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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated, Appellants,

v.

Clay Killian, in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, Aiken County, City of Aiken, Aiken Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken, Respondents.

INITIAL BRIEF OF APPELLANTS MARK GREGORY THOMPSON AND JANE PAGE THOMPSON INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED

RICHARDSON THOMAS, LLC
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., PA.
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Avenue (29609)
Post Office Box 2446
Greenville, SC 29602
T: (864) 271-2636
F: (864) 271-2637
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAWFIRM, P.C.
T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
P.O. Box 2765 (29304)
229 Magnolia Street
Spartanburg, SC 29306
T: (864) 585-3873
F: (864) 585-6485
rlangley@hodgelawfirm.com

Attorneys for Appellants and the Class

Dated: June 2, 2023

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2. Whether the lower court erred in holding that S.C. Code Ann. § 12-60-80(C) and *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) prevent Appellants from bringing any class action against a political subdivision?

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STATEMENT OF THE CASE

This is a class action arising out of various actors for Aiken County and the City of Aiken[1] who have and continue to charge, collect, and retain virtually identical Road Maintenance Fees to the one invalidated in *Burns v. Greenville County Council*, 433 S.C. 583 (2021). On June 30, 2021, the South Carolina Supreme Court declared to all counties in this state that fees, like the Road Maintenance Fees at issue in this case, are illegal and not authorized under South Carolina law. *See id.* at 590 ("Going forward, courts will carefully scrutinize so-called 'service or user fees.'") (J. Kittredge, concurring). The Aiken City Respondent has repealed its illegal Road Maintenance Fee but has failed to refund any of the fees collected. Compl. ¶ 37. Aiken County Respondents continue to collect and retain monies pursuant to this illegal fee. *Id.* ¶ 26. Overall,

[1] In the lower court, Appellants dismissed without prejudice Respondent Aiken County Council, Respondent Clay Killian as Aiken County Administrator, Respondent Aiken City Council, and Respondent Stewart Bedenbaugh as Aiken City Manager.

The only remaining Respondents for the County are Aiken County, and Jason Goings as Aiken County Treasurer. The only remaining Respondent for the City is City of Aiken.

Respondents are hoarding millions in illegally collected Road Maintenance Fees, and Respondents refuse to return these Fees paid by their citizens. *Id.* ¶¶ 10, 42.

Appellants Mark and Jane Thompson originally filed this class action in circuit court on November 2, 2021, seeking a declaration that Respondents' Road Maintenance Fee ordinances are unconstitutional, unlawful, and void *ab initio*, a mandate that Respondents refund the illegal fees Appellants were forced to pay in addition to an award of ten times the amount of fees illegally challenged pursuant to S.C. Code Ann. § 8-21-30. In addition to their individual claims, Appellants seek to represent a proposed class defined as:

> Any individual who at any time paid either or both the Aiken County Road Maintenance Fee and/or the City of Aiken Road Maintenance Fee.

Compl. ¶ 52.

The City and County Respondents separately moved to dismiss Appellants' Complaint asserting myriad arguments. The lower court held a hearing on April 20, 2022. *See* Transcript (April 20, 2022). Thereafter, the lower court dismissed Appellants' case in two orders holding Appellants cannot bring a class action against Respondents pursuant to S.C. Code Ann. § 12-60-80(C). The lower court did not reach the remaining arguments. *See* Order Granting County Defendants' Motion to Dismiss (August 5, 2022); *see also* Order Granting City Defendants' Motion to Dismiss (August 8, 2022). Appellants then filed a motion for reconsideration as to each of the two orders seeking clarification of whether the lower court meant to dismiss Appellants' claims brought in their individual capacities, too.

The lower court, on October 14, 2022, via a Form 4 Order, requested written submissions from the parties in order to decide Appellants' motion for reconsideration.[2] *See* Form 4 on Reconsideration. The parties submitted memoranda. Thereafter, the lower court re-affirmed its prior rulings on Respondents' motions to dismiss in two separate rulings dated January 3, 2023 and January 4, 2023. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (Jan. 3, 2023); *see also* Order on Plaintiffs' Motion to Alter or Amend as to City Defendants (Jan. 4, 2023). In these Orders, the lower court requested oral argument to assist in determining the remaining issues, which was held on January 13, 2023. *See* Transcript (Jan. 13, 2023).

On February 23, 2023, the circuit court dismissed Appellants' remaining claims, and therefore Appellants' case, against the City Respondents. *See* Order on Plaintiffs' Motion to Alter or Amend as to City Defendants (Feb. 23, 2023). Appellants' notice of appeal to this Court timely followed. On March 9, 2023, the circuit court dismissed Appellants' remaining claims, and therefore Appellants' case, against County Respondents. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023). An appeal to this Court followed. On March 17, 2023, this Court thereafter consolidated the appeals of which are currently before this Court.[3]

[2] This order was specific as to the City Defendants; however, at a later hearing, the lower court indicated it meant to include the County as well as the arguments are similar. *See* Transcript (Jan. 13, 2023) at pp.2:23 – 3:2.

[3] To be clear, in the lower court, Appellants and Respondents agreed to dismiss the following Defendants from this action: Aiken County Council, Clay Killian as Aiken County Administrator, Aiken City Council, and Stewart Bedenbaugh as Aiken City Manager.

Appellants have agreed to dismiss the declaratory judgment as to the City of Aiken based on it no longer charging the Road Maintenance Fee. *See* Transcript (Jan. 13, 2023) at p. 14:9-13.

