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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.

RECORD ON APPEAL

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) 281-8150
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 LAW FIRM, 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: October 12, 2023

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

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

Civil Action Number: 2021CP0202323

Plaintiffs,)

vs.)

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

Defendants.)

**ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
WITHOUT PREJUDICE JASON GOINGS,
IN HIS OFFICIAL CAPACITY AS
TREASURER OF AIKEN COUNTY,
and AIKEN COUNTY, and DISMISSING
BY CONSENT CLAY KILLIAN, IN
HIS OFFICIAL CAPACITY AS AIKEN
COUNTY ADMINISTRATOR, and
AIKEN COUNTY COUNCIL**

Heard: April 20, 2022 via Webex Virtual Courtroom by consent

Attorney for Plaintiffs: William C. Lewis

Attorney for Aiken Co. Defendants (Killian, Goings, County Council, & Aiken County): Bradley T. Farrar

Attorney for City of Aiken Defendants (City Council, Bedenbaugh, & the City): Andrew Lindeman

Court Reporter: None – Webex recording procedure, by consent

A Rule 12(b)(6) motion to dismiss the Complaint, with prejudice, or, in the alternative, to dismiss the case without prejudice for lack of subject matter jurisdiction has been brought by the Defendants Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, and Aiken County.¹ Because the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) is binding upon this court, the class action lawsuit against

¹ Two Defendants were dismissed by agreement. The motion was originally brought by 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. Plaintiffs agreed to dismiss, without prejudice, Aiken County Council and Clay Killian, as Aiken County Administrator.

the parties designated above is dismissed, without prejudice. Because of the dismissal on this ground, this order does not address the other issues raised.

BACKGROUND

The Plaintiffs challenge the alleged wrongful collection of the Aiken County Road Maintenance Fee beginning in 1992 and continuing each year since. The Plaintiffs rely on *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court ruled that a Greenville County road maintenance fee is invalid because it is actually a tax that violates S.C. Code Ann. § 6-1-310. Properly enacted service or user fees are permitted under § 6-1-330.

The First Cause of Action seeks a judgment declaring the current and former Aiken County's fees are taxes disguised as fees. In the other causes of action, the Plaintiffs seek for themselves and as a class to recover monetary relief for refunds of fees previously paid. The Plaintiffs assert three causes of action for monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 for illegally collected fees and for a penalty of ten times the fees against the Treasurer only; and (3) a claim for violation of Article I, § 3 of the South Carolina constitution against all Defendants.

The Plaintiffs' memo in support of the motion begins, as follows:

On June 30, 2021, the South Carolina Supreme Court announced to all counties in this state that fees, like the Road Maintenance Fees at issue, are illegal and not authorized under South Carolina law. See *Burns v. Greenville County Council*, 433 S.C. 583, 590 (2021) (“Going forward, courts will carefully scrutinize so-called ‘service or user fees.’”) (J. Kittredge, concurring). The Defendants in this action (both Aiken County and the City of Aiken) had all but identical Road Maintenance Fees to the one invalidated in *Burns*. Given this, post the *Burns* decision, Aiken City Defendants have repealed their illegal Road Maintenance Fee, but have failed to refund any of the illegal fees collected. Compl. ¶ 37. Interestingly, despite having an identical ordinance, Aiken County continues to collect monies pursuant to this illegal fee. *Id.* ¶ 26. As a result, Defendants are

hoarding millions in illegally collected Road Maintenance Fees that they refuse to return to their citizenry. Id. ¶¶ 10, 42.

Contrary to this argument, *Burns* does not appear to declare all such fees invalid, and it leaves open the ability to collect maintenance fees, if the proper procedures are followed. A main question concerning this motion is the appropriate forum for determining whether Aiken County's fees are permissible or are taxes disguised as fees. The court does not reach that issue because the Plaintiffs cannot proceed in a class action under the statute.

STANDARD

At the Rule 12(b)(6) stage, the court is required to take all averments in the Complaint and all reasonable inferences therefrom in the light most favorable to the Plaintiffs. Dismissal is a drastic remedy that is to be invoked cautiously, and the inquiry is generally limited to reviewing the four corners of the Complaint.

GROUND S ASSERTED FOR DISMISSAL

The Defendants raise several grounds for dismissal of the Complaint. They maintain that the Plaintiffs' claims are premised on their assertion that the fee is actually a tax and that challenges of taxes fall within the Revenue Procedures Act ("RPA"). The RPA establishes that claims for refunds of money paid for taxes are made through an administrative process, that declaratory judgment actions are barred in circuit court (except where there is a constitutional challenge to the tax), and that class actions are prohibited. Defense counsel has also raised the issue that the claims are barred by sovereign immunity, but that relates only to the unjust enrichment claim.

Subject Matter Jurisdiction

The Defendants argue that the RPA vests exclusive jurisdiction over tax disputes to an administrative process, with review by the Administrative Law Court and the South Carolina Court of Appeals. Subsections (A) and (B) of § 12-60-80 read:

§ 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) Except as provided in subsection (B), *there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.*

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

The undersigned judge has wrestled extensively with the issues related to this motion and has asked for additional input of counsel following the hearing. Both sides have responded, and both have submitted orders from learned circuit judges who reached different conclusions.² The court is particularly concerned about whether the Plaintiffs can seek relief in the circuit court to answer the fundamental question of whether Aiken County's fees are unlawful, perhaps through a bifurcated procedure. The court is also concerned about the impact of the definitions section of the RPA, such as the definition of the words "tax" and "Department."³ Definitions may impact the analysis by limiting the ordinary and customary scope and meaning of words. Ultimately, this court cannot get around the holding in *Aiken*.

Aiken was decided based on a catchall phrase that is unique to the class actions. (§12-60-80(C)). The dispute in *Aiken* concerned hospital debts from governmentally owned hospitals, which are permitted to contract with the Department of Revenue to collect those debts under §12-

² Motions to alter or amend have been filed with some or all of those circuit judges who have ruled.

³ The definitions section of the Revenue Procedures Act, §12-60-30(27) defines the term "tax," as follows: "'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." "Department" is defined as the South Carolina Department of Revenue.

4-580. An issue was raised as to whether these debts fell within the definition of taxes in the RPA, but the Supreme Court did not deem it necessary to decide that issue.⁴

Our Supreme Court in *Aiken* focused on the so-called "catchall" provision of §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" *Aiken* states:

[S]ubsection 12-60-80(C) provides:

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.* (emphasis added to catchall clause). The answer to the question of whether this action may proceed as a class action is found in our analysis of the catchall clause of subsection (C). Therefore, we need not address the issue of whether the debts purportedly owed by Respondents to the hospitals are "taxes" as that term is defined in subsection 12-60-30(27) of the RPA. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when the disposition of a prior issue is dispositive of the appeal).

We reverse the circuit court and hold this case cannot proceed as a class action against the Department.

While *Aiken* involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection, all of the Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

⁴ In this court's view, there was a much more solid position in *Aiken* that the collection of debts fell within the definition of "tax" because they were subject to "collection by the department."

Most critically regarding the pending motion, Aiken states, "We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class action' in the catchall clause of subsection (C) to the specific subject of taxes." 429 S.C. 414, at 420.

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice, as to the Defendants named as bringing this motion or being dismissed by consent. Since the case is being dismissed as to these Defendants, the other issues raised by the parties are not addressed in this order.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-08-04 19:13:06 page 7 of 7

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021CP0202323

v.)

**ORDER GRANTING
MOTION TO DISMISS BY
DEFENDANTS CITY OF AIKEN
AND AIKEN CITY COUNCIL**

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants" or the "City")¹ move to dismiss and for judgment on the pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF. Present for the hearing were William C. Lewis, counsel for the Plaintiffs, and Andrew F. Lindemann for the City Defendants, and Bradley T. Farrar as counsel for the Aiken County Defendants. The motion seeks dismissal without prejudice for lack of subject matter jurisdiction, or alternatively for dismissal with prejudice as to the merits. If the court understood correctly the concessions stated in oral argument by the Plaintiffs concerning withdrawal of certain claims against the City, the only cause of action remaining against the City Defendants is for unjust

¹ By Partial Stipulation of Dismissal filed April 13, 2022, the Plaintiffs stipulated that "the Third Cause of Action for violation of S.C. Code Ann. § 8-21-30 against the Defendant Stuart Bedenbaugh in his official capacity as City Manager of Aiken is dismissed." Therefore, the Defendant Bedenbaugh has been dismissed from this action.

enrichment.² The court finds that this class action lawsuit is not permitted in circuit court and dismisses this action, without prejudice, based on a lack of subject matter jurisdiction.

BACKGROUND

The Plaintiffs Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit to challenge the alleged wrongful collection of a road maintenance fee that was imposed by Aiken City ordinance in 2016, effective January 1, 2017. The Defendants associated with county government have also filed a similar motion to dismiss concerning the County's ordinances, and that motion is addressed in a separate order.

The Plaintiffs rely on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that Greenville County's "road maintenance fee" is actually a tax.

Following the *Burns* decision, on August 23, 2021, the Aiken City Council rescinded or repealed the road maintenance fee effective July 1, 2021. As a result, the road maintenance fee is no longer being collected. In addition, the City decided to reimburse all road maintenance fees that have been paid since July 1, 2021.

² Plaintiffs' counsel stated on page 62 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. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot." The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of "tax" under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The Plaintiffs conceded at the hearing that the declaratory judgment cause of action is moot due to the rescission of the City's ordinance. There being no remaining case or controversy as to the declaratory judgment action, it is inappropriate for the court to address it here.

The Plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The Complaint states three causes of action for monetary relief, but only one is currently asserted against the City Defendants, the Second Cause of Action for unjust enrichment.³ Thus, the Plaintiffs' First and Fourth Causes of Action against the City Defendants are dismissed by consent, without prejudice.

I. Lack of Subject Matter Jurisdiction

With the withdrawal of all but the unjust enrichment claims, many of the arguments in support of the City's motion are now immaterial. Issues do remain as to whether the action for unjust enrichment is a claim covered by the RPA, which must be addressed through administrative action, and whether this class action lawsuit against a governmental agency and its officials is barred by the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.

Aiken was decided based on a catchall phrase that is unique to class actions. (§12-60-80(C)). The dispute in *Aiken* concerned hospital debts from governmentally owned hospitals, which are permitted to contract with the Department of Revenue to collect those debts under §12-4-580. The term "tax" is a defined term under the RPA, and arguments were raised in the Supreme

³ The Complaint raised monetary damages on the following theories: (1) an equitable claim for unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 which is asserted against the County Defendants only; and (3) a claim for violation of Article I, § 3 of the South Carolina Constitution against all Defendants. The Plaintiffs agreed to dismissal of their Fourth Cause of Action because they cannot seek monetary relief pursuant to the South Carolina Constitution. *See, Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255, 261 (Ct. App. 2019) (certiorari denied on May 28, 2021) ("the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute").

Court, as they have been here, that the RPA is inapplicable because the contested charges do not fall within the definition of "tax." In *Aiken*, the Supreme Court did not deem it necessary to decide that issue.⁴

The Court in *Aiken* focused on §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" [the catchall clause] *Aiken* states:

[S]ubsection 12-60-80(C) provides:

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.* (emphasis added to catchall clause). The answer to the question of whether this action may proceed as a class action is found in our analysis of the catchall clause of subsection (C). Therefore, we need not address the issue of whether the debts purportedly owed by Respondents to the hospitals are "taxes" as that term is defined in subsection 12-60-30(27) of the RPA. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when the disposition of a prior issue is dispositive of the appeal).

We reverse the circuit court and hold this case cannot proceed as a class action against the Department.

While *Aiken* involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection, all of the City Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the

⁴ In this court's view, there was a stronger argument for dismissal in *Aiken* because the collection of these debts fell within the definition of "tax" because they were subject to "collection by the department."

Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

Most critically regarding the pending motion, *Aiken* states, "We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class action' in the catchall clause of subsection (C) to the specific subject of taxes." 429 S.C. 414, at 420.

II. Dismissal of Second Cause of Action for Unjust Enrichment

Since the court has decided that it lacks subject matter jurisdiction, this order does not address the argument for dismissal on the merits based on sovereign immunity concerning the unjust enrichment cause of action. (See *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the South Carolina Tort Claims Act enacted in 1986, and *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995)).

THEREFORE, IT IS ORDERED that this case against the City Defendants is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Mark Gregory Thompson and Jane Page)
Thompson, individually and on behalf)
of all those similarly situated,)
Plaintiffs,)
vs.)
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 City Council,)
and Stuart Bedenbaugh in his official)
capacity as City Manager of Aiken,)
Defendants.)
_____)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

Civil Action Number: 2021CP0202323

**ORDER ON MOTION TO ALTER
OR AMEND FILED BY PLAINTIFFS RE:
JASON GOINGS, IN HIS OFFICIAL
CAPACITY AS TREASURER OF AIKEN
COUNTY and AIKEN COUNTY**

The plaintiffs filed a motion to reconsider and to alter or amend an order issued on August 8, 2022, which dismissed their claims against the Aiken County defendants. The parties were notified that the motion would be decided on written submissions under Rule 59(f), SCRPC. Both sides have submitted impressive briefs, which have been reviewed. The court reaffirms its prior ruling that the remaining Aiken County defendants cannot be sued in a class action. However, because the prior order was based on an interpretation of the Complaint that considered this as only a class action, the court finds that oral argument is needed to assist in determining this Rule 59 motion related to remaining issues that were not specifically ruled upon. A hearing via Webex will be scheduled, if both sides consent to using a virtual platform.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Mark Gregory Thompson and Jane Page	)	Civil Action Number: 2021CP0202323
Thompson, individually and on behalf	)	
of all those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON MOTION TO ALTER
	)	OR AMEND FILED BY PLAINTIFFS RE:
Clay Killian, in his official capacity as Aiken	)	CITY OF AIKEN and AIKEN CITY
County Administrator, Jason Goings, in	)	COUNCIL
his official capacity as Treasurer of Aiken	)	
County, Aiken County Council, Aiken	)	
County, City of Aiken, Aiken City Council,	)	
and Stuart Bedenbaugh in his official	)	
capacity as City Manager of Aiken,	)	
	)	
Defendants.	)	
	)	

The plaintiffs filed a motion to reconsider and to alter or amend an order issued on August 8, 2022, which dismissed their claims against the City of Aiken defendants. The parties were notified that the motion would be decided on written submissions under Rule 59(f), SCRCF. Both sides have submitted impressive briefs, which have been reviewed. The court reaffirms its prior ruling that the remaining City of Aiken defendants cannot be sued in a class action. However, because the prior order was based on an interpretation of the Complaint that considered this as only a class action, the court finds that oral argument is needed to assist in determining this Rule 59 motion related to remaining issues that were not specifically ruled upon. A hearing via Webex will be scheduled, if both sides consent to using a virtual platform.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-01-03 16:29:55 page 2 of 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	Case Number: 2021CP0202323
MARK GREGORY THOMPSON,	)	
ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON PLAINTIFFS' MOTION TO ALTER
	)	OR AMEND AS TO CITY OF AIKEN
CLAY KILLIAN, ET AL.,	)	DEFENDANTS
	)	
Defendants.	)	

The plaintiffs filed a motion to alter or amend an order issued on August 8, 2022, which dismissed the case against the remaining City of Aiken defendants, without prejudice, on the sole remaining cause of action against them for unjust enrichment. The basis of the prior ruling was that a class action is not permitted. Rulings were not made on other issues because of the dismissal. Having reconsidered the matter, the court finds that the plaintiffs who are suing in their individual capacity would not be barred from seeking relief, but that their claim is predicated on their assertion that they are entitled to an assertion that the road maintenance fee is a tax. The exclusive means for securing the relief they seek as individuals would be through administrative procedures. The claims of all plaintiffs are dismissed, without prejudice. The plaintiffs have failed to exhaust their administrative remedies. In addition, the prior order did not decide whether the cause of action for unjust enrichment is barred by sovereign immunity. Having reconsidered the matter, the court finds that the plaintiffs are barred from seeking this claim of unjust enrichment.

The motion asserts that the prior order contains a two-fold error. First, that the court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case. It is argued that the clear

legislative intent of the Revenue Procedures Act (“RPA”), specifically § 12-60-20, dictates the RPA’s non-application in this matter. Second, the holding that a citizen may not bring a class action against a political subdivision would only prevent class certification, and the plaintiffs’ individual claims are not barred by § 12-60-80(C). The court has previously stated in a Form 4 order that it affirms the prior order in finding that the determination that this class action cannot proceed. However, upon reconsideration, the court agrees with the second argument. While the language in the Complaint repeatedly states that this is a class action lawsuit, the standards applicable to summary dismissal would require the court to allow the plaintiffs to pursue individual claims, if they were not otherwise barred from maintaining this action in common pleas court.

An interesting and well-stated argument has been made by the plaintiffs concerning the RPA. There are problems with accepting their position. The only way they can recover for unjust enrichment based on the *Burns* case which they cite is if the City of Aiken’s road maintenance fee is declared to be a tax. The definition of tax in the RPA uses the word “fee,” as stated in the prior order. It is undisputed that the road maintenance fee was assessed based on the ownership of an item of personal property – a vehicle.

The plaintiffs argue that the court has misapplied or ignored legislative intent in enacting the RPA. S.C. Code Section 12-60-20 states:

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. (emphasis supplied).

The plaintiffs rely upon *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), claiming that the dispute with the Department of Revenue makes *Aiken*

distinguishable. The prior order discussed *Aiken* in the context of prohibiting class action lawsuits. The Supreme Court in *Aiken* interpreted the language of statutory intent cited above to mean that a dispute concerning property taxes is covered, whether or not the Department of Revenue is a party.

The court did not address the other grounds related to subject matter jurisdiction. The prior order stated, “The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.” The parties now seek rulings.

The plaintiffs abandoned their declaratory judgment action against the City of Aiken defendants. That cause of action is moot because the City repealed its ordinance after *Burns*. In a footnote, the prior order states:

Plaintiffs' counsel stated on page 62 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. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot.” The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs’ lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of “tax” under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The administrative procedure includes the ability to appeal issues raised before the Administrative Law Court. The plaintiffs' claims seeking a refund or recovery of any illegal or wrongfully collected taxes as claimed by the plaintiffs may be pursued through administrative

channels. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The plaintiffs are not challenging the constitutionality of any statute. Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." The prior order dismissed the claims without prejudice, leaving the plaintiffs the ability to assert their claims. The plaintiffs have administrative remedies that they have not exhausted under the RPA.

Another issue related to subject matter jurisdiction is the contention of the City of Aiken defendants that the unjust enrichment claim is barred by sovereign immunity. The City defendants contend that the plaintiffs' Second Cause of Action for unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment or to be prosecuted against a governmental entity.

Sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background has been summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. ***In response to our decision in McCall, the legislature implemented a***

comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity. 455 S.E.2d at 690. (Emphasis added)(Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein.*" S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

The reinstatement of sovereign immunity is subject only to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for the non-tort/equitable cause of action for unjust enrichment. Moreover, the General Assembly has not enacted any other legislation that explicitly waives sovereign immunity for an unjust enrichment or any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The plaintiffs' cause of action for unjust enrichment is a non-tort/equitable claim, barred by sovereign immunity. It is dismissed because the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.¹

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature appears on separate page]

¹ Two earlier Circuit Court decisions were called to the attention of the court, not as precedent, but argued as being persuasive. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621.



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-02-23 12:18:41 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Mark Gregory Thompson and Jane Page	)	Civil Action Number 2021CP0202323
Thompson, individually and on behalf	)	
of all those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON MOTION TO ALTER
	)	OR AMEND REGARDING COUNTY
	)	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, Aiken	)	
County, City of Aiken, Aiken City Council,	)	
and Stuart Bedenbaugh in his official	)	
capacity as City Manager of Aiken,	)	
	)	
Defendants.	)	
	)	

Heard: January 13, 2023 via Webex Virtual Courtroom by consent
Attorney for Plaintiffs: William C. Lewis
Attorney for Aiken County Defendants¹ (Goings & Aiken County): Bradley T. Farrar
Attorney for City of Aiken Defendants (City Council, Bedenbaugh, & the City):
Andrew Lindemann
Court Reporter: None – Webex recording procedure, by consent

Plaintiffs move to alter or amend an order of dismissal dated August 8, 2022. The basis of that ruling was that the plaintiffs cannot bring this case as a class action. A partial ruling on the motion for

¹ Clay Killian and Aiken County Council have been dismissed. The remaining County defendants, Jason Goings and Aiken County, have filed a return to the Motion to Reconsider. The rulings in this case have been segregated with an order related to the action against the City of Aiken defendants and the Aiken County defendants. An order filed October 14, 2022, indicated that written submissions were requested, but only requested asked for the City defendants' positions. However, in early January of 2023, two orders were issued establishing that a hearing would be conducted on the claims of both City and County. The court is considering the motion to alter or amend as having been fully argued as to the County defendants, and that no further briefing has been requested. Plaintiff's counsel may notify the court within 5 days of the filing of this order if they have a different interpretation and feel they were deprived of an opportunity to brief the issues.

reconsideration was issued January 3, 2023, declining to modify the ruling that a class action is barred in this circumstance. The prior order did not rule on other matters raised. The parties now request rulings on those issues. The motion to alter or amend is granted in part and denied in part, as set forth below. However, the net effect is that the case is dismissed, without prejudice.

BACKGROUND

This lawsuit relates to road maintenance fees imposed under separate ordinances by the City of Aiken and Aiken County. The initial order dismissed this case against both the City and County defendants, without prejudice, finding that class action lawsuits cannot be brought against political subdivisions.² A separate order dealing with the motion to alter or amend the rulings related to the City of Aiken has been filed. This order deals with the County ordinances and fees.

First, the plaintiffs' request the court to rule that the lawsuit may proceed by the plaintiffs in their individual capacities. The court had read the action as a class action because of certain averments in the Complaint, but upon reconsideration finds that there were sections of the Complaint that sought relief in individual capacities. Because of the strict standards applicable to dismissal at this stage, the court now agrees that the Complaint should have been construed so that the plaintiffs might sue in their individual capacities, if those claims are not subject to dismissal on other grounds. The other grounds for dismissal are discussed below, and those result in dismissal of the individual claims, as well.

The plaintiffs' causes of action are predicated on the assertion that the road maintenance fee is actually a tax. *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). *Burns* determined that the Greenville County road maintenance fee ordinance imposed an impermissible tax. The City of Aiken rescinded its road maintenance fee following *Burns*, but the

² *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020)

County did not. This prompted the plaintiffs to differentiate between the claims against the City and those lodged against the County.

AIKEN COUNTY DEFENDANTS

The plaintiffs allege wrongful collection of the Aiken County road maintenance fee that was imposed by ordinance in 1992 and has continued uninterrupted for each year since. *Burns* ruled that a "road maintenance fee" as implemented by the Greenville County Council is actually a tax that violates S.C. Code Ann. § 6-1-630. It declared the Greenville fees to "invalid under South Carolina law." 861 S.E.2d at 31.

This lawsuit includes a request for a declaratory judgment establishing that Aiken County's fee is an impermissible tax. The plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The plaintiffs raise three causes of action seeking the monetary relief against the County defendants: (1) an equitable claim for unjust enrichment; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the defendants Aiken County and Goings as its Treasurer; and (3) a claim for violation of Article I, § 3 of the South Carolina Constitution.

RECOVERY FOR INVALID IMPOSITION OF A TAX

The plaintiffs' contention is that the ordinances passed over the applicable years by Aiken County are essentially the same as the ones in Greenville County and were reached in the same impermissible way. That is a heavily disputed factual issue. *Burns* does not declare all road maintenance fees to be taxes. Instead, the Supreme Court recognized that there is a permissible way to have an enforceable road maintenance fee. *Burns* affirms a county's authority to impose uniform service charges under two separate statutes, stating:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); see also S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service

or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("Service or user fee' also includes 'uniform service charges'").

There are many assertions of fact concerning differences between Aiken County's ordinances and Greenville's. Those are outside the four corners of the Complaint and not permitted to be considered in a Rule 12(b)(6) motion. The question before the court is whether the plaintiffs can seek a declaration from this court that the fees are actually taxes or whether they are required to pursue their claims of invalidly collected taxes through administrative channels.

While basing their Complaint on the *Burns* court's ruling of an impermissibly imposed tax, the plaintiffs then style Aiken County's road maintenance uniform service charge as a fee. This wordplay is inconsistent. Recognizing that a plaintiff may plead in the alternative, that is not what is being done here. Based on the pleading, any invalidity of the Aiken County ordinance requires its actually being a tax.

The plaintiffs argue that the court has misapplied or ignored legislative intent in enacting the Revenue Procedures Act (RPA). S.C. Code Section 12-60-20 states:

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. (emphasis supplied).

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.

The Plaintiffs rely upon *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), claiming that the dispute with the Department of Revenue makes *Aiken* distinguishable. The prior order discussed *Aiken* in the context of prohibiting class action

lawsuits. The Supreme Court in *Aiken* interpreted the language of statutory intent cited above to mean that a dispute concerning property taxes is covered, whether or not the Department of Revenue is a party.

Having reconsidered the matter, the court finds that the challenges raised in this Complaint are to addressed through the RPA.³ The action for declaratory relief remains dismissed.

SUBJECT MATTER JURISDICTION

REVENUE PROCEDURES ACT

The prior order stated, “The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.” The parties now seek rulings.

The administrative procedure includes the ability to appeal issues raised before the Administrative Law Court. The Plaintiffs' claims seeking a refund or recovery of any alleged illegal or wrongfully collected taxes may be pursued through administrative channels. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The plaintiffs are not challenging the constitutionality of any statute.⁴ Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." The prior order dismissed the

³ The court does have a practical concern in that the *Burns* case was initiated in circuit court.

⁴ In a footnote, the prior order notes: “Plaintiffs' counsel stated on page 62 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.’”

claims without prejudice, leaving the plaintiffs the ability to pursue relief elsewhere. They have not exhausted administrative remedies under the RPA.

SOVEREIGN IMMUNITY

Another issue related to subject matter jurisdiction is the contention that the unjust enrichment claim is barred by sovereign immunity. The court agrees. The South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment to be prosecuted against a governmental entity.

The common law doctrine of sovereign immunity was abrogated in 1986. *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). However, in 1986, and in response to the Supreme Court's abrogation of sovereign immunity, the General Assembly enacted the Tort Claims Act. In so doing, the legislature first reinstated sovereign immunity in full, subject only to express waivers and limitations on actions against governments in South Carolina. *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688, 690 (1995) announced that, "...[i]n *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity." (Internal citations omitted).

In S.C. Code Ann. § 15-78-20(a), the General Assembly determined that:

[i]t is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein."

The Tort Claims Act further provides that the General Assembly, "[i]ntends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty,

immunity from liability and suit for any tort except as waived by this chapter,” and, “[o]nly to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.” See § 15-78-20(b) [Emphasis added].

The question is whether this Act only intended to bar liability for tortious conduct as opposed to other theories of recovery such as non-tort/equitable remedies. The Tort Claims Act contains an explicit carveout for actions arising in contract. Section 15-78-20(d) reads, “Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.” Including reference to actions in contract within the Tort Claims Act indicates that the General Assembly considered the impact upon other remedies, including equitable remedies, in making its determination to reestablish sovereign immunity.

S.C. Code § 15-78-20(f) states, “[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.”

The Tort Claims Act does not include a waiver of sovereign immunity for equitable causes of action for unjust enrichment or *quantum meruit* that do not lie in tort. While these are quasi contract actions, our Supreme Court held in *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), that “unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.” 678 S.E.2d 434. The State has never explicitly waived sovereign immunity for unjust enrichment, or any other equitable claim against the State or its political subdivisions.⁵ It is well settled that “[w]aivers of

⁵ “[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed' in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). See also, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The plaintiffs' cause of action for unjust enrichment is a non-tort/equitable claim, barred by sovereign immunity. It is dismissed because the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.⁶

RETURN OF FEES PLUS TENFOLD PENALTY

Plaintiffs assert that they are entitled to return of fees, plus a penalty, presumably if the road maintenance fees are not declared to have been taxes. S.C. Code § 8-21-10 prohibits officers listed in that section from improperly imposing fees and states that the provisions are not applicable to other officers.

S.C. Code Section 8-21-10 provides:

The several officers named in this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated. (Emphasis supplied herein).

S.C. Code § 8-21-15 reads, in part:

No fee for performing duty, responsibility, or function of agency unless authorized by statute and regulation; exceptions.

(A) No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section.

⁶ Two earlier Circuit Court decisions were called to the attention of the court, not as precedent, but argued as being persuasive. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621.

Section 8-21-30 establishes a penalty of ten times the illegally charged fee.

The Supreme Court in *Burns* makes no mention of the invalidity of Greenville County's ordinances under §§ 8-21-10, et seq. It discusses deficiencies under § 4-9-30(5)(a) and § 6-1-330(A), specifically finding that Greenville County's failure to comply with § 6-1-330(A) makes its fees taxes.

Pursuant to § 8-21-10, only the fees and costs prescribed in Chapter 21 are recoverable. Road maintenance is not one of the "services enumerated" in that limited fee statute. Rather, Chapter 21 deals with fees charged and collected for such things as mileage reimbursement for jurors and witnesses (§ 8-21-20), fees for recording a mark or brand imposed by the Secretary of State (§ 8-21-110), fees of appraisers of homestead and commissioners in dower or partition (§ 8-21-120), fees of twenty-five cents that county auditors shall receive for every entry and endorsement on any deed of conveyance of real property recorded in their offices (§ 8-21-130), notary public fees (§ 8-21-140), fees of deputy surveyors (§ 8-21-150), and other similar charges for mainly ministerial duties of select officials in limited circumstances. Road maintenance is nowhere mentioned or contemplated in §§ 8-21-10 et seq., the same being prescribed under the Home Rule statutes of Title 4, and the tax and uniform service charge provisions of Title 6 for counties as adopted by their governing bodies and not by any of the individual officials named in § 8-21-10.

In this regard, Defendants contend that the Title 8 chapter dealing with "Fees and Costs Generally" contains a fraction of the fees and uniform service charges the General Assembly has

prescribed.⁷ The Court agrees, taking note of the hundreds of such fees cited by Defendants that are not contained in Title 8, Chapter 21.

Further, § 8-21-15(A) provides:

No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section. (Emphasis added).

Road maintenance fees are permitted by §§ 4-9-30(5) and 6-1-300 et seq., unless the governing body does not follow the requirements discussed in *Burns*. S.C. Code §§ 8-21-10, et seq. have no application to such fees.

Section 8-21-30 provides for the tenfold penalty. It reads:

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. (Emphasis supplied herein).

The Defendants argue that County Treasurer Goings does not charge a road maintenance fee. Rather, his ministerial duty is to collect taxes, fees, and charges that are listed on tax bills. That is a logical argument with which the Court has wrestled. This Treasurer did not impose or decide to impose a road maintenance fee. These fees clearly were collected after they were created by the County's governing body. Plaintiffs did not allege this Cause of Action against the Aiken

⁷ Defendants note that, "[t]he South Carolina Code of Laws is set forth in sixty-three (63) titles. "Fees" are prescribed in fifty-nine (59) of them: Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63. Only Titles 10, 18, 21, and 53 contain no references to fees." Memorandum in Support of Motion to Dismiss, filed on December 1, 2021. Defendants then proceed to list five hundred (500) separate fees codified in the South Carolina Code of Laws. *Id.* at pp. 18-45.

County Council.⁸ Imposing a tenfold penalty makes sense when there is an unauthorized charge created and levied by a ministerial official. Here, the Treasurer was merely collecting pursuant to County ordinances.

S.C. Code Ann. §§ 8-21-10 and 8-21-30 have no application to these road maintenance fees, and the Defendant Goings cannot be held liable under S.C. Code Ann. § 8-21-30 for charging a fee for a service that is not enumerated in S.C. Code Ann. § 8-21-310.

The Plaintiffs' Third Cause of Action against the County Treasurer for the recovery of what are alleged to be improperly assessed and collected fees pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30 is dismissed.⁹

ARTICLE I, § 3 OF THE SOUTH CAROLINA CONSTITUTION

Plaintiffs allege in their Fourth Cause of Action a loss of a property interest without due process of law. Plaintiffs do not have a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. See *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019), where the South Carolina Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261.

⁸ Of all the chapters referenced in S.C. Code Ann. § 8-21-10, a county treasurer is mentioned only in a single Code section, S.C. Code Ann. § 8-21-310. In that section, the county treasurer is named, in addition to the clerk of court and register of deeds, as being authorized to charge filing or recording fees in expressly stated amounts for a variety of legal documents.

⁹ There is not a sufficient record at this stage to adopt the Defendants' argument that S.C. Code Ann. § 8-21-30 has been impliedly repealed by the South Carolina Tort Claims Act. It is argued that § 8-21-30 pre-dates the South Carolina Tort Claims Act and the waiver of sovereign immunity.⁹ For the reasons set forth in the discussion on Plaintiffs' Second Cause of Action, the Defendants contend that § 8-21-30 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. This Court declines to rule on this issue in light of the other bases for dismissal.

Therefore, the Court concludes that the Plaintiffs are precluded from recovering money damages for the alleged violation of the South Carolina Constitution, and as a result, the Fourth Cause of Action is dismissed.

THEREFORE, IT IS ORDERED, after reconsideration, that the Defendants' Motion to Alter or Amend is granted in part and denied in part, as set forth above. The Complaint remains dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0202323

Mark Gregory Thompson et al
PLAINTIFF(S)

null
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Mark Gregory Thompson and Jane Page Thompson filed a motion to alter or amend the order dated August 8, 2022, concerning the motion to dismiss filed by the City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity. The reconsideration motion will be decided on written submissions under Rule 59(f), SCRPC. The moving parties are to file any documents in support of their motion by October 26, 2022. The responding parties may file documents in opposition or in clarification by November 4, 2022. The moving parties may file documents in reply by November 11, 2022. Should there be a need to extend these deadlines, the attorneys may contact the court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/14/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Scheduling Order

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-10-14 10:43:24 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO.: _____
Mark Gregory Thompson and Jane Page	)	
Thompson, individually and on behalf of	)	
all those similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	SUMMONS
vs.	)	
	)	
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 City Council, and Stuart	)	
Bedenbaugh in his official capacity as	)	
City Manager of Aiken.	)	
	)	
<i>Defendants.</i>	)	

TO: DEFENDANTS ABOVE-NAMED:

YOU ARE SUMMONED and required to answer this complaint, a copy of which is being served on you, and to serve a copy of your answer to this complaint at the address shown below, within thirty (30) days after service, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be entered against you for the relief requested in the complaint.

[Signature on Following Page]

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

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

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

HODGE & LANGLEY LAW FIRM, P.C.
T. Ryan Langley (SC Bar 76558)
Charles J. Hodge (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 Plaintiffs and the Class

Dated: November 2, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO.: _____
Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	COMPLAINT
vs.	)	[JURY TRIAL DEMANDED]
	)	
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 City Council, and Stuart Bedenbaugh in his official capacity as City Manager of Aiken.	)	
	)	
	)	
	)	
	)	
	)	
	)	
<i>Defendants.</i>	)	

Plaintiffs, Mark Gregory Thompson and Jane Page Thompson (“Plaintiffs”), individually and on behalf of all others similarly situated, file this Class Action Complaint against Clay Killian, in his official capacity as Aiken County Administrator (“Administrator Killian”), Jason Goings, in her official capacity as Treasurer of Aiken County (“Treasurer Goings”), Aiken County Council, and Aiken County, City Of Aiken, Aiken City Council, and Stuart Bedenbaugh his official capacity as City Manager of Aiken (“Manager Bedenbaugh”) (collectively “Defendants”) and respectfully allege the following:

INTRODUCTION

1. This is a class action brought to obtain declaratory relief and monetary damages based upon Defendants’ collection and retention of illegal fees, specifically the Road Maintenance Fee enacted by Aiken County and the Aiken City Road Maintenance enacted by the City of Aiken (collectively “Road Maintenance Fees”).

2. In July 1992, Aiken County Council enacted a mandatory Road Maintenance Fee “on each motorized vehicle licensed in Aiken County.”

