

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Robin B. Stilwell, Circuit Judge

Appellate Case No. 2019-001449

Sylvia Lockaby,.....Appellant,

v.

City of Simpsonville, Janice Curtis, and Adam Randolph,.....Respondents.

PETITION FOR REHEARING

The Appellant, Sylvia Lockaby, hereby respectfully moves and petitions, pursuant to Rule 221(a), SCACR, as well as all other applicable law, for an order granting rehearing in this case and submits the memorandum below in support of the same. In an effort to keep this petition succinct, particularly with regard to the arguments not addressed by the court’s opinion, Appellant incorporates herein by reference her previously submitted briefs, making by reference those same arguments here. This petition does not restate the briefs, except by incorporation, any more than is needed to address the misapprehensions evident from the opinion issued in this case.

In an opinion issued on June 21, 2023, this court held that Appellant Lockaby’s suit for damages resulting from violations of civil rights was barred by legislative immunity. This court further ruled that Respondent Curtis’ decision, as chair of the Simpsonville Town Council, to arrest and remove Appellant was a legislative act, entitling all Respondents to such immunity.

Appellant respectfully urges the court to reexamine its holding and decision in this case. By holding Respondent Curtis's removal of Appellant was a legislative act, entitling all Respondents to legislative immunity, the court has dramatically expanded the scope of such immunity inconsistent with existing jurisprudence.

Appellant respectfully submits that the court may have overlooked or misapprehended certain points in this case, as the following shows:

I. **A presiding officer's decision to remove a legislator from a proceeding is not a legislative act**

The Court is correct that the U.S. Supreme Court and our state supreme court have openly acknowledged that qualified legislative immunity extends to local lawmakers, like the parties to this appeal, in civil rights actions. All the authority cited in the Court's opinion though is from decisions made by legislative bodies that were then challenged. The facts of this case concern whether the impairment of the legislative process – the arrest of legislator during a legislative meeting – can never be recoverable as a chair's decision to arrest will always be a legislative act entitled to qualified immunity. This is very different than in Whitener v. McWatters, 112 F.3d 740 (4th Cir. 1997) where the decision by a county board of supervisors to punish one of its members was held immune from suit. “[B]ecause citizens may not sue legislators for their legislative acts, **legislative bodies are left to police their own members. Absent truly exceptional circumstances, it would be strange to hold that such self-policing is itself actionable in a court.**” Opinion at 8 (quoting Whitener at 744)(emphasis added). This case does not challenge a decision by the Simpsonville Town Council to arrest Appellant. Qualified legislative immunity does exist and can protect decisions made by the legislative body when that legislator is later sued but that

is not this case. By extending qualified immunity to the decision of one member of a legislative body, this court has expanded immunity to non-legislative acts.

Imposing liability on the decision of a presiding officer to arrest a fellow legislator will not impact the exercise of presiding chairs' administrative functions during public meetings. The court's opinion cites to Forrester v. White, 484 U.S. 219, (1988) for the proposition that is the effect that the particular form of liability will have on the nature of the governmental functions at issue which determines whether a grant of immunity is appropriate. Opinion at 8 (quoting Forrester at 224). Allowing liability for decisions like Respondent's Curtis to censor, arrest and remove Appellant, thus depriving her constituents a voice at the Town Council meeting, would not impact the ability of presiding officers to do this moving forward. If it did – if a presiding officer was hesitant to order the sergeant-at-arms to remove a fellow legislator for fear of a lawsuit – and instead, there was a vote by the body to discipline the legislator then the legislative functions would be enhanced. Allowing liability for these exceptional decisions by presiding officers would also help promote the civility that such leaders often promote.

II. The Court's opinion fails to consider Appellant's protections as legislator while conferring immunity on Respondents

In addition to the Court's misapplication of the law of legislative immunity as provided to the actions of Respondent Curtis, alone, and not that of council, the opinion also fails to consider the "impairment" to the legislative function of the city council that was Appellant's seizure and removal. See the quoted passage from the eighth page of the Court's opinion:

Legislative acts are not all-encompassing. The heart of the [Speech and Debate] Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they *must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings* with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House. As the Court of Appeals put it, the courts have extended the privilege to matters beyond pure speech or debate in either House, but "only when necessary to prevent indirect impairment of such deliberations."

Id.(emphasis in original); citing Gravel v. United States, 408 U.S. 606, 625 (1972)(quoting United States v. Doe, 455 F.2d 753, 760 (1st Cir. 1972)).

Lockaby's questioning of Dyrhaug was exactly the "integral part of the deliberative and communicative process by which" City Council members address the city administrator about stormwater and other issues. Precisely how is the chair's decision to remove Lockaby during this "communicative" process 'legislative' but Lockaby's questioning of the city administrator not? Furthermore, if both Lockaby's questioning and Respondent Curtis's action to remove Lockaby are legislative then upon what legal or logical basis does the balancing of these interests occur in this opinion. It doesn't appear to, which is why Appellant petitions the Court to address it.

III. Conclusion

The court's misapplication of the law of qualified immunity, including the authority it cites in its opinion, but not limited to it, is a dangerous precedent towards the expansion of autocratic powers within legislative bodies and our society.

WHEREFORE Appellant prays for an order granting rehearing in this case.

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Respectfully submitted,

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