STATEMENT OF THE FACTS

This case arises out of two ordinances passed by City and County Respondents which imposed two all-but-identical Road Maintenance Fees to the one invalidated by the Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583 (2021).

A. Aiken County Respondents

Aiken County Respondents enacted an ordinance that imposed the County's Road Maintenance Fee in 1992. Compl. ¶ 22. It required the owner of each motor vehicle licensed in Aiken County to pay a fee each year to Aiken County. *Id.* In 2020, that Road Maintenance Fee was $25.00. *Id.* ¶ 23. The County ordinance reads in relevant portion as follows:

> Effective July 1, 1992, a mandatory road maintenance fee as established in the annual County Operating Budget Ordinance on each motorized vehicle licensed in Aiken County is to be included on motor vehicle tax notices with the proceeds going into a separate fund for accounting purposes specifically to be used for maintenance and improvements of the county road system, to include road signs and correction of drainage problems impacting the county road system.

Id. ¶ 22.

Each year, Aiken County collects approximately $4,000,000.00 from this fee. *Id.* ¶ 26. Respondent Jason Goings, as Aiken County Treasurer, is responsible for overseeing the collection of the Road Maintenance Fees for the County. *Id.* ¶¶ 17, 24, 25. This has continued each year and continues even now, and Respondents continue to retain these monies. *Id.* ¶ 26.

B. Aiken City Respondent

Aiken City Council passed an ordinance enacting the Aiken City Road Maintenance Fee in 2017. *Id.* ¶ 27. The City ordinance at issue reads in relevant portion as follows:

> Effective January 1, 2017, a mandatory road maintenance fee as established in the annual City Operating Budget Ordinance on each motorized vehicle licensed in the city is to be included on motor vehicle tax notices with the proceeds going into a separate fund for accounting purposes specifically to be used for maintenance

> and improvements of the city road system, to include road signs and correction of drainage problems impacting the city road system.

Id.

In 2020, Aiken City's Road Maintenance Fee was $20.00. *Id*. ¶ 28. Each year, the City of Aiken collects approximately $500,000.00 in these Road Maintenance Fees. *Id*. ¶ 29. This City ordinance was repealed effective June 1, 2022. *See* Transcript (April 20, 2022) at p.36:1-5.

Appellants Mark Gregory Thompson and Jane Page Thompson are Aiken County and City of Aiken residents. Compl. ¶ 43. Appellants own vehicles licensed in Aiken County and the City of Aiken. *Id.* ¶ 44. They have paid the Road Maintenance Fees in all years levied against citizens of both Aiken County and City of Aiken. *Id.* ¶ 45.

C. The *Burns v. Greenville County Council* Decision

On June 30, 2021, the South Carolina Supreme Court found Greenville County Ordinance No. 4906,[4] which imposed a road maintenance fee, illegal under South Carolina law. *See id*. ¶¶ 32- 36 (citing *Burns v. Greenville County Council*, 433 S.C. 583 (2021)). Greenville County Ordinance No. 4906 reads as follows:

> The owners of every vehicle required to be registered and licensed in Greenville County by the South Carolina Department of Motor Vehicles shall pay annually to the Greenville County tax collector a road maintenance fee of $25 on each such vehicle.

Addressing this ordinance, the Court first held that it did not impose a value based-property tax. *Burns*, 433 S.C. at 586 ("Neither ordinance imposes a value-based property tax."). The Court's analysis then turned to whether it qualified as "uniform service charges" under

[4] The *Burns* Court also invalidated Ordinance number 4907, which imposed a Telecommunications Fee, based upon the same reasoning. *See Burns*, 433 S.C. at 589-90.

subsection 4-9-30(5)(a), or as "service or user fees" under subsection 6-1-330(A). The Court found neither applied stating:

> Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the "government service or program . . . benefits the payer in some manner different from the members of the general public."
>
> . . .
>
> Greenville County Ordinances 4906 and 4907 purport to impose a "uniform service charge" on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

Like Greenville County's illegal fees in *Burns*, Appellants contend that imposition of all-but-identical Road Maintenance Fees in this case is unlawful, and Respondents' continued collection and retention of those fees is an ongoing deprivation of the rights of Appellants and the putative class members. Compl. ¶ 91.

STANDARD OF REVIEW

A Rule 12(b)(1), SCRCP, motion challenges the power of the lower court over the subject matter. "Whether subject matter jurisdiction exists is a question of law, which this Court is free to decide with no particular deference to the circuit court." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) (citing *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009)); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Therefore, the Court of Appeals reviews the lower court's findings de novo. *See Capital City*, 382 S.C. at 99, 674 S.E.2d at 528; *Catawba Indian Tribe*, 372 S.C. at 524, 642 S.E.2d at 753.

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Patterson v. Witter*, 425 S.C. 213, 225, 821 S.E.2d 677, 684 (2018) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Id*. (citation omitted). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id*. at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Id*. at 395, 645 S.E.2d at 248 (citation omitted).

ARGUMENT

I. The lower court erred in dismissing this case for lack of subject matter jurisdiction because this case is not controlled by the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*

Appellants contend the lower court erred when it found the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq*. ("RPA"), applied to this dispute and warranted dismissal of Appellants' individual and class action claims for lack of subject-matter jurisdiction. In doing so, the lower court ignored the clear legislative intent of the RPA at S.C. Code Ann. § 12-60-20, which limits the RPA's application to cases involving the South Carolina Department of Revenue (hereinafter "SCDOR") and cases involving property taxes. *See* S.C. Code Ann. § 12-60-20; *see also Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). In this case, neither the SCDOR nor property taxes are at issue.