3. The amount of the Road Maintenance Fee is established annually in the County Operating Budget Ordinance.

4. In 2020, the Aiken County Road Maintenance fee was \$25.00

5. Aiken City Council also enacted an Aiken City Road Maintenance Fee.

6. In 2020, the Aiken City Road Maintenance Fee was \$20.00.

7. On June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*, 433 S.C. 583 (2021), declaring an almost identical road maintenance fee in Greenville County as illegal and passed in contravention of State law.

8. After issuance of the *Burns* opinion some municipalities suspended collection of these types of fees, to include the City of Aiken, but Aiken County continues to collect and retain these illegal fees in contravention of State law and the *Burns* decision.

9. The City of Aiken has not returned any of the illegally collected fees.

10. This is the epitome of bad government; taking money illegally from citizens, and, after the South Carolina Supreme Court informs them these fees are illegal, the government actors still refuse to return the ill-gotten fees.

11. This action is brought for recovery of those fees and ten times the illegally collected Road Maintenance Fees pursuant to S.C. Code Ann. § 8-21-30.

THE PARTIES

12. Plaintiffs, Mark Gregory Thompson and Jane Page Thompson, are residents of Aiken County, South Carolina.

13. Defendant, Administrator Killian, is the County Administrator for Aiken County, South Carolina, and on information and belief, a resident of Aiken County, South Carolina.

14. Defendant, Treasurer Goings, is the Treasurer for Aiken County, South Carolina and on information and belief, a resident of Aiken County, South Carolina.

15. Defendant, Aiken County, is a political subdivision of the state of South Carolina and the governing authority for the geographic region of Aiken County, South Carolina.

16. Defendant, Aiken County Council, is a body politic, incorporate, and governing body of Aiken County, South Carolina.

17. Defendant, the City of Aiken, is a political subdivision of the state of South Carolina and the governing authority for the geographic region of the City of Aiken, South Carolina.

18. Defendant, Aiken City Council, is a body politic, incorporate, and governing body of Aiken County, South Carolina.

19. Defendant, Manager Bedenbaugh, is the City Manager for the City of Aiken, and on information and belief, a resident of Aiken County.

JURISDICTION AND VENUE

20. This court has jurisdiction over the parties because Plaintiffs are residents of South Carolina, and Defendants are residents, legislative bodies, or political subdivisions of South

Carolina. Additionally, S.C. Code Ann. § 8-21-30 provides for suit to be brought in the Court of Common Pleas.

21. Venue in this Court is proper because a substantial part of the events giving rise to these claims occurred in Aiken County, South Carolina.

FACTUAL ALLEGATIONS

A. The Illegal Fees

22. Aiken County Council passed an ordinance in 1992 establishing the Road Maintenance Fee at issue. The 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.

23. In 2020, this fee was \$25.00.

24. Treasurer Goings is responsible for overseeing the collection of all taxes and fees in Aiken County, including the invalid Road Maintenance Fee.

25. Administrator Killian is the chief executive officer of Aiken County Government responsible for implementation of the policies of Aiken County Council to include the Road Maintenance Fee.

26. Aiken County collects approximately \$4,000,000.00 in Road Maintenance Fees a year.

27. In 2017, Aiken City Council passed an ordinance enacting the Aiken City Road Maintenance Fee. The 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.

28. In 2020, the Aiken City Road Maintenance Fee was \$20.00

29. The City of Aiken collects approximately \$500,000.00 annually from this fee.

30. On information and belief, Manager Bedenbaugh is the chief executive officer of the City of Aiken responsible for implementation of the policies of Aiken City Council to include its Road Maintenance Fee.

31. In light of the *Burns* decision, the Road Maintenance Fees were enacted in contravention of state law, and as such are invalid, *ultra vires*, and void.

B. The *Burns* Decision

32. On June 30, 2021, the South Carolina Supreme Court issued its opinion to a suit challenging the validity of Greenville County Ordinances 4906 and 4907.

33. The Supreme Court unanimously found Ordinances 4906 and 4907 invalid.

34. Ordinance 4906 established a fee almost identical to the Road Maintenance Fees at issue in this case. Indeed, Ordinance 4906 reads in relevant part as follows:

Road maintenance fee established. 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. . . .

35. The *Burns* Court was unequivocal that fees such as this were invalid under South Carolina law

36. The Road Maintenance Fees enacted and collected by Defendants are almost identical to the fee found invalid in *Burns*.

C. Defendants' Statements and Actions Post *Burns*

37. Recognizing *Burns*'s application to the City of Aiken Road Maintenance Fee, the City Council of Aiken repealed the fee.

38. Discussing the *Burns* decision, Manager Bedenbaugh stated "It's very clear in state law and in the state constitution that local governments have the authority to tax folks with and this is not one of those methods or constitutional methods."

39. On August 12, 2021, Administrator Killian addressing *Burns* stated: "We have talked it over with our county attorney (Bradley Farrar), and we are comfortable with it right now. The case only applied to Greenville County. It was specifically for Greenville County."

40. The language of the City of Aiken's ordinance enacting its Road Maintenance Fee is almost identical to that of Aiken County's ordinance, and both are almost identical to the invalidated ordinance in *Burns*.

41. Despite this, Aiken County continues to collect Road Maintenance Fees.

42. Neither Aiken County nor the City of Aiken have returned any of the illegally collected Road Maintenance Fees.

D. Factual Allegations Specific to the Named Plaintiffs

43. Plaintiffs are residents of Aiken County and the City of Aiken

44. Plaintiffs own vehicles licensed in Aiken County and the City of Aiken.

45. Plaintiffs have paid the Road Maintenance Fees in all years in which it was levied against citizens of Aiken County and the City of Aiken.

46. Plaintiffs have not received a refund for any of these illegal fees paid.

CLASS ALLEGATIONS

47. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

48. Plaintiffs bring this action on behalf of themselves and other similarly situated persons who paid the illegal Road Maintenance Fees.

49. All members of this putative class paid either or both of the Road Maintenance Fees.

50. As to all members of this putative class, Administrator Killian and Treasurer Goings were responsible for the collection and retention of these fees on behalf of Aiken County, and on information and belief, Manager Bedenbaugh was responsible for the collection and retention of these fees on behalf of the City of Aiken..

51. As a result, Aiken County and the City of Aiken have received and retained millions in Road Maintenance Fees collected in violation of South Carolina Law.

52. Specifically, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves, and all others similarly situated, as representatives of the following class (the "Class"):

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.

53. Excluded from the Class are Defendants, Defendants' immediate family members, Aiken County Council members, Aiken City Council Members, legal counsel for Defendants, the judges, and all other court personnel to whom this case is assigned and their immediate family members.

54. The passage of the ordinances enacting the Road Maintenance Fees and the illegal collection and retention of these invalid fees by Defendants, directly and proximately resulted in damages to Class members.

**THE CLASS MEETS THE REQUIREMENTS OF RULE 23 OF THE SOUTH
CAROLINA RULES OF CIVIL PROCEDURE**

55. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

56. The Class is properly brought and should be maintained as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure because it satisfies the prerequisites of numerosity, commonality, typicality, and adequacy.

57. *Numerosity:* The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery. However, the estimates of total fees paid is in in the millions and the fees were paid in increments of \$20 and \$25. Therefore, the number of members satisfies the numerosity requirement.

58. *Commonality:* The claims of Plaintiffs and the members of the Class involve common questions of law and fact, which predominate over questions affecting only individual members of the Class and which can be answered with common proof, including, *inter alia*, the following: (1) whether collection of the invalid fees violates S.C. Code Ann. § 8-21-30; (2) whether Defendants should be ordered to return the illegally collected fees and pay statutory penalties plus interest in accordance with South Carolina Law; and (3) whether Plaintiffs and the Class members are entitled to damages as a result of Defendants' collection and retention of these invalid fees.

59. *Typicality:* Plaintiffs' claims are typical of those members of the Class because their claim has the same essential characteristics as the claims of the Class members, and their claims arise from the same course of conduct by Defendants. Plaintiffs and all of the Class members paid either or both of the invalid fees. As to Plaintiffs and all Class members, the invalid fees were

enacted in the exact same manner. As to Plaintiffs and all Class members, Defendants violated South Carolina law, specifically but not limited to S.C. Code Ann. § 8-21-30.

60. *Adequacy*: Plaintiffs will fairly and adequately represent the interests of all Class members. Plaintiffs' claims are common to all Class members and Plaintiffs have strong interests in vindicating their rights. Plaintiffs are represented by counsel experienced in complex, class action litigation. Neither Plaintiffs nor Plaintiffs' counsel has any interests adverse to, or in conflict with, any absent Class member.

61. The amount in controversy for all Class members exceeds one hundred dollars.

62. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- a. The interests of the Plaintiffs and Class members in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- b. The expense of prosecuting Plaintiffs' and Class members' claims individually would significantly exceed any economic benefit Plaintiffs or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties, making individual litigation of liability and damages economically impractical and infeasible;
- c. It is desirable that litigation of the claims occur for the Class members in this forum to preserve the resources of both the courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and

- d. Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Class members.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment
(as to all Defendants)

63. Plaintiffs and the Class members repeat and re-allege all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

64. Plaintiffs and the Class members are interested persons whose rights, status, or other legal relations are affected by a statute and local ordinance, and thus they have standing to assert his cause of action for a declaratory judgment.

65. Plaintiffs and the Class members paid substantially similar fees declared unlawful by the Supreme Court of South Carolina in *Burns*.

66. This case presents an actual case or controversy, namely whether:

- a. The Road Maintenance Fees are unlawful for the reasons enunciated in *Burns*.
- b. Whether Aiken County acted outside the scope of its authority in passing the Ordinance enacting the Road Maintenance Fee, thereby rendering the fee *void ab initio* and *ultra vires*.
- c. Whether the City of Aiken acted outside the scope of its authority in passing the Ordinance enacting the Road Maintenance Fee, thereby rendering the fee *void ab initio* and *ultra vires*.
- d. Whether the Defendants owe Plaintiffs and the class members a full refund for the invalid and unlawful Road Maintenance Fee.

67. Plaintiffs and the Class hereby requests a declaratory judgment from this Court that the Road Maintenance Fees are unlawful, for the reasons articulated in *Burns*, and the Defendants owe Plaintiffs and the class refunds with interest

FOR A SECOND CAUSE OF ACTION
Unjust Enrichment
(as to All Defendants)

68. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

69. Defendants are aware that all Road Maintenance Fees are collected were collected in violation of state law.

70. Manager Bedenbaugh admitted this to a reporter on the record.

71. Plaintiffs and Class members were required to pay the Road Maintenance Fees and were subject to penalties of up to a \$200 fine and/or serve thirty (30) days in jail if they did not pay the fees.

72. However, Defendants have not reimbursed these fees.

73. Defendants continue to retain the unlawfully collected fees.

74. As a result, Defendants obtained monies, (realized a benefit) which rightfully belong to Plaintiffs and Class members, to the detriment of Plaintiffs and Class members.

75. Defendants' retention of these monies under the circumstances would be unjust.

76. As such, Defendants should return the full value of the illegally collected fees.

FOR A THIRD CAUSE OF ACTION
Violation of S.C. Code Ann. § 8-21-30
(As to Administrator Killian and Treasurer Goings and Manager Bedenbaugh)

77. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

78. Administrator Killian and Treasurer Goings are officers of Aiken County, a political subdivision of the State of South Carolina.

79. Manager Bedenbaugh is an officer of the City of Aiken, a political subdivision of the State of South Carolina.

80. As the Treasurer and Administrator for Aiken County, Administrator Killian and Treasurer Goings oversaw and directed the charge, collection, and retention of the Road Maintenance Fees for Aiken County.

81. As the City Manager for the City of Aiken, Manager Bedenbaugh oversaw and directed the charge, collection, and retention of the Road Maintenance Fees for Aiken County.

82. Pursuant to *Burns* and South Carolina Law, these Road Maintenance fees were illegally charged.

83. Pursuant to S.C. Code Ann. § 8-21-30, the officers responsible for charging these fees, Administrator Killian, Treasurer Goings, and Manager Bedenbaugh, are liable to forfeit ten times the amount so improperly charged.

84. Pursuant to S.C. Code Ann. § 8-21-30, these damages may be recovered in suit in the Court of Common Pleas. Therefore, all illegally collected fees should be returned and a ten time multiplier penalty should be paid to Plaintiffs and each member of the class.

FOR A FOURTH CAUSE OF ACTION
Violation of Due Process S.C. Constitution
(As to All Defendants)

85. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

86. No person shall be deprived of life, liberty, or property without due process of law. S.C. Const. art. I, §3.

87. Plaintiffs and Class members paid the “Road Maintenance Fees” pursuant to illegal ordinances.

88. Plaintiffs and the Class members have cognizable property interests in their monies that they were forced to give to Defendants.

89. Defendants violated Plaintiffs' and Class members' due process rights by charging, collecting, and retaining unlawfully, collected fees pursuant to illegal and invalid ordinances.

90. The violations of Plaintiffs' and Class members' due process rights have damaged Plaintiffs and Class members.

JURY TRIAL DEMANDED AND PRAYER FOR RELIEF

91. WHEREFORE, Plaintiffs demand a jury trial and prays for judgment against the Defendants and:

- a. that summons and process issue to the Defendants as required by law;
- b. Granting Plaintiffs' request for declaratory judgement as to the matters set forth above;
- c. that Plaintiffs, individually, recover compensatory damages for the invalid and illegal retention of the "Road Maintenance Fees";
- d. that the Court certify the Class requested herein, and find that that Plaintiffs are appropriate representatives of the Class;
- e. that the Court find that the undersigned counsel fairly and adequately represents and protects the interests of the Class, and certify the undersigned counsel to act as counsel for the Class members;
- f. that judgment be entered against Defendants finding that they deprived Plaintiffs and Class members of rights secured by the Laws of South Carolina;

- g. that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiffs and the other Class members;
- h. that the Court issue an order awarding damages of ten times the amount of illegal fees collected;
- i. that Plaintiffs and Class members be awarded the just and proper equitable relief requested;
- j. that the Court award Plaintiffs and Class members their costs;
- k. that the Court award Attorney's fees as provided for under South Carolina law;
- l. that Plaintiffs have a trial by jury with respect to his legal claims; and
- m. that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

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

DAVID R. PRICE, JR., PA.
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr. (SC Bar 75140)
318 West Stone Avenue (29609)

Post Office Box 2446
COUNTY, SC 29602
T: (864) 271-2636
F: (864) 271-2637
sam@COUNTYlegal.com
david@COUNTYlegal.com

HODGE & LANGLEY LAW FIRM, P.C.

T. Ryan Langley (SC Bar 76558)
Charles J. Hodge (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 Plaintiffs and the Class

Dated: November 2, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

**ANSWER OF DEFENDANTS CITY OF
AIKEN, AIKEN CITY COUNCIL, AND
STUART BEDENBAUGH
(Jury Trial Requested)**

The Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants"), reserving all rights under their Motion to Dismiss and/or Motion for Judgment on the Pleadings filed contemporaneously herewith, answer the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Plaintiffs' Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The City Defendants reserves their right to file a motion pursuant to Rule 12(b)(6), SCRCP and/or Rule 12(c), SCRCP.

FOR A SECOND DEFENSE

2. The Court lacks subject matter jurisdiction over this action. The City Defendants reserve their right to file a motion pursuant to Rule 12(b)(1), SCRCP. S.C. Code Ann. § 12-60-

3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

FOR A THIRD DEFENSE

3. The City Defendants deny each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

4. The allegations set forth in Paragraph 1 of the Plaintiffs' Complaint present a purported characterization or description of the Plaintiffs' lawsuit. The City Defendants deny the Plaintiffs' claims and their claims for declaratory and monetary relief.

5. The allegations set forth in Paragraphs 2, 3, and 4 of the Plaintiffs' Complaint are factual allegations not pertinent to the claim against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they admit that Aiken County Council created a road maintenance fee by ordinance enacted in 1992, and that the fee is set by County Council.

6. The allegations set forth in Paragraphs 5 and 6 of the Plaintiffs' Complaint are admitted.

7. As to the allegations set forth in Paragraph 7 of the Plaintiffs' Complaint, the City Defendants admit that on June 30, 2021, the South Carolina Supreme Court issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the City Defendants crave reference to that opinion for its holding and the relief granted.

8. As to the allegations set forth in Paragraph 8 of the Plaintiffs' Complaint, the City Defendants admit that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021. Further answering, the City Defendants crave reference to Ordinance Number 08232021F for its language and specific provisions.

9. The allegations set forth in Paragraph 9 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

10. The allegations set forth in Paragraph 10 of the Plaintiffs' Complaint are denied.

11. The allegations set forth in Paragraph 11 of the Plaintiffs' Complaint present a purported characterization or description of the Plaintiffs' lawsuit. The City Defendants deny the Plaintiffs' claims and their claims for declaratory and monetary relief.

12. As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

13. The allegations set forth in Paragraphs 13 and 14 of the Plaintiffs' Complaint are admitted.

14. As to the allegations set forth in Paragraph 15 of the Plaintiffs' Complaint, the City Defendants admit that Aiken County is a political subdivision of the State of South Carolina. The remaining allegations in Paragraph 15 are unclear and are denied.

15. As to the allegations set forth in Paragraph 16 of the Plaintiffs' Complaint, the City Defendants admit only that Aiken County Council is the governing body of Aiken County. Further answering, Aiken County Council is not a body politic separate and apart from Aiken County and is not subject to suit.

16. As to the allegations set forth in Paragraph 17 of the Plaintiffs' Complaint, the City Defendants admit that the City of Aiken is a municipality located in the State of South Carolina. The remaining allegations in Paragraph 17 are unclear and are denied.

17. As to the allegations set forth in Paragraph 18 of the Plaintiffs' Complaint, the City Defendants admit only that Aiken City Council is the governing body of the City of Aiken. Further answering, Aiken City Council is not a body politic separate and apart from the City of Aiken and is not subject to suit.

18. The allegations set forth in Paragraph 19 of the Plaintiffs' Complaint are admitted.

19. The allegations set forth in Paragraph 20 of the Plaintiffs' Complaint are denied. Further answering, the City Defendants aver that S.C. Code Ann. § 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

20. The allegations set forth in Paragraph 21 of the Plaintiffs' Complaint are admitted.

21. The allegations set forth in Paragraphs 22, 23, 24, 25, and 26 of the Plaintiffs' Complaint are factual allegations not pertinent to the claim against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they admit that Aiken County Council created a road maintenance fee by ordinance enacted in 1992, and that the fee is set by County Council and administered by County officials.

22. As to the allegations set forth in Paragraph 27 of the Plaintiffs' Complaint, the City Defendants admit only that in 2016, the Aiken City Council passed Ordinance Number 06202016 which amended the Aiken City Code to establish a road maintenance fee. Further answering, the City Defendants crave reference to Ordinance Number 06202016 for its language and specific provisions.

23. The allegations set forth in Paragraph 28 of the Plaintiffs' Complaint are admitted.

24. The allegations set forth in Paragraph 29 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1,

2021, and as a result, the road maintenance fee is no longer being collected. Prior to the repeal, the City of Aiken collected just less than \$500,000 in road maintenance fees annually.

25. As to the allegations set forth in Paragraph 30 of the Plaintiffs' Complaint, the City Defendants admit that the Defendant Stuart Bedenbaugh is the City Manager and performs such administrative duties as required by the Aiken County Code and state law.

26. The allegations set forth in Paragraph 31 of the Plaintiffs' Complaint are denied as a legal conclusion or matter of law. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021.

27. As to the allegations set forth in Paragraphs 32, 33, and 35 of the Plaintiffs' Complaint, the City Defendants admit that on June 30, 2021, the South Carolina Supreme Court ruled unanimously and issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the City Defendants craves reference to that opinion for its holding and the relief granted.

28. As to the allegations set forth in Paragraphs 34 and 36 of the Plaintiffs' Complaint, the City Defendants admit that the road maintenance fee at issue in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), was similar to the road maintenance fee imposed by the City of Aiken pursuant to Ordinance Number 06202016.

29. As to the allegations set forth in Paragraph 37 of the Plaintiffs' Complaint, the City Defendants admit that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021.

30. The allegations set forth in Paragraph 38 of the Plaintiffs' Complaint are admitted.

31. As to the allegations set forth in Paragraph 39 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations which are directed at the Aiken County Defendants.

32. As to the allegations set forth in Paragraph 40 of the Plaintiffs' Complaint, the City Defendants admit that the road maintenance fee at issue in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), was similar to the road maintenance fee imposed by the City of Aiken pursuant to Ordinance Number 06202016.

33. As to the allegations set forth in Paragraph 41 of the Plaintiffs' Complaint, the City Defendants admit, upon information and belief, that Aiken County continues to collect its road maintenance fee.

34. The allegations set forth in Paragraph 42 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

35. As to the allegations set forth in Paragraphs 43, 44, 45, and 46 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

36. As to the allegations set forth in Paragraph 47 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

37. The allegations set forth in Paragraphs 48 and 49 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

38. The allegations directed at or about the Defendant Stuart Bedenbaugh as set forth in Paragraph 50 of the Plaintiffs' Complaint are denied.

39. The allegations set forth in Paragraph 51 of the Plaintiffs' Complaint are denied.

40. The allegations set forth in Paragraphs 52 and 53 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

41. The allegations set forth in Paragraph 54 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits. Further answering, the City Defendants deny any injury to any purported class members.

42. As to the allegations set forth in Paragraph 55 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

43. The allegations set forth in Paragraphs 56 through 62 of the Plaintiffs' Complaint, including subparts, pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

44. As to the allegations set forth in Paragraph 63 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

45. The allegations set forth in Paragraph 64 of the Plaintiffs' Complaint are denied.

46. As to the allegations set forth in Paragraph 65 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations as to the Plaintiffs. As for purported class members, the allegations set forth in Paragraph 65 are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

47. The allegations set forth in Paragraphs 66 and 67 of the Plaintiffs' Complaint are denied to the extent alleged against and relief is sought from the City Defendants.

48. As to the allegations set forth in Paragraph 68 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein. The City Defendants object to the jumbling of causes of action.

49. The allegations set forth in Paragraphs 69 and 70 of the Plaintiffs' Complaint are denied.

50. As to the allegations set forth in Paragraph 71 of the Plaintiffs' Complaint, the City Defendants admit only that in 2016, the Aiken City Council passed Ordinance Number 06202016 which amended the Aiken City Code to establish a road maintenance fee. Further answering, the City Defendants crave reference to Ordinance Number 06202016 for its language and specific terms.

51. The allegations set forth in Paragraph 72 of the Plaintiffs' Complaint are denied as stated to the extent asserted against the City Defendants. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

52. The allegations set forth in Paragraphs 73, 74, 75, and 76 of the Plaintiffs' Complaint are denied to the extent asserted against the City Defendants.

53. As to the allegations set forth in Paragraph 77 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein. The City Defendants object to the jumbling of causes of action.

54. As to the allegations set forth in Paragraph 78 of the Plaintiffs' Complaint, the City Defendants admit that the Defendant Clay Killian is the Aiken County Administrator and that the Defendant Jason Goings is the Aiken County Treasurer.

55. As to the allegations set forth in Paragraph 79 of the Plaintiffs' Complaint, the City Defendants admit that the Defendant Stuart Bedenbaugh is the City Manager for the City of Aiken.

56. The allegations set forth in Paragraph 80 of the Plaintiffs' Complaint are factual allegations not pertinent to the claims against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they are denied as stated.

57. The allegations as set forth in Paragraph 81 of the Plaintiffs' Complaint are denied.

58. The allegations as set forth in Paragraph 82, 83, and 84 of the Plaintiffs' Complaint are denied. Further answering, the City Defendants aver that the "officers" against whom a cause of action based on S.C. Code Ann. § 8-21-30 may be brought, if the cause of action is even valid, are limited to the following by S.C. Code Ann. § 8-21-10: master-in-equity, magistrate, constable, secretary of state, appraisers of homestead and commissioners in dower or partition, county auditor, clerk of court, register of deeds, deputy surveyor, and probate judge. The City Defendants also aver that the Defendant Bedenbaugh, as the City Manager for the City of Aiken, does not qualify as an "officer" under S.C. Code Ann. § 8-21-10. In addition, the City Defendants aver that the "road maintenance fee" at issue is not one of the fees and costs prescribed by Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23. Finally, the City Defendants aver that road maintenance is not of the "services enumerated" in Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter

23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23.

59. As to the allegations set forth in Paragraph 85 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein. The City Defendants object to the jumbling of causes of action.

60. As to the allegations set forth in Paragraph 86 of the Plaintiffs' Complaint, the City Defendants crave reference to Article I, § 3 of the South Carolina Constitution for the precise language of that constitutional provision and its application.

61. The allegations set forth in Paragraphs 87, 88, 89, and 90 of the Plaintiffs' Complaint are denied.

62. As to the allegations set forth in Paragraph 91 of the Plaintiffs' Complaint, the City Defendants deny all allegations and relief sought in the Prayer for Relief including all subparts.

FOR A FOURTH DEFENSE

63. The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of limitations.

FOR A FIFTH DEFENSE

64. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of laches.

FOR A SIXTH DEFENSE

65. The Plaintiffs' claims are, in whole or in part, barred based upon the failure to exhaust all administrative remedies as provided under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, and therefore, is barred from proceeding with this action in the Circuit Court.

FOR A SEVENTH DEFENSE

66. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of mootness.

FOR AN EIGHTH DEFENSE

67. The Plaintiffs' claims are, in whole or in part, barred by the public duty rule.

FOR A NINTH DEFENSE

68. The City Defendants assert the defense of absolute sovereign immunity as to all claims for money damages, including those causes of action that are based upon principles of equity where the form of relief is monetary in nature.

FOR A TENTH DEFENSE

69. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act as well as pursuant to the common law, including but not limited to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on the recovery of attorney's fees, pre-judgment interest, and punitive damages.

FOR AN ELEVENTH DEFENSE

70. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants are absolutely immune pursuant to S.C. Code Ann. § 15-78-50(b) of the South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE

71. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), and (20).

FOR A THIRTEENTH DEFENSE

72. To the extent that the Plaintiffs have alleged a tort claim, the Defendant Stuart Bedenbaugh is entitled to absolute employee immunity under S.C. Code Ann. § 15-78-70(a).

FOR A FOURTEENTH DEFENSE

73. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

FOR A FIFTEENTH DEFENSE

74. The imposition of a penalty under S.C. Code Ann. § 8-21-30 violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South Carolina Constitution and is contrary to the public policy of the State of South Carolina.

FOR A SIXTEENTH DEFENSE

75. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR A SEVENTEENTH DEFENSE

76. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR AN EIGHTEENTH DEFENSE

77. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is preempted by S.C. Code Ann. § 12-60-80(A).

FOR A NINETEENTH DEFENSE

78. The Plaintiffs' attempt to bring this action as a class action is expressly barred by S.C. Code Ann. § 12-60-80(C).

FOR A TWENTIETH DEFENSE

79. The legislative actions taken by the Defendants City of Aiken and Aiken City Council are fairly debatable and are therefore presumptively valid, legal, and constitutional. The decision by the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), to the extent held to applicable to this action and the road maintenance fee enacted by the City of Aiken, is entitled only to prospective application and effect.

FOR A TWENTY-FIRST DEFENSE

80. The Plaintiffs' claims are, in whole or in part, barred by common law legislative immunity.

FOR A TWENTY-SECOND DEFENSE

81. The Defendant Aiken City Council is not a proper party. Aiken City Council is not a body politic separate and apart from City of Aiken. Instead, Aiken City Council is the governing body of the City of Aiken.

FOR A TWENTY-THIRD DEFENSE

82. The Defendant Stuart Bedenbaugh, who is sued in his official capacity as the City Manager for the City of Aiken, is the alter ego of the City of Aiken. Thus, the suit against Bedenbaugh in his official capacity should be dismissed as duplicative.

FOR A TWENTY-FOURTH DEFENSE

83. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina.

FOR A TWENTY-FIFTH DEFENSE

84. There is an improper joinder of Defendants in violation of Rule 20, SCRCP. The City Defendants reserve their right to seek protective measures in accordance with Rule 20(b), SCRCP, including the severance of the City Defendants and/or separate trials.

FOR AN TWENTY-SIXTH DEFENSE

85. There is a misjoinder of parties, and the claims of the Plaintiffs should be severed. The City Defendants reserve their right to seek relief pursuant to Rule 21, SCRCP.

FOR A TWENTY-SEVENTH DEFENSE

86. The City Defendants reserve their right to oppose the Plaintiffs' request for a trial by jury.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken, pray that the Complaint be dismissed with prejudice; for the denial of all declaratory relief; for the costs of this action, including reasonable attorney's fees under the South Carolina Frivolous Civil Proceedings Act; and for such other and further relief as the Court deems just and proper.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
 ANDREW F. LINDEMANN #13030
 5 Calendar Court, Suite 202
 Post Office Box 6923
 Columbia, South Carolina 29260
 (803) 881-8920
 Email: andrew@ldlawsc.com

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

December 8, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

v.)

**AMENDED ANSWER OF DEFENDANTS
CITY OF AIKEN, AIKEN CITY COUNCIL,
AND STUART BEDENBAUGH**

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

The Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants"), reserving all rights under their Motion to Dismiss and/or Motion for Judgment on the Pleadings previously filed on December 8, 2021, answer the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Plaintiffs' Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The City Defendants reserves their right to file a motion pursuant to Rule 12(b)(6), SCRCF and/or Rule 12(c), SCRCF.

FOR A SECOND DEFENSE

2. The Court lacks subject matter jurisdiction over this action. The City Defendants reserve their right to file a motion pursuant to Rule 12(b)(1), SCRPC. S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

FOR A THIRD DEFENSE

3. The City Defendants deny each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

4. The allegations set forth in Paragraph 1 of the Plaintiffs' Complaint present a purported characterization or description of the Plaintiffs' lawsuit. The City Defendants deny the Plaintiffs' claims and their claims for declaratory and monetary relief.

5. The allegations set forth in Paragraphs 2, 3, and 4 of the Plaintiffs' Complaint are factual allegations not pertinent to the claim against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they admit that Aiken County Council created a road maintenance fee by ordinance enacted in 1992, and that the fee is set by County Council.

6. The allegations set forth in Paragraphs 5 and 6 of the Plaintiffs' Complaint are admitted.

7. As to the allegations set forth in Paragraph 7 of the Plaintiffs' Complaint, the City Defendants admit that on June 30, 2021, the South Carolina Supreme Court issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the City Defendants crave reference to that opinion for its holding and the relief granted.

8. As to the allegations set forth in Paragraph 8 of the Plaintiffs' Complaint, the City Defendants admit that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021. Further answering, the City Defendants crave reference to Ordinance Number 08232021F for its language and specific provisions.

9. The allegations set forth in Paragraph 9 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

10. The allegations set forth in Paragraph 10 of the Plaintiffs' Complaint are denied.

11. The allegations set forth in Paragraph 11 of the Plaintiffs' Complaint present a purported characterization or description of the Plaintiffs' lawsuit. The City Defendants deny the Plaintiffs' claims and their claims for declaratory and monetary relief.

12. As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

13. The allegations set forth in Paragraphs 13 and 14 of the Plaintiffs' Complaint are admitted.

14. As to the allegations set forth in Paragraph 15 of the Plaintiffs' Complaint, the City Defendants admit that Aiken County is a political subdivision of the State of South Carolina. The remaining allegations in Paragraph 15 are unclear and are denied.

15. As to the allegations set forth in Paragraph 16 of the Plaintiffs' Complaint, the City Defendants admit only that Aiken County Council is the governing body of Aiken County. Further

answering, Aiken County Council is not a body politic separate and apart from Aiken County and is not subject to suit.

16. As to the allegations set forth in Paragraph 17 of the Plaintiffs' Complaint, the City Defendants admit that the City of Aiken is a municipality located in the State of South Carolina. The remaining allegations in Paragraph 17 are unclear and are denied.

17. As to the allegations set forth in Paragraph 18 of the Plaintiffs' Complaint, the City Defendants admit only that Aiken City Council is the governing body of the City of Aiken. Further answering, Aiken City Council is not a body politic separate and apart from the City of Aiken and is not subject to suit.

18. The allegations set forth in Paragraph 19 of the Plaintiffs' Complaint are admitted.

19. The allegations set forth in Paragraph 20 of the Plaintiffs' Complaint are denied. Further answering, the City Defendants aver that S.C. Code Ann. § 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

20. The allegations set forth in Paragraph 21 of the Plaintiffs' Complaint are admitted.

21. The allegations set forth in Paragraphs 22, 23, 24, 25, and 26 of the Plaintiffs' Complaint are factual allegations not pertinent to the claim against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they admit that Aiken County Council created a road maintenance fee by ordinance enacted in 1992, and that the fee is set by County Council and administered by County officials.

22. As to the allegations set forth in Paragraph 27 of the Plaintiffs' Complaint, the City Defendants admit only that in 2016, the Aiken City Council passed Ordinance Number 06202016 which amended the Aiken City Code to establish a road maintenance fee. Further answering, the

City Defendants crave reference to Ordinance Number 06202016 for its language and specific provisions.

23. The allegations set forth in Paragraph 28 of the Plaintiffs' Complaint are admitted.

24. The allegations set forth in Paragraph 29 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021, and as a result, the road maintenance fee is no longer being collected. Prior to the repeal, the City of Aiken collected just less than \$500,000 in road maintenance fees annually.

25. As to the allegations set forth in Paragraph 30 of the Plaintiffs' Complaint, the City Defendants admit that the Defendant Stuart Bedenbaugh is the City Manager and performs such administrative duties as required by the Aiken County Code and state law.

26. The allegations set forth in Paragraph 31 of the Plaintiffs' Complaint are denied as a legal conclusion or matter of law. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021.

27. As to the allegations set forth in Paragraphs 32, 33, and 35 of the Plaintiffs' Complaint, the City Defendants admit that on June 30, 2021, the South Carolina Supreme Court ruled unanimously and issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the City Defendants craves reference to that opinion for its holding and the relief granted.

28. As to the allegations set forth in Paragraphs 34 and 36 of the Plaintiffs' Complaint, the City Defendants admit that the road maintenance fee at issue in *Burns v.*

Greenville County Council, 433 S.C. 583, 861 S.E.2d 31 (2021), was similar to the road maintenance fee imposed by the City of Aiken pursuant to Ordinance Number 06202016.

29. As to the allegations set forth in Paragraph 37 of the Plaintiffs' Complaint, the City Defendants admit that Aiken City Council enacted Ordinance Number 08232021F which rescinded or repealed the road maintenance fee effective July 1, 2021.

30. The allegations set forth in Paragraph 38 of the Plaintiffs' Complaint are admitted.

31. As to the allegations set forth in Paragraph 39 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations which are directed at the Aiken County Defendants.

32. As to the allegations set forth in Paragraph 40 of the Plaintiffs' Complaint, the City Defendants admit that the road maintenance fee at issue in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), was similar to the road maintenance fee imposed by the City of Aiken pursuant to Ordinance Number 06202016.

33. As to the allegations set forth in Paragraph 41 of the Plaintiffs' Complaint, the City Defendants admit, upon information and belief, that Aiken County continues to collect its road maintenance fee.

34. The allegations set forth in Paragraph 42 of the Plaintiffs' Complaint are denied as stated. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

35. As to the allegations set forth in Paragraphs 43, 44, 45, and 46 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

36. As to the allegations set forth in Paragraph 47 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein.

37. The allegations set forth in Paragraphs 48 and 49 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

38. The allegations directed at or about the Defendant Stuart Bedenbaugh as set forth in Paragraph 50 of the Plaintiffs' Complaint are denied.

39. The allegations set forth in Paragraph 51 of the Plaintiffs' Complaint are denied.

40. The allegations set forth in Paragraphs 52 and 53 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

41. The allegations set forth in Paragraph 54 of the Plaintiffs' Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits. Further answering, the City Defendants deny any injury to any purported class members.

