testimony of former City Manager, Steve Gantt, Human Resources Director, Pamela Benjamin, and Budget and Program Management Director, Missy Caughman. These witnesses confirmed that City Council reserves to itself the authority to determine benefits provided to employees and retirees. Mr. Gantt held several administrative position before serving as City Manager. (R. pp. 548-552.) He testified without objection that neither he nor his fellow administrators had authority to make policy, bind Council, or exceed expenditures approved by Council. (R. pp. 553-564.) This testimony is consistent with the City’s ordinances and state law. (R. pp. 712, 717.) Ms. Benjamin has served as a human resources professional in state and

municipal governments for more than twenty years. (R. pp. 623-624.) She testified that in her prior positions and as Director of the City’s Human Resources Office, human resources staff routinely administer employee and retiree benefits. (R. p. 625.) Ms. Benjamin further testified that the authority to administer does not extend to policymaking or offering any “promise” that benefits will be provided beyond the time frame affected by the City’s budget or designated by Council vote. (R. pp. 626-628.) Ms. Caughman testified that she had been involved in budgeting for employee and retiree benefits since her first employment with the City in 1998. (R. pp. 629-630.) Ms. Caughman further testified that Council alone votes on employee and retiree benefits, including any charges that might be imposed. (R. pp. 631-632.) Records of City Council meetings admitted without objection confirm that Council received information from staff and outside consultants before voting on imposing charges for employee and retiree health benefits, including the actions challenged by Petitioners. (R. pp. 720-722; 724, 727-728; 730; 744; 757-758; 766; 774; 783; 785-786; 790-793; 818-819; 826; 840-844; 864-871.)

ARGUMENT

- I. The Court of Appeals correctly applied this Court’s holdings in *Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co.*, 276 S.C. 663, 281 S.E.2d 469 (1981), and *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015), in affirming the circuit court’s judgment in favor of the City of Columbia on Petitioners’ promissory estoppel claim.**

In asserting the Court of Appeals misconstrued this Court’s precedent in *Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co.*, 276 S.C. 663, 281 S.E.2d 469 (1981) (“*Higgins*”), and *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) (“*Richardson*”), Petitioners read a single sentence of the court’s opinion in isolation and mistakenly claim that it represents the Court of Appeals’ holding. However, a review of the Court of Appeals’ statement regarding fraud in the context of a promissory estoppel claim

demonstrates that the court's conclusion that the circuit court's decision in favor of the City should be affirmed was not based on a misunderstanding or misapplication of this Court's precedent in *Higgins* or *Richardson*, and instead is a generalized statement made in the context of highlighting the inequity that would be imposed upon the City (i.e. the party sought to be estopped) if it were required to cover the entire cost of Petitioners' healthcare coverage for as long as they live under the circumstances of this case.

Specifically, Petitioners isolate the following sentence in the Court of Appeals' opinion, as indicated in **bold** text:

As our case law recognizes, there must be a balancing in the consideration of promissory estoppel claims. The proponent of the estoppel must demonstrate all requirements by clear and convincing evidence so as to not "risk imposing its own inequity against the party sought to be estopped." [*Barnes v. Johnson*, 402 S.C. 458,] 470, 742 S.E.2d 6, 12 (Ct. App. 2013).] **Additionally, promissory estoppel is only invoked when the failure to find it would essentially result in a fraud.** This case does not reveal an intent on the part of the City to defraud [Petitioners]. It has not changed the premiums charged to retirees on a whim. Instead, it is a response to the ever-increasing costs of healthcare. Additionally, the City continues to pay approximately 90-95% of the retiree's coverage depending on the coverage selected. Based on all of the foregoing, we conclude the decision of the circuit court in favor of the City is AFFIRMED.