A. The lower court erred in holding that the Revenue Procedures Act applied, and that Appellants were required to exhaust its administrative remedies, despite clear legislative intent limiting the Act to disputes not at issue in this case.

The lower court's primary basis for dismissal of this suit was by erroneously applying the RPA and its provisions requiring the exhaustion of administrative remedies and barring class wide relief. *See* Order on Plaintiffs' Motion to Alter or Amend as to City Defendants (Feb. 23, 2023) at pp.3-4; *see also* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp. 5-6. This was error as the Generally Assembly limited the RPA's application to disputes involving only (1) disputes with the SCDOR, and (2) disputes concerning property taxes. *See* S.C. Code Ann. § 12-60-20. This suit involves neither. Thus, the RPA does not apply.

The RPA's limitation to these disputes is contained in S.C. Code Ann. § 12-60-20, which is even titled "Legislative intent." There, section 12-60-20 unambiguously sets forth the types of disputes to which the RPA will apply:

> It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine **a dispute with the Department of Revenue and a dispute concerning property taxes**. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (emphasis supplied).

The cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the General Assembly. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222 (Ct. App. 2005). Here, the General Assembly titles and provides its express intent as to the application of the RPA. To construe any provision of the Act as applying beyond these two disputes would violate this cardinal rule, and to apply any other rule of construction would violate the tenant that, "[a]ll rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of

the intended purpose of the statute." *Id*. at 230. There is no dispute that the intent of the RPA is clear, as it is laid out in plain language and titled "Legislative Intent." Thus, any application of the RPA and its provisions to disputes not involving "property taxes" or the SCDOR violates these cardinal rules of statutory construction.

Further, the lower court's orders fail to address each holding's direct conflict with the controlling decision by our South Carolina Supreme Court in *Lightner v. Hampton Hall Club, Inc*., which recently addressed the control of § 12-60-20 on the RPA's scope. 419 S.C. 357, 798 S.E.2d 555 (2017). There, the Supreme Court clarified the scope of the RPA based upon the language of § 12-60-20 holding:

> The plain language of the statute, including the repetition of the terms "a dispute" after the term "and," indicates the General Assembly intended to distinguish "a dispute with the Department of Revenue" from "a dispute concerning property taxes.". . . By recognizing that the General Assembly intended to distinguish between "a dispute with the Department of Revenue" and "a dispute concerning property taxes," **we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality**.

Lightner, 419 S.C. 357, 365 (emphasis supplied).

Appellants have not sued the SCDOR in any capacity, nor do Appellants' underlying claims concern "property taxes," as that term is defined by the RPA. *See* S.C. Code Ann. § 12-60-30(18) ("Property tax means *ad valorem* taxes on real and personal property."). The fees at issue are flat fees and do not involve any *ad valorem* tax, as the value of the vehicle has no bearing on the amount of fee. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.4. ("The Complaint notes that a road maintenance fee is based on ownership of personal property – a registered motor vehicle. If the fee is a tax, it is assessed on ownership of property, but not its value."). Further, the Supreme Court made clear in *Burns* that these types

of fees do not impose a value-based property tax. *See Burns*, 433 S.C. at 586 ("Neither ordinance imposes a value-based property tax.").

Further, a review of case law reveals that our courts have only ever applied the RPA to disputes involving either the SCDOR and/or property taxes. *See e.g*., *B & A Development Inc. v. Georgetown County*, 372 S.C. 261, 268, 641 S.E.2d 888, 892 (2007) (dispute over property taxes); *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017) (SCDOR named Defendant); *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414 (2020) (SCDOR named Defendant).

Therefore, the lower court violated the express intent of the General Assembly and erroneously applied the RPA's provisions requiring exhaustion of administrative remedies and the provision barring class relief (discussed further *infra*). Because this dispute concerns neither property taxes nor the SCDOR, the lower court erred in applying the RPA to this dispute.

B. The lower court incorrectly applied S.C. Code Ann. § 12-60-80(C) and *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) to prohibit Appellants' claims from proceeding as a class action.

The lower court incorrectly decided that section 12-60-80(C) of the RPA prohibits Appellants from bringing a class action against Respondents as political subdivisions of the State. *See* Order Granting County Defendants' Motion to Dismiss (Aug. 5, 2022) at p.3 ("Plaintiffs cannot proceed in a class action under the statute"); and Order Granting City Defendants' Motion to Dismiss (Aug. 8, 2022) at p.2 ("…this class action lawsuit is not permitted in circuit court and dismisses this action…") (both Orders re-affirmed on the lower court's motions to alter or amend). As stated above, this is not a dispute with SCDOR, nor does it involve property taxes. *See* S.C. Code Ann. § 12-60-30(18); *see also Burns*, 433 S.C. at 586. Therefore, section 12-60-80(C), contained within the RPA, does not have any application to this case.

Close examination of section 12-60-80(C) further supports this position:

> (C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

The first operative clause in section 12-60-80(C) plainly states that the prohibition against class actions for "refund[s]" applies only to claims involving "taxes." The lower court takes issue with whether the Road Maintenance Fees are taxes or fees for purposes of determining whether the RPA applies. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp.3-4. At the early stage of the pleadings, it is of no moment whether the Road Maintenance Fees at issue are taxes or fees, and any factual dispute ***should*** have been construed in favor of the Appellants, which in and of itself amounts to error.[5] *See Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003).