42. As to the allegations set forth in Paragraph 55 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein.

43. The allegations set forth in Paragraphs 56 through 62 of the Plaintiffs' Complaint, including subparts, pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

44. As to the allegations set forth in Paragraph 63 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein.

45. The allegations set forth in Paragraph 64 of the Plaintiffs' Complaint are denied.

46. As to the allegations set forth in Paragraph 65 of the Plaintiffs' Complaint, the City Defendants lack sufficient information to admit or deny those allegations as to the Plaintiffs. As for purported class members, the allegations set forth in Paragraph 65 are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

47. The allegations set forth in Paragraphs 66 and 67 of the Plaintiffs' Complaint are denied to the extent alleged against and relief is sought from the City Defendants.

48. As to the allegations set forth in Paragraph 68 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein. The City Defendants object to the jumbling of causes of action.

49. The allegations set forth in Paragraphs 69 and 70 of the Plaintiffs' Complaint are denied.

50. As to the allegations set forth in Paragraph 71 of the Plaintiffs' Complaint, the City Defendants admit only that in 2016, the Aiken City Council passed Ordinance Number 06202016 which amended the Aiken City Code to establish a road maintenance fee. Further answering, the City Defendants crave reference to Ordinance Number 06202016 for its language and specific terms.

51. The allegations set forth in Paragraph 72 of the Plaintiffs' Complaint are denied as stated to the extent asserted against the City Defendants. Further answering, the City Defendants aver that Aiken City Council enacted Ordinance Number 08232021F which directed that "the

City of Aiken shall reimburse all road maintenance fees that have been paid since July 1, 2021 to the payors."

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53. As to the allegations set forth in Paragraph 77 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein. The City Defendants object to the jumbling of causes of action.

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55. As to the allegations set forth in Paragraph 79 of the Plaintiffs' Complaint, the City Defendants admit that the Defendant Stuart Bedenbaugh is the City Manager for the City of Aiken.

56. The allegations set forth in Paragraph 80 of the Plaintiffs' Complaint are factual allegations not pertinent to the claims against the City Defendants. However, to the extent those allegations may be directed against or otherwise implicate the City Defendants in any respect, they are denied as stated.

57. The allegations as set forth in Paragraph 81 of the Plaintiffs' Complaint are denied.

58. The allegations as set forth in Paragraph 82, 83, and 84 of the Plaintiffs' Complaint are denied. Further answering, the City Defendants aver that the "officers" against whom a cause of action based on S.C. Code Ann. § 8-21-30 may be brought, if the cause of action is even valid, are limited to the following by S.C. Code Ann. § 8-21-10: master-in-equity, magistrate, constable, secretary of state, appraisers of homestead and commissioners in dower or partition, county auditor,

clerk of court, register of deeds, deputy surveyor, and probate judge. The City Defendants also aver that the Defendant Bedenbaugh, as the City Manager for the City of Aiken, does not qualify as an "officer" under S.C. Code Ann. § 8-21-10. In addition, the City Defendants aver that the "road maintenance fee" at issue is not one of the fees and costs prescribed by Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23. Finally, the City Defendants aver that road maintenance is not of the "services enumerated" in Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23.

59. As to the allegations set forth in Paragraph 85 of the Plaintiffs' Complaint, the City Defendants reiterate and reallege each corresponding paragraph of this Amended Answer set forth herein. The City Defendants object to the jumbling of causes of action.

60. As to the allegations set forth in Paragraph 86 of the Plaintiffs' Complaint, the City Defendants crave reference to Article I, § 3 of the South Carolina Constitution for the precise language of that constitutional provision and its application.

61. The allegations set forth in Paragraphs 87, 88, 89, and 90 of the Plaintiffs' Complaint are denied.

62. As to the allegations set forth in Paragraph 91 of the Plaintiffs' Complaint, the City Defendants deny all allegations and relief sought in the Prayer for Relief including all subparts.

FOR A FOURTH DEFENSE

63. The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of limitations.

FOR A FIFTH DEFENSE

64. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of laches.

FOR A SIXTH DEFENSE

65. The Plaintiffs' claims are, in whole or in part, barred based upon the failure to exhaust all administrative remedies as provided under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, and therefore, is barred from proceeding with this action in the Circuit Court.

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66. The Plaintiffs' claims are, in whole or in part, barred based upon the defense of mootness.

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68. The City Defendants assert the defense of absolute sovereign immunity as to all claims for money damages, including those causes of action that are based upon principles of equity where the form of relief is monetary in nature.

FOR A TENTH DEFENSE

69. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act as well as pursuant to the common law, including but not limited to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on the recovery of attorney's fees, pre-judgment interest, and punitive damages.

FOR AN ELEVENTH DEFENSE

70. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants are absolutely immune pursuant to S.C. Code Ann. § 15-78-50(b) of the South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE

71. To the extent that the Plaintiffs have alleged a tort claim, the City Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), and (20).

FOR A THIRTEENTH DEFENSE

72. To the extent that the Plaintiffs have alleged a tort claim, the Defendant Stuart Bedenbaugh is entitled to absolute employee immunity under S.C. Code Ann. § 15-78-70(a).

FOR A FOURTEENTH DEFENSE

73. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

FOR A FIFTEENTH DEFENSE

74. The imposition of a penalty under S.C. Code Ann. § 8-21-30 violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South Carolina Constitution and is contrary to the public policy of the State of South Carolina.

FOR A SIXTEENTH DEFENSE

75. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR A SEVENTEENTH DEFENSE

76. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR AN EIGHTEENTH DEFENSE

77. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is preempted by S.C. Code Ann. § 12-60-80(A).

FOR A NINETEENTH DEFENSE

78. The Plaintiffs' attempt to bring this action as a class action is expressly barred by S.C. Code Ann. § 12-60-80(C).

FOR A TWENTIETH DEFENSE

79. The legislative actions taken by the Defendants City of Aiken and Aiken City Council are fairly debatable and are therefore presumptively valid, legal, and constitutional. The decision by the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), to the extent held to applicable to this action and the road maintenance fee enacted by the City of Aiken, is entitled only to prospective application and effect.

FOR A TWENTY-FIRST DEFENSE

80. The Plaintiffs' claims are, in whole or in part, barred by common law legislative immunity.

FOR A TWENTY-SECOND DEFENSE

81. The Defendant Aiken City Council is not a proper party. Aiken City Council is not a body politic separate and apart from City of Aiken. Instead, Aiken City Council is the governing body of the City of Aiken.

FOR A TWENTY-THIRD DEFENSE

82. The Defendant Stuart Bedenbaugh, who is sued in his official capacity as the City Manager for the City of Aiken, is the alter ego of the City of Aiken. Thus, the suit against Bedenbaugh in his official capacity should be dismissed as duplicative.

FOR A TWENTY-FOURTH DEFENSE

83. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina.

FOR A TWENTY-FIFTH DEFENSE

84. There is an improper joinder of Defendants in violation of Rule 20, SCRPC. The City Defendants reserve their right to seek protective measures in accordance with Rule 20(b), SCRPC, including the severance of the City Defendants and/or separate trials.

FOR AN TWENTY-SIXTH DEFENSE

85. There is a misjoinder of parties, and the claims of the Plaintiffs should be severed. The City Defendants reserve their right to seek relief pursuant to Rule 21, SCRPC.

FOR A TWENTY-SEVENTH DEFENSE

86. The state law constitutional claims are barred, in whole or in part, based upon the lack of a private right of action for monetary relief as recognized in *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019).

FOR A TWENTY-EIGHTH DEFENSE

87. The City Defendants reserve their right to oppose the Plaintiffs' request for a trial by jury.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken, pray that the Complaint be dismissed with prejudice; for the denial of all declaratory relief; for the costs of this action, including reasonable attorney's fees under the South Carolina Frivolous Civil Proceedings Act; and for such other and further relief as the Court deems just and proper.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

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

January 7, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

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

Civil Action Number 2021-CP-02-02323

Plaintiffs,)

vs.)

**NOTICE OF MOTION AND MOTION
TO DISMISS**

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

Defendants.)

TO: TERRY E. RICHARDSON, JR., ESQUIRE, WILLIAM C. LEWIS, ESQUIRE, BRADY
R. THOMAS, ESQUIRE, SAM TOOKER, ESQUIRE, DAVID R. PRICE, JR., ESQUIRE,
T. RYAN LANGLEY, ESQUIRE, AND CHARLES J. HODGE, ESQUIRE, COUNSEL
FOR PLAINTIFFS, ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that 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, by and through the undersigned attorney, will
move before a Judge of the Second Judicial Circuit to whom the case is assigned, at the Aiken
County Judicial Center, 109 Park Avenue SE, Aiken, South Carolina 29801, on the ____ day of
_____, 202__, at _____ o'clock, __.M., or as soon thereafter as counsel can be heard,
pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure to dismiss the Complaint
for failure to state a cause of action against the Defendants.

This motion is based on the constitution and laws of South Carolina, as well as the memorandum filed in support of this motion.

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

ATTORNEY 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

December 1, 2021
Aiken, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

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

Civil Action Number 2021-CP-02-02323

Plaintiffs,)

vs.)

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

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

Defendants.)

FILED 12.1 20 21 11:51
SP
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

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 ("Aiken County Defendants"), respectfully submit this Memorandum in Support of their Motion to Dismiss the Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as follows:

Background

Plaintiffs bring their lawsuit seeking to certify a class of similarly situated people to challenge the alleged wrongful collection of Aiken County's road maintenance fee that was imposed by ordinance in 1992 and has continued uninterrupted for each year since.

Plaintiffs have named as parties to this action the Aiken County Defendants, along with the City of Aiken and several of its officials. This Memorandum pertains to the Aiken County

Defendants, although the principles set forth herein apply generally to counties and municipalities in South Carolina that impose "uniform service charges," "service," or "user fees."¹

Plaintiffs allege that since another local government in South Carolina, Greenville County, had its road maintenance fee (along with a fee imposed separately in connection with telecommunication services) invalidated by the South Carolina Supreme Court, Aiken County, the City of Aiken, and apparently every other county and municipality in South Carolina that also imposes a road maintenance fee, also should have their adopting ordinances declared invalid, apparently irrespective of the contents of their ordinances, and, critically, the legislative histories and circumstances in which they were adopted.

In making their argument, Plaintiffs cite the same statute, S.C.Code Ann. Section 8-21-30, seven (7) times, S.C.Const. art. I, § 3 (which affirms the principle of due process of law), and *Burns v. Greenville County Council*, 433 S.C. 583 (2021), a fact-specific case in which the South Carolina Supreme Court panned one county governing body for its shortcomings in establishing a legislative history before imposing a fee under Home Rule. Plaintiffs allege, repeatedly,² that the road maintenance fees adopted by Aiken County and the City of Aiken are "almost identical" to Greenville County's road maintenance fee.

Defendants have never seen an argument like this, especially from parties championing due process:

"Government A was found liable in its case, therefore, Governments B and C also must be liable, in separate instances, in different jurisdictions, under the 'close enough' and 'sorta-kind of' doctrines."

¹ S.C.Code Ann. Subsection 6-1-300(6) provides that the term, "[s]ervice or user fee" also includes "uniform service charges".

² Complaint at paragraphs 7, 34, 36 and 40.

Plaintiffs have managed to extend "profiling" to local governments. Their contention is like the losing coach at the Superbowl arguing that his team's point total was "almost identical" to the champion's score. Or a conceding politician confidently assuring his supporters that his vote tally was "almost identical" to that of the candidate who won. Or the professing Christian who claims his worldview is "almost identical" to that set forth in the Ten Commandments.

No one gets a prize for winning the "95-yard dash." What is keeping Defendants' circumstances from being *exactly* the same as another county's? Plaintiffs' errors of omission are striking, and each is exposed herein.

S.C.Code Ann. Section 8-21-30 Has Nothing To Do With Road Maintenance Fees

There is no cause of action for recovery of alleged illegal collection of a road maintenance fee pursuant to Title 8, Chapter 21 of the South Carolina Code of Laws.

In relying exclusively on S.C.Code Ann. Section 8-21-30, Plaintiffs skip entirely past the substance of the Chapter in which that section appears and move straight to the penalties provision without ever explaining how it is triggered.

Section 8-21-30 provides:

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.

Nowhere in their Complaint do Plaintiffs mention any other section in Title 8, Chapter 21 except for its penalties provision. That is because Plaintiffs know that the rest of Title 8, Chapter 21, picks their case apart section by section. Indeed, from the outset of the Chapter, 8-21-10 provides:

The several officers named in this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated. (Emphasis supplied herein).

The officers named in Title 8, Chapter 21 as providing services do not include county councilmembers or counties, and there is no mention of county administrators anywhere in the statute.

Article 3 of Chapter 11 of Title 14 deals with Masters-in-Equity, so that portion of State law also is irrelevant to all of the Aiken County Defendants (and, in fact, to all of the Defendants in this lawsuit).

There is no "Chapter 19 of Title 14" in the South Carolina Code of Laws.

There is no "Article 7 of Chapter 23 of Title 14" in the Code.

There is no "Chapter 19 of Title 19" in the Code.

Chapter 7 of Title 22 pertains to magistrates.

Article 3 of Chapter 9 of Title 22 consists of one section, entitled, "Deduction of certain payments to others from constable's salary."

No Aiken County Defendant is a master-in-equity, or a magistrate, or a constable.

Therefore, based on the prescriptions of Section 8-21-10 alone, Plaintiffs' Complaint should be dismissed as to Defendant Killian, in his official capacity as an official nowhere named in Title 8, Chapter 21, the Aiken County Council, and Aiken County.

Road Maintenance Is Not A "Service Enumerated" In Title 8, Chapter 21

But we are not even finished with Section 8-21-10 yet. Anyone looking at that statute will immediately hone in on its further enormous limitation:

The several officers named in this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, **for the services herein enumerated.** (Emphasis supplied herein).

Road maintenance fees are not among the "services enumerated" in Title 8, Chapter 21. It cannot be said any plainer than that.

Here are all of the "services enumerated" in Title 8, Chapter 21, aptly named, "Fees and Costs *Generally*" (as in, neither specifically nor exclusively):

- Section 8-21-20 governs the computation and payment method to reimburse the "mileage of jurors, witnesses or other persons required to attend court or to travel to perform any legal duty..."
- Section 8-21-40 deals with cases, "in which the clerk of court or a magistrate shall issue an execution," wherein, "he shall attach thereto a bill of each item of costs therein charged and also shall tax all costs which accrue to the sheriff for services on such execution."
- Section 8-21-110 permits the Secretary of State to charge fees:
 - (1) For searches;
 - (2) For entering satisfaction on a mortgage;
 - (3) For recording a mark or brand;
 - (4) For recording any writing;
 - (5) For making out a grant of lands, recording and fixing the great seal;
 - (6) For a testimonial with the great seal;
 - (7) For registering the certificate of a person or family becoming citizens;

- (8) For commissioning a commissioner of deeds;
 - (9) For filing a limited partnership agreement;
 - (10) For furnishing a certificate under seal;
 - (11) For making a certified copy of a charter;
 - (12) For making a certified copy of a land grant;
 - (13) For making a certified copy of a plat, for tracing the first four corners, certifying and copying; and
 - (14) For certified copy of any record.
- Section 8-21-120 authorizes appraisers of homestead and commissioners in dower or partition to charge fees for their services:
 - (1) Of appraisers to set out the homestead; and
 - (2) Of commissioners in dower or in partition...one dollar and a half per day and five cents per mile for necessary travel.
 - Section 8-21-130 provides with respect to county auditors that, "For every entry and endorsement on any deed of conveyance of real property recorded in his office, each county auditor shall receive a fee of twenty-five cents.
 - Section 8-21-140 allows notaries public to charge fees:
 - (1) For taking a deposition and swearing witnesses;
 - (2) For a duplicate of a deposition, protest and certificate;
 - (3) For each attendance upon any person for proving and certifying a matter or thing;
 - (4) For every notarial certificate, with seal;
 - (5) For administering an oath for an affidavit;
 - (6) For taking a renunciation of dower or inheritance; and
 - (7) For every protest...together with the cost of postage for transmitting notice thereof.
 - Section 8-21-150 permits deputy surveyors to charge fees:
 - (1) For surveying;
 - (2) For making out a fair plat, certifying, signing and returning the same; and
 - (3) For running old lines for any person or between parties, or by order of court, while they are on the survey.

- Section 8-21-310 allows clerks of court, registers of deeds, and county treasurers to collection uniform fees as follows:

- (1) fifteen dollars for a deed to real estate; and
- (2) twenty-five dollars for the following documents:
 - (a) a mortgage;
 - (b) a land sale installment contract;
 - (c) a real estate sales contract;
 - (d) any document required to be recorded pursuant to the Uniform Commercial Code;
 - (e) a plat or survey not part of or attached to another document to be recorded;
 - (f) a lease for real estate;
 - (g) an order for partition of real estate;
 - (h) an easement agreement or other document affecting title or possession of real property not otherwise provided for in this section;
 - (i) a power of attorney;
 - (j) a notice of a mechanic's lien; or
 - (k) any other document affecting a title or the possession of real estate that is required by law to be recorded or filed, except judicial records, including restrictive covenants, bylaws, and amendments to restrictive covenants and bylaws.
- (B) 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, unless otherwise stated, for the following documents or actions:
 - (1) a revocation of power of attorney...
 - (2) an assignment of leases and rents or the cancellation or release of an assignment of leases and rents;
 - (3) separate probates, acknowledgements, affidavits, or certificates that are not part of or attached to another document to be recorded;
 - (4) a mortgage satisfaction or release, including a partial release or entry in a public record;

- (5) the recording of an instrument that assigns, transfers, or affects a single real estate mortgage or other instrument affecting a title to real property or a lien for the payment of money,...
- (6) taking and filing bond or security costs;
- (7) filing a trustee qualification, memorandum of trust, or certification of trust;
- (8) filing a notice of meter conservation charge;
- (9) the filing, enrolling, satisfaction, or expungement of state or federal liens...
- (10) the filing or recording of any commission of a notary public or other public office or any license or permit to practice a profession or trade required to be filed in the county where the individual permanently resides;
- (11) the filing of the charter of any public or private corporation or association;
- (12) the filing or recording of the dissolution of any partnership or corporate document;
- (13) the filing and enrolling of a judgment by confession;
- (14) the taking and filing of an order for bail with or without bond;
- (15) the filing of a notice of discharge in bankruptcy;
- (16) the filing, recording, and indexing of a lis pendens;
- (17) the recording of a release or discharge of a mechanic's lien, or notice of pendency of an action of suit to enforce a mechanic's lien; or
- (18) the filing of a document relating to a title of an interest in a vacation time sharing plan organized under Chapter 32, Title 27...
- (C) Except as otherwise expressly provided, the clerks of court or county treasurers, as may be determined by the governing body of the county, shall:
 - (1) in addition to the fee imposed by Section 14-1-204(B)(1), collect one hundred dollars for filing a first complaint or petition, including an application for a remedial and prerogative writ and bond in a civil action or proceeding...
 - (2) collect one hundred dollars for filing, indexing, enrolling, and entering a foreign judgment and an affidavit;

- (3) collect an amount set by the Chief Justice of the South Carolina Supreme Court for filing court documents by electronic means from an integrated electronic filing or e-filing system owned and operated by the South Carolina Judicial Department...;
 - (4) collect thirty-five dollars for filing and processing an order for the Destruction of Arrest Records...;
 - (5) collect thirty-five dollars for receiving and enrolling transcripts of judgment from magistrate courts and federal district courts;
 - (6) collect ten dollars for taking and filing an order for bail;
 - (7) collect ten dollars for taking and filing bond or security costs;
 - (8) collect ten dollars for issuing an official certificate under the seal of the court not otherwise specified in this section; or
 - (9) collect fifteen dollars as set forth in Section 29-5-23 for a Notice of Project Commencement.
- Section 8-21-320 provides that, "There is assessed for every motion made in the court of common pleas and family court, not including motions made in family court juvenile delinquency proceedings, a fee of twenty-five dollars.
 - Section 8-21-770. Determination of fees and costs; schedule of fees and costs to be collected.

(A) Fees and costs are payable upon the filing of an application or petition. Fees also may be charged for:

Issuing a certified copy; Issuing exemplified/authenticated copy; Reforming or Correcting marriage record; Filing demands for notice; Filing conservatorship accountings; Recording authenticated or certified record; Reopening closed estates; Appointment of special or temporary fiduciary; Filing and indexing a will; Certifying appeal record; and Filing affidavit for collection of personal property under Section 62-3-1201.

The costs of the notice to creditors or other legal advertisement are in addition to prescribed court costs and are due and payable prior to publication of advertisement.

- Section 8-21-1010 allows magistrates to collect fees and costs as follows:
- (A) Except as otherwise expressly provided, the following fees and costs must be collected by the magistrates and deposited in the general fund of the county:

- (1) for taking civil recognizance;
 - (2) for granting an order for civil special bail;
 - (3) for receiving and filing bond in claim and delivery, attachment; if justification of sureties required, an additional five dollars;
 - (4) for administering and certifying oaths or documents in writing;
 - (5) for issuing any prerogative writ;
 - (6) in all civil actions, for issuing a summons and a copy for defendant, and for giving judgment with or without a hearing, forty-five dollars;
 - (7) for issuing execution and renewal thereof;
 - (8) for making up, certifying, and forwarding a transcript of record and judgment in a case for purpose of appeal;
 - (9) for proceedings by a landlord or lessor against a tenant or lessee, including notices to quit, eviction orders, or recovery of rents;
 - (10) for proceedings on a coroner's inquest;
 - (11) for proceeding on estrays, including judgment for possession, sale, or damages;
 - (12) for qualifying appraisers to set off homestead or qualifying sureties on a bond;
 - (13) for each tax execution collected; and
 - (14) for filing or issuing any other paper not provided for in this section.
- Section 8-21-1040 allows mileage to be paid to constables.
 - Magistrates and their officers may collect fees for the following pursuant to Section 8-21-1060:
 - (1) for summoning a witness to magistrate court in a civil action;
 - (2) for summoning the jury panel to try a civil action in magistrate court;
 - (3) for summoning a coroner's jury and witnesses, five dollars, and mileage;
 - (4) for serving a summons, rule, order, or notice by a magistrate in a civil action;
 - (5) for serving an attachment or civil arrest on a person and making return thereof;

(6) for selling an estray;

(7) for levying execution, posting notice of sale, conducting sale, and paying over proceeds; and

(8) for serving warrants, or any other criminal process, and for conveying prisoners.

- Section 8-21-1070 permits constables to get fees and mileage for performance of duties outside the county in which they are employed or appointed to serve.

And that's it. None of the "enumerated services" in Title 8, Chapter 21 involves road maintenance. If fact, that portion of the South Carolina Code of Laws makes no mention of "roads," or of "maintenance," of "road maintenance" or anything having to do with that activity. As road maintenance is not a service governed by 8-21-10, or by any section in Title 8, Chapter 21, that portion of State law is irrelevant to road maintenance fees. Plaintiff's Complaint should be dismissed as based on a statute that does not regulate the activity they complain of, and that has no bearing on Aiken County's road maintenance fee.

No Aiken County Defendant is a "State Officer"

But the legislature does not stop there. It doubles down on the limitations of this portion of the South Carolina Code of Laws by providing in relevant part in Section 8-21-15:

(A) No **state** agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section. (Emphasis supplied herein).

No Aiken County Defendant is a "state agency, department, board, committee, commission, or authority."

Defendant Killian is a county administrator. He is not a State officer, but is instead a county officer whose office, duties and responsibilities are set forth in Title 4, Chapter 9, Article 7, "Council-Administrator Form of County Government."

Defendant Goings also is not a State officer, but is an elected county officer, and is so designated throughout State law, including, *inter alia*, in S.C.Code Ann. Section 8-15-65, which provides:

(A) The General Assembly shall appropriate annually salary supplements for the following county officers:

- (1) clerks of court;
- (2) probate judges;
- (3) sheriffs;
- (4) registers of deeds;
- (5) auditors;
- (6) treasurers. (Emphasis supplied herein)

S.C.Code Ann. Section 4-9-60 provides:

Under the council, council-supervisor and council-administrator forms of government provided for in this chapter the county treasurer and the county auditor shall be elected. (Emphasis supplied herein).

S.C.Code Ann. Section 4-11-10 further provides:

The time for the commencement of the terms of office of the various county officers is the first Tuesday in January next after their election, except that the terms of the county auditors and county treasurers shall commence the first day of July next following their election. Nothing in this Section applies to those officers who are appointed by the Governor..." (Emphasis supplied herein).

No Aiken County Defendant is appointed by the Governor.

Aiken County operates under the "council-administrator" form ("Form No. 3") of government pursuant to S.C.Code Ann. Section 4-9-10(b).

S.C.Code Ann. Section 4-9-610 provides:

The council in those counties adopting the council-administrator form of government provided for in this article shall consist of not less than three nor more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election...

Defendant Aiken County Council is comprised of local officials whose elections are prescribed in S.C.Code Ann. Section 4-9-90:

Council members must be elected from defined single-member election districts unless otherwise determined under the provisions of subsection (a), (b), or (c) of Section 4-9-10 or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986...

County council members are subject to the dual office holding prohibition set forth in, *inter alia*, S.C.Code Ann. Section 4-9-100:

No member of council, including supervisors, shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term...

Therefore, a county council member may not simultaneously be a "county" and a "State" officer.

"Public officers" for purposes of Title 8, are defined in S.C.Code Ann. Section 8-1-10, which provides:

The term "public officers" shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.

Title 8 distinguishes within this universe of "public officers" between "State" and "county" officers, in such statutes as S.C.Code Ann. Section 8-15-30, which provides:

Each State and county officer entitled to receive a set of the Code, Code Supplement, Acts, Journals or other such publication shall file with the director of the Legislative Council a receipt acknowledging

receipt of it before such publication shall be delivered to him. Each officer receiving such publications shall keep them in his office where they may be used by the public, but this provision shall in nowise affect any of the duties now imposed by law on any officer... (Emphasis supplied herein).

Pursuant to S.C.Code Ann. Section 8-21-15, Plaintiffs' Complaint should be dismissed as none of the Aiken County Defendants is a "state agency, department, board, committee, commission, or authority..."

Road Maintenance Fees Are Authorized In A Completely Different State Law Than What Plaintiffs Allege

No South Carolina county or municipality would ever invoke Title 8, Chapter 21 as its authority for imposing or collecting a road maintenance fee. That portion of State law has nothing to do with road maintenance or any similar governmental service.

Rather, counties in South Carolina, through their governing bodies, have authority to adopt ordinances imposing uniform service charges that run the breadth of government services pursuant to S.C.Code Ann. Section 4-9-30, which provides in relevant part:

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers **which shall be exercised by the respective governing bodies** thereof:

...(5)(a) to assess property and levy ad valorem property taxes and **uniform service charges**, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, **including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public**

health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. (Emphasis supplied herein).

Pursuant to S.C.Code Ann. Section 6-1-300:

(6) "Service or user fee" means a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee. **"Service or user fee" also includes "uniform service charges"**. (Emphasis supplied herein).

Municipalities, such as the City of Aiken, have the same authority as counties pursuant to S.C.Code Ann. Section 5-7-30, another statute that has nothing to do with Title 8, Chapter 21:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, **including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them;**... (Emphasis supplied herein).

The legislature, fully aware that it has placed the broad subject of fees in all but four of the sixty-three Titles in the South Carolina Code, deliberately noted this reality in S.C.Code Ann. Section 8-21-15, which provides in relevant part:

(A) No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, **or function is authorized by**

statutory law and set by regulation except as provided in this section.

The legislature is even more specific, providing in subsection (D):

Statutory law for purposes of this Section does not include regulations promulgated pursuant to the State Administrative Procedures Act.

The Administrative Procedures Act comprises one article (Article 3) in one chapter (Chapter 23) of Title 1. Thus, "statutory law" pursuant to 8-21-15(D) means the entirety of the South Carolina Code of Laws except for Article 3 of Chapter 23 of Title 1.

Therefore, in considering the one Section in Title 8, Chapter 21 that Plaintiffs do mention in their Complaint, we see the same insurmountable qualifier in Section 8-21-30 as we see in Section 8-21-10; namely:

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. (Emphasis supplied herein).

Road maintenance is not a "service herein mentioned" anywhere in Title 8, Chapter 21.

Section 8-21-30 also deals with the "charging" of fees, not the collecting of them. Neither Defendant Killian nor Defendant Goings "charges" the Aiken County road maintenance fee.

So, could anyone ever violate Title 8, Chapter 21? Certainly. Here is what *would* be a violation of that chapter: A magistrate in South Carolina is authorized pursuant to Section 8-21-1010(A)(11) to charge a fee of ten dollars "for proceeding on estrays, including judgment for possession, sale, or damages..." If a magistrate were to impose a fee, e.g., of twenty-five dollars in addition to, or in lieu of, the ten dollar fee the law allows him to impose for whatever a "proceeding on estray" is, that would be a violation of Title 8, Chapter 21 as duplicative or

supplanting of the fee authorized in that statute. A county governing body adopting an ordinance pursuant to 4-9-30(5)(a) to impose a uniform service charge for the expressly authorized government provision of road maintenance, or a municipality doing the same thing pursuant to Section 5-7-30, is not.

Title 8, Chapter 21 does not contain all of the authorized fees in the South Carolina Code of Laws. It also does not prohibit the imposition or collection of fees for services not mentioned in it Title 8, Chapter 21. For example, S.C.Code Ann. Section 4-19-10 authorizes, "[t]he governing body of each county":

(a) To establish, operate, and maintain a system of fire protection.

(and)

...(j) To place into effect and to revise, whenever it so wishes or may be required, a schedule of rates and charges for the furnishing of fire protection services within each service area. (Emphasis supplied herein).

Under Plaintiffs' logic, Defendant Aiken County Council could not impose the charges 4-9-10(j) expressly authorizes it to impose, and Defendant Goings could not in his official capacity accept payment of the charges 4-9-10(j) authorizes, because fire protection services are not mentioned in Title 8, Chapter 21. And not only could he not accept payment, but the Aiken County Council and Mr. Goings should both be fined pursuant to 8-21-30 ten (10) times the amount of the fire protection services fees charged even though fire protection services are not part of the "services herein mentioned" in Title 8, Chapter 21.

The South Carolina Code of Laws is set forth in sixty-three (63) titles. "Fees" are prescribed in fifty-nine (59) of them: Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46,

47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63. Only Titles 10, 18, 21, and 53 contain no references to fees.

The prescriptions and proscriptions relative to fees cover the range of activity one can engage in while within the bounds of South Carolina.

Plaintiffs seem to believe that Title 8, Chapter 21 is the only place in State law where fees are addressed. Here are five hundred instances in the South Carolina Code of Laws where the legislature has addressed fees other than in Title 8, Chapter 21:

- 1) S.C.Code Ann. Section 1-1-705 allows the Secretary of State to collect a fee for The South Carolina Railroad Museum in Fairfield County to be the official railroad museum of the State of South Carolina;
- 2) S.C.Code Ann. Section 1-5-50 authorizes the Secretary of State to, "establish and collect fees, not to exceed the actual cost of searching for or making copies of records";
- 3) S.C.Code Ann. Section 1-5-60 authorizes the Secretary of State to, "establish, collect, and retain fees to recover the costs associated with the collection of dishonored checks returned to the agency due to insufficient funds";
- 4) S.C.Code Ann. Section 6-1-70(B) permits, "a municipality that originally enacted a real estate transfer fee prior to January 1, 1991 (to) impose and collect a real estate transfer fee, by ordinance, regardless of whether imposition of the fee was discontinued for a period after January 1, 1991";
- 5) Title 4, Chapter 10, Article 1 of the South Carolina Code of Laws, 1976, as amended, permits fees to be paid in lieu of taxes in association a government's imposition of a Local Option Sales Tax;
- 6) Title 4, Chapter 10, Article 9 of the South Carolina Code of Laws, 1976, as amended, authorizes counties and municipalities to impose a "local option tourism development fee";
- 7) Title 4, Chapter 12 of the South Carolina Code of Laws, 1976, as amended, authorizes the payment to governments in South Carolina of a fee in lieu of property taxes;
- 8) Title 4, Chapter 29 of the South Carolina Code of Laws, 1976, as amended, authorizes the payment to governments in South Carolina of a fee in lieu of property taxes in connection with "Industrial Development Projects";

- 9) Title 6, Chapter 11 of the South Carolina Code of Laws, 1976, as amended, prescribes fees in connection with "Special Purpose or Public Service Districts";
- 10) Title 12, Chapter 6 addresses corporate license and other fees in the "South Carolina Income Tax Act";
- 11) Title 12, Chapter 20 governs corporation license fees;
- 12) S.C.Code Ann. Section 12-21-1120 requires that, "beer and wine taxes and license fees...must be paid to and collected by the department and deposited to the credit of the general fund of the State";
- 13) S.C.Code Ann. Section 12-21-2420 permits the collection of "a fee for pleasure fishing, excursion, sight-seeing and private charter" and a "participation fee" at NASCAR events *vis-à-vis* admissions taxes;
- 14) Title 12, Chapter 21 provides for imposition of, "any amount of the charge for admission, whether or not separately stated that is a fee or tax imposed by a political subdivision of the State";
- 15) S.C.Code Ann. Section 12-21-2720 provides that, "a municipality may by ordinance impose a license fee on (coin operated devices or) machines...in an amount not exceeding ten percent of three thousand six hundred dollars of the license fee imposed pursuant to subsection (A) for the equivalent license period";
- 16) S.C.Code Ann. Section 12-21-2720 provides that, "a county may by ordinance impose a license fee on (coin operated devices or) machines...located in an unincorporated area of the county in an amount not exceeding ten percent of three thousand six hundred dollars of the license fee imposed pursuant to subsection (A) for the equivalent license period";
- 17) S.C.Code Ann. Section 12-21-2720 provides that, "the Department of Revenue is authorized to assess an additional fee of fifty dollars on each Class Two coin-operated machine license" in South Carolina;
- 18) In addition to all of the other licenses required in Title 12, Chapter 21, S.C.Code Ann. Section 12-21-2728 provides that anyone who owns or operates coin-operated devices shall pay license fees biennially ranging from fifty dollars to two thousand dollars;
- 19) S.C.Code Ann. Section 12-21-4240 requires the Department of Revenue to, "charge an annual license fee of five thousand dollars for each manufacturer and two thousand dollars for each distributor" of devices and machines set forth in Title 12, Chapter 21 of the South Carolina Code of Laws;
- 20) S.C.Code Ann. Section 12-21-4030 authorizes entrance fees for bingo games;

- 21) S.C.Code Ann. 12-24-10 allows, "In addition to all other recording fees, a recording fee is imposed for the privilege of recording a deed in which land and improvements on the land, tenements, or other realty is transferred to another person. The fee is one dollar eighty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value as determined by Section 12-24-30";
- 22) S.C.Code Ann. Section 12-24-50 provides that fees imposed in Title 12, Chapter 24, "must be remitted to the clerk of court or the register of deeds in the county in which the realty is located and recorded";
- 23) S.C.Code Ann. Section 12-24-60 requires the collection of deed recording fees, providing, "[t]he clerk of court or register of deeds, before recording a deed subject to the fee imposed by this chapter, shall collect the fee...";
- 24) S.C.Code Ann. Section 12-24-80 requires that the, "clerk of court or register of deeds and the county shall keep and preserve suitable records to determine the amount of fee due and collected under this chapter";
- 25) S.C.Code Ann. Section 12-24-90 prescribes the calculation of fees for realty transfers;
- 26) S.C.Code Ann. Section 12-24-100 prescribes the method payment for deed recording fees that are collected by clerks of court and registers of deed to the S.C. Department of Revenue;
- 27) S.C.Code Ann. Section 12-24-120 provides penalties for clerks of court and registers of deeds who do not collect fees required by Title 12, Chapter 24: "If the clerk of court or register of deeds fails to collect the proper fee due, or place the notation on the instrument as required by this chapter, the clerk of court or register of deeds is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. This penalty may be waived or reduced by the department";
- 28) S.C.Code Ann. Section 12-24-120(C) provides, "If the person liable for the fee imposed by this chapter fails to pay the proper fee due, that person is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. This penalty may be waived or reduced by the department";
- 29) Penalties for fees collected, "must be paid proportionately into the Heritage Land Trust Fund, the South Carolina Housing Trust Fund, the general fund of the State, and the county general fund" pursuant to Title 12, Chapter 24;
- 30) Pursuant to 12-24-130, "the fee imposed under this chapter and any penalties and interest thereon are a debt owing to the State by the person or persons liable for the fee and are a lien on all property of these persons...";
- 31) Title 12, Chapter 28, prescribes and contains 507 references to "user fees";

32) S.C.Code Ann. Section 12-37-135 provides that, "[a] county governing body may require a business registration throughout the entire county area and may impose an administrative fee not to exceed fifteen dollars. The fee is an administrative fee and must not be based upon business income...[t]he business registration administrative fee may be billed on any property tax bill and is deemed to be property tax for the purposes of collection if so billed. This registration, if adopted, is in lieu of any business license which is authorized pursuant to Section 4-9-30(12)";

33) S.C.Code Ann. Section 12-37-235 allows, "[e]ach county and municipality in this State [to] charge the owners of all real property exempt from ad valorem taxation under the provisions of items (2), except property of the State, counties, municipalities, school districts and other political subdivisions where such property is used exclusively for public purposes, (3), except public libraries, and (4) of subsection (A) of Section 12-37-220 of the 1976 Code, which is located within their respective boundaries, reasonable fees for fire protection...