Cruz v. City of Columbia, 437 S.C. 204, 218, 877 S.E.2d 479, 486 (Ct. App. 2022) (emphasis added). When read in the context of the opinion and the paragraph in which it appears, that statement is a generalization of the discussion in *Higgins* and *Richardson* regarding the doctrine of promissory estoppel and its application, as well as the ever-important balancing of considerations "between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." *Barnes v. Johnson*, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct. App. 2013). Petitioners' contention that the Court of Appeals' "emphasis on a party's intent to defraud" is not borne out

Moreover, the Court of Appeals' affirmance of the circuit court appropriately took into consideration the nature of the testimony and evidence in the record in finding the promise claimed by Petitioners of "no-cost health insurance for life" did "not establish clearly articulated and definite terms." *Id.* at 217, 877 S.E.2d at 485; *see also Satcher v. Satcher*, 351 S.C. 477, 487, 570 S.E.2d 535, 540 (Ct. App. 2002) (finding, despite testimony that some agreement existed, an unclear, unspecific promise was ambiguous); 28 Am. Jur. 2d *Estoppel and Waiver* § 52 (2011) ("The promise must be clear and unambiguous and sufficiently specific so that the judiciary can understand the obligation assumed and enforce the promise according to its terms."). The ambiguity in the terms of the promise that Petitioners seek to enforce against the City, as well as the Petitioners' failure to meet their burden of proof as to reasonable reliance on such promise, "preclude[] promissory estoppel's application, though perceived inequities may exist." *Barnes*, 402 S.C. at 470, 742 S.E.2d at 12.

II. The Court of Appeals correctly found that Petitioners failed to prove an "unambiguous promise" that group health insurance offered at retirement was guaranteed to continue for their lifetimes without charge.

A claim of promissory estoppel requires proof of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *See, Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Promissory estoppel requires evidence of a promise unambiguous in its terms. *See, A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 587, 812 S.E.2d 759, 763 (Ct. App. 2018). To satisfy this burden, Petitioners were required to prove by "clear and convincing evidence" that an authorized promise was communicated in an unambiguous manner. *Barnes v. Johnson*, 402 S.C. 458, 471, 742 S.E.2d 6, 12 (Ct. App. 2013) (reversing a promissory estoppel judgment despite the plaintiff's sympathetic

situation based upon failure to prove an unambiguous promise and “injury sustained in reliance upon such a promise.”) According to the Oxford Dictionary of the English Language, “unambiguous” means: “not open to more than one interpretation, incontrovertible, incontestable, undeniable, irrefutable, beyond dispute, indubitable, not in doubt, beyond doubt, beyond a shadow of a doubt, unarguable, inarguable, undebatable, and unanswerable.” See, oxforddictionaries.com/definition/unambiguous. The inability to articulate the terms of a promise clearly and convincingly also renders reliance unreasonable. *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 924 (Ct. App. 2006).

Judge Sprouse ruled that Petitioners subjectively relied upon representations that health insurance would be provided without cost throughout their retirements even though the City always retained the right to change its policies. The City has never challenged Petitioners’ honesty or sincerity. The question remains, however, whether Petitioners’ reliance was based on an “unambiguous promise” having been placed on notice individually, through ordinance and state law, that the City has a council-manager form of government and that the City’s Council reserves to itself all legislative authority. While Petitioners’ observations of earlier retirees receiving insurance without charge, statements of current policy and even predictions as to the future by fire chiefs, personnel staff and others may have created an expectation of some form of health insurance without charge, this expectation does not rise to the level of a clear definite, specific, unambiguous promise required for promissory estoppel relief. *Barnes*, at 471, 742 S.E.2d at 12.

The ambiguity of Petitioners’ expectations is illustrated by their testimony. For example, Petitioner Floyd has changed his position during this litigation as to the benefits promised, while fellow Petitioners Hill, Martin, Gillam, and Cruz expressed disagreement as to the terms of their expected benefits. Moreover, Petitioners should have known that representations exceeding the

administrative functions of their supervisors, department heads and City managers could not bar the City's Council from exercising its legislative authority. *See, Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 633-35, 620 S.E. 2d 65, 68 (2005) (precluding promissory estoppel based on notice that future payments were contingent on school board approval) Like the teachers in *Davis*, Petitioners were on notice that "promises" of future benefits were contingent on Council funding. In addition, Petitioners were aware that any guarantees were inconsistent with signed acknowledgments and warnings that escalating health costs could require contributions by participants in the group health plan. (R. pp. 694-705; 872-909). These facts demonstrate that no verbal or written promise could be reasonably relied upon to bar City Council from exercising its legislative authority to appropriate funds and allocate premium costs for participation in the City's group health program. Indeed, a ruling that statements made by fellow employees, regardless of position, could prohibit future City Councils from exercising their legislative prerogative, would be inconsistent with controlling law and compromise municipal authority established by state law and constitution.