Despite this, in reaching its holding, the lower court erroneously relied on dicta in the *Burns* decision describing the illegal fees as illegal taxes. *See Burns*, 433 S.C. at 590, 861 S.E.2d at 34; *see also* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.5; *and see* Order on Plaintiffs' Motion to Alter or Amend as to City Defendants (Feb. 23, 2023) at p.3. Such reliance was error because, the *Burns* Court never addressed the RPA's definition of "taxes."

[5] The lower court acknowledges the "many assertions of fact concerning the differences between [Respondents'] ordinances and Greenville's." *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.5.

Indeed, the definition of "taxes" under the RPA, is much more limited than the standard definition of taxes[6]:

> "Tax" or "taxes" means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, **imposed by this title, or subject to assessment or collection by the department.**

S.C. Code Ann. § 12-60-30(27) (emphasis supplied).

Respondents imposed their illegal user fees under Title 6 of the South Carolina Code of Laws. *See* S.C. Code Ann. § 6-1-330. The fees at issue were not passed pursuant to Title 12. *See* S.C. Code Ann. § 12-60-30(18). The only taxes the County can impose pursuant to Title 12 are *ad valorem* property taxes, of which Respondents Aiken County's and the City of Aiken's fees are not, as each were passed as a service or user fee. Respondents cannot rely on Title 6 when adopting these user fees only to then rely on Title 12 when it comes to defending them. To be clear, the refunds Appellants seek in this case do not involve a tax, license, permit, fee, or other amount **imposed by Title 12**, nor is the charge **subject to assessment or collection by the SCDOR**. For the same reasons the RPA does not apply, section 12-60-80(C) is equally inapplicable.

Additionally, the lower court similarly erred in finding that the Road Maintenance Fees are property taxes and therefore fall under the RPA as discussed *supra* part I(A). *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp.4-5; on Plaintiffs' Motion to Alter or Amend as to City Defendants (Feb. 23, 2023) at pp.2-3. The RPA defines property tax as "ad valorem taxes on real and personal property." S.C. Code Ann. § 12-60-30(18). These taxes are proportional taxes based on the value of the property. *See* Order on

[6] *Compare* Tax, Black's Law Dictionary (11th ed. 2019) (defining tax as "[a] charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue.").

Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.4; *see also* Transcript (Jan. 13, 2023) at p.50:14-19; *Burns*, 433 S.C at n.2 (" 'Ad valorem' is a Latin term sometimes used to mean 'value-based.'") *See* Ad Valorem, Black's Law Dictionary (11th ed. 2019) (stating "ad valorem" means "proportional to the value of the thing taxed."). The Road Maintenance Fees at issue are not value based, but are flat fees charged to Appellants and the putative class and by definition cannot fall under the purview of the RPA. Compl. ¶¶ 3-6.

Next, the lower court incorrectly read the final clause of section 12-60-80(C) to impose a blanket prohibition against any political subdivision being sued in any class action in the State—regardless of whether the RPA even governs the underlying claims. *See* Order Granting County Defendants' Motion to Dismiss (August 5, 2022) at p. 5 (reaffirmed). The lower court relies on *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) to support its holding.

This reliance on *Aiken* was error, as it is precisely one of those lawsuits contemplated by the RPA, and the lower court even acknowledges such. *See* Order Granting City Defendants' Motion to Dismiss (Aug. 8, 2022) at p. 5 ("While Aiken involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection…."). In *Aiken*, the court rejected class claims against the SCDOR over certain wage garnishments imposed by the agency pursuant to section 12-4-580 (the Governmental Enterprise Receivable (GEAR) program). But SCDOR is **not** a defendant in this case; and Respondents' Road Maintenance Fees are not governed by Title 12. These fundamental differences take this case out of both section 12-60-80 and the holding in *Aiken v SCDOR*.

In addition, the lower court's expansive construction of section 12-60-80(C), renders this section applicable to disputes in which no other provision in the RPA would apply, and conflicts

with the stated legislative intent contained in section 12-60-20. Indeed, the lower court's reading would render class-actions prohibitive in any dispute, as long as a political subdivision was involved, based upon one provision in an Act which does not apply to the underlying dispute. *See Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) ("Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.") (citations omitted).

Further it would create an absurd result, whereby the lower court would hold that the General Assembly—in a Title of the Code named "Taxes," and in a Chapter that applies only to disputes with the SCDOR and those concerning property taxes—intended to impose a blanket ban on any class action alleging any claim of any nature against any political subdivision in the entire State. Such an interpretation is unsupported by the intent of the RPA, and all rules of statutory construction.[7]

[7] Respondents' arguments are wholly inconsistent with the numerous class actions certified under Rule 23, SCRCP, litigated, and resolved against political subdivisions, none of which involve the SCDOR or Title 12. *See Real Estate Transactions, LLC v. Beaufort Cnty.*, Case No. 2018-CP-07-02252 (certifying a Rule 23 litigation class against Beaufort County over disputed fees collected by its Treasurer); *City of Myrtle Beach v. Horry Cnty.*, Case No. 2019-CP-26-01732 (municipal government class certified in hospitality fee refund case against Horry County); *Snee Farm Lakes Homeowners Ass'n, Inc. v. Comm'rs of Pub. Works for the Town of Mount Pleasant*, Case No. 2018-CP-10-2764 (ratepayer class certified in rate refund case against municipal water utility); *James v City of Denmark*, Case No. 2018-CP-05-00242 (water utility customer class certified against municipality); *Cook v S.C. Pub. Serv. Auth.*, Case No. 2017-CP-25-348 (ratepayer class certified in rate refund case against state-owned electrical utility for nuclear power plant abandonment); *Worley Investments, LLC v. Berkeley Cnty.*, Case No. 2015-CP-08-1153 (property owner class certified in impact fee refund case against Berkeley County); *Watson v. S.C. Pub. Serv. Auth.*, Case No. 2007-CP-26-6025 (ratepayer class certified in rate refund case against state-owned electric utility for coal power plant abandonment); *Hearn v. S.C. Pub. Serv. Auth.*, Case No. 2017-CP-26-05256 (ratepayer class certified in rate refund case against state-owned electric utility for purchase and abandonment of coal-fired power plant).