All such fees shall be based on the protection and services provided and which are maintained in whole or in part by funds from ad valorem taxes. No fees shall exceed the amount of taxes that would be levied on any of the subject property for any one service if the subject property were subject to ad valorem taxation";

34) S.C.Code Ann. Section 12-37-830 includes in its "Allowable expenses," "fees allowed to sheriffs and constables for serving a summons and, to witnesses, the fees allowed to witnesses in suits before a magistrate's court";

35) The legislative history and "Editor's Note" to 2017 Act No. 40 (H.3516), eff January 1, 2019, provides for road fees:

"L. (1) Notwithstanding any provision to the contrary within this SECTION, a person who registers a vehicle for use in this State pursuant to Article 23, Chapter 37, Title 12, as amended by this act, must register his vehicle during calendar year 2019 and is required to pay the road fees calculated based on the fair market value of the vehicle as specified in Sections 12-37-2820 and 12-37-2850 at the time the vehicle's registration fees are paid."

"(2) Notwithstanding the provisions in Section 12-37-2865(B) and (C), as contained in this SECTION, to the contrary, during calendar year 2019, the first four hundred thousand dollars of fee revenue collected pursuant to Section 12-37-2865 must be retained by the Department of Motor Vehicles to defray programming costs."

"M. This Section takes effect January 1, 2019, except that the Department of Revenue, in consultation with the Revenue and Fiscal Affairs Office, shall calculate the millage to be used to calculate the road use fee provided in Section 12-37-2850 by July 1, 2018";

- 36) S.C.Code Ann. Section 12-37-2610 provides that, "[l]arge commercial motor vehicles and buses, as defined in Section 12-37-2810, must pay road use fees pursuant to Article 23, Chapter 37, Title 12 in lieu of ad valorem property taxes";
- 37) S.C.Code Ann. Section 12-37-2650, provides that, "When the tax and all other charges included on the tax bill have been paid, the treasurer shall issue the taxpayer a paid receipt," and that, "[l]arge commercial motor vehicles and buses, as defined in Section 12-37-2810, must pay road use fees pursuant to Article 23, Chapter 37, Title 12 in lieu of ad valorem property taxes";
- 38) S.C.Code Ann. Section 12-37-2740 provides, "B) Notwithstanding the provisions of Sections 56-1-460 and 56-9-500, a charge of driving under suspension if the suspension is solely for failure to pay property taxes or the reinstatement fee required for the property tax suspension does not require proof of financial responsibility...
- "...(D) Before the reinstatement of a driver's license or vehicle registration suspended pursuant to this section, a fee of fifty dollars must be paid to the Department of Motor Vehicles...Fees collected in excess of actual departmental direct costs related to suspension and reinstatement actions pursuant to this Section must be deposited to the credit of the general fund of the State at the end of each fiscal year";
- 39) S.C.Code Ann. Section 12-37-2810 contains within its fines a "South Carolina apportionment factor," and the process "to apportion **the registration fees** of the fleet under the International Registration Plan";
- 40) The legislative history and "Editor's Note" to S.C.Code Ann. Section 12-37-2815 reaffirms the **road fees required to be paid in Title 12, Chapter 37**, for registered vehicles, and provides that, "the first four hundred thousand dollars of fee revenue collected pursuant to Section 12-37-2865 must be retained by the Department of Motor Vehicles to defray programming costs";
- 41) S.C.Code Ann. Section 12-37-2820 (**road fees**);
- 42) S.C.Code Ann. Section 12-37-2830 (**road fees** and apportionment factor);
- 43) S.C.Code Ann. Section 12-37-2840, "**Road use fees** due at the same time as **registration fees**";
- 44) S.C.Code Ann. Section 12-37-2850, "Assessment of **road use fees**; distribution of **fees**";
- 45) S.C.Code Ann. Section 12-37-2860:
- (B) Instead of any property tax and the registration requirements provided in Sections 56-3-110 and 56-3-700 on semitrailers and trailers of motor carriers as defined in Section 12-37-2810, and commonly used in combination with a large commercial

motor vehicle, a **one-time fee** payable to the Department of Motor Vehicles in the amount of eighty-seven dollars is imposed on all semitrailers and trailers currently registered and subsequently on each semitrailer and trailer before being placed in service.

(C) The fee imposed pursuant to subsection (B) and the registration requirements of this Article are **in lieu of any local road use fee, registration fees, or any other vehicle-related fee** imposed by a political subdivision of this State on a trailer or semitrailer”;

46) S.C.Code Ann. Section 12-37-2865, “Distribution of revenues from **road use and one-time fee assessments**”;

47) S.C.Code Ann. Section 12-37-2870 (**fee distribution formula**);

48) S.C.Code Ann. Section 12-37-2880, “Fair market value of large commercial motor vehicles subject to **road use fee**”;

(C) **Counties shall mail bills for road use fees** and registration to large commercial motor vehicles operating intrastate until the effective date of Section 12-37-2860(F)”;

49) Title 12, Chapter 44 authorizes counties in South Carolina to enter into agreements with businesses to accept **fees in lieu of taxes** to promote economic development in the State, and to accept an, “Alternative payment method,” [which] means **fee payments**”;

50) S.C.Code Ann. Section 12-44-80 provides for the “**distribution of fee payments**” in a **fee in lieu of taxes** arrangement;

51) S.C.Code Ann. Section 17-22-110 provides that, “An applicant to an intervention program or an offender who applies to the chief administrative judge of the court of general sessions for admission to a program pursuant to Section 17-22-100 shall pay a **nonrefundable application fee** of one hundred dollars and, if accepted into the program, a **nonrefundable participation fee** of two hundred fifty dollars prior to admission. All **fees** paid must be deposited into a special circuit solicitor's fund for operation of the pretrial intervention program. All **fees** or costs of supervision may be waived partially or totally by the solicitor in cases of indigency...”;

52) S.C.Code Ann. Section 17-22-350 provides a painstaking formula for the **distribution of fees** required for participation in a pretrial intervention program:

(B)... **Fees** paid in installments must be remitted as received. The State Treasurer shall deposit the amounts received as follows:

- (1) 23.62 percent to the Department of Probation, Parole and Pardon Services;
- (2) 15.12 percent to the South Carolina Criminal Justice Academy;

- (3) .44 percent to the Department of Public Safety's South Carolina Law Enforcement Officers Hall of Fame;
- (4) 13.73 percent to the Office of the Attorney General, South Carolina Crime Victim Services Division;
- (5) 6.01 percent to the General Fund;
- (6) 10.97 percent to the Commission on Indigent Defense;
- (7) 1.34 percent to the Attorney General's Office;
- (8) .90 percent to the Department of Juvenile Justice Arbitration Program;
- (9) .81 percent to the Department of Juvenile Justice Marine Institutes;
- (10) .90 percent to the Department of Juvenile Justice Regional Status Offender Program;
- (11) 3.95 percent to the Department of Juvenile Justice Coastal Evaluation Center;
- (12) 6.74 percent to the Circuit Solicitors;
- (13) 2.68 percent to the State Law Enforcement Division;
- (14) 2.68 percent to the Department of Corrections;
- (15) .67 percent to the Judicial Department;
- (16) .28 percent to the Department of Natural Resources; and
- (17) .02 percent to the Forestry Commission";

53) S.C.Code Ann. Section 17-22-360 (annual report for the **"amount of fees collected"**);

54) S.C.Code Ann. Section 17-22-550 (fee waiver provision);

55) S.C.Code Ann. Section 17-22-710 (fee schedule for worthless checks);

56) S.C.Code Ann. Section 17-22-940 (**administrative and filing fees** for the expungement of criminal records);

57) S.C.Code Ann. Section 12-22-1120 (diversion program **fees waived**);

58) S.C.Code Ann. Section 24-21-5 (administrative monitoring **fees** for criminal offenders);

59) S.C.Code Ann. Section 24-21-55 (**hearing fee** for The Department of Probation, Parole and Pardon Services);

60) S.C.Code Ann. Section 24-21-80, "Probationers and parolees **to pay supervision fee; intensive supervision fee....**";

61) S.C.Code Ann. Section 24-21-85, "**Electronic monitoring fees**";

62) S.C.Code Ann. Section 24-21-87, "**Extradition and maintenance polygraph fees**";

63) S.C.Code Ann. Section 24-21-90 (disposition of **fees paid**);

- 64) S.C.Code Ann. Section 24-21-100, "Administrative monitoring when fines outstanding; **fee**";
- 65) S.C.Code Ann. Section 24-21-110 (administrative sanctions for failing to pay fines, **fees** or restitution);
- 66) S.C.Code Ann. Section 24-21-480 (payment of "a **daily fee** for housing and food");
- 67) S.C.Code Ann. Section 24-21-490 (**fees** for collection and distribution of restitution);
- 68) S.C.Code Ann. Section 24-21-960, "**Pardon application fee...**";
- 69) S.C.Code Ann. Section 24-21-1160, ("rules and amendments" to include report on collection of restitution and **fees** from offenders);
- 70) S.C.Code Ann. Section 24-21-1200 ("...fines, **fees**, and costs in amounts as are considered reasonable as fixed by the Interstate Commission");
- 71) S.C.Code Ann. Section 24-21-1320 (payment of a "reasonable **supervision fee**");
- 72) S.C.Code Ann. Section 27-1-70, "Real property **transfer fee** covenants unenforceable..."³;
- 73) S.C.Code Ann. Section 35-1-302 (filing or other **fee** requirements with respect "to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2))");
- 74) S.C.Code Ann. Section 35-1-304 (**finder's fees** for securities);
- 75) S.C.Code Ann. Section 35-1-305 (securities registration **filing fees**);
- 76) S.C.Code Ann. Section 35-1-306 ("Denial, suspension, and revocation of securities registration," for, *inter alia*, failure to pay required filing **fee**);
- 77) S.C.Code Ann. Section 35-1-405 ("Federal covered investment adviser notice filing requirement," and failure to pay **fee**);
- 78) S.C.Code Ann. Section 35-1-406 ("Registration by broker-dealer, agent, investment adviser, and investment adviser representative," and **fees**);
- 79) S.C.Code Ann. Section 35-1-408 ("Termination of employment or association of agent and investment adviser representative; transfer of employment or association," and **fees**);

³ Fees are so prevalent throughout the South Carolina Code of Laws apart from Title 8, Chapter 21, that the legislature even included sections that make clear what types of fees or fee arrangements are not permitted. Title 27 contains one such instance in the context of property transfers.

- 80) S.C.Code Ann. Section 35-1-410 ("Examination and filing **fee requirements**");
- 81) S.C.Code Ann. Section 35-1-412 ("Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration," and failure to pay **fees**);
- 82) S.C.Code Ann. Section 35-1-605 ("establish fees for filings under Section 35-1-504, filings required or permitted by rule or order adopted pursuant to this section, and other miscellaneous filings for which no fees are otherwise specified by law");
- 83) S.C.Code Ann. Section 35-1-702, "**Fees**; portion of recovery in civil and administrative enforcement actions retained by Attorney General";
- 84) S.C.Code Ann. Section 37-2-110 (**license fees** and credit sales);
- 85) S.C.Code Ann. Section 37-2-111 ("amounts actually paid or to be paid by the seller for registration, certificate of title, or **license fees**");
- 86) S.C.Code Ann. Section 37-2-202 ("**official fees** and taxes...**fees** or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes...**fees** for preparation of a deed, settlement statement, or other documents...**fees** for notarizing deeds and other documents...**fees** for appraising the real estate that is collateral for a credit sale...and assumption **fee(s)**");
- 87) S.C.Code Ann. Section 37-2-203 (delinquency charges and late **fees**);
- 88) S.C.Code Ann. Section 37-2-305 ("Filing and posting maximum rate schedule," and **fees**);
- 89) S.C.Code Ann. Section 37-2-306 ("Notice of assumption of rights," and **fees**);
- 90) S.C.Code Ann. Section 37-2-307, "Motor vehicle sales contracts **closing fees**";
- 91) S.C.Code Ann. Section 37-2-309, ("Manufactured home credit disclosure; material terms," and **fees**);
- 92) S.C.Code Ann. Section 37-2-706, ("Deposits; delivery charges; pick up charges," and **nonrefundable fee(s)**);
- 93) S.C.Code Ann. Section 38-43-50 ("Limited line and special producer licensure; appointment by insurer as producer or agent," and **appointment fees**);
- 94) S.C.Code Ann. Section 38-43-70 ("Nonresident producer licensure," and **fees**);
- 95) S.C.Code Ann. Section 4-19-10 ("fire protection services charges);
- 96) S.C.Code Ann. Section 38-43-80, "**License fees**; payment by credit card";

- 97) S.C.Code Ann. Section 38-43-100 ("nonrefundable examination fee...remit all required fees and forms...fees provided for in Section 38-43-80...furnish a complete set of his fingerprints and the required fees...processing fees for licensure or renewal of a license...");
- 98) S.C.Code Ann. Section 38-43-106 ("Continuing education requirements; administrator; advisory committee; exemptions from requirements," and fees);
- 99) S.C.Code Ann. Section 38-43-110 ("Renewal of license; conditions; lapse; request for military waiver," and fees);
- 100) S.C.Code Ann. Section 38-43-200, "Prohibition or payment of certain commissions and fees"⁴;
- 101) S.C.Code Ann. Section 38-43-500, "Definitions; motor vehicle rental companies; limited licensing to sell or offer insurance," and limited license fees;
- 102) S.C.Code Ann. Section 38-43-630, "Limited Licensing of Self-Service Storage Facilities to Sell or Offer Insurance...Application for limited license; fee; renewal; advertising";
- 103) S.C.Code Ann. Section 38-43-715 (fee waivers);
- 104) S.C.Code Ann. Section 38-43-720 (cancellation fee(s));
- 105) S.C.Code Ann. Section 38-43-730, "Offer and dissemination of travel insurance under limited lines travel insurance producer license; brochures; prohibited acts," and fees);
- 106) S.C.Code Ann. Section 38-43-780, "Premium tax on travel insurance premiums," and cancellation fee waivers;
- 107) S.C.Code Ann. Section 38-43-790, "Travel protection plans," and fees;
- 108) "Fees" are mentioned 89 times in Title 40, Chapter 47, "Physicians and Miscellaneous Health Care Professionals";
- 109) There are 41 references to "fees" in Title 40, Chapter 58, "Licensing of Mortgage Brokers Act";
- 110) "Fees" appear 37 times in Title 40, Chapter 68, "Regulation of Professional Employer Organizations";
- 111) **Title 40 of the South Carolina Code of Laws contains eighty-nine chapters. Fees are prescribed in each one of them,** regulating, "Professions and Occupations,"

⁴ See footnote 1.

“Accountants,” “Architects,” “Attorneys-at-Law,” “Auctioneers,” “Barbers and Barbering,” “South Carolina Perpetual Care,” “Chiropractors,” “Fire Protection,” “Contractors,” “Cosmetology and Cosmetologists,” “Dentists, Dental Hygienists, and Dental Technicians,” “Private Security and Investigation Agencies,” “Embalmers and Funeral Directors,” “Dietetics,” “Engineers and Surveyors,” “Environmental(ists),” “Eye Care” professionals, “Commercial Inspectors,” “Junk Dealers,” “Landscape Architects,” “Manufactured Housing,” “Massage and Bodywork” professionals, “Naturopathy,” “Nurses,” “Long Term Health Care Administrators,” “Occupational Therapists,” “Optometrists,” “Opticians,” “Pawnbrokers,” “Peddlers and Hawkers,” “Horse Traders, and Fortunetellers,” “Pharmac(ists),” “Physical Therapists,” “Physicians and Miscellaneous Health Care Professionals,” “Plumbers,” “Podiatrists,” “Polygraph Examiners,” “Dealers in Precious Metals,” “Psychologists,” “Pyrotechnic” workers, “Real Estate Brokers, Salesmen, and Property Managers,” “Mortgage Brokers,” “Residential Home Builders,” “Sanitarians,” “Social Workers,” “Soil Classifiers,” “Speech Pathologists and Audiologists,” “Veterinarians,” “Professional Counselors, Marriage and Family Therapists, and Licensed Psycho-Educational Specialists,” “Geologists,” and “Firefighters.”

“Fees” are also prescribed in:

- 112) Title 44, Chapter 56, “South Carolina Hazardous Waste Management Act”;
- 113) Title 44, Chapter 96, “South Carolina Solid Waste Policy and Management Act”;
- 114) Title 50, Chapter 5, “Marine Resources Act”;
- 115) Title 50, Chapter 9, “Hunting and Fishing Licenses”;
- 116) Title 50, Chapter 23, “Watercraft and Outboard Motors”;
- 117) Title 56, Chapter 1, “Driver’s License”;
- 118) Title 56, Chapter 3, “Motor Vehicle Registration and Licensing”;
- 119) Title 56, Chapter 10, “Motor Vehicle Registration and Financial Security”;
- 120) Title 56, Chapter 19, “Protection of Titles to and Interests in Motor Vehicles”;
- 121) Title 58, Chapter 9, “Telephone, Telegraph and Express Companies”;
- 122) Title 58, Chapter 12, “Cable Television”;
- 123) Title 58, Chapter 23 “Motor Vehicle Carriers”;
- 124) Title 59, Chapter 53, “Technical and Vocational Education and Training”;

- 125) Title 59, Chapter 127, "South Carolina State University";
- 126) Title 61, Chapter 6, "Alcohol Beverage Control Act";
- 127) Title 46 Chapter 13, "Pesticide Control Act";
- 128) Title 48, Chapter 2, "Environmental Protection Funds";
- 129) Title 58, Chapter 11, "Radio Common Carriers";
- 130) Title 14, Chapter 1, "Courts: General Provisions";
- 131) Title 17, Chapter 3, "Defense of Indigents";
- 132) Title 37, Chapter 22, "Mortgage Lending";
- 133) Title 56, Chapter 5, "Uniform Act Regulating Traffic on Highways";
- 134) Title 58, Chapter 9, "Telephone, Telegraph and Express Companies";
- 135) Title 56, Chapter 31, "Rental of Private Passenger Automobiles";
- 136) Title 61, Chapter 4, "Beer, Ale, Porter, and Wine";
- 137) Title 41, Chapter 25, "Private Personnel Placement Services";
- 138) Title 27, Chapter 32, "Vacation Time Sharing Plans";
- 139) Title 44, Chapter 7, "Hospitals, Tuberculosis Camps, and Health Services Districts";
- 140) Title 46, Chapter 25, "Fertilizers";
- 141) Title 59, Chapter 119, "Clemson University";
- 142) Title 59, Chapter 121, "The Citadel, the Military University of South Carolina";
- 143) Title 59, Chapter 34, "Deferred Presentment Services";
- 144) Title 40, Chapter 23, "Environmental Certification Board";
- 145) Title 35, Chapter 11, "South Carolina Anti-Money Laundering Act";
- 146) Title 37, Chapter 7, "Consumer Credit Counseling";
- 147) Title 37, Chapter 11, "Licensing and Regulation of Continuing Care Retirement Communities";

- 148) Title 40, Chapter 28, "Landscape Architects";
- 149) Title 40, Chapter 57, "Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers";
- 150) Title 59, Chapter 133, "Francis Marion University";
- 151) Title 23, Chapter 3, "South Carolina Law Enforcement Division";
- 152) Title 40, Chapter 13, "Cosmetology and Cosmetologists";
- 153) Title 40, Chapter 609, "Real Estate Appraisers and Appraisal Management Companies";
- 154) Title 54, Chapter 7, "Shipwrecks and Salvage Operations";
- 155) Title 59, Chapter 125, "Winthrop University";
- 156) Title 58, Chapter 9, "Telephone, Telegraph and Express Companies";
- 157) Title 12, Chapter 4, "The South Carolina Department of Revenue";
- 158) Title 33, Chapter 56, "Solicitation of Charitable Funds";
- 159) Title 37, Chapter 3, "Loans";
- 160) Title 40, Chapter 33, "Nurses";
- 161) Title 40, Chapter 59, "Residential Home Builders";
- 162) Title 40, Chapter 81, "State Athletic Commission";
- 163) Title 57, Chapter 3, "Department of Transportation";
- 164) Title 63, Chapter 9, "Adoptions";
- 165) Title 40, Chapter 2, "Accountants";
- 166) Title 40, Chapter 18, "Private Security and Investigation Agencies";
- 167) Title 40, Chapter 22, "Engineers and Surveyors";
- 168) Title 59, Chapter 150, "South Carolina Education Lottery Act";
- 169) Title 7, Chapter 11, "Designation and Nomination of Candidates";

- 170) Title 34, Chapter 30, "State Savings Bank";
- 171) Title 38, Chapter 71, "Accident and Health Insurance";
- 172) Title 40, Chapter 1, "Professions and Occupations";
- 173) Title 40, Chapter 19, "Embalmers and Funeral Directors";
- 174) Title 40, Chapter 45, "Physical Therapists";
- 175) Title 48, Chapter 27, "Registration of Foresters";
- 176) Title 63, Chapter 3, "Family Court";
- 177) Title 39, Chapter 15, "Labels and Trademarks";
- 178) Title 40, Chapter 6, "Auctioneers";
- 179) Title 40, Chapter 15, "Dentists, Dental Hygienists, and Dental Technicians";
- 180) Title 40, Chapter 51, "Podiatrists and Podiatry";
- 181) Title 40, Chapter 69, "Veterinarians";
- 182) Title 44, Chapter 2, "Underground Petroleum Environmental Response Bank Act of 1988";
- 183) Title 40, Chapter 15, "Dentists, Dental Hygienists, and Dental Technicians";
- 184) Title 20, Chapter 1, "Marriage";
- 185) Title 46, Chapter 1, "Notaries Public";
- 186) Title 33, Chapter 1, "Corporations, Partnerships and Associations: General Provisions";
- 187) Title 34, Chapter 41, "Check-Cashing Services";
- 188) Title 38, Chapter 45, "Insurance Brokers and Surplus Lines Insurance";
- 189) Title 38, Chapter 53, "Bail Bondsmen and Runners";
- 190) Title 38, Chapter 90, "Captive Insurance Companies";
- 191) Title 40, Chapter 30, "Massage/Bodywork Practice Act";

- 192) Title 42, Chapter 15, "Notice of Accident; Filing of Claims; Medical Attention and Examination";
- 193) Title 44, Chapter 93, "Infectious Waste Managements";
- 194) Title 57, Chapter 25, "Outdoor Advertising";
- 195) Title 12, Chapter 55, "Overdue Tax Debt Collection Act";
- 196) Title 26, Chapter 2, "Electronic Notaries Public";
- 197) Title 31, Chapter 23, "South Carolina Community Land Trust";
- 198) Title 33, Chapter 31, "South Carolina Nonprofit Corporation Act";
- 199) Title 34, Chapter 29, "Consumer Finance Law";
- 200) Title 40, Chapter 7, "Barbers and Barbering";
- 201) Title 40, Chapter 8, "South Carolina Perpetual Care Cemetery Act";
- 202) Title 40, Chapter 38, "Opticians";
- 203) Title 59, Chapter 112, "Determination of Rates of Tuition and Fees";
- 204) Title 12, Chapter 10, "Enterprise Zone Act of 1995";
- 205) Title 23, Chapter 9, "State Fire Marshal";
- 206) Title 36, Chapter 9, "Commercial Code-Secured Transactions";
- 207) Title 38, Chapter 47, "Insurance Adjusters";
- 208) Title 40, Chapter 9, "Chiropractors and Chiropractic";
- 209) Title 40, Chapter 27, "Junk Dealers";
- 210) Title 40, Chapter 67, "Speech-Language Pathologists and Audiologists:";
- 211) Title 48, Chapter 59, "The South Carolina Conservation Bank Act";
- 212) Title 48, Chapter 60, "South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act";
- 213) Title 49, Chapter 19, "Drainage Districts Under 1920 Act";

- 214) Title 50, Chapter 13, "Protection of Fish";
- 215) Title 51, Chapter 17, "Heritage Trust Program";
- 216) Title 57, Chapter 5, "State Highway System";
- 217) Title 63, Chapter 17, "Paternity and Child Support";
- 218) Title 5, Chapter 25, "Building Codes and Fire Protection";
- 219) Title 8, Chapter 13, "Ethics, Government Accountability, and Campaign Reform";
- 220) Title 15, Chapter 9, "Summonses, Orders of Publication and Service of Papers Generally";
- 221) Title 23, Chapter 47, "Public Safety Communications Center";
- 222) Title 25, Chapter 1, "Military Code";
- 223) Title 34, Chapter 28, "Savings Associations";
- 224) Title 38, Chapter 3, "The Department of Insurance";
- 225) Title 38, Chapter 7, "Fees and Taxes";
- 226) Title 38, Chapter 48, "Public Insurance Adjusters";
- 227) Title 38, Chapter 59, "Claims Practices";
- 228) Title 38, Chapter 77, "Automobile Insurance";
- 229) Title 40, Chapter 36, "Occupational Therapists";
- 230) Title 40, Chapter 65, "Soil Classifiers";
- 231) Title 40, Chapter 77, "Geologists";
- 232) Title 51, Chapter 18, "War Between the States Heritage Trust Program";
- 233) Title 11, Chapter 35, "South Carolina Consolidated Procurement Code";
- 234) Title 12, Chapter 2, "Taxation: General Provisions";
- 235) Title 20, Chapter 3, "Divorce";
- 236) Title 28, Chapter 2, "The Eminent Domain Procedures Act";

- 237) Title 37, Chapter 6, "Consumer Protection Code: Administration";
- 238) Title 39, Chapter 57, "Business Opportunity Sales Act";
- 239) Title 40, Chapter 25, "Practice of Specializing in Hearing Aids Act";
- 240) Title 40, Chapter 41, "Peddlers and Hawkers, Horse Traders, and Fortunetellers";
- 241) Title 40, Chapter 43, "South Carolina Pharmacy Practice Act";
- 242) Title 47, Chapter 9, "Livestock Generally";
- 243) Title 48, Chapter 20, "South Carolina Mining Act";
- 244) Title 48, Chapter 39, "Coastal Tidelands and Wetlands";
- 245) Title 49, Chapter 29, "South Carolina Scenic Rivers Act";
- 246) Title 57, Chapter 11, "Highways, Bridges and Ferries: Financial Matters. General Provisions";
- 247) Title 58, Chapter 25, "Regional Transportation Authority Law";
- 248) Title 38, Chapter 90, "Captive Insurance Companies";
- 249) Title 41, Chapter 8, "Illegal Aliens and Private Employment";
- 250) Title 6, Chapter 35, "Residential Improvement District Act";
- 251) Title 7, Chapter 13, "Conduct of Elections";
- 252) Title 16, Chapter 3, "Offenses Against the Person";
- 253) Title 17, Chapter 1, "Criminal Procedures: General Provisions";
- 254) Title 23, Chapter 31, "Firearms";
- 255) Title 27, Chapter 7, "Form and Execution of Conveyances";
- 256) Title 37, Chapter 17, "Discount Medical Plan Organizations";
- 257) Title 38, Chapter 49, "Motor Vehicle Physical Damage Appraisers";
- 258) Title 38, Chapter 97, "Portable Electronics Insurance";

- 259) Title 40, Chapter 75, "Professional Counselors, Marriage and Family Therapists, and Licensed Psycho-educational Specialists";
- 260) Title 44, Chapter 55, "Water, Sewage, Waste Disposal";
- 261) Title 46, Chapter 21, "Seeds; Plants; Seed and Plant Certification";
- 262) Title 48, Chapter 14, "The Stormwater Management and Sediment Reduction Act";
- 263) Title 48, Chapter 43, "Oil and Gas Exploration, Drilling, Transportation, and Production";
- 264) Title 49, Chapter 4, "South Carolina Surface Water Withdrawal, Permitting Use, and Reporting Act";
- 265) Title 50, Chapter 11, "Protection of Game";
- 266) Title 51, Chapter 3, "State Parks";
- 267) Title 56, Chapter 9, "Motor Vehicle Financial Responsibility Act";
- 268) Title 56, Chapter 15, "Regulation of Manufacturers, Distributors, and Dealers";
- 269) Title 1, Chapter 23, "State Agency Rule Making and Adjudication of Contested Cases";
- 270) Title 12, Chapter 36, "South Carolina Sales and Use Tax Act";
- 271) Title 16, Chapter 17, "Offenses Against Public Policy";
- 272) Title 20, Chapter 4, "Protection from Domestic Abuse";
- 273) Title 32, Chapter 7, "Preneed Funeral Contracts";
- 274) Title 33, Chapter 36, "Corporations Not-for-Profit Financed by Federal or State Loans";
- 275) Title 33, Chapter 41, "Uniform Partnership Act";
- 276) Title 40, Chapter 3, "Architects";
- 277) Title 40, Chapter 37, "Optometrists";
- 278) Title 40, Chapter 39, "Pawnbrokers";
- 279) Title 40, Chapter 49, "Plumbers and Plumbing";

- 280) Title 44, Chapter 90, "Captive Insurance Companies";
- 281) Title 44, Chapter 53, "Poisons, Drugs, and Other Controlled Substances";
- 282) Title 44, Chapter 115, "Physicians' Patient Records Act";
- 283) Title 51, Chapter 1, "Department of Parks, Recreation and Tourism";
- 284) Title 56, Chapter 23, "Driver Training Schools";
- 285) Title 6, Chapter 15, "Sewage Collection, Disposal and Treatment by Governmental Entities";
- 286) Title 9, Chapter 16, "Retirement System Funds";
- 287) Title 12, Chapter 56, "Setoff Debt Collection Act";
- 288) Title 13, Chapter 7, "Nuclear Energy";
- 289) Title 14, Chapter 11, "Masters and Referees";
- 290) Title 27, Chapter 16, "Catawba Indian Claims Settlement Act";
- 291) Title 38, Chapter 90, "Captive Insurance Companies";
- 292) Title 27, Chapter 18, "Uniform Unclaimed Property Act";
- 293) Title 27, Chapter 29, "Uniform Land Sales Act";
- 294) Title 31, Chapter 17, "Mobile Homes and House Trailers";
- 295) Title 33, Chapter 44, "Uniform Limited Liability Company Act of 1996";
- 296) Title 33, Chapter 47, "Marketing Cooperative Associations";
- 297) Title 34, Chapter 26, "South Carolina Credit Union Act";
- 298) Title 38, Chapter 39, "Insurance Premium Service Companies";
- 299) Title 39, Chapter 61, "Motor Club Services Act";
- 300) Title 44, Chapter 79, "Physical Fitness Services Act";
- 301) Title 46, Chapter 41, "Dealers and Handlers of Agricultural Products";
- 302) Title 47, Chapter 3, "Dogs and Other Domestic Pets";

- 303) Title 61, "Alcohol and Alcoholic Beverages," Chapter 2, "General Provisions";
- 304) Title 1, Chapter 7, "Attorney General and Solicitors,"
- 305) Title 1, Chapter 13, "State Human Affairs Commission";
- 306) Title 6, Chapter 29, "South Carolina Local Government Comprehensive Planning Enabling Act of 1994";
- 307) Title 17, Chapter 25, "Judgment and Execution";
- 308) Title 23, Chapter 1, "Law Enforcement and Public Safety: General Provisions";
- 309) Title 23, Chapter 19, "Sheriffs' Fees and Accounting With Successor";
- 310) Title 24, Chapter 13, "Prisoners Generally";
- 311) Title 31, Chapter 21, "Fair Housing Law";
- 312) Title 34, Chapter 36, "Loan Brokers";
- 313) Title 38, Chapter 70, "Utilization Reviews and Private Review Agents";
- 314) Title 38, Chapter 78, "Service Contracts";
- 315) Title 39, Chapter 9, "Weights and Measures";
- 316) Title 40, Chapter 5, "Attorneys-at-law";
- 317) Title 40, Chapter 29, "Uniform Standards Code for Manufactured Housing";
- 318) Title 40, Chapter 35, "Long Term Health Care Administrators";
- 319) Title 40, Chapter 53, "Polygraph Examiners Act";
- 320) Title 40, Chapter 54, "Dealers in Precious Metals";
- 321) Title 40, Chapter 60, "Social Workers";
- 322) Title 42, Chapter 17, "Awards Procedure";
- 323) Title 44, Chapter 1, "Department of Health and Environmental Control";
- 324) Title 44, Chapter 20, "South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act";

- 325) Title 44, Chapter 87, "Asbestos Abatement License";
- 326) Title 49, Chapter 1, "Waters, Water Resources and Drainage: General Provisions";
- 327) Title 50, Chapter 3, "Department of Natural Resources";
- 328) Title 50, Chapter 15, "Nongame and Endangered Species";
- 329) Title 52, Chapter 19, "Bungee Jumping";
- 330) Title 56, Chapter 2, "Specialized Vehicles";
- 331) Title 56, Chapter 11, "Road Tax on Motor Carriers";
- 332) Title 58, Chapter 17, "The General Railroad Law";
- 333) Title 59, Chapter 73, "School Taxes";
- 334) Title 41, Chapter 18, "South Carolina Amusement Rides Safety Code";
- 335) Title 1, Chapter 11, "Department of Administration";
- 336) Title 4, Chapter 25, "Regulation of Building Construction";
- 337) Title 12, Chapter 60, "South Carolina Revenue Procedures Act";
- 338) Title 12, Chapter 62, "South Carolina Motion Picture Incentive Act";
- 339) Title 15, Chapter 39, "Remedies and Judicial Sales Generally";
- 340) Title 15, Chapter 67, "Recovery of Real Property";
- 341) Title 22, Chapter 3, "Jurisdiction and Procedure in Magistrates' Courts";
- 342) Title 27, Chapter 37, "Ejectment of Tenants";
- 343) Title 27, Chapter 47, "Manufactured Home Park Tenancy Act";
- 344) Title 29, Chapter 3, "Mortgages and Deeds of Trust Generally";
- 345) Title 30, Chapter 4, "Freedom of Information Act";
- 346) Title 33, Chapter 45, "Cooperative Associations Generally";
- 347) Title 34, Chapter 25, "South Carolina Banking and Branching Efficiency Act";