While Petitioners' claims were on remand, this Court accepted an action in its original jurisdiction challenging a decision by the State's Budget and Control Board to alter premiums charged to members of the State's group health insurance plan. Members of the Board included the Governor, Comptroller General, State Treasurer and other high office holders. Finding that their action violated the separation of powers guaranteed by our constitution, this Court confirmed that "[i]ncluded within the legislative power is the **sole prerogative to make policy decisions**; to exercise discretion as to what the law will be." The Court went on to observe that "while non-legislative bodies may make policy determinations when delegated such power by the legislature,

absent such a delegation, **policymaking is an intrusion upon the legislative power.**” *Hampton v. Haley*, 403 S.C. 395, 403-404, 743 S.E.2d 258, 262 (2013) (emphasis added).

Applying the above principles to the funding of group health insurance for public employees, the Court held: “appropriation of public funds is a legislative function and the . . . power to reduce appropriations according to [administrative] criteria would be an impermissible delegation of legislative powers.” *Id.* at 409, 743 S.E.2d at 265. Accordingly, to determine whether any representations regarding future group health insurance benefits were authorized, this Court must examine the form of government adopted by the City of Columbia, the manner in which legislative/policymaking functions are performed, and distinctions between legislative and administrative responsibilities.

As stipulated by Petitioners, the City has adopted a council-manager form of government. (R. p. 712; *see also*, *City of Columbia Ordinance*, Chap. 2, art. 1, Sec. 2-1 (R. p. 950))¹ The legislative powers of the City and the determination of all matters of policy are vested in the City Council, with each member, including the Mayor, having one vote. (*City of Columbia Ordinance*, Chap. 2, art. 1, Sec. 2-5 (R. p. 950)); the City Manager is the chief executive officer and head of the administrative branch of the City’s government. The City Manager must operate within financial limits imposed by the budget approved by City Council. (*City of Columbia Ordinance*, Chap. 2, art. 1, Sec. 2-32(a)(b) (R. p. 952)) The Director of Human Resources works under the City Manager and has administrative supervision over the Department of Human Resources, including employee benefits. (*City of Columbia Ordinance*, Chap. 2, art. 1, Sec. 2-122 (R. p. 953))

¹ The City’s ordinances were reorganized by Ord. No. 2016-042 on June 21, 2016. The substance of the ordinances addressed above are consistent with those in place during the period relevant to this litigation, including the duties of the City Manager (former Ord. § 2-114), responsibilities of department heads (former Ord. § 2-151) and administrative authority of the Director of Human Resources (former Ord. § 2-125) referenced in *Bishop, supra*. at n. 6.

Department heads, including the Fire Department, are subject to the City Manager and are responsible for administering their departments. (*City of Columbia Ordinance*, Chap. 2, art. 1, Sec. 2-151 (R. pp. 954-955) Under the council-manager form of government, the municipal council has exclusive authority to adopt the budget, provide for the general welfare of the municipality and to carry out any duties not prohibited by law or constitution. S.C. Code Ann. § 5-13-30. For this reason, neither a city manager nor any department head “have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative authority granted to the municipal council.” *Todd v. Smith*, 305 S.C. 227, 231, 407 S.E. 2d 644, 646-647 (1991) (addressing the council-manager form of government) In this context, Petitioners cannot identify any “authorized promise” of future health benefits. Moreover, the relief requested would undermine Council’s legislative authority to make policy decisions regarding expenditure of public funds.