In this case, Respondents imposed their illegal user fees under Title 6 of the South Carolina Code of Laws as a service or user fee. *See* S.C. Code Ann. § 6-1-330. The fee at issue was not passed pursuant to Title 12. The only taxes the County can impose pursuant to Title 12 are *ad valorem* property taxes, of which Aiken County's and the City of Aiken's Road Maintenance Fees are not, as discussed *supra*. Thus, the refund sought in this case does not involve a tax, license, permit, fee, or other amount imposed by Title 12, nor is the charge subject to assessment or collection by the SCDOR. For the same reasons the RPA does not apply, § 12-60-80(C) is equally inapplicable.

Further, the only sensible interpretation of the final clause in § 12-60-80(C) is that the General Assembly intended to prohibit class actions against political subdivisions in property tax cases that seek relief outside of a refund, i.e., declaratory or injunctive relief. Nowhere has the General Assembly stated an intention to bury a sweeping prohibition in the tax laws that would bar any class action against any political subdivision regardless of whether the RPA governs the underlying claims. The only discernable intent that the General Assembly expressed as to Article 1 in the Act that amended § 12-60-80 to add subsection (C) was:

> **TO AMEND ARTICLE 1, CHAPTER 60 OF TITLE 12, RELATING TO SOUTH CAROLINA REVENUE PROCEDURES ACT, SO AS TO REVISE THE MANNER IN WHICH AND CONDITIONS UNDER WHICH <u>DISPUTES OR CLAIMS WITH THE DEPARTMENT OF REVENUE</u> ARE DETERMINED AND RESOLVED;**

Act No. 69, 2003 S.C. Acts 718, 744 (emphasis supplied).

Notably absent is any indication that the General Assembly intended to revise the manner or conditions in which counties and municipalities could be sued in cases that do not involve the SCDOR or property tax disputes.

Moreover, our Supreme Court has previously construed the language of § 12-60-80 so narrowly that it found taxpayers, who were challenging the imposition of excess interest on the redemption of defaulted property taxes, could not bring an action before the administrative law court pursuant to the RPA, but instead had to pursue their claims in circuit court under the Alternate Procedures Act. *See Buist v. Huggins*, 367 S.C. 268, 274 (2006) ("The circuit court in this case, as well as the Court of Appeals, found that Petitioners' claims did not involve a challenge to a property tax assessment but, rather, a claim for a refund of interest paid to the Delinquent Tax Collector, and that the only provisions governing redemption of property sold at a delinquent tax sale were found in … the Alternate Procedures Act, requiring suit to be brought in the circuit court. We agree.").

Section 12-60-80 is to be construed narrowly as it was in *Buist*, and in accordance with the General Assembly's expressed intent as defined in § 12-60-20. By reading section 12-60-80(C) to apply outside of the RPA, the lower court erred.

II. The lower court erred in dismissing Appellants' claims for Respondents' violations of S.C. Code Ann. § 8-21-30.

The lower court incorrectly dismissed Appellants' claims for failing to state causes of action for Respondents' violations of S.C. Code Ann. § 8-21-30.[8] *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp.8-11. Section 8-21-30 provides an individual who has been charged an unauthorized fee by a public officer a remedy in circuit court for ten times the illegal fee charged. *See* 7 S.C. Jur. Costs § 52 (explaining liability for excessive charges under § 8-21-30). When addressing the application of § 8-21-30, this Court must strictly construe it against the sovereign charging the fee. *See State v. Wilder*, 198 S.C. 390,

[8] Appellants assume the lower court dismissed these claims for failure to state a claim for relief.

18 S.E.2d 324, 326 (1941) ("Fee statutes must be strictly construed."); The Honorable Glenn G. Reese, 2011 WL 5304079, at *1 (S.C.A.G Oct. 11, 2011).

Under South Carolina law, a fee is illegally charged unless it is authorized by statute. *See* S.C. Code Ann. § 8-21-15(A). Appellants have more than adequately alleged the fees at issue were not authorized by law, e.g., Compl. ¶¶ 1, 8, 46, 91(c), and the recourse for addressing such an illegal fee is found in section 8-21-30:

> Liability for ten times fee illegally charged. If any officer herein named shall charge any other fee or fees for any services herein mentioned, such officer shall be liable to forfeit ten times the amount so improperly charged, to be recovered by suit in the court of common pleas, by attachment or by sale when the penalty does not exceed twenty dollars.

S.C. Code Ann. § 8-21-30.

In this case, an officer, Treasurer Goings, charged and collected illegal fees, the Road Maintenance Fees, and Appellants have brought suit in the lower court for ten times the amount illegally charged. This is the exact scenario for which section 8-21-30 applies.

A. County Treasurers are Officers under S.C. Code Ann. § 8-21-30.

The lower court correctly identified that County Treasurers are Officers under S.C. Code Ann. § 8-21-30. Indeed, the lower court stated in a footnote that "a county treasurer is mentioned" in a code section listed in S.C. Code Ann. § 8-21-10. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at n.8. Yet, it held that the Treasurer was not an officer for purposes of this section. *See id.* at pp.10-11.

