

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

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

Respondents.

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**MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF ON BEHALF OF  
BEAUFORT COUNTY IN SUPPORT OF THE CIRCUIT COURT'S ORDERS  
DISMISSING APPELLANTS' CASE IN ITS ENTIRETY**

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*Attorney for Amicus Curiae,  
Beaufort County*

Pursuant to Rule 213 of the South Carolina Appellate Court Rules (“SCACR”), Beaufort County, by and through undersigned counsel, respectfully requests leave to file an *amicus curiae* brief in support of Judge Keesley’s orders dismissing Appellants’ case in its entirety. *See* Order Granting County Defendants’ Motion to Dismiss (Aug. 5, 2022); *see also* Order Granting City Defendants’ Motion to Dismiss (Aug. 8, 2022); Order on Plaintiffs’ Motion to Alter or Amend as to County Defendants (Jan. 3, 2023); Order on Plaintiffs’ Motion to Alter or Amend as to City Defendants (Jan. 4, 2023); Order of Plaintiffs’ Motion to Alter or Amend as to City Defendants (Feb. 23, 2023); Order on Plaintiffs’ Motion to Alter or Amend as to County Defendants (Mar. 9, 2023). A copy of Beaufort County’s proposed *amicus curiae* brief is attached and is being conditionally filed with this motion in accordance with Rule 213, SCACR.

#### **INTEREST OF AMICUS CURIAE**

Beaufort County is a political subdivision of South Carolina empowered under law to assess ad valorem taxes and uniform service charges. Beaufort County has imposed a uniform service charge on county residents’ vehicles (referred to herein as a “road fee”) since 1993. Beaufort County is presently a named defendant in a putative class action challenging its road fee, styled Civil Action No. 2021-CP-07-01967 (“Beaufort County Case”). The plaintiffs’ theories and claims in the Beaufort County Case are essentially identical to the claims and theories at issue in the appeal presently before this Court, as well as the claims in a number of other road fee cases across the State.<sup>1</sup> The road fee cases across the State are in various stages of litigation, but this is the first road fee case to reach our appellate courts. Accordingly, the resolution of this case on appeal could greatly impact the trajectory of the other road fee cases.

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<sup>1</sup> There are presently cases at various stages of circuit court litigation in at least the following counties: Aiken County, Beaufort County, Florence County, Georgetown County, Horry County, Kershaw County, Orangeburg County, Richland County, and Spartanburg County.

More generally, the outcome of these road fee cases is of paramount importance to the entire State and its citizenry. First, the amount of money the plaintiffs are seeking in these numerous road fee cases is staggering. Not only do the plaintiffs universally seek a refund of all road fees collected over a number of years, they also seek a ten-times multiplier on those fees. In Beaufort County alone, the plaintiffs seek an estimated \$227 million in damages. Any such recoveries will necessarily come out of the pockets of local governments and their citizens, causing financial instability and hardship. Second, the ability of political subdivisions to provide safe and convenient roadways for their citizens and tourists alike will be extremely hampered if these entities cannot impose road fees. Building and maintaining roads is a core government function. Counties and cities rely on these road fees as a critical source of revenue to support their roadways, as they have very limited means for collecting revenues outside of charging uniform service fees. *See, e.g.*, S.C. Code § 6-1-310 (Except for value-based property taxes, local governing bodies “may not impose a new tax . . . unless specifically authorized by the General Assembly.”). Thus, the continued viability of these road fees is critically important for South Carolina.

#### **DESIRABILITY OF BRIEF OF AMICUS CURIAE**

On appeal, “[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” SCACR, 220(c). In addition to the arguments presented in Respondents’ Initial Brief, Beaufort County will provide additional grounds and legal support for the circuit court’s orders dismissing Appellants’ case. The implications of the various (but essentially identical) road fee cases across the State are far-reaching and this is the first of those cases to reach the Court of Appeals. It is both efficient and desirable for the Court to be briefed on all of the numerous grounds for affirming the circuit court’s orders in this case, in the

hope that it will prevent future appeals in the other pending cases on issues that could be disposed of here and now.

**CONCLUSION**

For the reasons explained above, we respectfully request that the Court grant Beaufort County's motion for leave to file an *amicus curiae* brief in this case.

Respectfully submitted,

BURR & FORMAN LLP

*s/James K. Gilliam*

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James K. Gilliam, S.C. Bar No. 76695

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*Attorney for Amicus Curiae, Beaufort County*

September 29, 2023

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PROOF OF SERVICE

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I, Catherine Martin, an employee of Burr & Forman LLP, attorneys for *Amicus Curiae*, Beaufort County, in the above-entitled action, certify that I have served **Motion for Leave to File an Amicus Curiae Brief on Behalf of Beaufort County in Support of the Circuit Court's Orders Dismissing Appellants' Case in its Entirety** on Counsel of Record by U.S. mail and electronic mail on the 29th day of September, 2023 as follows:

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

Catherine Marti

September 29, 2023  
Greenville, South Carolina

**RECEIVED**

**Sep 29 2023**

**SC Court of Appeals**

**BURR FORMAN** LLP  
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September 29, 2023

**BY U.S. MAIL AND EMAIL (CTAPPFILINGS@SCCOURTS.ORG)**

The Honorable Jenny Abbott Kitchings  
Clerk  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: Mark Gregory Thompson and Jane Page Thompson v. Clay Killian, et al.; Appellate Case No.: 2023-000442**

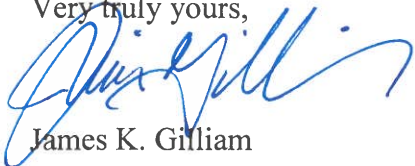
Dear Ms. Kitchings,

On behalf of Beaufort County, we are enclosing herewith one copy of the following:

- Motion for Leave to File an *Amicus Curiae* Brief on Behalf of Beaufort County in Support of the Circuit Court's Orders Dismissing Appellants' Case in its Entirety
- *Amicus Curiae* Brief on Behalf of Beaufort County
- Proof of Service
- Filing Fee

All Counsel of Record have been served as indicated on the Proof of Service.

Very truly yours,



James K. Gilliam

JKG/cem

Enclosures

The Honorable Jenny Abbott Kitchings  
September 29, 2023  
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cc: Counsel of Record