Petitioners’ arguments to the contrary, the Court of Appeals neither ignored the record nor expanded the established law of this State in concluding that so called “promises” uttered by individuals known to have no authority to deliver the desired result are enforceable. Petitioners’ inability to agree upon the terms to be enforced further demonstrates that the challenged decision is consistent with controlling law.

ADDITIONAL/ALTERNATIVE SUSTAINING GROUNDS:

The following arguments are presented as additional grounds for sustaining the decision to deny Petitioners relief on their promissory estoppel cause of action. *See, I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418, 526 S.E. 2d 716, 722 (2000) (applying SCACR Rule 220(c), “[t]he appellate court may affirm any ruling, order, or judgement upon any ground(s) appearing in the Record on Appeal.”).

1. Judge Sprouse correctly held that Petitioners failed to satisfy all criteria necessary to obtain relief on their promissory estoppel claim.

In ruling Petitioners failed to meet the burden of proof necessary to obtain relief on their promissory estoppel claim, Judge Sprouse focused on the requirement of demonstrating injury in reliance on the alleged promise. This makes sense, because a failure to prove reliance damages renders inquiries regarding ambiguity, reasonableness, and foreseeability unnecessary.

The remand order in *Bishop* specifically affirms dismissal of Petitioners' contract claim seeking enforcement of continuing health insurance without charge. The order further states that any relief under promissory estoppel requires proof of "injury **in reliance** on the promise." 401 S.C. at 664, 738 S.E.2d at 261 (emphasis added). This holding is in keeping with the principal that promissory estoppel is not measured by the expected value of the promise. Instead, relief is available only when the plaintiff can prove a specific loss **other than the promise** such as an opportunity obtainable or an injury sustained but for actions taken in reliance. *Barnes, supra.*, at 474-476, 742 S.E.2d 14-15.

Following remand, both Judge Gee and Justice Toal rejected Petitioners' assertions that each was entitled to the same expectation relief (continued group health coverage without charge and reimbursement for premiums paid). In denying class certification Judge Gee held that to prevail each Petitioner must "demonstrate how he was prejudiced or how his position was made worse **in reliance** on a promise by the City." (R. p. 25 (emphasis added)) In the order denying reconsideration of class certification, Justice Toal stated "the controlling law of this state [requires] individualized examinations necessary to address the **detrimental reliance** (injury) element of [Petitioners'] estoppel claims. . . ." (R. p. 28 (emphasis added)). Judge Sprouse independently reached the same conclusion, finding Petitioners' evidence of detrimental reliance lacking in substance, clarity, and specificity.

The detrimental reliance element necessary to obtain relief on a promissory estoppel claim requires each Petitioner to prove first that he would have been better off (or at least as well off) if he had not relied upon the asserted promise, and second, provide a measure of relief not dependent upon speculation. Judge Sprouse correctly ruled that Petitioners failed on both counts. Although some testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future, no Petitioner identified an available employment opportunity that offered better or equal pay, benefits or future guarantees. (R. pp. 495-496, 503-504, 510, 518-520, 529, 539, 543-544, 572-575, 596, 610, 614, 621-622) Other Petitioners testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay \$33.18 per month for individual group health coverage, compared to the \$800 per month contributed by the City. Even these Petitioners concede that they experienced substantial increases in pay during employment, obtained significant promotions, enjoyed personal gratification, and received valuable pension benefits as a result of their employment with the City. (R. pp. 481-482, 495, 510-511, 519, 536, 546-547, 257-258, 575-576, 586-587, 615). Significantly, no Petitioner considered the value of receiving health insurance without cost for decades of employment and following retirement when calculating their “loss” occasioned by a change in plan requirements. (R., pp. 492-493, 506, 510-511, 518-159, 529, 540, 277-578).