A County Treasurer qualifies as an "officer" under S.C. Code Ann. § 8-21-10. Appellants have adequately pleaded that Respondent Treasurer Goings qualifies. Compl. ¶¶ 78-84. Title 8 of the South Carolina Code applies to Public Officers and Employees, and Chapter 21 of Title 8,

deals with Fees and Costs generally.[9] Section 8-21-20 contained within Article 1 of Chapter 21 articulates as to which officers it applies:

> The several officers named in this chapter . . . shall be entitled to receive and recover the fees and costs prescribed by this chapter . . . and none other, for the services herein enumerated.

S.C. Code Ann. § 8-21-20.

Looking to Chapter 21, County Treasurers are indeed named in the chapter. *See* e.g., S.C. Code Ann. § 8-21-310(A) – (C) ("Except as otherwise expressly provided, the clerks of court, registers of deeds, or **county treasurers**, shall collect the following uniform filing fees") ("Except as otherwise expressly provided, the clerks of court, registers of deeds, or **county treasurers**, as may be determined by the governing body of a county, shall collect a uniform filing fee of ten dollars") (Except as otherwise expressly provided, the clerks of court or **county treasurers**, as may be determined by the governing body of the county, shall . . . . [collect various fees listed]) (emphasis supplied); *see also* § 8-21-1040; and *see* § 8-21-760. As County Treasurers are one of "[t]he several officers named in [Chapter 21]," the lower court erred by finding that Respondent Goings was not an officer

B. Section 8-21-30 Applies to Fees Not Authorized by Law.

The lower court incorrectly dismissed Appellants' claims for Respondents' violations of S.C. Code Ann. § 8-21-30 based on a finding that "road maintenance" is not an enumerated service under § 8-21-10, and the fees are not those prescribed in Chapter 21 of Title 8. *See* Order

[9] Title 8 is titled "Public Officers and Employees" and Chapter 21 is titled "Fees and Costs Generally."

on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp.8-10.[10] Limiting § 8-21-30 to apply only to fees enumerated in Chapter 21 and for services rendered in Chapter 21 violates the general rule regarding construction of fee statutes, creates an absurd result, and is inconsistent with prior constructions of § 8-21-30. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941). Indeed, the lower court's holding results in a bizarre construction of the statute in favor of the officer, when the rules of construction in this state require the opposite. *See id.* at 390, 18 S.E.2d at 326.

For example, under the lower court's construction of the statute, the clerk of court is authorized to charge a fifteen-dollar fee for a deed to real estate pursuant to section 8-21-310(A)(1). The clerk of court violates § 8-21-30 by imposing a fee of twenty-five dollars for that service. Yet, under Aiken County's reading of section 8-21-30, that same clerk of court may charge a $100 fee wholly unauthorized by law in the first place and not be subject to liability under § 8-21-30. Indeed, such an unauthorized fee would not be enumerated in Chapter 21, as it is unlawful in the first instance, yet under the lower court's reading of § 8-21-30, it would not apply. Such a reading creates an absurd result to the benefit of the charging official, violating two tenets of statutory construction. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("goal of statutory construction . . . to prevent an interpretation that would lead to a result that is plainly absurd."); *see also Wilder*, 198 S.C. at 390, 18 S.E.2d at 324.

[10] In addition, the lower court distanced Respondent Treasurer Goings from charging the fees, finding instead that "the Treasurer was merely collecting pursuant to County ordinances." *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.11. The technical distinction is of no moment. Respondent Treasurer Goings was charged with the collection of illegal fees. The remedy for which is ten times the unlawful fee Respondent charged. *See* S.C. Code Ann. § 8-21-30. Appellants sufficiently pleaded Respondents' violation of S.C. Code Ann. § 8-21-30, and the lower court erred in dismissing Appellants' claims.

Moreover, section 8-21-15 in Article 1 of Chapter 21 (the location of § 8-21-30) contemplates prohibitions of any fee "unless authorized by statute" not just those enumerated in Chapter 21.[11] *See* S.C. Code Ann. § 8-21-15 (Titled: "No fee for performing duty, responsibility, or function of agency unless authorized by statute and regulation; exceptions.")

Additionally, the lower court's holding ignores the fact that § 8-21-10 and § 8-21-15 make clear that only those fees which are authorized by Chapter 21 or other statute are recoverable. *See* S.C. Code Ann. § 8-21-10 (Title reading "Only fees and costs prescribed are recoverable"; § 8-21-15 ("No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty … unless authorized by statute…."). Applying the inverse, fees not expressly prescribed by Chapter 21 (or another statutory provision) are unauthorized, prohibited, and will subject an officer charging them to liability under § 8-21-30.

While there is limited case law applying § 8-21-30,[12] the Attorney General has rendered opinions supporting Appellants' construction that § 8-21-30 will apply to fees and services not enumerated in Chapter 21. *See Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011) ("Attorney General opinions are persuasive but not binding authority."). By way of example, in addressing Senator Reese's inquiry regarding whether a Sherriff may charge for drug sniffing dogs in a school, the Attorney General cited to § 8-21-30 as creating liability for such charges, stating:

> Our Supreme Court has consistently recognized that costs and fees "are in the nature of penalties and the statutes granting them have always been strictly construed." *State et al. v. Wilder*, 198 S.C. 390, 394, 18 S.E.2d 324 (1941). In other words, "statutes providing for fees are to be strictly construed against allowing a fee by implication with respect to both the fixing of the fee and the officer entitled

[11] There are other articles mentioned in this statute, however, for the sake of simplicity, wherein this motion references "enumerated in Chapter 21," such should be read to include all Titles and Chapters discussed in § 8-21-20.