- 348) Title 37, Chapter 20, "Consumer Identity Theft Protection";
- 349) Title 38, Chapter 5, "Authority and Requirements to Transact Business";
- 350) Title 38, Chapter 73, "Property, Casualty, Inland Marine, and Surety Rates and Rate-making Organizations";
- 351) Title 38, Chapter 75, "Property, Casualty, and Title Insurance Generally";
- 352) Title 39, Chapter 22, "State Warehouse System";
- 353) Title 39, Chapter 53, "Products Made by Blind Persons";
- 354) Title 40, Chapter 10, "Fire Protection Sprinkler Systems Act";
- 355) Title 40, Chapter 26, "Commercial Inspectors";
- 356) Title 44, Chapter 43, "Disposition of Human Bodies and Parts; Post-Mortem Examinations";
- 357) Title 45, Chapter 7, "Tourist Camps and Roadhouses";
- 358) Title 46, Chapter 27, "South Carolina Commercial Feed Act";
- 359) Title 46, Chapter 39, "Farmers' Associations";
- 360) Title 47, Chapter 2, "Large Wild Cats, Non-Native Bears and Great Apes";
- 361) Title 47, Chapter 11, "Sale, Grading, and Inspection of Livestock";
- 362) Title 47, Chapter 17, "Meat and Meat Food";
- 363) Title 49, "Waters, Water Resources and Drainage";
- 364) Title 54, Chapter 15, "Pilots and Pilotage";
- 365) Title 58, Chapter 5, "Gas, Heat, Water, Sewerage Collection and Disposal, and Street Railway Companies";
- 366) Title 59, Chapter 20, "Education Finance Act of 1977";
- 367) Title 59, Chapter 25, "Teachers";
- 368) Title 59, Chapter 40, "Charter Schools";
- 369) Title 59, Chapter 101, "Colleges and Institutions of Higher Learning Generally";

- 370) Title 63, Chapter 13, "Childcare Facilities";
- 371) Title 2, Chapter 65, "South Carolina Federal and Other Funds Oversight Act";
- 372) Title 4, Chapter 9, "County Government";
- 373) Title 4, Chapter 23, "Joint County Fire Districts";
- 374) Title 5, Chapter 3, "Change of Corporate Limits";
- 375) Title 11, Chapter 5, "Public Finance";
- 376) Title 11, Chapter 44, "High Growth Small Business Job Creation Act";
- 377) Title 12, Chapter 3, "South Carolina Tax Realignment Commission";
- 378) Title 12, Chapter 23, "License Taxes on Other Businesses";
- 379) Title 12, Chapter 33, "Alcohol Beverages Taxes";
- 380) Title 12, Chapter 63, "Energy Freedom and Rural Development Act";
- 381) Title 15, Chapter 11, "Notice of Lis Pendens";
- 382) Title 15, Chapter 35, "Judgment and Decrees Generally";
- 383) Title 15, Chapter 49, "Change of Name";
- 384) Title 16, Chapter 25, "Domestic Violence";
- 385) Title 23, Chapter 6, "Department of Public Safety";
- 386) Title 23, Chapter 51, "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act";
- 387) Title 24, Chapter 5, "Jails and Jailers";
- 388) Title 24, Chapter 19, "Judge William R. Byars Youthful Offender Act";
- 389) Title 30, Chapter 9, "Indexing and Filing";
- 390) Title 33, Chapter 46, "Telephone Cooperative Act";
- 391) Title 33, Chapter 49, "Electric Cooperatives";
- 392) Title 33, Chapter 57, "Nonprofit Raffles for Charitable Purposes";

- 393) Title 34, Chapter 1, "State Board of Financial Institutions";
- 394) Title 37, Chapter 23, "High-Cost and Consumer Home Loans";
- 395) Title 38, Chapter 12, "South Carolina Investments Laws";
- 396) Title 38, Chapter 17, "Reciprocal Insurance";
- 397) Title 38, Chapter 25, "Unauthorized Transaction of Insurance Business";
- 398) Title 38, Chapter 31, "South Carolina Property and Casualty Insurance Guaranty Association";
- 399) Title 38, Chapter 41, "Multiple Employer Self-Insured Health Plan";
- 400) Title 38, Chapter 51, "Administrators of Insurance Benefit Plans";
- 401) Title 38, Chapter 63, "Individual Life Insurance";
- 402) Title 39, Chapter 17, "Contractors and Grades";
- 403) Title 39, Chapter 19, "Warehouses and Warehousemen Generally";
- 404) Title 40, Chapter 55, "Psychologists";
- 405) Title 40, Chapter 61, "Sanitarians";
- 406) Title 40, Chapter 79, "South Carolina Alarm System Business Act";
- 407) Title 40, Chapter 83, "Registration of Immigration Assistance Service Act";
- 408) Title 42, Chapter 7, "Funds";
- 409) Title 43, Chapter 7, "Medical and Hospital Care";
- 410) Title 44, Chapter 32, "Body Piercing";
- 411) Title 44, Chapter 34, "Tattooing";
- 412) Title 44, Chapter 41, "Abortions";
- 413) Title 44, Chapter 69, "Licensure of Home Health Agencies";
- 414) Title 44, Chapter 71, "Quality Hospice Programs Act";
- 415) Title 46, Chapter 26, "Agricultural Liming Minerals and Landplaster";

- 416) Title 46, Chapter 33, "Shipment and Sale of Trees, Plants, and Shrubs";
- 417) Title 47, Chapter 1, "Cruelty to Animals";
- 418) Title 47, "Chapter 19, "Poultry Products Inspection Law";
- 419) Title 56, Chapter 7, "Traffic Tickets";
- 420) Title 56, Chapter 14, "Regulation of Manufacturers, Distributors and Dealers of Recreational Vehicles";
- 421) Title 56, Chapter 16, "Regulation of Motorcycle Manufacturers, Distributors, Dealers and Wholesalers";
- 422) Title 56, Chapter 27, "Professional Housemoving";
- 423) Title 57, Chapter 27, "Junkyard Control";
- 424) Title 58, Chapter 15, "Railroad, Street Railway, Steamboat and Canal Companies";
- 425) Title 59, Chapter 19, "School Trustees";
- 426) Title 59, Chapter 26, "Training, Certification and Evaluation of Public Educators";
- 427) Title 59, Chapter 58, "Nonpublic Post-Secondary Institution Licensing";
- 428) Title 59, Chapter 102, "Athlete Agents and Student Athletes";
- 429) Title 62, Chapter 2, Article 2, "Interstate Succession and Wills";
- 430) Title 63, Chapter 19, "Juvenile Justice Code";
- 431) Title 41, Chapter 41, "Employment and Workforce—Offenses, Penalties and Liabilities";
- 432) Title 4, Chapter 21, "Fire Protection and Ambulance Services; Medical Clinic Facilities";
- 433) Title 5, Chapter 19, "Civil Service Commissions";
- 434) Title 5, Chapter 27, "Streets and Sidewalks";
- 435) Title 6, Chapter 4, "Allocation of Accommodations Tax Revenues";
- 436) Title 6, Chapter 9, "Building Codes";

- 437) Title 7, Chapter 25, "Offenses Against the Election Laws";
- 438) Title 11, Chapter 9, "State Finances Generally";
- 439) Title 11, Chapter 11, "State Budget System";
- 440) Title 11, Chapter 13, "Deposit of State Funds";
- 441) Title 11, Chapter 15, "Bonds of Political Subdivisions";
- 442) Title 11, Chapter 45, "Venture Capital Investment Act of South Carolina";
- 443) Title 12, Chapter 11, "Income Tax on Banks";
- 444) Title 12, Chapter 39, "County Auditors";
- 445) Title 12, Chapter 51, "Alternate Procedure for Collection of Property Taxes";
- 446) Title 12, Chapter 53, "Tax Collection by Department of Revenue";
- 447) Title 17, Chapter 1, "South Carolina Research Authority";
- 448) Title 14, Chapter 3, "Supreme Court";
- 449) Title 14, Chapter 23, "Probate Courts";
- 450) Title 15, Chapter 50, "Structured Settlement Protection Act";
- 451) Title 16, Chapter 61, "Financial Transaction Card Crime Act";
- 452) Title 17, Chapter 7, "Autopsies and Inquest of the Dead";
- 453) Title 17, Chapter 27, "Uniform Post-Conviction Procedure Act";
- 454) Title 22, Chapter 1, "Magistrates Generally";
- 455) Title 22, Chapter 2, "Selection of Magistrates and Magistrates' Jury";
- 456) Title 23, Chapter 35, "Fireworks and Explosives";
- 457) Title 23, Chapter 43, "Modular Buildings Construction Act";
- 458) Title 24, Chapter 3, "State Prison System";
- 459) Title 24, Chapter 7, "County and Municipal Chain Gangs";

- 460) Title 25, Chapter 11, "Department of Veterans' Affairs";
- 461) Title 27, Chapter 50, "The Residential Property Condition Disclosure Act";
- 462) Title 29, Chapter 13, "Agricultural Liens";
- 463) Title 30, Chapter 6, "Uniform Real Property Electronic Recording Act";
- 464) Title 34, Chapter 43, "South Carolina Community Economic Development Act";
- 465) Title 37, Chapter 4, "Insurance";
- 466) Title 37, Chapter 5, "Remedies and Penalties";
- 467) Title 37, Chapter 10, "Miscellaneous Loan Provisions";
- 468) Title 38, Chapter 13, "Examinations, Investigations, Records, and Reports";
- 469) Title 38, Chapter 21, "Insurance Holding Company Regulatory Act";
- 470) Title 38, Chapter 33, "Health Maintenance Organizations";
- 471) Title 38, Chapter 35, "Mutual Benevolent Aid Associations";
- 472) Title 38, Chapter 38, "Fraternal Benefit Societies";
- 473) Title 38, Chapter 57, "Trade Practices";
- 474) Title 38, Chapter 95, "Interstate Insurance Product Regulation Compact";
- 475) Title 39, Chapter 3, "Trusts, Monopolies and Restraints of Trade";
- 476) Title 39, Chapter 51, "Anti-Freeze";
- 477) Title 40, Chapter 20, "South Carolina Dietetics Licensure Act";
- 478) Title 40, Chapter 80, "South Carolina Firefighters Employment and Registration Act";
- 479) Title 40, Chapter 82, "Liquid Petroleum Gas";
- 480) Title 42, Chapter 5, "Insurance and Self-Insurance";
- 481) Title 44, Chapter 15, "Local Mental Health Programs, Boards, and Centers";
- 482) Title 44, Chapter 61, "Emergency Medical Services";

- 483) Title 44, Chapter 75, "Athletic Trainers' Act of South Carolina";
- 484) Title 44, Chapter 89, "Birthing Center Licensure Act";
- 485) Title 46, Chapter 3, "Department and Commissioner of Agriculture";
- 486) Title 46, Chapter 19, "Local Marketing Authorities and Farm Marketing Centers";
- 487) Title 47, Chapter 4, "State Livestock-Poultry Health Commission";
- 488) Title 47, Chapter 5, "Rabies Control";
- 489) Title 48, Chapter 1, "Pollution Control Act";
- 490) Title 48, Chapter 46, "Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act";
- 491) Title 51, Chapter 13, "Regional Districts, Commissions and Authorities";
- 492) Title 55, Chapter 11, "Particular Airports";
- 493) Title 56, Chapter 25, "Nonresident Traffic Violator Compacts";
- 494) Title 56, Chapter 29, "Motor Vehicle Chop Shop, Stolen, and Altered Property Act";
- 495) Title 58, Chapter 41, "Renewable Energy Programs";
- 496) Title 59, Chapter 2, "South Carolina College Investment Program";
- 497) Title 59, Chapter 3, "State Superintendent of Education";
- 498) Title 59, Chapter 47, "School for the Deaf and the Blind";
- 499) Title 41, Chapter 16, "South Carolina Elevator Code"; and
- 500) Title 46, Chapter 10, "Boll Weevil Eradication."

Burns vs. Greenville County

Plaintiffs attempt to bootstrap the penalties section of Title 8, Chapter 21, to the South Carolina Supreme Court's decision in *James Mikell "Mike" Burns, Garry R. Smith and Dwight A.*

Loftis v. Greenville County Council and Greenville County, Opinion No. 28041 (Filed June 30, 2021).

In delivering the Court's opinion in *Burns*, Justice Few noted:

The plaintiffs—three members of the South Carolina General Assembly—claim the two charges are taxes and, therefore, violate section 6-1-310 of the South Carolina Code (2004). We agree. We declare the road maintenance and telecommunications taxes are invalid under South Carolina law.

The plaintiffs filed this lawsuit to challenge the validity of the ordinances on several grounds, including their claim the ordinances impose a tax and not a permissible fee. (Emphasis supplied herein).

Thus, just as Plaintiffs avoid mentioning any substantive provision of Title 8, Chapter 21 that Defendants are to have violated, they conspicuously omit any reference to "tax" or "taxes" when invoking *Burns*. Rather, they repeat the one-note samba, "*fees...fees...fees*," knowing full well that the Court held that Greenville County's ostensible road maintenance and telecommunications fees were instead **taxes** without a proper basis for their imposition. Indeed, the Court's entire focus is on taxes:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); see also S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("Service or user fee" also includes 'uniform service charges').

Except for value-based property **taxes**, a county "may not impose a new tax . . . unless specifically authorized by the General Assembly." § 6-1-310. Neither ordinance imposes a value-based property **tax**, and the General Assembly has not authorized Greenville County to impose any other new taxes. Therefore, unless the charges in the ordinances are "uniform service charges" under subsection 4-9-30(5)(a) or a "service or user fee" under subsection 6-1-330(A), the charges imposed pursuant to the ordinances are invalid under State law.

The Court makes no mention of the invalidity of Greenville County's fees under Title 8, Chapter 21, but instead discusses their shortcomings *vis-à-vis* S.C.Code Ann. Subsections 4-9-30(5)(a) and 6-1-330(A), and that, specifically, Greenville County's failure to comply with Subsection 6-1-330(A) makes its fees taxes.

The Court went on in *Burns* to provide:

In 1992, this Court addressed the question of what is a "uniform service charge authorized under [section] 4-9-30," and in particular, whether a "road maintenance fee" imposed by Horry County was "a service charge or a tax." *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992). We later explained, summarizing our extensive analysis in *Brown*, Under *Brown*, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers. *C.R. Campbell Const. Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68).

The South Carolina Supreme Court's decision in *Brown* clearly explains why the Aiken County Council began its road maintenance fee ordinance by noting:

The South Carolina Supreme Court has upheld a ruling that a road maintenance fee is a valid service charge;

The Supreme Court issued its decision in *Brown* on April 13, 1992. Aiken County adopted its road maintenance fee less than three months later on July 1, 1992, expressly referencing the *Brown* decision as its legal basis for doing so.

Five years after Aiken County adopted its road maintenance fee ordinance under the standard the Court articulated in *Brown*, the legislature amended a statute dealing with service or user fees. The *Burns* Court, citing that occurrence, noted:

In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "service or user fee"—including "uniform service

charges"—as "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee." After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6). Our analysis of the two ordinances at issue in this case begins and ends with subsection 6-1-300(6). (Emphasis supplied herein).

It is impossible to read the Court's last sentence, above, and find any evidence that Title 8, Chapter 21, ever entered its mind regarding a uniform service charge adopted under Home Rule (Title 4) and validated or invalidated pursuant to Title 6. In fact, the Court makes clear that its analysis involves nothing but 6-1-300(6).

The Court in *Burns* went on to discuss the legislative history behind the two ordinances at issue in that case, noting with respect to the telecommunications fee:

When County Council enacted Ordinance 4907, it did not address the factual question of whether an improved telecommunications system will enhance property values, and Greenville County presented only speculative evidence of such an enhancement at trial. The County Administrator testified the new system "could... enhance property values for individual property owners." One County Council member testified his own property "stands to benefit from better coordinated, faster, first responder services." Plaintiff Mike Burns testified on cross-examination the new telecommunication system "would benefit [him] as a property owner," but he said nothing about any benefit to his property value.

In this case, neither County Council when it adopted the ordinance nor Greenville County when it tried this case put any effort into demonstrating the new telecommunications system would meaningfully enhance property values.

The Court went on to make special mention that:

If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the

decision, as we did in C.R. Campbell Construction. (Emphasis supplied herein).

While Aiken County's road maintenance fee was in effect five years before the legislature adopted 6-1-300(6), and, therefore, falls squarely outside of the group of fees the Court specifically mentions as subject to a different analysis if adopted, "[a]fter 1997," as part of its budget process, Aiken County adopted in August 2021 thirty-seven specific findings and conclusions with respect to its road maintenance fee. *See* Exhibit 1, attached to and made a part of this Memorandum. Once again, in lumping Aiken County in with every other local government in South Carolina that Plaintiffs feel have road maintenance fees "almost identical" to Greenville County's, Plaintiffs either are unaware of the publicly adopted budget ordinance that includes this exhaustive legislative history on the impact of the road maintenance fee on property values and other benefits to fee payers, or are unaware of the Court's clear guidance that, "[i]f the governing body actually..." creates a legislative history, "...significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in C.R. Campbell Construction," or both.

Whatever the reason, the holding in *Burns* is:

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. (Emphasis supplied herein).

In a blistering concurring opinion, Justice Kittredge, joined by Chief Justice Beatty, wrote that:

"...this Court in recent years has received an increasing number of challenges to purported 'service or user fees.' Local governments, for obvious reasons, want to avoid calling a tax a tax. I am hopeful that today's decision will deter the politically expedient penchant for imposing taxes disguised as 'service or user fees.' I believe today's decision sends a clear message that the courts will not uphold taxes masquerading as 'service or user fees.' Going

forward, courts will carefully scrutinize so-called 'service or user fees' to ensure compliance with section 6-1-300(6)."

Notice again how these two Supreme Court Justices did not write, "carefully scrutinize so-called 'service or user fees' to ensure compliance with Title 8, Chapter 21," but for their compliance with 6-1-300(6).

Plaintiffs never categorize Aiken County's road maintenance fee as a "tax," even though that is the gravamen of *Burns*. They invoke *Burns* yet distance themselves from its holding. That's like trying to explain *McDonald's* without mentioning hamburgers.

Why leave out the import of the very decision Plaintiffs claim is controlling in this case? *Taxes. Taxes. Taxes.*

**Circuit Courts Lack Subject Matter Jurisdiction to Hear a Claim
For Wrongful Or Alleged Wrongful Attempt to Collect Taxes**

Plaintiffs have alleged that Defendants wrongfully collected road maintenance fees under facts and circumstances, and an ordinance, that is "almost identical" to the fees the South Carolina Supreme Court held to be "taxes." *Burns*, the case Plaintiffs contend is dispositive as to Aiken County's road maintenance fees, deals with the wrongful collection and attempt to collect taxes. Circuit Courts in South Carolina lack subject matter jurisdiction to hear any claim of wrongful collection of taxes or of the attempted wrongful collection of taxes.

In *Brackenbrook North Charleston, LP, North Bluff North Charleston, LP, Riverwoods, LLC, Ashley Arbor, LLC, et al. v. The County of Charleston, Andrew Smith in his official capacity as Charleston County Treasurer et al.*, Opinion No. 25855 (filed August 16, 2004), the South Carolina Supreme Court held:

In 1995 the General Assembly adopted the South Carolina Revenue Procedures Act (the Act) "to provide the people of this State with a

straight forward procedure to determine any disputed revenue liability." S.C. Code Ann. § 12-60-20 (2000). Section 12-60-80 (Supp. 2003) of the Act provides:
§ 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons. (Emphasis supplied herein).

Plaintiffs have not challenged the constitutionality of any South Carolina statute.

The cardinal rule of statutory interpretation is to determine and effectuate the legislature's intent. *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Envtl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007); *Dreher*, 370 S.C. at 80, 634 S.E.2d at 648; *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 62, 504 S.E.2d 117, 121 (1998); *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 597, 654 S.E.2d 284, 375 S.C. 589, 654 S.E.2d 284, 289 (Ct.App. 2007); *Shealy v. Doe*, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct.App. 2006); *Bass*, 365 S.C. at 469, 617 S.E.2d at 377.

Ascertaining the legislature's intent begins by determining whether the statute's meaning is clear on its face. *Peake*, 375 S.C. at 597, 654 S.E.2d at 289 [citing *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); *Eagle Container Co., L.L.C. v. County of Newberry*, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct.App. 2005)].

Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005);

Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *Grinnell Corp. v. Wood*, 378 S.C. 458, 467, 663 S.E.2d 61, 66 (Ct.App. 2008); *White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct.App. 2007) [citing *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct.App. 2005)].

The Court in *Normandy Corp. v. S.C. Dept. of Transp.*, Op. No. 4640 (S.C.Ct.App. filed December 17, 2009) opined:

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution and the laws of the state. *Duckett v. Goforth*, 374 S.C. 446, 456, 649 S.E.2d 72, 77 (Ct. App. 2007). Issues involving subject matter jurisdiction may be raised at any time, including on appeal. *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2 (2007).

The Court in *Dema* held:

South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, Page 121 § 11. In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. See *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001) (examining the language of the statute to determine the legislative intent regarding exclusive jurisdiction). *Id.* at 120.

Subsection 12-60-80 is a clear and unambiguous law that requires no statutory construction and should be applied by the court according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *Grinnell Corp. v. Wood*, 378 S.C. 458, 467, 663 S.E.2d 61, 66 (Ct.App.

2008); *White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct.App. 2007) [citing *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct.App. 2005)].

Since Plaintiffs have not challenged the constitutionality of any statute, there is no remedy available to them for the alleged wrongful or attempted wrongful collection of taxes, as *Burns* involved, other than that prescribed in Title 12, Chapter 60 of the South Carolina Code of Laws. Those remedies do not include circuit court relief.

Rather, the Legislature has devised a jurisdictional scheme for review that is exclusive to those entities set forth in the Revenue Procedures Act. See *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001).

Judicial review of a final decision of an administrative law judge is available pursuant to S.C.Code Ann. § 1-23-610 (Supp.2009), with the notice of appeal served and filed with the court of appeals. There is no circuit court role in the judicial review process of a tax challenge under South Carolina law for cases that do not involve the constitutionality of a statute. This case does not involve the constitutionality of any statute. Therefore, this Court does not have jurisdiction to hear Plaintiffs' claims. S.C.Code Ann. Section 12-60-80 (Supp.2009).

The Court has consistently affirmed the exclusivity of the remedies prescribed in the RPA. In *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct.App. 2004), the Court held:

Taxpayers first argue the RPA (Revenue Procedures Act) does not apply to their cause of action for illegal taxation against the County. We disagree.

The RPA prescribes the procedures for resolving claims for the wrongful collection of taxes in our state. The language of its operative provisions signals the Act's broad and comprehensive application. Specifically, section 12-60-80 of the RPA provides

"there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A) (Supp. 2003) (emphasis added). The only exception to this mandate is for "action[s] for a declaratory judgment where the sole issue is whether a statute is constitutional." § 12-60-80(B); *see also Evans v. State*, 344 S.C. 60, 543 S.E.2d 547, 550 (2001) ("Recognizing the separation of powers doctrine prohibits an agency and ALJ from ruling on the constitutionality of a statute, [the court] concluded § 12-60-3390 was inapplicable 'where the sole issue [was] whether a statute or other legislative action is constitutional.'" (quoting *Ward v. State*, 343 S.C. 14, 20, 538 S.E.2d 245, 248 (2000)). *Id.* at 456. (Emphasis in original).

The Court in *B & A Development* further held:

The (Revenue Procedures) Act provides that a taxpayer may contest real property taxes assessed by the county assessor by filing a claim for refund with the assessor and provides a right of appeal to the Administrative Law Judge Division. S.C. Code Ann. § 12-60-2560 (2000). The same basic procedures for taxpayers contesting a county's personal property tax assessment are also provided for under the RPA. *See* S.C. Code Ann. § 12-60-2940 (2000).

Our supreme court further clarified the scope of the administrative remedies available to taxpayers under the RPA in *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004). In that case, the plaintiff taxpayers brought an action in circuit court alleging Charleston County levied an excessive millage rate on real property. The circuit court allowed the taxpayers' judicial action, finding the taxpayers had no administrative remedies under the RPA because the Act did not cover taxpayer challenges to the county's millage rate determination. The circuit court concluded the RPA's mandated administrative remedies only applied to taxpayer challenges to a county's "property tax assessment" (PTA). Because the taxpayers in *Brackenbrook* did not dispute any component of their PTA, the circuit court held the taxpayers had an immediate right of judicial action. The supreme court reversed, holding that:

While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests. Section 12-60-2530(A) specifically provides the board of assessment appeals may rule on any PTA dispute "and also other relevant claims of a legal or factual nature except claims relating to property tax exemptions."

Looking first to the Act, as we must, we hold that Taxpayers' remedy is not this direct circuit court refund suit, but rather an administrative refund pursuant to § 12-60-2560. *Id.* at 398, 399, 602 S.E.2d at 44 (footnote omitted). As interpreted by our supreme court, therefore, the RPA's administrative procedures and remedies are not limited to a narrow class of taxpayer suits. Rather, the Act's provisions are sufficiently expansive to include any "relevant claims of a legal or factual nature." The RPA therefore vests county administrative bodies with jurisdiction to hear and decide in the first instance a broad range of taxpayer suits.

Accordingly, section 12-43-285 does not supplant the remedial scheme of the RPA. Had the Legislature intended to allow for direct action in circuit court — in contravention of the broadly defined scope of the RPA — it could have expressly provided for such immediate judicial review. *Id.* at 459. (Emphasis supplied herein).

Failure to Exhaust Administrative Remedies

As Plaintiffs have not raised a constitutional challenge to any statute, any claims they may have of wrongful or attempted wrongful collection of taxes are governed by the RPA, which sets forth a clear administrative path for relief. *Drummond v. State*, 378 S.C. 362, 662 S.E.2d 587 (2008).

While the Legislature has given exclusive jurisdiction in this type of case to another court pursuant to the RPA, even if this Court could intervene, and even if the fee at issue were governed by Title 8, Chapter 21, Plaintiffs' failure to exhaust their statutorily prescribed administrative remedies would deprive them of jurisdiction to hear their claims.

Plaintiffs have not asserted that they should be excused from the requirement to exhaust administrative remedies under the RPA. Even if Plaintiffs had raised a novel issue in any of their claims, the same also would be subject to dismissal under the exclusivity of the RPA remedies. As the Court held in *B & A Development*:

"...[w]here the dispute is not as to the underlying facts but as to interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss for failure to state a claim." *Evans v. State*, 344 S.C. 60 at 68, 543 S.E.2d 547 at 551.

The overarching issue in this case is whether the exclusive remedy provisions of the RPA govern the dispute resolution process in adjudicating Taxpayers' claims. This issue is purely a question of law. Therefore, we find further development of the factual record would not aid in determining the statutory and constitutional questions raised. The circuit court therefore acted appropriately in deciding this issue on a motion to dismiss. *Id.* at 462.

Taxpayers must exhaust their administrative remedies provided under the RPA before their suit for illegal taxation can receive judicial review. *Id.* at 462.

Since the Legislature has chosen to give jurisdiction in this case to another court pursuant to the RPA, and that jurisdiction is exclusive rather than concurrent with the Circuit Court, Plaintiffs' failure to exhaust their administrative remedies under the RPA is a separate basis to dismiss the Complaint, and one that this Court need not reach given the jurisdictional bar to further review. S.C.Code Ann. § 12-60-80 (Supp.2009); *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001); *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct.App.); *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004); and *Drummond v. State*, 378 S.C. 362, 662 S.E.2d 587 (2008).

Moreover, S.C.Code Ann. Section 12-60-60 prohibits a judicial stay of tax collections:

An action of a court or an administrative law judge cannot stay or prevent the department or an officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due. (Emphasis supplied herein).

Subject matter jurisdiction is statutory, and cannot be conferred by the court, or a court rule, or agreement of the parties to a case or controversy. The remedies set forth in the South

Carolina Revenue Procedures Act (RPA), Title 12, Chapter 60, South Carolina Code of Laws, do not include circuit court relief. See *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct.App. 2004); *Evans v. State*, 344 S.C. 60, 543 S.E.2d 547, 550 (2001); *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000); and *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

Issues involving subject matter jurisdiction may be raised at any time, including on appeal. *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2 (2007). *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (S.C.Ct.App. 2009) *Slate v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004).

Critically, and no doubt yet another fact Plaintiffs hope does not to come to light, S.C.Code Ann. Section 12-60-80 provides:

(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. (Emphasis supplied herein).

Subsection 12-60-80(C) is so off-putting to aspiring plaintiffs that, still hoping to capitalize on *Burns* without having to acknowledge its holding, the more enterprising ones searched the United States Code to try to find a way to bring a class action suit in federal court. Unfortunately, for such parties, 28 U.S. Code § 1341 provides:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

As circuit courts lack subject matter jurisdiction to hear causes of action involving the alleged wrongful collection or attempted wrongful collection of taxes, they are bound by S.C.Code Ann. Section 12-60-3390, which categorically provides:

If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice. See Brackenbrook North Charleston, LP, North Bluff North Charleston, LP, Riverwoods, LLC, Ashley Arbor, LLC, et al. v. The County of Charleston, Andrew Smith in his official capacity as Charleston County Treasurer et al., Opinion No. 25855 (filed August 16, 2004). (Emphasis supplied herein).

Due Process and Unjust Enrichment

Plaintiffs allege at paragraph 31 of their Complaint:

In light of the Burns decision, the Road Maintenance Fees were enacted in contravention of state law, and as such are invalid, *ultra vires*, and void.

That statement is categorically false.

Plaintiffs further allege at paragraph 69 of their Complaint:

“Defendants are aware that all Road Maintenance Fees are collected were collected (sic) in violation of state law.”

That statement also is not true. There has been no judicial determination that Aiken County’s ordinance adopting a road maintenance fee is illegal, invalid, unconstitutional, or inapplicable. In fact, Plaintiffs’ Complaint is the first one challenging Aiken County’s road maintenance fee since it was adopted almost thirty years ago.

Plaintiffs, who upon information and belief are longtime Aiken County residents and frequent attendees and participants at Aiken County government meetings, never mentioned to any

Aiken County Defendant any concern either may have had with Aiken County's road maintenance fee prior to filing this lawsuit.

As the South Carolina Supreme Court has consistently held:

A municipal ordinance is a legislative enactment and is presumed to be constitutional. *Southern Bell Telephone and Telegraph Co., v. City of Spartanburg*, 285 S.C. 495, 331 S.E.2d 333 (1985). The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose. *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424, 425 (1991). *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C.550, 397 S.E.2d 662 (1990), *Bob Jones University v. Greenville*, 243 S.C. 351, 133 S.E.2d 843. The South Carolina Supreme Court has held that "the party attacking the ordinance bears the burden of proving its unconstitutionality beyond a reasonable doubt." *City of Beaufort v. Baker*, 315 S.C. 146, 432 S.E.2d 470, 474 (1993).

The Court has further held that:

The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent on respondent to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. See *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

The *Burns* decision makes no mention of any other road maintenance fee or ordinance in the State of South Carolina or in the world other than that adopted by Greenville County for that County's road maintenance and telecommunications purposes.

The Court in *Burns* did not direct a refund of any road maintenance or other fee paid by anyone.

The *Burns* Court nowhere mentions Title 8, Chapter 21 of the South Carolina Code of Laws.

The Court makes no mention in *Burns* of unjust enrichment. Nor does it discuss or make any finding with respect to procedural or substantive due process.

Aiken County's road maintenance fee, set forth in Ordinance No. 92-5-19, was adopted pursuant to S.C.Code Ann. Section 4-9-120, which provides:

The council **shall take legislative action by ordinance** which may be introduced by any member.

First reading of Ordinance No. 92-5-19 was made on April 21, 1992. It was referred to the Aiken County Development Committee and considered by that Committee on May 12, 1992. Second reading of that ordinance was held on May 5, 1992. The public hearing was held on May 5, 1992. Third reading was held on May 19, 1992, and the Ordinance became effective on July 1, 1992. The Aiken County Council Clerk certified that the Ordinance was advertised for Public Hearing on April 19, 1992.

All proceedings in connection with the proposal, consideration, public hearing and input, and adoption of Aiken County's road maintenance fee were lawful and proper pursuant to South Carolina law.

S.C.Code Ann. Section 4-9-25 provides:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. **The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.** (Emphasis supplied herein).

Anyone interested in Aiken County's road maintenance fee proposal was given opportunity at a public hearing to raise any concerns he, she, it or they may have had. There is no record of

any concerns having been expressed, or anyone claiming that there was no due process to express any input anyone may have desired to give.

All the Court did in *Burns* was declare Greenville County's road maintenance and telecommunications fees to be taxes. Relief from alleged wrongful collection of taxes may only be made in South Carolina pursuant to the Revenue Procedures Act, and not under Title 8, Chapter 21...or *Burns* by osmosis under the "almost identical" theory.

Aiken County's Road Maintenance Fee Predates 6-1-300(6)

Lastly, but as a fundamental issue that serves as yet another independent basis to dismiss Plaintiffs' Complaint, Aiken County's road maintenance fee was implemented at a time when the South Carolina Supreme Court evaluated fees and uniform service charges under the precedent it set forth in *Brown*.

As adopted by the Aiken County Council as part of its annual budget, Exhibit 1 memorializes Aiken County's consideration not only of the Court's *Brown* factors that governed the County's road maintenance fee ordinance as passed in 1992, but also the factors the Court discussed in *Burns*, a case decided nearly thirty years after Aiken County's ordinance was adopted in accordance with the Court's criteria for valid uniform service charges:

17. In the 1997 case of *C.R. Campbell Construction Co., Inc. v. The City of Charleston*, the South Carolina Supreme Court held:

Our recent decision in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), is dispositive on this issue. **In *Brown*, we upheld a \$15 road maintenance fee on all cars registered in the county as a valid uniform service charge under S.C.Code Ann. § 4-9-30(5)(a) (Supp.1995).**

Similarly, under S.C.Code Ann. § 5-7-30 (Supp.1995), municipalities are authorized to impose uniform service charges.

Under Brown, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers. In this case, it is undisputed the transfer fee is used only for parks and recreational facilities, the payers benefit because their real property values are enhanced, the transfer fee does not generate more revenue than that spent on such facilities, and all payers pay a uniform percentage of the sale price of property conveyed. According to the facts in the record, the transfer fee is a uniform service charge and therefore valid under Brown.

18. The revenue from Aiken County's road maintenance fee is used to the benefit of the payers, even if the general public also benefits.

19. The revenue from the road maintenance fee is used only for the specific improvements contemplated in its collection.

20. The revenue generated by the road maintenance fee does not exceed the cost of the improvements made.

21. The road maintenance fee is uniformly imposed on all of the payers.

22. Findings and conclusions 18 through 21 confirm that the Aiken County road maintenance fee meets the South Carolina Supreme Court's requirements set forth in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

23. In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "service or user fee"—including "uniform service charges"—as "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee."

24. In *Burns v. Greenville County Council and Greenville County*, Opinion No. 28041, filed June 30, 2021, the Supreme Court of South Carolina considered road maintenance fees, holding that:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); see also S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("Service or user fee" also includes "uniform service charges").

In 1992, this Court addressed the question of what is a "uniform service charge authorized under [section] 4-9-30," and in particular, whether a "road maintenance fee" imposed by Horry County was "a service charge or a tax." *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992).

We later explained, summarizing our extensive analysis in *Brown*, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers. *C.R. Campbell Const. Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68).

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If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in C.R. Campbell Construction.

Critically, the Court held:

After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6).

Findings 25 through 37 in Exhibit 1 set forth a detailed legislative history that takes into account the Court's concerns in *Burns*, even though Aiken County's fee was adopted many years before those concerns were required to be addressed for those local governments that implemented their road maintenance fees under the Court's standard in *Brown*.

The Aiken County Council concludes its findings in Exhibit 1 by noting:

Since 1992, Aiken County's road maintenance fee has provided essential and continuous infrastructure improvements and maintenance that allows those paying the fee to realize the benefits of the relationship among a sound County Road System, property rights and property values, while providing ancillary benefits to visitors, tourists and transients who use the system—preserving the first prong of the South Carolina Supreme Court's requirements in *Brown* that, "the revenue generated [therefrom] is used to the benefit of the payers, even if the general public also benefits."

At the same time, the County Road System, funded largely through the road maintenance fee, takes into account the life and property-saving consequences of well-built and maintained road and drainage infrastructure that can reduce emergency response times, and evacuations in the event of a crisis.

While the fee was adopted prior to the enactment of S.C.Code Ann. Section 6-1-300, when the S.C. Supreme Court's *Brown* criteria were required of local government service and user fees, and uniform service charges, its forward-thinking provisions have proven that the private property rights and values, and public safety rationales are in line with the extensive public and private research studies from South Carolina, the United States, and countries around the world cited herein, and with the 1997 State law that takes into account a feepayer benefit "in some manner different from the members of the general public not paying the fee."