Having considered all testimony and documents presented, Judge Sprouse held that Petitioners did not prove that any lost opportunity would have exceeded **or equaled** the compensation, benefits, retirement pension and continuing access to group health insurance made available through their employment with the City. (R. pp. 34-36). Petitioners argue that Judge Sprouse imposed an unfair burden in requiring them to show lost advantageous opportunities or

sacrificed benefits by remaining in the City's employ. Petitioners' focus on the phrase "better off" misinterprets the basis of the challenged decision. Read in its entirety, Judge Sprouse's opinion adheres to established precedent by requiring proof of detrimental reliance beyond mere expectation that a promise will be fulfilled. It was Petitioners' failure to demonstrate detrimental reliance through evidence of equal or better compensation and benefits than obtained from employment with the City that resulted in denial of their requested relief. *Barnes, supra*; *See also, Craft v. South Carolina Commission for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009).

As Judge Sprouse properly observed, the burden of proving reliance damages addressed in *Craft* applies here as it applied in *Barnes*. In *Craft* this Court found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that a recognizable injury resulted from his reliance. Specifically, Craft could not show that he lost another business opportunity.

Like Craft, Petitioners assert that they relied upon representations regarding a future event, here retirement. Like Craft, however, no Petitioner offered evidence that he lost a better (or equal) opportunity, with regard to pay, career advancement, personal satisfaction or guaranteed benefits, in reliance upon promises received. As in *Craft* and *Barnes*, this failure eliminates promissory estoppel as a basis for relief.

2. City Council's legislative exercise to examine and fund budgetary components, including group health costs, cannot be delegated or compromised.

In keeping with the preservation of legislative authority maintained by the City's Council, neither individual employees nor Council members may bind the City regarding future health insurance. *See, Willoughby v. City Council of City of Florence*, 51 S.C. 462, 29 S.E. 242 (1898)

(verbal assurances insufficient to bind a municipality); *State v. Burgess*, 408 S.C. 421, 438, 759 S.E.2d 407, 416 (2014) (a governing body is prevented from delegating its “high functions” to any entity or officer and may not “surrender or restrict any portion of [the] power conferred upon it”) A resolution duly adopted by a municipal council “is a legislative enactment and presumed to be constitutional.” *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011), quoting *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010). As these authorities illustrate, Petitioners’ requests to be insulated from the consequences of a legislative decision based on promises of future benefits are unenforceable through the judicial process. Instead, any remedy must be obtained legislatively absent proof of unlawful or unconstitutional conduct on the part of Council.

3. City Council’s decision to require all participants in the group health plan to contribute financially was within its legislative authority.

Should this Court decide to evaluate its authority to enjoin City Council from enforcing its resolution as to Petitioners or compel Council to modify or ignore the resolution requiring members of its group health plan to make financial contributions, the record must contain proof that the challenged resolution was invalid, keeping in mind that in “[t]his state’s constitution . . . the powers of local governments should be liberally construed.” *Sandlands, supra.*, citing S.C. Const. art. VIII, § 17; see also, *Denene, Inc. v. City of Charleston*, 532 S.C. 208, 574 S.E.2d 196 (2002) (rehearing denied).

Legislative power is inherently subject to exercise by way of enactment, revision and repeal. In recognition of this power, our Supreme Court has long and consistently held that a council “has no authority to make . . . a contract [or other commitment] extending beyond the terms of its office; that the acts of former councils relating to governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect

upon succeeding councils.” *Newman v. McCullough*, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948). Thus, “[t]he power conferred upon municipal councils to exercise legislative or governmental functions is done so to be exercised as often as may be found needful or politic...” *Id.*; *see also*, *Cunningham v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013) (discussing *Newman*), reversed in part on other grounds, 414 S.C. 298, 778 S.E.2d 884 (2015).

A two-step analysis is employed to determine the validity of a local governmental act. First, the court must determine “whether the [municipality] had the power to enact the ordinance.” Because City Council had the requisite power, this Court would be compelled to ascertain “whether the [challenged action] is inconsistent with the Constitution or the general laws of this state.” If it is determined that the challenged action is not barred by the Constitution or other general law, the Court may not intervene in the valid exercise of the Council’s legislative authority. *Sandlands, supra.*, at 471-472, 290-291. An act within a governmental agency’s authority may not be declared unconstitutional if by any reasonable construction it can be harmonized with state and federal constitutions. *City of Darlington v. Stanley*, 239 S.C. 139, 122 S.E.2d 207 (1961)