[12] *See Dean v. Todd*, 49 S.C. 461, 27 S.E.2d 471 (1897); and *Tinsley v. Kirby*, 8 S.C. 113 (1877).

> thereto." 67 C.J.S. Officers, § 224. Governing the fees and costs of public officers generally, South Carolina Code of Laws Section 8-21-10 states, "The several officers named in ... Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter ... and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated." Moreover, § 8-21-30 of the Code requires that if a Sheriff "improperly" charges a fee, he may be liable for "ten times the amount so improperly charged...."

The Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011) (emphasis supplied).

As expected, there is no mention of a fee for drug-sniffing dogs anywhere in Chapter 21 of Title 8, thus it is not an "enumerated" service. Yet, the opinion notes § 8-21-30 applicability. If this statutory scheme applies to such a fee, despite no mention of drug-sniffing dogs anywhere in Chapter 21 of Title 8, the scheme should equally apply to a County Treasurer charging illegal Road Maintenance Fees.

As this opinion shows, it is not the authorization in Chapter 21 that triggers potential liability under § 8-21-30, but the lack of authorization in the first place, something both an illegal "drug sniffing" dog fee and illegal Road Maintenance fees share.[13]

III. The lower court incorrectly held that sovereign immunity barred Appellants' claims for unjust enrichment.

The lower court incorrectly held that Appellants' equitable claims are barred by sovereign immunity by comparing the General Assembly's waiver for tort claims under the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq*. ("SCTCA"), to equitable claims for unjust enrichment. *See* Order on Plaintiffs' Motion to Alter or Amend as to City Defendants (Feb. 23, 2023) at pp.4-5; *see also* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants

[13] The Court declined to address whether S.C. Code Ann. § 8-21-30 has been implicitly appealed.

(March 9, 2023) at pp.6-8. For the reasons discussed below, the lower court's holding should be reversed.

In *U.S. Rubber Products v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937), the South Carolina Supreme Court held that the Town of Batesburg was liable to the plaintiff, a private corporation, in equity for the amount the Town had been unjustly enriched. In its decision, the Court recognized that:

> In an action depending on the obligation or duty called quasi contract the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff. In an action against the town for money or goods had or received, the question is not what the claimant has parted with to officers who were not in authority to take his money or goods for the town, or what they have promised him, but how much has the town been benefited. The right to such a recovery is supported by the weight of authority.

183 S.C. at 49, 190 S.E. at 124-25. In support of its decision, the Court quoted from the United States Supreme Court's decision in *Marsh v. Fulton Cnty.*, 77 U.S. 676 (1870) for the following general principle of law relating to counties and municipalities:

> The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.

77 U.S. at 684.

In accordance with these principles, appellate courts in South Carolina have repeatedly allowed equitable claims to proceed against political subdivisions. *See e.g.*, *Bishop v. City of Columbia*, 401 S.C. 651, 665, 738 S.E.2d 255, 262 (Ct. App. 2013) ("Retirees argue summary judgment on estoppel was inappropriate because there is a genuine issue of fact as to whether they reasonable relied on promises and representations made by City employees. We agree."); *Charleston Cnty. v. Nat'l Advert. Co.*, 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); *Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) ("Government

agents, acting within the proper scope of their authority, can by their acts give rise to estoppel against a municipality."); *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 493–94, 257 S.E.2d 716, 718 (1979) ("It would then follow that under the instant circumstances, the City of Abbeville is not immune from application of the doctrine of estoppel."). Collectively, these cases demonstrate that sovereign immunity does not bar equitable claims against political subdivisions in South Carolina.

Moreover, the SCTCA has no effect on Appellants' ability to maintain equitable claims against Respondents. Back in 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity, otherwise known as governmental immunity in tort,[14] when it declared that "[s]overeign immunity can no longer be tolerated in this State." *McCall v. Batson*, 285 S.C. 243, 246 (1985). The *McCall* opinion clarified that it "expressly overrule[d] all previous decisions of [the] Court which uphold sovereign immunity." *Id*. at 247.

Shortly after *McCall* was decided, the General Assembly promulgated the SCTCA which "granted" the government qualified immunity for tort claims prospectively, S.C. Code Ann. § 15-78-20(b), "reinstated" sovereign immunity for uninsured tort claims that accrued before the TCA was enacted, *id*. at § 20(c), and established 40 exceptions to the government's newfound tort liability. *Id*. at § 60. In section 30, the General Assembly also defined the word "claim" to mean "any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, **caused by the tort** of any employee of the State or a political subdivision while acting within the scope of his official duty." *Id.* at § 30(b). Importantly, the SCTCA does

[14] *See* G. TOLBERT GOOLSBY, JR. & GINGER GOFORTH, THE SOUTH CAROLINA TORT CLAIMS ACT: A PRIMER AND THEN SOME, 1 (3d ed. 2003).

not address equitable claims whatsoever and the General Assembly has not passed any subsequent law that has "granted" or "reinstated" sovereign immunity as to **equitable claims**.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *See Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And restitution is a basis of recovery independent of tort or contract liability. *See Restatement of the Law of Restitution* § 1 (1937) (tort, contract and restitution are the three primary areas in the overall classification of the law). Here, Appellants' unjust enrichment claims are not tort claims seeking compensatory damages. Instead, they seek restitution for the value of the illegal fees Appellants remitted to Respondents. *See* Compl. ¶ 76, 84. Because these claims do not sound in tort, and seek restitution rather than compensatory damages, the SCTCA does not bar Appellants' claims. *See Wright v. Genesee Cnty.*, 504 Mich. 410, 414, 934 N.W.2d 805, 807 (2019) ("A claim for unjust enrichment is neither a tort nor a contract [claim] but rather an independent cause of action. And the remedy for unjust enrichment is restitution—not compensatory damages, the remedy for tort. For both reasons, the [Governmental Tort Liability Act] does not bar an unjust-enrichment claim.").