The road maintenance fee has allowed for the provision of an essential government service and the promotion of public safety, while limiting to the greatest extent those who pay it to the motorists most likely to reap the benefits their funding has ensured since 1992.

Conclusion

In a recent U.S. Court of Appeals' decision involving federally mandated vaccinations, the Court noted:

After the President voiced his displeasure with the country's vaccination rate in September, the Administration pored over the U.S. Code in search of authority, or a "work-around," for imposing a national vaccine mandate. The vehicle it landed on was an OSHA ETS (Emergency Temporary Standard)... *BST Holdings, L.L.C. et al. v. Occupational Safety and Health Administration, United States Department of Labor*; United States United States Court of Appeals Fifth Circuit filed November 12, 2021, No. 21-60845).

In like manner, Plaintiffs scoured the South Carolina Code of Laws in search of a penalties provision that could serve as a vehicle to leverage the Court's holding in an unrelated case, involving different governments, different jurisdictions, and different facts, circumstances, ordinance adoption dates, and legislative histories.

They named as Defendants a County Administrator and a County Treasurer who are not State officers, who have no authority to adopt a fee pursuant to Title 8, Chapter 21 for road maintenance, who have no authority to adopt uniform service charges, fees or taxes pursuant to S.C.Code Ann. Sections 4-9-30, or 6-1-300, and a County governing body that is expressly authorized to adopt uniform service charges pursuant to Title 4 and Title 6.

Plaintiffs invoked Title 8, Chapter 21 when that portion of South Carolina law has nothing to do with the fee they are challenging.

They cited the South Carolina Supreme Court case of *Burns v. Greenville County* while disavowing its holding that Greenville County's fees are really taxes.

They represented to this Court that Aiken County's road maintenance fee was "enacted in contravention of state law," and that "Defendants are aware that all Road Maintenance Fees are collected in violation of state law," when neither of those things is true. And they apparently made such claims completely unaware that the Aiken County Council publicly adopted Exhibit 1 in conjunction with its current road maintenance fee, and as a retrospective on the fee since its imposition in 1992.

Plaintiffs avoid any mention of "taxes," lest it get them kicked out of this Court and vectored to another, when class action suits are not allowed in any South Carolina court for tax refund claims.

In so doing, Plaintiffs have joined that group of litigants who are trolling and polling the State of South Carolina to find any county or municipality that has adopted a road maintenance fee, cutting and pasting the names thereof into a one-size-fits-all pleading, and petitioning the court for relief by arguing that all cases look alike.

This failed Jedi mind trick—*“These are not the statutes and case holdings you’re looking for”*—is “almost identical” to that attempted in a sovereign citizen’s complaint when someone submits a grainy copy of U.C.C. filing statement signed by his thumbprint, and alleges that since the United States departed from the gold standard, he owes no taxes.

Plaintiffs have sued the wrong parties, in the wrong court, under the wrong statute.

This case should be dismissed without argument.

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

December 1, 2021

Aiken, South Carolina

Sponsor(s) : County Council
 First Reading : July 20, 2021
 Second Reading : August 17, 2021
 Public Hearing : September 21, 2021
 Third Reading : September 21, 2021
 Effective Date : September 22, 2021

I, Kathleen Phay
 Council Clerk, certify that this Ordinance was
 published for a Public Hearing on 9/5/2021.

ORDINANCE NO. 21-09-25

COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR AIKEN COUNTY

To Amend Ordinance No. 21-06-18, Fiscal 2021-2022 Annual Operating, Capital and Debt Service Budgets for Aiken County, South Carolina, by Adding Specific Language to Section 16, Fees and Charges Regarding the Imposition of Certain Service and User Fees and to Make Appropriations of Proceeds Received from the American Rescue Plan Act.

WHEREAS:

1. The Aiken County Council, pursuant to state statutes, has the authority to prepare an annual budget for all Departments and Agencies of the County Government; and
2. The Fiscal Year 2021-2022 Annual Operating, Capital and Debt Service budget ordinance was given third reading and adopted by the County Council on June 15, 2021 with an effective date of July 1, 2021; and
3. County Council finds that this ordinance needs to be amended in certain particulars regarding fees and charges for services provided by the County and to appropriate funds received, or to be received, from the American Rescue Plan Act.

NOW THEREFORE BE IT ENACTED BY THE AIKEN COUNTY COUNCIL THAT:

1. Ordinance No. 21-06-18, Fiscal 2021-2022 Annual Operating, Capital and Debt Service Budgets for Aiken County, South Carolina, is hereby amended by adding the following language to Section 16, Fees and Charges:

Exhibit 1 contains a discussion of the South Carolina statutes authorizing counties to impose service and user fees, and uniform service charges, along with a review of various South Carolina Supreme Court cases involving such fees and charges. Exhibit 1, and its findings and conclusions, are incorporated in and made a part of this Ordinance.

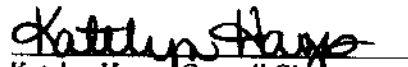
2. FY 22 additional appropriations of \$33,189,883 for the American Rescue Plan Act funds to be budgeted in various line items in Fund 604 to be used for the purposes outlined below:

Sewage/Wastewater projects to be determined by Council	\$15,076,883
Detention Center Expansion	\$9,000,000
Aiken Electric Broadband	\$3,000,000
Lost Revenue – Public Safety Salary Upgrades	\$2,500,000
Projects or programs compliant with ARPA to be determined by Council	\$2,000,000
FY 22 Items that were eliminated from original budget	\$ 763,000
Aiken Center	\$ 500,000
United Way	\$ 350,000

This Ordinance shall become effective on September 22, 2021.

Adopted at the regular meeting of Aiken County Council on September 21, 2021.

ATTEST:


Katelyn Hayes, Council Clerk

SIGNED:


Gary Bunker, Chairman

REVIEWED BY:


County Attorney

COUNCIL VOTE: Majority
OPPOSED: Furguele/ Hightower

EXHIBIT 1¹

Service and User Fees, and Uniform Service Charges in South Carolina Counties

Article VIII of the South Carolina Constitution establishes local government in South Carolina, including at Section 7 the "organization, powers and duties of counties."

S.C.Code Ann. Section 4-9-25 provides:

All counties of the State...have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C.Code Ann. Section 4-9-30 provides that, "[e]ach county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works."

S.C.Code Ann. Subsection 4-9-30(14) authorizes county governments in South Carolina, "to enact ordinances for the implementation and enforcement of the powers granted in this section."

The Aiken County Council holds public hearings prior to the adoption of annual operational and capital budgets in accordance with S.C.Code Ann. Subsection 4-9-130(1), and in so doing provides the public hearing notice for budget adoption required by S.C.Code Ann. Section 6-1-80, as well as the notice required under S.C.Code Ann. Section 30-4-80, the South

¹ Exhibit 1 contains a discussion of the South Carolina statutes authorizing counties to impose service and user fees, and uniform service charges, along with a review of various South Carolina Supreme Court cases involving such fees and charges. Exhibit 1, and its findings and conclusions, are incorporated in and made a part of this Ordinance.

Carolina Freedom of Information Act, S.C.Code Ann. Sections 30-1-10 *et seq.*, for meetings of public bodies.

Pursuant to S.C.Code Ann. Section 4-9-140, Aiken County, "[a]nnually and prior to the beginning of the fiscal year [adopts] operating and capital budgets for the operation of county government and...in such budgets identif(ies) the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted."

The County's budget further provides, "[f]or the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources," including service and user fees, and uniform service charges adopted in accordance with State law.

Pursuant to Title 6, Article 3 of the South Carolina Code of laws, counties and other local governing bodies in South Carolina have the authority to assess taxes and "service or user fees," with the latter defined in S.C.Code Ann. Subsection 6-1-300(6) as, "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee. 'Service or user fee' also includes 'uniform service charges.'"

Pursuant to S.C.Code Ann. Section 6-1-330:

(A) A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee; (and)

(B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid.

Service or user fees, including uniform service charges, are adopted by Aiken County pursuant to the statutory requirements, and proceed through the legislative and adoption processes set forth above.

Revenue from service and user fees, and uniform service charges (including from the County's road maintenance fee, discussed below), are segregated into their own special revenue fund that is used explicitly for the intended purposes of such fees and charges. The special revenue fund is included in Aiken County's financial statements that are audited each year internally and by outside, competitively procured accounting firms.

Aiken County Road Maintenance Fee

It has been nearly thirty years since Aiken County implemented a road maintenance fee to improve the County Road System. County Council has determined that it is appropriate to provide a public report incorporating its findings and conclusions on the impact payment and collection of the road maintenance fee has had on the County's Road System, including roadway and drainage improvements and maintenance, and the state of the County's infrastructure as a result of the uninterrupted collection of this fee since 1992.

Therefore, the Aiken County Council makes the following findings and conclusions with respect to the road maintenance fee program described herein, and issues its report on the results and impact thereof:

Findings and Conclusions

1. In 1992, Aiken County adopted Ordinance Number 92-5-19, implementing a road maintenance fee paid solely by owners of motor vehicles registered in Aiken County. All proceeds of this fee are kept in, "a separate fund for accounting purposes specifically to be used for maintenance and improvement of the County Road System, to include road signs and correction of drainage problem(s) impacting the County Road System."
2. Emphasizing the uniform service charge nature of the road maintenance fee, as opposed to a tax that might implicate a larger number of payers with a more attenuated benefit from the use of funds so collected, Ordinance Number 92-5-19 is enforced through traditional ordinance means rather than through the remedies available for unpaid taxes.
3. In establishing the legislative history of Ordinance Number 92-5-19, County Council specifically found that the fee was appropriate, noting that immediately prior to its adoption, "The South Carolina Supreme Court [has] upheld a ruling that a road maintenance fee is a valid service charge";²
4. The road maintenance fee implemented pursuant to S.C.Code Ann. Section 4-9-30(5)(a) is a different funding mechanism than taxes generated by, e.g., a "Capital Project Sales Tax" pursuant to S.C.Code Ann. Sections 4-10-300 et seq., or "Optional Methods for Financing Transportation Facilities," pursuant to S.C.Code Ann. Section 4-37-10 et seq., which entail referenda for specific projects. Funds generated through the road maintenance fee are spent directly on the bedrock, day-to-day roadway and infrastructure essentials of Aiken County.
5. Having the fee paid by registered motor vehicle owners who benefit directly from it is in keeping with the numerous South Carolina laws that distinguish between "transients" and

² In Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), the South Carolina Supreme Court upheld a \$15 road maintenance fee on all cars registered in the county as a valid uniform service charge under S.C.Code Ann. § 4-9-30(5)(a).

"residents" of a county, as well as the many State statutes that differentiate between "tourists" and "residents" of a county.

6. Included among those State laws making such distinctions is S.C.Code Ann. Section 12-36-920, which prescribes a specific tax on accommodations for transients, without defining the term, "transients," and imposes a sales tax equal to seven (7%) percent on the gross proceeds derived from rental accommodations.
7. Further, Title 6, Article 5, authorizes a local accommodations tax, "on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration."
8. Similarly, S.C.Code Ann. Section 6-1-530 requires that all "revenue generated by the local accommodations tax must be used exclusively for:
 - (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
 - (2) tourism-related cultural, recreational, or historic facilities;
 - (3) beach access, renourishment, or other tourism-related lands and water access;
 - (4) highways, roads, streets, and bridges providing access to tourist destinations;
 - (5) advertisements and promotions related to tourism development; or
 - (6) water and sewer infrastructure to serve tourism-related demand"; and
9. Title 6, Article 7 of the South Carolina Code of Laws empowers local governments in South Carolina:

to impose a "Local hospitality tax" on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine; and
10. S.C.Code Ann. Section 6-1-730(A) requires that the "revenue generated by the hospitality tax must be used exclusively for the following purposes:
 - (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

- (2) tourism-related cultural, recreational, or historic facilities;
- (3) highways, roads, streets, and bridges providing access to tourist destinations;
- (4) advertisements and promotions related to tourism development;
- (5) water and sewer infrastructure to serve tourism-related demand;
- (6) control and repair of flooding and drainage within or on tourism-related lands or areas; or
- (7) site preparation for items in this section including, but not limited to, demolition, repair, or construction"; and

11. Section 6-1-730(C) recognizes the value of tourism and transient activity, providing that:

If applying the provisions of subsection (A)(7), then the revenues must be expended exclusively on public works projects designed to eliminate or mitigate the adverse effects of recurrent nuisance flooding, including that which is attributable to sea-level rise, or other recurrent flooding. Such adverse effects include road closures and other transportation disruptions, stormwater drainage issues, and compromised public infrastructure. The public works projects must be within or on tourism-related lands or areas.

12. It is well-settled in South Carolina caselaw that words that are not defined, not considered "terms of art," or not referred to as doctrinal, are given their ordinary and customary meaning. Merriam-Webster, an ordinarily and customarily referred to English dictionary, defines "transient" as, "passing through or by a place with only a brief stay," using the example of "transient visitors."

The same authority defines, "tourist," as "one who makes a tour for pleasure or culture."

13. Consistent with S.C.Code Ann. Section 12-36-920, Sections 12-36-150 and 12-36-1320 include a special imposition of taxes on transient construction property.
14. In addition, Title 12, Chapter 36 of the South Carolina Code of Laws imposes a specific tax on accommodations for transients, Chapter 117 of the South Carolina Code of State Regulations references "transients" in Section 117-305.8., "Meals Served by Boarding Houses," Section 117-307.3, "Certain Facilities Not Subject to the Tax," and Section 117-334.2, "Goods coming into this State - Use Tax," prescribes specific tax treatment and consequences with respect to transients and transient property. Notably, Section 117-334.2(C) makes an assumption about transients and their property rather than rely on domiciliary certitude of the taxpayer:

(C) When tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser's designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax...; and

15. In adopting Title 6, Article 8 of the South Carolina Code of Laws, the "Fairness in Lodging Act," the General Assembly found in S.C.Code Ann. Section 6-1-180(B) that:

(1) providing lodging accommodations for tourists is a major business in this State;

(2) there are instances where individuals who rent residential accommodations to tourists are failing to collect and remit the local accommodations tax imposed pursuant to Article 5 of this chapter and the state sales tax on accommodations imposed pursuant to Section 12-36-920;

(3) those who fail to collect and remit local and state taxes on providing accommodations to transients are competing unfairly against those who dutifully meet these legal obligations;

(4) by the enactment of the Fairness in Lodging Act, municipalities and counties are provided the option to exercise additional enforcement authority with respect to these taxes and to engage in active cooperation with the South Carolina Department of Revenue in data sharing, to provide comprehensive enforcement of the applicable accommodations tax laws so as to promote a more equal competitive playing field for those engaged in this State in the business of renting accommodations to tourists; and

16. The Legislature also differentiated between residents and tourists by adopting S.C.Code Ann. Section 6-1-185(B), which provides:

(B) The provisions of this article do not apply to any residential real property lawfully assessed for property tax purposes pursuant to Section 12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code Section 280A(g); and

17. In the 1997 case of C.R. Campbell Construction Co., Inc. v. The City of Charleston, the South Carolina Supreme Court held:

Our recent decision in Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), is dispositive on this issue. In Brown, we upheld a \$15 road maintenance fee on all cars registered in the county as a valid uniform service charge under S.C.Code Ann. § 4-9-30(5)(a) (Supp.1995).

Similarly, under S.C.Code Ann. § 5-7-30 (Supp.1995), municipalities are authorized to impose uniform service charges.

Under Brown, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers. In this case, it is undisputed the transfer fee is used only for parks and recreational facilities, the payers benefit because their real property values are enhanced, the transfer fee does not generate more revenue than that spent on such facilities, and all payers pay a uniform percentage of the sale price of property conveyed. According to the facts in the record, the transfer fee is a uniform service charge and therefore valid under Brown.

18. The revenue from Aiken County's road maintenance fee is used to the benefit of the payers, even if the general public also benefits.
19. The revenue from the road maintenance fee is used only for the specific improvements contemplated in its collection.
20. The revenue generated by the road maintenance fee does not exceed the cost of the improvements made.
21. The road maintenance fee is uniformly imposed on all of the payers.
22. Findings and conclusions 18 through 21 confirm that the Aiken County road maintenance fee meets the South Carolina Supreme Court's requirements set forth in Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).
23. In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "service or user fee"—including "uniform service charges"—as "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee."
24. In Burns v. Greenville County Council and Greenville County, Opinion No. 28041, filed June 30, 2021, the Supreme Court of South Carolina considered road maintenance fees, holding that:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); *see also* S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("Service or user fee' also includes 'uniform service charges'").

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If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in *C.R. Campbell Construction*.

Critically, the Court held:

After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6).

25. While Aiken County's road maintenance fee was adopted five years prior to the enactment of Subsection 6-1-300(6), it meets not only the four (4) requirements the South Carolina Supreme Court established for a valid uniform service charge in *Brown v. Cty. of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), the road maintenance fee provides a benefit to fee payers in some manner different from the members of the general public not paying the fee, in that only those owning property in Aiken County realize the increase in property values attributable to improved roads, drainage and infrastructure systems directly resulting from the fee. Specifically, a 2013 study published in the International Journal of Economy, Management and Social Sciences concluded that:

The efficiency of any form of human activity system, including urban area, largely depends on the provision of efficient infrastructure and services.

The quality and coverage of infrastructure services have a major impact on living standards and economic growth...

The competition for locations with good urban infrastructure usually results in an increase in land and housing values, either sales or rentals.

Infrastructure does not only affect production and consumption directly, it also creates many direct and indirect externalities. It involves large flows of expenditure, thereby creating additional employment. Equally, infrastructure can have a significant impact on output, income, employment, international trade, and quality of life.

[a]ttributes that have been commonly used in property valuation research include[e] accessibility factors, neighbourhood (sic) level factors, specific negative externalities, public services, taxes and density factors.

One of the determinants of property value is infrastructure, the presence of which leads to appreciation in property values. Its absence affects neighbourhood (sic) properties adversely.

[g]ood and adequate infrastructure is central to property values...a residential user may be prepared to pay a high value for a property depending on his consideration for basic facilities such as accessibility, water and electricity.

[i]nfrastructure services have taken on a new urgency in part because they have a direct bearing on economic growth...adequate infrastructure reduces the cost of production, which in turn affects profitability, level of output and employment; particularly in small-scale businesses.

Participants in the study listed good water, electricity, and good roads as the top three most desired infrastructural facilities, ranking good roadways ahead of drainage systems, waste disposal systems, recreational facilities, and medical centers; and

26. In addition, there are numerous scholarly public and private reports evidencing a manifest nexus between the good quality of roads and increased property values, as well as the poor condition of roads and lower property values, having been published prior to, contemporaneous with, and after Aiken County adopted its road maintenance fee in 1992, and County Council craves reference herein to a representative selection of them:
- a. An eighteen-year (1982-1999) parcel-level real estate assessment study using a land value model, an improvement or structure value model, and a total property value model, yielding empirical results that suggest that improvement type, freeway proximity, parcel location at key network points (e.g., corner parcels), and timing of construction and completion play key roles in property valuation.³

³ *Property Values and Highway Expansions: An Investigation of Timing, Size, Location, and Use Effects* by Brian ten Siethoff, Cambridge Systematics, Inc., and Kara M. Kockelman, C. B. Luce Assistant Professor of Civil Engineering

- b. Highway capitalization studies analyzing the effects of highway construction on residential sale prices.⁴
- c. Extensive literature review by Huang (1994) finding that virtually every major land use study came to the conclusion that transportation improvements positively affect the value of nearby land.⁵
- d. A 1997 study of median housing prices and monthly rents in the San Francisco Bay Area showing a strong positive association between accessibility and land prices, after controlling for a wide variety of other variables, including parcel size and square footage of development.⁶
- e. A 2001 report concluding that homeowners and renters value improvements to the transportation network whether their perception of the travel benefits is direct or indirect.⁷
- f. Classical economic theory study showing that when a highway is built, large parcels of land that previously had poor accessibility – or none at all – are suddenly underpriced. Often, the market immediately responds: the area is quickly developed and the real estate market establishes a new equilibrium based on the new transportation technology. The land-value impacts that are experienced can be significant.⁸
- g. Major improvement to infrastructure should also have a strong, positive effect on nearby real estate values.^{9 10}

Department of Civil Engineering, The University of Texas at Austin, Transportation Research Record No. 1812:191-200, Presented at the 81st Annual Meeting of the Transportation Research Board, January 2002.

⁴ Transportation Research Board (TRB). *Special Report Number 245 1995. Expanding Metropolitan Highways*. Washington, DC: National Academy Press.

⁵ Huang, W. 1994. "The Effects of Transportation Infrastructure on Nearby Property Values: A Review of the Literature." Institute of Urban and Regional Development: Berkeley, CA.

⁶ Kockelman, K.M. 1997. "Effects of Location Elements on Home Purchase Prices and Rents in San Francisco Bay Area." *Transportation Research Record No. 1606*, 40-50.

⁷ Mikelbank, Brian. 2001. "Spatial Analysis of the Relationship between Housing Values and Investments in Transportation Infrastructure." Paper presented at the 40th Annual Meeting of the Western Regional Science Association, Palm Springs, California (February).

⁸ Giuliano, G. 1989. "New Directions for Understanding Transportation and Land Use."

⁹ Landis, J., Gubhakurta, S., Huang, W., and Zhang, M. 1995. "Rail Transit Investments, Real Estate Values, and Land Use Change: A Comparative Analysis of Five California Rail Transit Systems." The University of California Transportation Center, University of California at Berkeley: Berkeley, CA.

¹⁰ Tomasik, J. 1987. "Socioeconomic and Land Values of Urban Freeways in Arizona." Phoenix, AZ. Arizona Department of Transportation.

- h. A 1961 study concluding that lack of access may decrease land values.¹¹
- i. Construction associated impacts and property values.¹²
- j. Property-value models predictions that depressed freeway designs contribute more to residential property values than at-grade freeways.¹³
- k. "Improvements to transportation networks, especially those in growing areas, tend to have impacts on local land markets. In principle, an improvement to a link in the network will confer economic benefits to adjacent and nearby properties by increasing the utility that the network provides.

...urban economic theory suggests that many of these benefits are capitalized into local property values, yielding a localized spillover effect."¹⁴

- 27. These empirical findings are not limited to United States' transportation studies. The same trends are seen around the world. For example, one study of urban transportation from Brazil clearly showed the nexus between infrastructure and property values:

Using detailed administrative data on property characteristics and sales prices, we implement a differences-in-differences methodology that compares treated and comparison neighborhoods over time to estimate the effects of road infrastructure improvements and revitalization of urban parks. We find that road improvements are highly cost-effective, producing an increase of 6.1% in property prices which translate into a return of \$4.25 per dollar invested.¹⁵

- 28. Based on data from surveys, Tax Policy Center's Data Query System (DQS), the U.S. Department of Transportation, Insurance Institute for Highway Safety and the Federal Highway Administration's "Highway Statistics: Highway Infrastructure, Public Road Mileage by Functional System," Consumer Affairs concluded in its 2019 study of the

¹¹ Mohring, Herbert. 1961. "Land Values and the Measurement of Highway Benefits." *Journal of Political Economy* 49 (June), 236-249.

¹² Nelson, J. P. 1982. "Highway noise and property values: A survey of recent evidence," *Journal of Transport Economics and Policy*, 16(2), 117-38.

¹³ Lewis, C.A., Buffington, J.L., and Vadali, S.R. 1997. "Land Value and Land Use Effects of Elevated, Depressed, and At-Grade Level Freeways in Texas." Texas Transportation Institute Research Report Number 1327-2. Texas A&M University: College Station, TX.

¹⁴ "The Economic Impact of Upgrading Roads, 2009-2016," Minnesota Department of Transportation.

¹⁵ "The Impact of Upgrading Municipal Infrastructure on Property Prices: Evidence from Brazil," by Paloma Acevedo Jason A. Hobbs Sebastian Martinez, Inter-American Development Bank (May 2017).

amount of money spent per mile of road, the number of motor crash fatalities, the total capital spending toward roadway expansion and repair, and a survey of 1,418 consumers across the United States that South Carolina has the worst roadways in America.

29. The American Road and Transportation Builders Association sets forth the challenges each community faces when it comes to critical infrastructure:

According to the National Highway Traffic Safety Administration, approximately 35,000 people die and nearly three million are injured each year on America's roadways. The U.S. Department of Transportation indicates that poor road conditions and obsolete road designs are a factor in about 14,000 highway deaths each year. Americans tolerate this carnage under the misimpression that it is unavoidable. That is not true. Prioritizing investments in improved roadway design, construction and operation can save thousands of lives every year.

This is a public health crisis that demands a new paradigm. One key factor jeopardizing travelers is the inadequate capacity in our basic roadway infrastructure.

According to the U.S. Census Bureau, since 1982, the U.S. population has grown 24 percent. During that same period, vehicle miles of travel rose by 74 percent; yet, total U.S. road capacity has increased by only 6 percent. More cars crowded together on roadways frustrate drivers into shortening following distances and adopting more aggressive driving styles.

Providing a safer roadway system for all Americans must be a top public policy priority.

30. Quality road systems have a direct impact on emergency response times, with forward-thinking jurisdictions even considering the strategic avoidance of routes with speed bumps that could cause delays where seconds can mean the difference between life and death. The road maintenance fee is used to plan, account for, design and build a road network that enhances public safety and emergency response times.¹⁶
31. In a Community Engagement Study conducted by neighboring Lexington County, South Carolina in 2019-2020, residents listed "roads" as their top priority, and "...faster response times for EMS, fire service, and crime-in-progress law enforcement," and "...increased funding for paved road repairs." In the same Study, 66% of respondents said that they would support additional levies, fees and taxes for stormwater drainage funding.¹⁷

¹⁶ "FY 2012 Performance and Accountability Report," Montgomery County Fire Rescue Service.

¹⁷ "Lexington County Community Engagement Study: Tracking Resident Perceptions and Priorities," Winter 2019/2020, MarketSearch, 2721 Devine Street, Columbia, SC 29205.

32. Aiken County is within a hurricane and 10-mile Emergency Planning Zone (EPZ), with the Savannah River Site nuclear facilities located within its evacuation routes. A sound road, drainage and infrastructure system is critical to the public safety of its inhabitants, as well as to those who may be in Aiken County at the time of a natural or manmade disaster.
33. On August 4, 2021, the White House released its, "State Fact Sheets Highlighting the Impact of the Infrastructure Investment and Jobs Act Nationwide," noting that:

For decades, infrastructure in South Carolina has suffered from a systemic lack of investment. In fact, the American Society of Civil Engineers gave South Carolina a C- grade on its infrastructure report card.

In South Carolina there are 1,702 bridges and over 7,292 miles of highway in poor condition. Since 2011, commute times have increased by 7.4% in South Carolina, and on average, each driver pays \$625 per year in costs due to driving on roads in need of repair.

34. Aiken County's road maintenance fee is not intended to be paid by transients or tourists, has no intention to do so, and based upon studies, reports, data analyses and public and private research compilations demonstrating a clear nexus between infrastructure quality, including roadway quality, and real property values, believes it would be unfair to impose such a fee on those who do not live and work in the County benefitting from increased property values based on its roadway and infrastructure vision and plans. The revenue generated from the road maintenance fee is used to the benefit of the payers, even though the general public also benefits as it traverses, however transiently, the maintained roadway and infrastructure systems of Aiken County.
35. In addition to meeting the *Brown* factors and the requirement of a unique feepayer benefit for uniform service charges imposed by local governments in South Carolina, Aiken County's road maintenance fee is consistent with the policies and purposes of the transportation laws of the United States, set forth in 49 U.S. Code § 5301 as:

(a) DECLARATION OF POLICY.—

It is in the interest of the United States, including the economic interest of the United States, to foster the development and revitalization of public transportation systems with the cooperation of both public transportation companies and private companies engaged in public transportation.

(b) GENERAL PURPOSES.—The purposes of this chapter are to—

- (1) provide funding to support public transportation;
- (2) improve the development and delivery of capital projects;

- (3) establish standards for the state of good repair of public transportation infrastructure and vehicles;
- (4) promote continuing, cooperative, and comprehensive planning that improves the performance of the transportation network;
- (5) establish a technical assistance program to assist recipients under this chapter to more effectively and efficiently provide public transportation service;
- (6) continue Federal support for public transportation providers to deliver high quality service to all users, including individuals with disabilities, seniors, and individuals who depend on public transportation;
- (7) support research, development, demonstration, and deployment projects dedicated to assisting in the delivery of efficient and effective public transportation service; and
- (8) promote the development of the public transportation workforce.

36. In an Opinion dated July 15, 1996, the South Carolina Attorney General cited the case of Hosp. Assn. of S.C. v. County of Chas., et al., 464 S.E.2d 113, 116 (1995), noting that:

[o]ur Supreme Court stated that with the adoption of Article VIII of the Constitution, local governments...must be given "home rule" authority. As ratified, new Article VIII directed the General Assembly to implement what was popularly referred to as "home rule" by establishing the structure, organization, powers, duties, functions and responsibilities of local governments by general law. S.C. Const. art. VIII, Secs. 7 and 9. In addition, new Article VIII mandated a liberal rule of construction regarding any constitutional provisions or laws concerning local government. S.C. Const. art. VIII, Sec. 17.

Of course, in reviewing the constitutionality or validity of an Ordinance, this Office has recognized on numerous occasions that [a]n ordinance, if it should be adopted, would be entitled to the same presumptions of constitutionality to which an enactment of the General Assembly would be. It would be presumed that the ordinance would be constitutional in all respects. The ordinance will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Cf., Thomas v. Macllen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality.

[a]n ordinance is a legislative enactment and is presumed to be constitutional. The burden is on the taxpayer to prove unconstitutionality beyond a reasonable doubt.

37. In Talbot v. Myrtle Beach Board of Adj., 222 S.C. 165, 72 S.E.2d 66 (1952), the Supreme Court of South Carolina held that:

One of the most firmly established principles in the field of constitutional law is that the wisdom of legislation is a matter exclusively for legislative determination.

...courts have been declared to have nothing to do with the question of the wisdom, expediency, propriety, or good policy thereof.

The matter is largely within the discretion of the legislative authority, which is presumed to have investigated and found conditions such that the legislation which it enacted was appropriate, so that if the facts do not clearly show that the bounds of that discretion have been exceeded, the courts must hold that the action of the legislative body is valid. In this respect, it has been declared that the municipal governing bodies are better qualified because of their knowledge of the situation to act upon those matters than are the courts, which will not substitute their judgment for that of the legislative body.

[There is] the presumption of validity with which any ordinance is ordinarily clothed, which is, in turn, product of the like presumption which follows a legislative enactment; and

In the case of De Treville v. Groover, Mayor, 219 S.C. 313, 329, 65 S.E. (2d) 232, 240, the Supreme Court of South Carolina held: "It should be added that the power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the courts to pass upon the wisdom or expediency of municipal ordinances or regulations.

Conclusion

Since 1992, Aiken County's road maintenance fee has provided essential and continuous infrastructure improvements and maintenance that allows those paying the fee to realize the benefits of the relationship among a sound County Road System, property rights and property values, while providing ancillary benefits to visitors, tourists and transients who use the system—preserving the first prong of the South Carolina Supreme Court's requirements in Brown that, "the revenue generated [therefrom] is used to the benefit of the payers, *even if the general public also benefits.*"

At the same time, the County Road System, funded largely through the road maintenance fee, takes into account the life and property-saving consequences of well-built and maintained road and drainage infrastructure that can reduce emergency response times, and evacuations in the event of a crisis.

While the fee was adopted prior to the enactment of S.C. Code Ann. Section 6-1-300, when the S.C. Supreme Court's *Brown* criteria were required of local government service and user fees, and uniform service charges, its forward-thinking provisions have proven that the private property rights and values, and public safety rationales are in line with the extensive public and private research studies from South Carolina, the United States, and countries around the world cited herein, and with the 1997 State law that takes into account a feepayer benefit "in some manner different from the members of the general public not paying the fee."

The road maintenance fee has allowed for the provision of an essential government service and the promotion of public safety, while limiting to the greatest extent those who pay it to the motorists most likely to reap the benefits their funding has ensured since 1992.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

v.)

**NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR MOTION
FOR JUDGMENT ON THE PLEADINGS**

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

TO: TERRY E. RICHARDSON, JR.; WILLIAM C. LEWIS; BRADY R. THOMAS;
DAVID R. PRICE, JR.; SAMUEL B. TOOKER; CHARLES J. HODGE AND
T. RYAN LANGLEY, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants"), will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Courthouse, Aiken, South Carolina, at such time and place as may be set by the Court, an Order, pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF, dismissing the Plaintiffs' Complaint without prejudice for lack of subject matter jurisdiction or alternatively with prejudice as to the merits.

The City Defendants' motion is based on the following grounds:

1. The exclusive jurisdiction for this action is pursuant to the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.* The Circuit Court lacks subject matter jurisdiction over this declaratory judgment action and the Plaintiffs' claims seeking a refund or recovery of any illegal or wrongfully collected taxes as claimed by the Plaintiffs. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The Plaintiffs are not challenging the constitutionality of any statute. Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

2. The Plaintiffs have failed to exhaust all administrative remedies as provided under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, and therefore, is barred from proceeding with this action in the Circuit Court.

3. The Plaintiffs' First Cause of Action is also barred based upon the defense of mootness.

4. The Plaintiffs' Second Cause of Action for unjust enrichment is barred by sovereign immunity. The South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment to be prosecuted against a governmental entity.

5. The Plaintiffs' Third Cause of Action fails to state facts sufficient to constitute a cause of action as a matter of law. The "officers" against whom a cause of action based on S.C. Code Ann. § 8-21-30 may be brought are limited to the following by S.C. Code Ann. § 8-21-10: master-in-equity, magistrate, constable, secretary of state, appraisers of homestead and commissioners in dower or partition, county auditor, clerk of court, register of deeds, deputy

surveyor, and probate judge. The Defendant Bedenbaugh, as the City Manager for the City of Aiken, does not qualify as an "officer" under S.C. Code Ann. § 8-21-10. In addition, the "road maintenance fee" at issue is not one of the fees and costs prescribed by Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23. Moreover, road maintenance is not of the "services enumerated" in Chapter 21 of Title, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, or Article 1 of Chapter 19 of Title 23.

6. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

7. The imposition of a penalty under S.C. Code Ann. § 8-21-30 violates the Excessive Fines Clauses of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South Carolina Constitution and is contrary to the public policy of the State of South Carolina.

8. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

9. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

10. The Plaintiffs' Third Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is preempted by S.C. Code Ann. § 12-60-80(A).

11. The Plaintiffs do not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021), the Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261. Thus, the Plaintiffs are precluded from recovering money damages for the alleged violations of the South Carolina Constitution.

12. The Plaintiffs' attempt to bring this action as a class action is expressly barred by S.C. Code Ann. § 12-60-80(C).

13. The legislative actions taken by the Defendants City of Aiken and Aiken City Council are fairly debatable and are therefore presumptively legal and constitutional. The decision by the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), to the extent held to applicable to this action and the road maintenance fee enacted by the City of Aiken, is entitled only to prospective application and effect.

14. The Plaintiffs' claims are, in whole or in part, barred by common law legislative immunity.

15. The Defendant Aiken City Council is not a proper party. Aiken City Council is not a body politic separate and apart from City of Aiken. Instead, Aiken City Council is the governing body of the City of Aiken.

16. The Defendant Stuart Bedenbaugh, who is sued in his official capacity as the City Manager for the City of Aiken, is the alter ego of the City of Aiken. See, *Kentucky v. Graham*, 473

U.S. 159 (1985) (“[o]fficial capacity suits ... genuinely represent only another way of pleading an action against an entity of which the officer is an agent”). Thus, the suit against Bedenbaugh in his official capacity should be dismissed as duplicative. *See, Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (affirming the dismissal of a claim against a superintendent in his official capacity because it was essentially a claim against the board of education and was, therefore, duplicative).