Each Petitioner concedes that City Council has the authority to set budgets, establish pay and provide employee benefits. The express law of this State confirms this authority. See, S.C. Code Ann. § 5-13-30(3) As stated above, the absence of a statutory or constitutional prohibition bars any infringement on the decision by City Council to impose premium costs for employee and retiree health benefits. *Hampton v. Haley*, (separation of powers doctrine expressed in S.C. Const. art. I, § 8 prohibits judicial interference in legislative functions); *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010) (challenge to the “wisdom, policy or expediency of an [legislative] act” raises a “nonjusticiable political question”); *Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) (“a court may not reject the

legislature’s policy determinations merely because the court may prefer what it believes is a more equitable result.”).

Although department heads and human resources personnel may explain and administer **current policies** regarding compensation and benefits, these individuals cannot prohibit future City Councils from making policy changes affecting compensation and benefits. Petitioners testified that they were aware their supervisors and other City administrators could not promise or deliver pay or benefits beyond terms approved by City Council. Petitioners agreed that any representations by their fellow employees or published in newsletters regarding retiree benefits were consistent with City policy at the time. Petitioners further conceded that City policies changed during their employment and retirement, including changes in the group health insurance program. Accordingly, the record before this Court establishes Petitioners cannot utilize the judicial branch to invalidate constitutionally adopted legislation requiring their contribution to the City’s group health plan.

4. Legislative immunity, separation of powers and constitutional spending limitations bar the relief sought by Petitioners.

The City cannot be judicially barred from making changes in its group health insurance program and cannot be compelled to provide an unfunded benefit. *See, Health Promotion Specialists, LLC v. S.C. Board of Dentistry*, 403 S.C. 623, 635-637, 743 S.E.2d 808, 814-815 (2013) (public entities are immune from liability on the basis of decisions to fund or impose costs for liabilities); *Tenney v. Brand Hove*, 341 U.S. 367, 376-378 (1951) (exercise of discretion in selecting projects for public funding is not a matter of judicial review); *Sandlands, supra.* at 460, 284 (a duly adopted resolution is a legislative enactment and presumed to be constitutional); S.C. Const., art. X, § 14 (public subdivisions barred from incurring public indebtedness beyond revenue production). These legal principals establish the reach and limits of governmental authority in

matters involving expenditure of public funds. Contrary to Petitioners' assertions in this proceeding, and their apparent reliance on a separate trial court order also under appeal, the relief requested is not available even had they satisfied all elements of their estoppel claim.

CONCLUSION

Judge Barber, this Court, Judge Gee, Justice Toal, and Judge Sprouse, and the Court of Appeals have correctly ruled that it was incumbent upon Petitioners to prove each element of their promissory estoppel cause of action. The Court of Appeals' correct reading of the record and proper application of the law of this State illustrates that Petitioners failed prove a promise unambiguous in its terms, rendering their subjective reliance unreasonable. The notices provided by state law, ordinance and repeated communications from the City regarding the opportunity to revise policy and to increase contributions required for group health insurance participation, coupled with their own disagreements regarding the nature and extent of benefits promised independently and cumulatively render further review of Petitioners' claims unnecessary.

Should the Court wish to offer further guidance, it is respectfully submitted that the holding by the Court of Appeals that Petitioners need not establish "injury" beyond the expenditure group health premiums warrants reversal. Unless the law of this State is changed, a party seeking relief under promissory estoppel cannot merely assert the expected value of the alleged promise. Instead, the claimant must demonstrate an actual loss, or "cost" of reliance. Even should this Court determine to overrule current precedent requiring proof of "injury on reliance" and adopt a "promissory enforcement" rather than "promissory estoppel" doctrine, this substantial departure should be applied prospectively only. Finally, independent of any analysis regarding satisfaction estoppel criteria Petitioners failed to prove that the City exceeded its legislative authority in

requiring all participants in its group health plan to share in the costs associated with the benefits,
and the relief requested by Petitioners is constitutionally barred.

Respectfully submitted,

s/Jacqueline M. Pavlicek

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