Finally, it would be manifestly unfair to permit Respondents free reign to violate South Carolina law by collecting fees illegally from its citizens, while subsequently hiding behind the cloak of immunity to avoid responsibility. Here, Appellants have alleged that Respondents have taken millions of dollars out of the pockets of South Carolina citizens by collecting road fees that mirror the fee our Supreme Court struck down in *Burns*. Good governance requires a remedy for private citizens when local governments are unjustly enriched by such *ultra vires* practices—otherwise there is no deterrent for future misconduct.

For these reasons, the lower court erroneously dismissed Appellants' equitable claims against Respondents for unjust enrichment. Long ago, *U.S. Rubber Products* established that

South Carolina citizens have an equitable right to recovery when political subdivisions have been unjustly enriched. And the General Assembly's subsequent passage of the SCTCA— which only governs claims that sound in tort—does not affect this right. As a result, the lower court's dismissal of Appellants' claims for unjust enrichment should be reversed.

IV. The lower court incorrectly dismissed Appellants' claims for violation of due process.

The lower court incorrectly dismissed Appellants' claims for Respondents' violation of their due process rights under Art. I, § 3 of the South Carolina Constitution based on relief that Appellants do not seek. *See* Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at pp.11-12. The lower court made a factual error when it dismissed Appellants due process claim:

> Plaintiffs' counsel stated on page 62 of the of the transcript: 'And, lastly, I will accept the stipulation that money damages aren't being claimed under the due process claim. I would ask, then, that that cause of action be dismissed.'
>
> *Id.* at n.4.

However, during the April 20, 2022 hearing, Counsel for Defendant/Respondent City of Aiken, Attorney Lindemann made the above statement. *See* Transcript (April 20, 2022) at p.59:7-9. Counsel for Plaintiffs/Appellants stated:

> Moving onto Mr. Lindemann's arguments, I can dispose of one quickly. The due process argument, we're not seeking monetary damages under the due process claim, I've told that -- I think it was actually in our stipulation. It may not have been. It's been in a number of ours, so [the lower court does not] need to address that.
>
> *Id.* at p.54:16-21.

Appellants do not seek monetary relief from the violation of due process that Appellants allege against Respondents. *See id.* at p.54:16-21. Rather, Appellants' due process claim requests

"that judgment be entered against Defendants finding that they deprived Plaintiffs and the Class of rights secured by the laws of South Carolina." Compl. ¶ 71(f). Therefore, the lower court erred because there is simply no basis that Appellants' due process claims should be dismissed.

CONCLUSION

Respondents have charged and continue to charge Road Maintenance Fees in violation of South Carolina law and an express directive of our Supreme Court. These fees—or taxes—whatever they turn out to be, either way do not fall under the Revenue Procedures Act. *See* S.C. Code Ann. § 12-60-10 *et seq.* The lower court had jurisdiction over this matter and incorrectly dismissed Appellants' complaint in full. For the foregoing reasons, the decision of the circuit court should be REVERSED and REMANDED.

Respectfully submitted,

RICHARDSON THOMAS, LLC

s/ William C. Lewis
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., PA.

Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Avenue (29609)
Post Office Box 2446
Greenville, SC 29602

T: (864) 271-2636
F: (864) 271-2637
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAWFIRM, P.C.

T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
P.O. Box 2765 (29304)
229 Magnolia Street
Spartanburg, SC 29306
T: (864) 585-3873
F: (864) 585-6485
rlangley@hodgelawfirm.com

Attorneys for Appellants and the Class

Dated: June 2, 2023
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

Mark Gregory Thompson and Jane Page Thompson, individually and behalf of all those similarly situated, Appellants,

v.

Clay Killian, in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, Aiken County, City of Aiken, Aiken Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken., Respondents.

CERTIFICATE OF COMPLIANCE

I certify that the Initial Brief of Appellants Mark Gregory Thompson and Jane Page Thompson complies with Rule 211(b), SCACR.

Respectfully,

RICHARDSON THOMAS, LLC

s/ William C. Lewis
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com

grace@richardsonthomas.com

Attorneys for Appellants

Dated: June 2, 2023

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PROOF OF SERVICE

I certify that I have served Appellant Mark Gregory Thompson and Jane Page Thompson's initial brief to be involved in the record on appeal on the Respondents via e-mail upon their respective attorneys of recorded as addressed below:

LINDEMANN & DAVIS, P.A.
Andrew F Lindemann (SC Bar 13030)
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Respondents City of Aiken,
Aiken City Council, and Stuart Bedenbaugh
in his official capacity as City Manager of Aiken

Bradley T. Farrar (SC Bar 66381)
Aiken County Attorney
1930 University Parkway, Suite 3600
Aiken, South Carolina 29801
803-642-3628
Bfarrar@aikencountysc.gov

Counsel for Respondents Clay Killian in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council

By: *s/ William C. Lewis*

William C. Lewis, Esq.
Richardson Thomas, LLC
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8145
will@richardsonthomas.com

Dated: June 2, 2023
Columbia, South Carolina