This motion is based upon the pleadings filed in this case; a memorandum of law as may be submitted at or prior to the hearing; and such other matters as may be presented to the Court.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

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

December 8, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Mark Gregory Thompson and Jane Page	)	C/A No.: 2021-CP-02-2323
Thompson, individually and on behalf of	)	
all those similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	PLAINTIFFS' OMNIBUS RESPONSE IN
vs.	)	OPPOSITION TO DEFENDANTS' MOTIONS
	)	TO DISMISS
	)	
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 City Council, and Stuart	)	
Bedenbaugh in his official capacity as	)	
City Manager of Aiken.	)	
	)	
<i>Defendants.</i>	)	
	)	

INTRODUCTION

On June 30, 2021, the South Carolina Supreme Court announced to all counties in this state that fees, like the Road Maintenance Fees at issue, are illegal and not authorized under South Carolina law. *See Burns v. Greenville County Council*, 433 S.C. 583, 590 (2021) (“Going forward, courts will carefully scrutinize so-called ‘service or user fees.’”) (J. Kittredge, concurring). The Defendants in this action (both Aiken County and the City of Aiken) had all but identical Road Maintenance Fees to the one invalidated in *Burns*. Given this, post the *Burns* decision, Aiken City Defendants have repealed their illegal Road Maintenance Fee, but have failed to refund any of the illegal fees collected. Compl. ¶ 37. Interestingly, despite having an identical ordinance, Aiken County continues to collect monies pursuant to this illegal fee. *Id.* ¶ 26. As a result, Defendants are hoarding millions in illegally collected Road Maintenance Fees that they refuse to return to their citizenry. *Id.* ¶¶ 10, 42.

In response, Plaintiffs filed this suit seeking an order declaring Defendants' Road Maintenance Fee ordinances unconstitutional, unlawful, void *ab initio*, and mandating that Defendants refund Plaintiffs and putative Class Members the illegal fees they were forced to pay. Additionally, pursuant to S.C. Code Ann. § 8-21-30, Plaintiffs seek an order awarding Plaintiffs and putative Class Members ten times the amount of fees illegally charged.¹

FACTUAL ALLEGATIONS

A. Defendants' Road Maintenance Fees

Aiken County Defendants' Road Maintenance Fee was imposed by Aiken County Council 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, and has retained it. *Id.* ¶ 26.

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:

¹ Plaintiffs' Counsel has informed Defense Counsel that Plaintiff will dismiss without prejudice: Clay Killian, as Aiken County Administrator, Aiken County Council, Stuart Bedenbaugh, and Aiken City Council. As such, any argument dealing with these Defendants will not be addressed.

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. ¶ 27.

In 2020, Aiken City Defendants' 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. Defendant Treasurer Jason Goings, as Aiken County Treasurer, is responsible for overseeing the collection of the Road Maintenance Fees for the County. *Id.* ¶ 17, 24, 25.

B. The Burns Decision

On June 30, 2021, the South Carolina Supreme Court found Greenville County Ordinance No. 4906,² 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 this ordinance 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

² 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 a “service or user fee” 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*, Defendants’ imposition of all-but-identical Road Maintenance Fees in this case is unlawful, and Defendants’ continued collection and retention of those fees is an ongoing deprivation of the rights of Plaintiff and the putative Class Members. Compl. ¶ 91.

LEGAL STANDARD

In deciding a motion to dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6), the trial court should consider the allegations set forth on the face of the Plaintiffs’ complaint. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The trial court must deny the motion to dismiss if “facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007); *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The question to be considered is whether, when viewed in the light most favorable to the Plaintiff, the complaint states a valid claim for relief, and further, the complaint should not be

dismissed merely because the court doubts the Plaintiff will prevail. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004).

Under South Carolina Rule of Civil Procedure 12(b)(1), a movant challenges the Court's power over the subject matter of an action. Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008). As such, "the question of subject matter jurisdiction is a question of law for the Court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

ARGUMENT

Defendants Clay Killian, Jason Goings, Aiken County Council, and Aiken County ("Aiken County Defendants") raise a number of grounds in their motion to dismiss ("County Motion to Dismiss"). Defendants Aiken City Council, City of Aiken, and Stuart Bedenbaugh ("Aiken City Defendants") raise sixteen grounds in their motion to dismiss ("City Motion to Dismiss").³ Both motions raise substantially similar arguments, and they may be grouped into four legal issues:

- Inapplicability of the Revenue Procedures Act. *See* City Mot. Dismiss ¶¶ 1, 2, 3, 10, and 12; *see also* County Mot. Dismiss at pp. 46, 50-58.
- The applicability of S.C. Code Ann. § 8-21-30 to the unlawful fees charged. *See* City Mot. Dismiss ¶¶ 5-6; *see also* County Mot. Dismiss at pp. 3-50.
- Availability of Unjust Enrichment. *See* City Mot. Dismiss ¶ 4; *see also* County Mot. Dismiss at pp. 58-61.

³ As to the pending motions for protective order. Plaintiffs have no objection to staying discovery pending resolution of the motions to dismiss. As such, those motions will not be addressed in this Omnibus Response.

- Miscellaneous Affirmative Defenses and Inapplicable Constitutional Arguments. *See* City Mot. Dismiss ¶¶ 3, 7-9, 11, 13, 14.

Plaintiffs will address each issue in turn. In sum, however, Defendants are actively flouting a South Carolina Supreme Court directive by retaining money illegally taken from their citizenry, and nothing raised in either the City Defendants' motion or the County Defendants' motion warrants dismissal of this action.

I. The Revenue Procedures Act is Inapplicable and does not Bar Plaintiffs' Class Claims.

Defendants assert that the Circuit Court lacks jurisdiction to hear this case because the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.* ("RPA"), applies to this dispute. Defendants specifically argue that Plaintiffs' exclusive remedy is through the RPA, Plaintiffs' class action claims are barred by S.C. Code Ann. § 12-6-80(C), and Plaintiffs have failed to exhaust administrative remedies as required by the RPA. At the outset, the RPA does not apply to this case, and therefore, neither does § 12-60-80(C) or (A).

A close reading of the RPA, most critically S.C. Code Ann. § 12-60-20 (titled "Legislative intent"), reveals the RPA applies *only* to disputes involving South Carolina Department of Revenue ("SCDOR") and/or property taxes. S.C. Code Ann. § 12-60-20 (limiting RPA to "a dispute with the Department of Revenue and a dispute concerning property taxes."). This suit does not involve SCDOR nor property taxes. Thus, the RPA does not apply.

Consequently, and contrary to assertions of the Defendants, the RPA does not deprive this Court of jurisdiction; require exhaustion of administrative remedies; or bar class wide relief. *See* City Mot. Dismiss ¶¶ 1, 2, 3, 10, and 12; *see also* County Mot. Dismiss at pp.46, 50-58.

1. The Revenue Procedures Act only applies to disputes with the SCDOR and disputes concerning property taxes.

Section 12-60-20 unambiguously sets forth the General Assembly's intent in promulgating the RPA:

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).

It is well-established in South Carolina jurisprudence that 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). Further, “[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.

In this case, the intent of the legislature is expressly given in § 12-60-20. The statute makes clear that the RPA applies in two scenarios: **(1) disputes with the SCDOR**, and **(2) disputes concerning property taxes**. This case involves neither. Further, a review of case law reveals that our Courts have only 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).

Indeed, the South Carolina Supreme Court, in *Lightner v. Hampton Hall Club, Inc.*, recently addressed the control of § 12-60-20 on the RPA's scope. There, the Court clarified the

scope 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).

Additionally, Aiken County is not the only county facing these lawsuits. An identical lawsuit is pending in Greenville County. In that case, Greenville County raised similar argument dealing with the RPA. In his order denying Greenville County’s motion to dismiss, Judge Lawton McIntosh resoundingly rejected the argument that the RPA applies to these types of claims. *See* Ex. A (Judge McIntosh Order). The analysis applied by Judge McIntosh is the identical analysis Plaintiffs would ask the Court apply in this case.

In addition to the Supreme Court and Judge McIntosh, the Honorable Deadra L. Jefferson, applied a similar analysis in holding that the RPA did not apply to a challenge to Beaufort County’s imposition of improper costs applied in the execution of sale of delinquent tax property. *See* Ex. B at p. 9. There, the Court relied on S.C. Code Ann. § 12-60-20 to hold that the RPA did not apply because the dispute did not involve the Department of Revenue, nor property taxes. *Id.* at p. 10. Plaintiffs would implore the Court to follow the same analysis in this case.

Plaintiffs have not sued the SCDOR in any capacity, nor do Plaintiffs’ 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.”); *see also Burns*, 433 S.C. at 586 (“Neither ordinance imposes a value-based property tax.”). Instead, Plaintiffs have sued Aiken County, the City of Aiken, and its Treasurer (not the SCDOR) based upon their imposition

of the illegal Road Maintenance Fees (not property taxes). *See generally* Compl.⁴

2. Section 12-60-80(C) does not bar Plaintiffs' class claims.

As the RPA does not apply to this case, neither does the RPA's provision barring class actions in 12-60-80(C) cited in Defendants' motions. *See* City Mot. to Dismiss ¶ 12; *see also* County Mot. Dismiss at p.57.

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 § 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 § 12-60-80(C) plainly states that the prohibition against class actions for “*refund[s]*” applies only to claims involving “*taxes.*” The term “taxes” is expressly defined by the RPA:

“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).

In this case, Defendants imposed their illegal user fees under Title 6 of the South Carolina Code of Laws. *See* S.C. Code Ann. § 6-1-330. The fee at issue was not passed pursuant to Title 12.

⁴ Plaintiffs will not separately address Defendants' argument regarding exhaustion of administrative remedies. Defendants' argument regarding administrative remedies is expressly tied to the Revenue Procedures Act applying. *See* City Mot. Dismiss ¶ 2; *see also* County Mot. Dismiss at p.57. As the RPA does not apply in this case, there is no requirement that these remedies must be exhausted.

The only taxes the County can impose pursuant to Title 12 are *ad valorem* property taxes, of which Aiken County and the City of Aiken's fees are not, as each were passed as a service or user fee. 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.

Next, to the extent Defendants may argue that the final clause of § 12-60-80(C) imposes 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—that argument is specious. Such an expansive reading of § 12-60-80(C) would mean 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. That interpretation of § 12-60-80(C) is nonsensical, and the Court should reject it summarily.

The sensible interpretation of the final clause in § 12-60-80(C) is that the General Assembly only 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. Indeed, 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 DISPUTES OR CLAIMS WITH THE DEPARTMENT OF REVENUE ARE DETERMINED AND RESOLVED;

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

Notably absent from the Title 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 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.”).

Like the Supreme Court in *Buist*, this Court must construe § 12-60-80 narrowly in accordance with the General Assembly’s expressed intent as defined in § 12-60-20. In doing so, the Court should reject Defendants’ invitation to abdicate Rule 23, SCRCPP, and impose a blanket ban on any class action being maintained against any political subdivision regardless of whether the RPA governs the underlying claims.

II. S.C. Code Ann. § 8-21-30 Applies to This Suit.

Both City of Aiken⁵ Defendants and Aiken County Defendants wrongly contend that S.C. Code Ann. § 8-21-30 “has nothing to do with road maintenance,” and therefore is not applicable to this dispute. *See* City Mot. Dismiss ¶¶ 5-6; *see also* County Mot. Dismiss at p.3. This is a baseless assertion.

Section 8-21-30 provides an individual who has been charged an unauthorized fee by public officer a remedy in circuit court for ten times the illegal fee charged. 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, 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) (“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.”).

Under South Carolina law, a fee is illegally charged unless it is authorized by statute. *See* S.C. Code Ann. § 8-21-15(A). Plaintiffs 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.

⁵ Defendant, City Manager Stuart Bedenbaugh, will be dismissed from this suit, so any argument as to him regarding S.C. Code Ann. § 8-21-30 will not be addressed.

In this case, an officer, Treasurer Goings,⁶ charged and collected illegal fees, the Road Maintenance Fees, and Plaintiffs have brought suit in the Court of Common Pleas for ten times the amount illegally charged. This is the exact scenario for which § 8-21-30 applies, and Defendants have provided no supportable argument to the contrary.

1. County Treasurers are Officers for Purposes of S.C. Code Ann. § 8-21-30.

Defendants argue that a County Treasurer does not qualify as an “officer” under S.C. Code Ann. § 8-21-10. This argument is easily disposed with. 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.⁷ 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,

⁶ Plaintiffs have agreed with Defendants to dismiss without prejudice the County Administrator Clay Killian. Thus, any argument regarding § 8-21-30’s applicability as to the Aiken County Administrator is moot.

⁷ Title 8 is titled “Public Officers and Employees” and Chapter 21 is titled “Fees and Costs Generally.”

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],” Defendants’ first argument regarding § 8-21-30 fails outright.

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

Defendants next assert two similar arguments to contend that § 8-21-30 does not apply. *See* City Mot. Dismiss ¶ 5; *see also* County Mot. Dismiss at pp. 3-45. First, Defendants argue that “road maintenance” is not an enumerated service under § 8-21-10, and second, the fees are not those prescribed in Chapter 21 of Title 8. The argument being § 8-21-30 will only apply to fees enumerated in Chapter 21 and for services rendered in Chapter 21. Such a limited construction 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).

In addition, Defendants’ argument requires one to read § 8-21-30 as only applying to situations involving charges for an authorized fee. This is a bizarre construction resulting in a severe limitation of the statute in favor of the officer, when the rules of construction require the opposite. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324, 326 (1941).

Indeed, Defendants’ reading results in an absurd scenario. Borrowing Aiken County Defendants’ example, a magistrate is authorized to charge a ten-dollar fee pursuant to statute. Therefore, the magistrate violates the § 8-21-30 by imposing a fee of twenty-five dollars instead. *See* County Mot. Dismiss at pp. 16-17. Yet, under Aiken County’s reading, that same magistrate may charge a \$100 fee wholly unauthorized by law in the first place and not be subject to liability under § 8-21-30. Such an unauthorized fee would not be enumerated in Chapter 21; thus, under Defendants’ reading, § 8-21-30 would not apply. Such a reading cannot stand as it 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* discussed *supra*.

Moreover, sections in Article 1 of Chapter 21 (the location of § 8-21-30) contemplate prohibitions of any fee “unless authorized by statute” not just those enumerated in Chapter 21.⁸ *See* S.C. Code Ann. § 8-21-15. Additionally, Defendants’ arguments ignore 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 and prohibited, and will subject an officer charging them to liability under § 8-21-30.

While there is limited case law applying § 8-21-30,⁹ the Attorney General has rendered opinions supporting Plaintiffs’ construction that § 8-21-30 will apply to fees and services not enumerated in Chapter 21. 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:

[o]ur Supreme Court has consistently recognized that costs and fees “are in the nature of penalties and the statutes granting them have always been strictly

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

⁹ *See Dean v. Todd*, 49 S.C. 461, 27 S.E.2d 471 (1897); and *Tinsley v. Kirby*, 8 S.C. 113 (1877).

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 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).¹⁰

If this this statutory scheme applies to restrict the sheriff’s office from charging a fee for drug-sniffing dogs, despite there being no mention of drug-sniffing dogs anywhere in Chapter 21 of Title 8, the scheme would equally apply wherein a County Treasurer charges 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.

3. S.C. Code Ann. § 8-21-30 Has Not Been Implicitly Repealed.

Aiken City Defendants argue that section 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the “TCA”). *See* City Mot. Dismiss ¶ 6. This assertion is unsupported by South Carolina jurisprudence.

At the outset, repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. *See Butler v. Unisun Ins. Co.*, 323 S.C. 402, 475 S.E.2d 758 (1996). Further, the enactment of a general statute (the TCA) does not repeal an earlier more specific statute (8-21-30). *See City of Rock Hill v. S.C. Dep’t of Health & Env’t Control*, 302 S.C.

¹⁰ *See also* Thomas W. Holland, Sr., Esquire, 2011 WL 1444710 (S.C.A.G 2011); Office of the Attorney General, State of South Carolina, 1985 S.C. Op. Atty Gen No. 85-103, 1985 WL 166073 (Sept. 18, 1985).

161, 167, 394 S.E.2d 327, 331 (1990). The Tort Claims Act did not address situations in which an officer charges an unauthorized fee. Here, we have a general statute (the TCA) which does not address the specific situation at issue in § 8-21-30, nor does it directly conflict with the other. Therefore, the TCA does not implicitly repeal the § 8-21-30.¹¹

Additionally, Plaintiffs' cause of action for violations of § 8-21-30 seeks to recover only what is authorized by the plain language of the statute itself—"liability for ten times [the] fee illegally charged." S.C. Code Ann. § 8-21-30. This claim seeks to recover damages which are expressly authorized by a statute *that specifically contemplates governmental officer liability*. Thus, the doctrine of sovereign immunity clearly, and thereby the TCA, do not bar Plaintiffs' statutory claims under § 8-21-30. *See McCall v. Batson*, 285 S.C. 243, 246 (1985).

Finally, the Attorney General Opinions referenced *supra* applying § 8-21-30 were issued well after the passage of the TCA and did not reference nor contemplate any repeal. To the contrary, they were cited as a deterrence for a county level officer (Sherriff) from charging an illegal fee. Had it been repealed by the enactment of the TCA, the TCA—and not § 8-21-30—presumably would have been cited.

In sum, Defendants cannot make the showing to warrant this Court repealing by implication § 8-21-30.¹²

¹¹ For these same reasons and the reasons stated above regarding the inapplicability of the RPA, § 8-21-30 is not "preempted" by the RPA's subsection found at § 12-60-80(A). City Mot. Dismiss ¶ 10.

¹² In addition, novel issues of law should not be decided on a motion to dismiss. *See Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

III. Sovereign Immunity Does Not Bar Plaintiffs' Claims for Unjust Enrichment.

Defendants make blanket assertions that sovereign immunity bars any claim of unjust enrichment in this case. Such an assertion is not supported by South Carolina law. *See* City Mot. Dismiss ¶ 4; *see also* County Mot. Dismiss at p.58.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity 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 also made clear 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 South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the “TCA”), which “granted” the government qualified immunity for tortious conduct 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. By contrast, the General Assembly has not passed any law after *McCall* that “granted” or “reinstated” sovereign immunity as to equitable claims, such as unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution.¹³ *See Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). Here, Plaintiffs seek to be restored the value of the illegal fees they remitted to Defendants, plus interest. *See* Compl. ¶ 76, 84. After *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. And

¹³ South Carolina Courts permit claims for unjust enrichment to proceed against the State. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep’t*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

to the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation. S.C. Code Ann. § 15-78-20(c)(i).

As a result, the now-abrogated common law doctrine of sovereign immunity does not bar Plaintiffs’ claims against Defendants for unjust enrichment.

IV. Excessive Fines, Equal Protection, and Due Process Not Implicated.

Plaintiffs are at a loss as to how any of these constitutional doctrines would apply to the case at bar. Plaintiffs, citizens, bring this suit against a political subdivision of the state and public officers based upon law passed by the General Assembly. There is simply no basis that these constitutional doctrines, which provide rights to the *citizenry*, would bar suit in this matter. Thus, Defendants’ arguments regarding such should be rejected outright. *See City Mot. to Dismiss* ¶¶ 7-9.

In addition, Defendants mischaracterize Plaintiffs’ cause of action for violation of due process, as that constitutional claim does not seek monetary relief at all. Rather, Plaintiffs’ 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). For these reasons, the Court should not dismiss Plaintiffs’ due process claim or their prayer for monetary relief.¹⁴

¹⁴ Plaintiffs will not address City Defendants’ third alleged ground for dismissal as to mootness because Plaintiffs seek a binding judgment from this Court as to the legality of the City of Aiken’s ordinance enacting the Road Maintenance Fee.

In addition, Plaintiffs will not address Defendants’ sixteenth alleged ground for dismissal. The argument deals solely with duplicative federal claims brought under 18 U.S.C. § 1983. *See Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004). This is not a § 1983 suit. To the contrary, this suit brings a cause of action pursuant to § 8-21-30 wherein the General Assembly contemplated

V. Plaintiff Sufficiently Alleged the Road Maintenance Fee's Illegality under S.C. Code Ann. § 6-1-300.

In its thirteenth ground for dismissal, City of Aiken Defendants allege that their Road Maintenance Fee is presumptively valid, and Plaintiffs have not alleged that the Road Maintenance Fee violates S.C. Code Ann. § 6-1-300. Respectfully, this ignores the fact that Plaintiffs cite to the language in *Burns* invalidating an almost identical provision for failing to comply with § 6-1-300. Compl. ¶¶ 27-36; *Burns*, 433 S.C. at 587. Further, the City of Aiken in response to the *Burns* decision, ***stopped*** collecting these fees in an implicit admission that the fee is illegal. Thus, Plaintiffs have more than met their burden at this pleading stage.

CONCLUSION

Defendants have charged and continue to charge fee in violation of South Carolina law and an express directive of our Supreme Court. They have provided no reason for why they should not answer in this Court for those actions. As such, Plaintiffs respectfully request this Court deny Defendants' Motion to Strike and Motion to Dismiss.

[Signature Page to Follow]

specific liability for a public officer who charges an illegal fee. As such, any allegation suggesting a duplicative claim is a non-issue.

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

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

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

HODGE & LANGLEY LAW FIRM, P.C.
T. Ryan Langley (SC Bar 76558)
Charles J. Hodge (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 Plaintiffs and the Class

Dated: April 12, 2022

Columbia, SC

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jerry A. Bruce, individually and on behalf
of all those similarly situated,

Plaintiff,

v.

Joseph Kernell, in his official capacity as
Greenville County Administrator, Jill Rees
Kintigh, in her official capacity as
Treasurer of Greenville County,
Greenville County Council, and Greenville
County,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C/A no. 2021-CP-23-04996

ORDER

Defendants, Joseph Kernell, Jill Rees, Greenville County, and Greenville County Council ("Defendants") filed a motion to dismiss Plaintiff Jerry A. Bruce's claims. Plaintiff opposes the motion. The parties submitted initial briefs. The Court then held a hearing on March 2, 2022. Having fully reviewed the parties' positions, the Court DENIES Defendants' motion to dismiss.

I. Factual Background.

This is a case about Greenville County's Road Maintenance Fee and Telecommunications Fee enacted pursuant to County Ordinance Nos. 4906 and 4907, respectively. On June 30, 2021, the South Carolina Supreme Court struck down these ordinances, finding Greenville County's Road Maintenance Fee and Telecommunications Fee were both illegal and unauthorized under South Carolina law.

In 1993, Greenville County passed Greenville Ordinance No. 2474, requiring the owner of every vehicle registered in Greenville County to pay \$15.00 a year to the Greenville County Tax Collector.¹ Since then, this fee has remained in effect and in 2017, was raised to \$25.00. Each year, Defendants collected and retained this fee. Specifically, the Treasurer of Greenville County, Defendant Kintigh, is responsible for overseeing the collection of both Fees at issue in this case.

On June 30, 2021, the South Carolina Supreme Court struck down Greenville County Ordinance Nos. 4906 and 4907. These ordinances imposed a Road Maintenance Fee on each citizen with a registered vehicle in Greenville County, and a Telecommunications Fee requiring the owner of every parcel of real property in Greenville to pay \$14.95 per year, for ten years, to the Greenville County Tax Collector. See *Burns v. Greenville County Council*, 433 S.C. 583 (2021).

Our Supreme Court started its analysis that Greenville County may only charge *ad valorem* property taxes or “uniform service charges” as defined by S.C. Code Ann. § 6-1-300(6). *Burns*, 433 S.C. at 586. The Court then found that neither ordinance imposed a value-based property tax, nor did they qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor qualified as a “service or user fee” under S.C. Code Ann. § 6-1-330(A). See *Burns*, 433 S.C. at 587.

Finding neither of the above applied to the Road Maintenance Fee and Telecommunications Fee imposed, collected, and retained by Defendants, our Supreme

¹ For purposes of this order, all facts plead in Plaintiffs Complaint are taken as true pursuant to the applicable standard of review. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

Court struck each ordinance down. However, Defendants continue to retain the fees collected pursuant to the illegal ordinances. As a result, Plaintiff filed this class action on behalf of himself and all others similarly situated.

Defendants argue four grounds in their motion to dismiss that can be distilled into two legal issues: (1) the applicability of the Revenue Procedures Act; (2) the applicability of S.C. Code Ann. § 8-21-30 to the fees charged. The parties have briefed and argued these issues.

For the reasons stated below, the Court DENIES Defendants motion to dismiss in its entirety.

II. Standard of Review

In deciding a motion to dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6), the trial court should consider the allegations set forth on the face of the plaintiff's complaint. See *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The trial court must deny the motion to dismiss if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007); *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states a valid claim for relief, and further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004).

Under South Carolina Rule of Civil Procedure 12(b)(1), a movant challenges the court's power over the subject matter of an action. Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008). As such, "the question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

III. Analysis.

Defendants² argue that this matter should be dismissed because the Legislature has provided a jurisdictional scheme to review the Road Maintenance Fee at issue here, under the Revenue Procedures Act ("RPA"). See S.C. Code Ann. § 12-60-10 *et seq.* Thus, Defendants argue, this Court lacks subject matter jurisdiction over Plaintiff's claims.

Plaintiff contests this. First, Plaintiff argues that the Revenue Procedures Act is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue ("SCDOR"); and 2) disputes concerning property taxes, citing to the legislative intent set forth in S.C. Code Ann. § 12-60-20, and the Supreme Court's holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Additionally, because the Revenue Procedures Act applies only to disputes with the SCDOR and disputes concerning property taxes, Plaintiff argues the class action prohibition in S.C. Code Ann.

² Plaintiff's counsel and Defense counsel have agreed to dismiss any arguments or claims against Joseph Kernell, as Greenville County Administrator, and Greenville County Council. As such, any arguments as against either party are hereby dismissed without prejudice.

§ 12-60-80(C), as well as the administrative remedies provided in the RPA, equally do not apply.

a. The Revenue Procedures Act does not apply to Plaintiff's claims.

The Revenue Procedures Act ("RPA") does not apply to this dispute because it only applies to "disputes with the Department of Revenue and disputes concerning property taxes." S.C. Code Ann. § 12-60-20.

The General Assembly left no doubt as to its intent when promulgating the RPA. Section 12-60-20, titled "Legislative intent," reads:

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).

In evaluating the RPA's applicability to disputes, the South Carolina Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments and disputes involving the SCDOR. See *e.g.*, *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004). The current matter presents a dispute involving neither property taxes nor the SCDOR.

In South Carolina, the cardinal rule of statutory interpretation gives effect to the intent of the legislature. See *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). "All 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.* Here, the General Assembly intended the RPA to apply to only two disputes: 1) disputes with SCDOR; and 2) disputes over property taxes, neither of which apply here.

Moreover, Plaintiff relies on the South Carolina Supreme Court’s opinion in *Lightner v. Hampton Hall Club, Inc.*, as dispositive of the scope of the RPA. 419 S.C. 357, 798 S.E.2d 555 (2017). In *Lightner*, members of a nonprofit brought a class against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. *Id.* at 359, 798 S.E.2d at 556. In this case, our Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59.

Here, Plaintiff has not sued the SCDOR like the plaintiffs did in *Lightner*, nor do the fees or taxes—whichever way the parties want to characterize them—concern property taxes.³ As such, the RPA does not apply. Correspondingly, the RPA’s class action prohibition, and its requirement of exhaustion of administrative remedies are inapplicable.

³ “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18).

Despite the *Lightner* holding and § 12-60- 20, Defendants, relying on *Burns*,⁴ argue that the fees are a “tax,” and as such, the RPA applies. Whether these fees are a “tax” or not, Defendants’ arguments ignore the fact that the term “tax” is expressly defined in the RPA, and the fees at issue do not fit the definition.

“Tax” or “taxes” are defined in South Carolina Code § 12-60-30(27) as:

“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).

The Road Maintenance Fee nor the Telecommunications Fee at issue were neither “collected by the department,” nor “imposed by [Title 12].” See *Burns*, 433 S.C. at 586 (2021). As such, even taking Defendants’ argument as true that this fee is an illegal tax, neither the Road Maintenance Fee nor the Telecommunications Fees fit the definition of “tax” as that term is defined in the RPA.

Thus, the Court finds the RPA does not apply, and the Circuit Court has jurisdiction over this matter. Moreover, because the Court finds that the RPA does not apply, neither the class action prohibition set out in the RPA at S.C. Code Ann. § 12-60-80(C), nor the administrative remedies provided in the RPA apply to this case.

b. S.C. Code Ann. § 8-21-30 applies to this suit.

⁴ The Defendants cite to the following language: “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 590, 861 S.E.2d at 34.

Defendants argue there is no cause of action for Plaintiff to recover the unauthorized Road Maintenance Fee or Telecommunications Fee paid to Defendants. Plaintiff argues that S.C. Code Ann. § 8-21-30 provides the remedy for an unlawful fee charged to individuals by a public officer. The Court disagrees with Defendants.

Section 8-21-30 provides:

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 South Carolina, a fee must be authorized by statute, otherwise it is illegally charged. See S.C. Code Ann. § 8-21-15(A). In addition, “[f]ee statutes must be strictly construed.” *State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941); The Honorable Glenn G. Reese, 2011 WL 5304079, at *1 (S.C.A.G Oct. 11, 2011) (“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.”). Strictly construing this statute against the charging officer, the Court finds § 8-21-30 applies in this case.

1. County Treasurers as “officers”

For this statute to apply to this matter, the fee at issue must have been charged by an “officer.” S.C. Code Ann. § 8-21-30. First, Defendants argue that the Greenville County Treasurer does not qualify as an “officer” under S.C. Code Ann. § 8-21-30. The Court disagrees.

In this action, Plaintiff has named Greenville County Treasurer Jill Rees Kintigh. It is alleged that Treasurer Kintigh is responsible for charging and collecting the Road

Maintenance Fee and Telecommunications Fee at issue in this case. Plaintiff provides that Title 8 of the South Carolina Code is titled, and applies to, Public Officers and Employees, with Chapter 21 titled, and covering, Fees and Costs generally. As Plaintiff points out, in Chapter 21, County Treasurers are expressly named multiple times. See e.g., S.C. Code Ann. § 8-21-310(A)-(C); S.C. Code Ann. § 8-21-1040; S.C. Code Ann. § 8-21-760.

Thus, the Court finds County Treasurer Kintigh to be an “officer” for the purpose of section 8-21-30.

2. Application of S.C. Code Ann. § 8-21-30

Next, Defendants argue that S.C. Code Ann. § 8-21-30 does not apply to this dispute because road maintenance and telecommunications are not enumerated services under S.C. Code Ann. § 8-21-10. Plaintiff argues that Defendants’ reading of the statute is limited, produces an absurd result, and violates the general rules of construction of fee statutes. The Court agrees with the Plaintiff.

Fee statutes must be strictly construed so as to not create an absurd result that is inconsistent with prior construction of the statute. See *Wilder*, 198 S.C. at 390. With limited case law citing S.C. Code Ann. § 8-21-30,⁵ Plaintiff points to persuasive authority from prior South Carolina Attorney Generals supporting the application of the statute in accordance with Plaintiff’s position. Specifically, an opinion suggesting liability on the part of a Sheriff, an officer, for charging a fee for drug sniffing dogs in a school. See *The*

⁵ See *Dean v. Todd*, 49 S.C. 461, 27 S.E.2d 471 (1897); and *Tinsley v. Kirby*, 8 S.C. 113 (1877).

Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011). Despite a lack of “drug sniffing dog” fees expressly enumerated anywhere in Title 8, Chapter 21, the opinion rendered a finding that “§ 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” *Id.* As this opinion suggests, § 8-21-30 has applicability beyond fees discussed in Chapter 21 of Title 8. The Court agrees with Plaintiff that where an officer charges a legally unauthorized fee, he or she may be subject to liability under § 8-21-30.

Applying the statute as Defendants would have this Court do, an officer could avoid reprimand for charging a fee solely because it is not listed in Title 8, Chapter 21. This result would be absurd, leaving an individual charged illegal and improper fees with no recourse and no cause of action. Thus, Defendants’ interpretation cannot stand. Strictly construing this fee statute requires the Court to find that Treasurer Kintigh is an “officer,” and Plaintiff has a claim under S.C. Code Ann. § 8-21-30.

c. S.C. Code Ann. § 8-21-30 has not been implicitly repealed.

Next, Defendants argue that S.C. Code Ann. § 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

Under South Carolina law, “repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation.” *Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). Our Supreme Court has declined to hold that amending a general statute impliedly affects an earlier specific statute. See *id.*

Contrary to Defendants' assertion that the Tort Claims Act impliedly repeals S.C. Code. Ann. § 8-21-30, the Tort Claims Act makes no mention of a situation in which a County officer charges an unauthorized fee. Consistent with Plaintiff's position, the Tort Claims Act, a general statute, does not impliedly repeal this earlier and more specific statute: § 8-21-30. In addition, Plaintiff's claim for recovery is found in a statute that is expressly authorized by a statute that contemplates governmental officer liability.

Thus, the Court finds that S.C. Code Ann. § 8-21-30 has not been impliedly repealed by the Tort Claims Act.

IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is DENIED. The Court notes the rulings in this order are based upon the on the allegations in the Complaint, which must be taken as true at this stage. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). Nothing in this order should be construed as a final determination on the merits of any claim or defense.

IT IS ORDERED.

S/R Lawton McIntosh
Circuit Court Judge

Dated: _____
Greenville, South Carolina.



Greenville Common Pleas

Case Caption: Jerry A Bruce vs. Joseph Kernell , defendant, et al

Case Number: 2021CP2304996

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2018-CP-07-02252

REAL ESTATE TRANSACTIONS, LLC;)
WILLIE YOUNG; CDSG BEAUFORT,)
LLC; MATT A. TRUMPS; SHELDON 123,)
LLC; BLANCHE TRUMPS; RIVER CITY)
DEVELOPERS, LLC; Individually and on)
behalf of all others similarly situated,)

PLAINTIFFS,)

vs.)

BEAUFORT COUNTY; MARIA E.)
WALLS, solely in her capacity as Beaufort)
County Treasurer,)

DEFENDANTS.)

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**

Presiding Judge:
Plaintiffs' Attorneys:

Defendants' Attorneys:

Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Russell P. Patterson, Esq. and
Lauren P. Williams, Esq.
M. Dawes Cooke, Jr., Esq. and
Mary B. Lohr, Esq.
February 14, 2020
Melissa Brown

This matter came before the Court on February 14, 2020, for a hearing on Defendants Beaufort County and Maria E. Walls', solely in her capacity as Beaufort County Treasurer (collectively "Defendants"), Motion to Dismiss Second Amended Complaint, filed November 25, 2019 (hereinafter "the Motion"). Appearing on behalf of Plaintiffs was Russell P. Patterson, Esq. and Lauren P. Williams, Esq. and appearing on behalf of Defendants was M. Dawes Cooke, Jr. Esq. and Mary B. Lohr, Esq. Based upon the record and the following findings of fact and conclusions of law, Defendants' Motion is heard and respectfully Denied.

BACKGROUND

This is a dispute over the collection of certain costs by the Beaufort County Treasurer's office ("Treasurer") against delinquent taxpayers. The Treasurer collects costs in two ways: a \$50.00 Execution Fee¹ and a \$75.00 Treasurer Fee² (collectively "Disputed Costs"). The Disputed Costs are collected at designated points during the process of collecting delinquent property taxes and redeeming property that has been seized for tax delinquency.³ Plaintiffs have brought this action individually and as a representative of all those similarly situated who have paid the Disputed Costs for 2015, 2016, and 2017 (collectively "Tax Years") and are seeking a Declaratory Judgment confirming the Disputed Costs collected are unlawful and illegal, a permanent injunction preventing the future collection of the Disputed Costs, and an accounting and a refund of the collected amounts.

Plaintiffs estimate the proposed class is composed of over 40,000 individuals.⁴ Plaintiffs have all previously redeemed their properties and are not seeking to overturn a tax sale. Additionally, Plaintiffs are not disputing or seeking a refund of the underlying millage, assessment, tax amount, percentage penalties, or interest paid in connection with their properties. Thus, they

¹ The \$50.00 Execution Fee is composed of the following: (1) labor costs comprised of salaries/wages of employees in the delinquent tax collection department and prorated portions of the salaries/wages of employees working in other county departments for their estimated time working on issues relating to the execution or sale of delinquent property; (2) professional services, including legal fees for title search assistance; (3) copying costs; (4) postage costs; (5) costs of posting properties; (6) advertising costs; (7) costs associated with conducting property sales, including costs for rental of chairs, stage, and auctioneer; (8) printing costs; and (9) mailing costs. This breakdown of the Disputed Costs was provided subsequent to the hearing at the Court's request without objection.

² The \$75.00 Treasurer Fee is composed of the following: (1) labor costs comprised of salaries/wages of employees in the delinquent tax collection department and prorated portions of the salaries/wages of employees working in other county departments for their estimated time working on issues relating to the execution or sale of delinquent property; (2) copying and printing costs; (3) postage costs; (4) professional fees; (5) equipment used by employees in the delinquent tax office; (6) LexisNexis researching costs; (7) advertising costs relating to collections; and (8) licenses for software used in the collection and execution process. This breakdown of the Disputed Costs was provided subsequent to the hearing at the Court's request without objection.

³ At no time during the collection process is a delineation of the Disputed Costs provided to the taxpayer.

⁴ The proposed class is putative and has not been certified. Plaintiffs filed a Motion for Class Certification on July 25, 2019 that has not been heard as of the date of this hearing.

contend that this is not a dispute concerning tax assessments, millage rates, or the imposition or collection of any penalty or tax. The Plaintiffs challenge only the Disputed Costs charged by the Defendants.

Under South Carolina law, the Treasurer is obligated to collect both real and personal property delinquent taxes in compliance with S.C. Code Ann. § 12-45-180. Section 12-45-180(A) reads as follows:

When the taxes and assessments or any portion of the taxes and assessments charged against any property or person on the duplicate for the current fiscal year are not paid before the sixteenth day of January or thirty days after the mailing of tax notices, whichever occurs later, the county auditor shall add a penalty of three percent on the county duplicate and the county treasurer shall collect the penalty. If the taxes, assessments, and penalty are not paid before the second day of the next February, an additional penalty of seven percent must be added by the county auditor on the county duplicate and collected by the county treasurer. If the taxes, assessments, and penalties are not paid before the seventeenth day of the next March, an additional penalty of five percent must be added by the county auditor on the county duplicate and collected by the county treasurer. If the taxes, assessments, and penalties are not paid before the seventeenth day of March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that Chapter.

S.C. Code Ann. § 12-45-180(A) (1976).

The tax execution process authorized under section 12-45-180 (A) is outlined in section 12-51-40, pursuant to the Alternate Procedure for Collection of Property Taxes (“APA”). Section 12-51-40 directs:

[T]he officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayers’ estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs.

S.C. Code Ann. § 12-51-40 (1976). The costs that may be collected by the Treasurer through this process are specifically defined by statute under § 12-51-40(d). Said costs include, “[a]ll expenses

of the levy, seizure, and sale must be added and collected as additional costs, and must include, but not be limited to, the expenses of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices.” S.C. Code Ann. § 12-51-40(d) (1976). The basis of Plaintiffs’ claim is that the Defendants have failed to impose costs in compliance with § 12-45-180 (A) and § 12-51-40.

In lieu of an Answer, Defendants' filed this Motion to Dismiss in response to Plaintiffs' Second Amended Complaint.

STANDARD OF REVIEW

Defendants' Motion seeks to dismiss all of Plaintiffs' claims pursuant to Rules 12(b)(1), 12(b)(6), and 12(f), SCRPC.

I. Defendants’ Rule 12(b)(6), SCRPC Argument

Defendants’ seek dismissal of Plaintiffs’ claims pursuant to Rule 12(b)(6), SCRPC on the basis that the Plaintiffs have failed to state a cause of action upon which relief may be granted.

A ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRPC, must be based solely on the allegations set forth on the face of the complaint. United Educational Distributors, LLC, v. Educational Testing Service, 350 S.C. 7, 13, 564 S.E.2d 324, 328 (Ct. App. 2002). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Washington v. Lexington County Jail, 337 S.C. 400, 404, 523 S.E.2d 204, 206 (Ct.App.1999); McCormick v. England, 328 S.C. 627, 632–33, 494 S.E.2d 431, 433 (Ct.App.1997). “[A] judgment on the pleadings is considered to be a drastic procedure by our courts.” Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991).

Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties. See Justice v. Pantry, 330 S.C. 37, 42, 496 S.E.2d 871, 874 (Ct.App.1998). “The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” McCormick, 328 S.C. at 633, 494 S.E.2d at 434. Further, “a novel issue should not be summarily decided on a 12 (b)(6) motion.” Keiger v. Citgo, Coastal Petroleum Inc., 326 S.C. 369, 373, 482 S.E.2d 792, 794 (Ct. App. 1997).

Viewed in the light most favorable to the non-moving party, the Court finds that the Plaintiffs have sufficiently alleged facts that would entitle them to relief on a theory of the case. See Washington, 337 S.C. at 404, 523 S.E.2d at 206. Further, dismissing the case on a Rule 12(b)(6), SCRPC motion would be premature without further development of the facts and law of the case. Accordingly, Defendants’ Motion to Dismiss pursuant to Rule 12(b)(6) is Denied.

II. Defendants’ 12(b)(1), SCRPC Argument

The Defendants seek dismissal of Plaintiffs’ causes of action pursuant to Rule 12(b)(1), SCRPC on the basis that this Court lacks subject matter jurisdiction over the action.

Subject matter jurisdiction is defined as “the power to hear and determine cases of the general class to which the proceedings in question belong.” Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93–94, 668 S.E.2d 795, 796 (2008). “The question of subject matter jurisdiction is a question of law for the court.” Hammer v. Hammer, 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012). Subject matter jurisdiction “is distinct from the doctrine of exhaustion of administrative remedies, which “is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional. Additionally, the doctrine of exhaustion of administrative remedies is often leveraged to avoid interference with the orderly performance

of administrative functions.” Consequently, a “failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 100, 674 S.E.2d 524, 529 (Ct. App. 2009) (internal citations omitted).

Defendants' argument for lack of subject matter jurisdiction is made pursuant to S.C. Code Ann. § 12-60-3390, which states, “[i]f a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.” For the reasons outlined below, this Court finds and concludes the Disputed Costs are not taxes within the meaning of the RPA, and that the RPA does not apply to the dispute over the Treasurer's collection of the Disputed Costs, and therefore Defendants’ Motion to Dismiss pursuant to Rule 12(b)(1), SCRCF is Denied.

A. The RPA does not apply because Plaintiffs are not challenging the underlying tax amount owed.

The RPA applies only to "disputes with the Department of Revenue and disputes concerning property taxes." S.C. Code Ann. § 12-60-20. The term “tax” or “taxes” is defined as follows in § 12-60-30 (27):

“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). This definition of the term tax does not include or reference the term costs, or other terms associated with costs collected in the process of redeeming property seized as a result of tax delinquency.

In its evaluation of the RPA's applicability to disputes concerning property taxes, the South Carolina Supreme Court has generally found the RPA applies only to disputes involving a challenge to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. See Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); B & A Dev., Inc. v. Georgetown Cty., 372 S.C. 261, 264, 641 S.E.2d 888,

890 (2007); Buist v. Huggins, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); Brackenbrook North Charleston v. Cty. of Charleston, 360 S.C. 390, 602 S.E.2d 39 (2004).

In 2006, the Court in Buist specifically held that the RPA does not apply to all cases involving monies billed or paid in connection with the assessment and collection of property taxes. In Buist, the plaintiffs alleged Charleston and Dorchester Counties were improperly calculating "bidder interest" under S.C. Code Ann. § 12-51-90 as part of the redemption price for property sold at delinquent tax sales. Buist, at 273, 625 S.E.2d at 638. The plaintiffs sought a refund of these alleged improper charges. Id.

The South Carolina Supreme Court held plaintiffs' claims were not subject to the RPA and that jurisdiction was proper in the circuit court for three reasons. First, the Court noted plaintiffs' claims regarding bidder interest had no impact on the underlying property tax amount. Id. at 274-75, 625 S.E.2d at 639 ("While their interest payment could feasibly be lowered, the underlying tax amount owed is not disputed."). Second, the Court recognized delinquent tax sales must be conducted in strict compliance with and are explicitly governed by the APA. Id. at 274, 625 S.E.2d at 639. Third, the Court recognized that plaintiffs were seeking a claim for a refund of monies paid to the Delinquent Tax Collector rather than the Assessor. Id. at 274, 625 S.E.2d at 639, n.7 ("This result is buttressed by the fact that S.C. Code Ann. § 12-60-2560 (under which the ALJ's jurisdiction in this case is premised) requires a taxpayer to seek a refund 'by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought.' Here, the assessment of interest was made by the Delinquent Tax Collector rather than the county assessor.").

Thus, the Buist court ruled the plaintiffs were not subject to the requirements of the RPA. Rather, they were subject to the requirements of the APA, and the suit was proper in the circuit

court, not the administrative law court. Id. at 275, 624 S.E.2d at 639. The Buist court distinguished the dispute regarding the payment of bidder's interest from the dispute involving the fifteen percent reassessment cap or limit at issue in Brackenbrook, as follows:

Unlike Brackenbrook, Petitioners in this case challenge neither their underlying tax assessments, nor their millage rates. Rather, Petitioners challenge only the calculation of interest under § 12-51-90. While their interest payment could feasibly be lowered, the underlying tax amount owed is not disputed. Accordingly, we find their challenge is properly brought under S.C. Code Ann. § 12-51-90, such that the Alternate Procedures Act controls. The Court of Appeals properly held jurisdiction over such disputes remains in the circuit court, and the ALJ was without jurisdiction.

Id. at 274, S.E.2d at 639.

In this case, Plaintiffs' claims are similar to those asserted in Buist. Plaintiffs allege that Defendants improperly included the costs that are collectable under §§ 12-45-180 and 12-51-40 as part of the redemption price of property sold at delinquent tax sales. In Buist, the Court held the calculations of the interest due in the tax sale redemption process were not covered by the RPA and were properly asserted in the circuit court because the calculations had no impact on the underlying tax amount. Id. Similarly, Plaintiffs' claim regarding the costs charged as part of the tax sale redemption process also has no impact on the underlying property tax amount, assessment, or millage.

Rather, the Plaintiffs contend that the Disputed Costs, which include costs for postage, copying, legal research, advertising, software licensing, venue and equipment rental, auctioneer booking, and printing, have improperly been included as part of the redemption price of property sold at delinquent tax sales. The Court finds that these Disputed Costs are not challenges to the underlying tax amount as defined by § 12-60-30 (27), and therefore the RPA does not apply to this suit. On the contrary, similar to Buist, the Disputed Costs are explicitly governed by the APA and relate to monies paid to the Delinquent Tax Collector rather than the Assessor.

The application of Buist to the Disputed Costs is consistent with a review of the South Carolina cases evaluating the applicability of the RPA. These cases have ruled that the RPA is applicable to cases involving various tax assessment disputes, which are within the statutory scope of the RPA. See Lightner, at 363-66, 798 S.E.2d at 558-59 (admission tax dispute on golf club dues subject to RPA); Drummond v. State, Dept. of Revenue, 378 S.C. 362, 386, 662 S. E. 2d 587, 590 (2008) (sales tax dispute over diabetic supplies subject to RPA); B&A Development, Inc., at 265-66, 641 S.E.2d at 891-92 (excessive millage by School Board subject to RPA); Brackenbrook North Charleston, at 395-96, 602 S.E.2d at 42-43 (dispute over 15% cap at reassessment subject to RPA).

Accordingly, this Court finds the RPA does not apply to the instant case because Plaintiffs are not challenging the underlying tax amount as defined by § 12-60-30 (27). Rather, they are challenging costs associated with the execution and sale of delinquent tax property, including labor costs, postage costs, and advertising costs, none of which challenges the underlying tax amount as defined by § 12-60-30 (27). Accordingly, Defendants' Motion to Dismiss is Denied.

B. The RPA does not apply because the Disputed Costs are not a tax as defined in the APA and RPA.

The Disputed Costs are also not subject to the RPA because these costs are not a tax as used and defined in the APA or the RPA (§§ 12-45-180 and 12-51-40 and 12-60-20.) Sections 12-45-180 and 12-51-40 of the APA make a clear distinction between delinquent taxes, assessments, penalties, and costs. On at least nine (9) different occasions, this group of four (4) different charges are individually and separately stated in these sections. Consider Section 12-45-180(A):

If the taxes, assessments, and penalties are not paid before the seventeenth day of March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that Chapter.

S.C. Code Ann. § 12-45-180 (A). Each of these four terms define four separate types of charges: taxes, assessments, penalties, and costs. The plain language of the statute separates these categories of charges, rather than grouping them together collectively as “taxes,” evincing the intent of the Legislature to delineate between “costs” and “taxes.” Thus, under the APA each of these four terms defines four separate types of charges, and should not be collectively grouped together under the term tax as defined by S.C Code Ann. § 12-60-30 (27).

Further, as noted above, the RPA's definition of the term taxes does not include the Disputed Costs involved in this dispute. The Legislature intended the RPA to apply only to “a dispute with the Department of Revenue and a dispute concerning property taxes.” S.C. Code Ann. § 12-60-20 (1976). As stated above, the RPA specifically defines the term taxes as follows:

"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).

The Disputed Costs are not a “dispute with the Department of Revenue” or a “dispute concerning property taxes” within the meaning of S.C. Code Ann. § 12-60-20. The Disputed Costs are comprised of costs for advertising, printing, postage, labor, research, legal consultation, software licensing, and copying. None of these fees encompassed by the Disputed Costs constitute a “tax” within the meaning of S.C. Code Ann. § 12-60-30 (27). The Disputed Fees are not licenses, permits, fees, interest, penalties, or fines, as contemplated by S.C. Code Ann. § 12-60-30 (27). Moreover, just as the Court in Buist found the interest due at redemption to the successful bidder was not a tax under the RPA, the Court here finds that the Disputed Costs are not taxes subject to adjudication under the RPA. See Buist at 275, at 625 S.E.2d at 639.

Therefore, the Court finds that the Disputed Costs are not taxes within the meaning of the

RPA, that the RPA does not apply to this case, and that this Court, rather than the administrative law court, has jurisdiction to hear this case.

Having found, supra, that Plaintiffs' causes of action are not subject to the RPA, the Court further finds that the Plaintiffs have failed to bring an action pursuant to Chapter 60 of the South Carolina Code of Laws. Accordingly, the Court finds that the circuit court has subject matter jurisdiction over the case and therefore the Defendants' Motion to Dismiss the Plaintiffs' Second Amended Complaint pursuant to Rule 12(b)(1), SCRCF for lack of subject matter jurisdiction is heard and respectfully Denied.

III. Defendants' Rule 12(f), SCRCF Argument

The Defendants seek dismissal of Plaintiffs' causes of action pursuant to Rule 12(f), SCRCF on the basis that the Plaintiffs have failed to state a cause of action upon which relief may be granted.

"[U]pon the Court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), SCRCF. "A motion to strike, challenging a theory of recovery in the complaint, is comparable to a motion to dismiss under Rule 12(b)(6), SCRCF. Where a pleading is attacked for an alleged failure to state a cause of action, the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case. A court should not strike a cause of action merely because the court doubts the plaintiff will prevail in the action. However, the matter of striking from a pleading is largely within the discretion of the trial judge. Thus, the grant of a motion to strike will not be reversed except for an abuse of discretion or error of law." Robinson v. Code, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009) (internal citations omitted).

The basis of Defendants' 12(f), SCRCP Motion being to challenge a theory of recovery in a complaint, the Rule 12(f), SCRCP Motion is comparable to a motion to dismiss under 12(b)(6), SCRCP. Id. Having found, supra, that the Defendants have not carried their burden in showing that the Plaintiffs have failed to state a cause of action upon which relief may be granted, Defendants' Motion pursuant to Rule 12(f), SCRCP is Denied.

CONCLUSION

Viewed in the light most favorable to the Plaintiffs, the Plaintiffs have sufficiently set forth claims and adequately pled causes of action against Defendants in their Second Amended Complaint. The Defendants' Motion to Dismiss the Second Amended Complaint pursuant to Rules 12(b)(1), 12(b)(6), and 12(f), SCRCF is heard and respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

July _____, 2020
Charleston, South Carolina
At Chambers



Beaufort Common Pleas

Case Caption: Real Estate Transactions Llc , plaintiff, et al VS Beaufort County , defendant, et al

Case Number: 2018CP0702252

Type: Order/Other

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

v.)

PARTIAL STIPULATION OF DISMISSAL

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

Pursuant to Rule 41(a)(1), SCRPC, the Plaintiffs and the Defendants stipulate that the Third Cause of Action for violation of S.C. Code Ann. § 8-21-30 against the Defendant Stuart Bedenbaugh in his official capacity as City Manager of Aiken is dismissed.

The Plaintiffs and Defendants further stipulate that this action is dismissed as to Defendants Clay Killian, in his official capacity as Aiken County Administrator, and Aiken County Council.

This Partial Stipulation of Dismissal has no impact on the remaining causes of action which will proceed as to the remaining Defendants.

s/ William C. Lewis

TERRY E. RICHARDSON, JR. #4721
WILLIAM C. LEWIS #101287
BRADY R. THOMAS #72530
RICHARDSON, THOMAS,
HALTIWANGER, MOORE & LEWIS, LLC
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
(803) 281-8145
Email: terry@richardsonthomas.com
Email: will@richardsonthomas.com
Email: brady@richardsonthomas.com

DAVID R. PRICE, JR. #75140
SAMUEL B. TOOKER #78999
DAVID R. PRICE, JR., P.A.
318 West Stone Avenue
Post Office Box 2446
Greenville, South Carolina 29602
(864) 271-2636
Email: david@greenvillelegal.com
Email: sam@greenvillelegal.com

CHARLES J. HODGE #2537
T. RYAN LANGLEY #76558
HODGE & LANGLEY LAW FIRM, P.C.
229 Magnolia Street
Post Office Box 2765
Spartanburg, South Carolina 29304
(864) 585-3873
Email: hodgecharles@hotmail.com
Email: rlangley@hodgelawfirm.com

Counsel for Plaintiffs

s/ Andrew F. Lindemann

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

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

s/ Bradley T. Farrar

BRADLEY T. FARRAR #66381
AIKEN COUNTY ATTORNEY
1930 University Parkway, Suite 3600
Aiken, South Carolina 29801
(803) 642-3628
Email: bfarrar@aikencountysc.gov

*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*

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

v.)

**CITY OF AIKEN DEFENDANTS'
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND/OR MOTION
FOR JUDGMENT ON THE PLEADINGS**

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

BACKGROUND

The Plaintiffs Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit to challenge the alleged wrongful collection of a road maintenance fee that was imposed by ordinance by the Aiken City Council in 2016. The Plaintiffs rely on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that a "road maintenance fee" as implemented by Greenville County Council is actually a tax that violates S.C. Code Ann. § 6-1-630. The Supreme Court thus "declare[d] the road maintenance taxes ... are invalid under South Carolina law." 861 S.E.2d at 31.

The Plaintiffs allege that the City of Aiken's road maintenance fee is likewise invalid. The Plaintiffs seek a declaratory judgment to that effect. The Plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The Plaintiffs assert three causes of action seeking that monetary relief: (1) an equitable claim for unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 which is asserted against the County Defendants only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.¹

LEGAL ANALYSIS

I. Claims for the alleged illegal or wrongful collection of taxes are exclusively heard pursuant to the South Carolina Revenue Procedures Act. As a result, the Circuit Court lacks subject matter jurisdiction.

The Plaintiffs allege that the Defendants wrongfully collected road maintenance fees, and in making that claim, they rely on the holding in *Burns*, wherein the Supreme Court held that similar fees collected by Greenville County were actually taxes. Based thereon, the City Defendants submit that the Circuit Court lacks subject matter jurisdiction to decide a case involving the wrongful collection of taxes.

An action for the wrongful collection of taxes falls within the scope of the Revenue Procedures Act (RPA), S.C. Code Ann. § 12-60-10, *et seq.* S.C. Code Ann. § 12-60-80(A) provides that "[e]xcept as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or

¹ By Partial Stipulation of Dismissal filed April 13, 2022, the Plaintiffs stipulated that "the Third Cause of Action for violation of S.C. Code Ann. § 8-21-30 against the Defendant Stuart Bedenbaugh in his official capacity as City Manager of Aiken is dismissed."

attempt to collect taxes." S.C. Code Ann. § 12-60-80(A). Subsection (B) then provides as follows:

Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional *as applied* to a person or a limited class or classes of persons.

S.C. Code Ann. § 12-60-80(B). (Emphasis added). Additionally of note, S.C. Code Ann. § 12-60-3390 states: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." S.C. Code Ann. § 12-60-3390.

These statutes, therefore, provide the exclusive remedy for any action by a taxpayer alleging the wrongful collection of taxes is under the RPA and cannot be initiated in Circuit Court, with one limited exception. That exception, as set forth in S.C. Code Ann. § 12-60-80(B), is "an action for a declaratory judgment where the *sole* issue is whether a statute is constitutional." S.C. Code Ann. § 12-60-80(B). (Emphasis added). Moreover, S.C. Code Ann. § 12-60-80(B) differentiates between a *facial* challenge to a tax statute and an *as-applied* challenge to a tax statute. The statute specifically limits that exception to the exclusive jurisdiction under the RPA and does not permit the Circuit Court to hear "a claim that the statute is unconstitutional *as applied* to a person or a limited class or classes of persons." *Id.* (Emphasis added). See, *B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007) ("The only exception to the exclusivity of administrative remedy is that an action for a declaratory judgment may be brought in circuit court 'where the sole issue is whether a statute is constitutional'; this exception, however, does not apply to a claim that the statute is unconstitutional 'as applied'"). The present case, however, does not involve a constitutional challenge to the City of Aiken's road maintenance fee.

The Plaintiffs counter by arguing that the RPA is not applicable to the road maintenance fee because that is not a "tax" as defined under the RPA. However, given that the road maintenance fee has been adjudicated a "tax" by the Supreme Court, it is certainly a "property tax" in that it is assessed based on the ownership of a motor vehicle and is collected in connection with other property taxes. The RPA was amended in 2007 to include "disputes concerning property taxes." S.C. Code Ann. § 12-60-20 provides:

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 added).

The Supreme Court's most recent decision in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), is particularly instructive in recognizing the broad scope of the RPA and in particular S.C. Code Ann. § 12-60-80. In *Aiken*, the Supreme Court found that the RPA applies to a wide range of tax disputes with taxing authorities in South Carolina. In that case, members of a putative class brought a declaratory judgment action against the Department of Revenue seeking refunds of amounts garnished from their wages by the Department to satisfy delinquent debts they allegedly owe to other governmental entities. The class action involved claims associated with the debt-collection program known as the Governmental Enterprise Accounts Receivable (GEAR) program. The Supreme Court also addressed the Setoff Debt Collection Act, which is a similar program used to collect debts owed by taxpayers to governmental entities. Most importantly for the present case, in *Aiken*, the Supreme Court found that the provisions of S.C. Code Ann. § 12-60-80 are applicable to the claims at issue which dealt with the debt collection programs. The Court made that ruling

despite declining to rule on whether the debts owed by the respondents to the hospitals at issue met the definition of "taxes" under the RPA. In essence, regardless of whether the definition of "taxes" under the RPA was met, the jurisdictional provisions of the RPA, specifically S.C. Code Ann. § 12-60-80, are applicable.

The same is true in the present case. The Plaintiffs rely on *Burns* in arguing that the City of Aiken road maintenance fees are an illegal tax. If those fees are taxes, then they are property taxes, and under the RPA, "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A). The Circuit Court, therefore, lacks jurisdiction. Consistent with S.C. Code Ann. § 12-60-3390, this action should be dismissed without prejudice. The Plaintiffs' exclusive remedy is pursuant to the RPA and must be pursued in the Administrative Law Court.

II. The City of Aiken's road maintenance fees ordinance is presumptively legal and valid, and for this reason, the Plaintiffs are not legally entitled to a refund of fees paid prior to the *Burns* decision.

The legislative actions taken by the Defendants City of Aiken and Aiken City Council are fairly debatable and are therefore presumptively legal and valid. South Carolina law recognizes that a "presumption of validity ... attaches to all legislation, especially legislation relating to police powers." *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443, 444 (1984). (Citations omitted). Thus, the decision by the Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), is entitled only to prospective application and effect. Where there is a presumption of validity, the law remains valid until overturned by a court of competent jurisdiction, or in the case of the City of Aiken's road maintenance fee, until it was repealed by subsequent legislation in light of the *Burns* decision.

In addressing a municipal "street tax," the South Carolina Attorney General offered the following opinion: "Because every statute is presumed to be constitutional, the Town of Winnsboro should continue to regard its 'street tax' ordinance and the statute pursuant to which it was enacted as constitutional until such time as either has been declared invalid by a court." S.C. Atty. General Op., September 24, 2070, 1970 WL 16966. (Citation omitted).

Based on the presumption of validity, the road maintenance fees collected by the City of Aiken are considered presumptively valid and enforceable. The Plaintiffs are therefore not entitled to the declaratory judgment they seek nor a refund of any fees paid prior to the *Burns* decision and the City's repeal of the ordinance.

III. The Plaintiffs' equitable claim for unjust enrichment is barred by sovereign immunity.

The City Defendants contend that the Plaintiffs' Second Cause of Action for unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment or to be prosecuted against a governmental entity.

By way of background, sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided the landmark case of *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background has been best summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. ***In response to our decision in McCall, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity.*** The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Emphasis added)(Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein.*" S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for the non-tort/equitable cause of action for unjust enrichment.² Moreover, the General Assembly has not enacted any other legislation that explicitly waives sovereign immunity for an unjust enrichment or any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally

² In *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), the Supreme Court explained that "unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." 678 S.E.2d 434.

expressed" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). See also, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The City Defendants' position that a governmental entity is entitled to sovereign immunity for equitable claims such as unjust enrichment is supported by well-reasoned case law from our sister state of North Carolina. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where the Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law

to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

In sum, the Plaintiffs' cause of action for unjust enrichment, which is a non-tort/equitable claim, is barred by sovereign immunity. As a matter of law, the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.³

IV. The Plaintiffs do not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3.

In their Fourth Third Cause of Action, the Plaintiffs allege a loss of a property interest without due process of law for which the Plaintiffs seek monetary relief. The Plaintiffs do not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021),⁴ the South Carolina Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261. Thus, the Plaintiffs are precluded from recovering money damages for the alleged violations of the South Carolina Constitution.

³ This very reasoning was applied in two earlier Circuit Court decisions which are submitted not as precedent obviously but for their persuasive effect. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621. A copy of those decisions are filed with this memorandum.

⁴ A petition for writ of certiorari was also denied by the United States Supreme Court on January 10, 2022. See, Orders List dated January 10, 2022 for United States Supreme Court.

V. Aiken City Council is not a proper party.

The Defendant Aiken City Council is not a proper party. Aiken City Council is not a body politic separate and apart from the City of Aiken. Instead, Aiken City Council is the governing body of the City of Aiken. Aiken City Council should be dismissed as a separate, distinct party-defendant.

VI. The Defendant Stuart Bedenbaugh, who is sued in his official capacity as the City Manager for the City of Aiken, is the alter ego of the City of Aiken and should be dismissed as duplicative.

The Defendant Stuart Bedenbaugh, who is sued in his official capacity as the City Manager for the City of Aiken, is the alter ego of the City of Aiken. *See, Kentucky v. Graham*, 473 U.S. 159 (1985) (“[o]fficial capacity suits ... genuinely represent only another way of pleading an action against an entity of which the officer is an agent”). Thus, the suit against Bedenbaugh in his official capacity should be dismissed as duplicative. *See, Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (affirming the dismissal of a claim against a superintendent in his official capacity because it was essentially a claim against the board of education and was, therefore, duplicative).

CONCLUSION

Based on the foregoing analysis, the Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken respectfully request that the Court grant their Motion to Dismiss and/or Motion for Judgment on the Pleadings thereby

dismissing the Plaintiffs' Complaint without prejudice on jurisdictional grounds or with prejudice if the Court reaches the merits.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

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

April 20, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS

Shirley's Iron Works, Inc. and
Tindall Corporation,

Plaintiffs,

v.

City of Union, South Carolina, Gilbert
Group, LLC and William E. Gilbert,

Defendants.

Civil Action No. 03-CP-44-171 (B)

ORDER

FILE FOR RECORD
2007 SEP 26 P 1:47
S. J. MOORE
CLERK OF COURT
UNION, SC

This matter is before this Court on the Plaintiffs' motion for summary judgment and the Defendant City of Union's motion for summary judgment. After a review of the pleadings, the parties' motions, the written submissions by the parties, and the oral arguments of counsel, this Court grants the Defendant City's motion for summary judgment and dismisses the Plaintiffs' claims against the City with prejudice.

I. Background

The City of Union entered into a contract with Gilbert Group, LLC on June 4, 2002, for the design, construction and marketing of a 50,000 square foot industrial shell building to be located in the Union County Industrial Park. In their Amended Complaint, the Plaintiffs allege that they were subcontractors who contracted with the general contractor, Gilbert Group LLC, for work performed in the construction of this building. The Plaintiffs claim that S.C. Code Ann. § 29-6-250 required the City to provide a payment bond, which the City failed to do. The Plaintiffs allege that they have

not received payment for the work they did and, as a result, have been harmed by the City's failure to obtain the payment bond required by statute. The Plaintiffs have brought suit against the City of Union for breach of a duty of care required by Section 29-6-250.

II. Claims Alleging Breach of Duty Under Section 29-6-250

The Plaintiffs are alleging that Section 29-6-250, which is part of the Subcontractors' and Suppliers' Payment Protection Act, creates a statutory duty of care whereby the City had a duty to actually provide payment bonds in the amount of the contract. S.C. Code Ann. § 29-6-250(3) provides: "For the purposes of any contract covered by the provisions of this section, it is the duty of the entity contracting for the improvement to take reasonable steps to assure that the appropriate payment bond is issued and is in proper form." The City contends that this language from Section 29-6-250 does not create a right of action by which subcontractors such as the Plaintiffs may sue a governmental entity for failing to ensure that a payment bond is obtained by the general contractor.

Following the hearing on the cross motions for summary judgment in this case, the South Carolina Court of Appeals issued its opinion in *Sloan Construction Co. v. Southco Grassing, Inc.*, 368 S.C. 523, 629 S.E.2d 372 (Ct. App. 2006). This Court finds that the *Sloan Construction* decision is dispositive of the Plaintiffs' tort claims, and based on that decision, the City is entitled to summary judgment on those tort claims.¹

In *Sloan Construction*, the Court of Appeals ruled that Section 29-6-250 does not provide for a private right of action against a governmental entity and does not constitute a waiver of sovereign immunity. The Court adopted the reasoning of the federal courts in cases where the U.S. government was sued in negligence under the Federal Tort Claims Act (FTCA) for failing

¹ The South Carolina Supreme Court granted certiorari on August 28, 2006.

to insure that a payment bond was provided by the general contractor. In those cases, the federal courts found no liability under the FTCA because a violation of the Miller Act, which required the payment bond, did not have a private counterpart. See e.g., *Devlin Lumber & Supply Corp. v. United States*, 488 F.2d 88 (4th Cir. 1973); *Hardaway Co. v. United States Army Corps of Engineers*, 980 F.2d 1415 (11th Cir. 1993).

The *Sloan Construction* Court applied the same reasoning. The Court explained that Section 15-78-40 of the South Carolina Tort Claims Act provides that governmental entities may only be held liable "for their torts in the same manner and to the same extent as a private individual under like circumstances." S.C. Code Ann. § 15-78-40. Yet, as the *Sloan Construction* Court found, Section 29-6-250 "deal[s] solely with government contracts," and as a result, "a private individual would never be in a position to require these statutorily mandated bonds, and thus could never be liable for the failure to require them." Therefore, because a private landowner cannot be held liable for failing to provide a payment bond and/or for failing to ensure that a payment bond is obtained by the general contractor, the Court ruled that the governmental entity is entitled to sovereign immunity and cannot be held liable in tort. The Court further held that "a violation of our own statutory bonding scheme does not give rise to a private right of action against a state agency." 629 S.E.2d at 375.

Based upon the Court of Appeals' reasoning in *Sloan Construction*, the Plaintiffs have no private right of action against the City for breach of any duties created by Section 29-6-250. Likewise, the City is entitled to sovereign immunity. Consequently, the Plaintiffs' claims must be dismissed.



III. Third-Party Beneficiary Contract Claim

The Plaintiffs further maintain that they can pursue the breach of any duties created by Section 29-6-250 in contract and by means of a third party beneficiary contract claim. The City disputes that the Plaintiffs' Amended Complaint alleges a third party beneficiary breach of contract cause of action. Nonetheless, to the extent that the Amended Complaint may be construed as alleging a third party beneficiary breach of contract claim, the Court finds that such claim must be dismissed because the duty that the Plaintiffs assert was breached was created by statute and not by contract. The duty that the Plaintiffs allege was breached by the City was created solely by statute, namely Section 29-6-250. The contract between the City and Gilbert Group included no such duty or requirement that a payment bond be procured by the general contractor nor a duty by the City to ensure that a bond be procured.

Where the duty of care that is allegedly breached arises from a source independent from the contract, then the claim is one in tort and not in contract. In *Caldwell v. Jim Walter Homes, Inc.*, 293 S.C. 229, 359 S.E.2d 518 (Ct. App. 1987), the Court of Appeals explained: "Ordinarily, where there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract, but when the breach of duty arises out of liability independently of the personal obligation undertaken by contract, it is a tort. 359 S.E.2d at 519. In fact, the law of this case as established by Judge Paul Short's previous order filed April 19, 2004, establishes that the breach of a statutory duty of care constitutes a tort. Consequently, the Plaintiffs' remedy does not lie in contract.

The Plaintiffs cite to the Seventh Circuit case of *A.E.I. Music Network v. Business Computers, Inc.*, 290 F.3d 952 (7th Cir. 2002), where that court applied Illinois law and ruled



that the statutory requirement of a bond is an implied term in every construction contract of a public entity. The court then allowed a subcontractor to sue as a third-party beneficiary for breach of contract to enforce that implied term. This Court does not agree with the reasoning of the Seventh Circuit, and the Plaintiffs have cited to no comparable South Carolina cases that would allow a statutory duty to be implied in a contract and then enforced by means of a third-party beneficiary contract claim. *See, Hooton v. Carolina Treatment Center, Inc.*, 300 S.C. 37, 386 S.E.2d 287, 289 (Ct. App. 1989) (implied terms in contract "are not generally favored in the law"). Furthermore, the *Sloan Construction* Court has already held that "South Carolina's bonding scheme on state projects does not grant a subcontractor the right to bring a private action against a violating state agency." *Sloan Construction*, 368 S.E.2d at 375, n.1. That holding further distinguishes the Seventh Circuit case on which the Plaintiffs rely.

Moreover, as the City argues, the Plaintiffs should not be permitted to avoid the City's sovereign immunity defenses by characterizing their claim as one in contract. In *Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987), the Court of Appeals rejected a similar attempt to characterize a tort claim as one in contract:

By claiming the existence of a contract, Rolandi seeks to avoid the application of sovereign immunity under the principle a sovereign waives the defense with respect to breaches of its contractual obligations. The trial court found Rolandi could not avoid the doctrine of sovereign immunity by characterizing her claim as one in contract when its true nature was a claim in tort. We agree.

363 S.E.2d at 386. (Citations omitted).

Finally, this Court finds that the Plaintiffs' third party beneficiary claim (assuming one has been pled) must be dismissed on the merits because the Plaintiffs do not qualify as third party beneficiaries of the contract entered into between the City and Gilbert Group, LLC. In *Bob Hammond Construction Co. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App.



1994), the Court of Appeals held that "one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff." 440 S.E.2d at 891. "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." *Id.* There is no evidence that the City and Gilbert Group, LLC intended to directly benefit the Plaintiffs. At best, the Plaintiffs are incidental beneficiaries of that contract, and thus cannot sue for a breach of that contract.

In *Bob Hammond*, the Court of Appeals rejected a third party beneficiary contract claim brought by a subcontractor on a highway project against the South Carolina Highway Department, which was the project owner. The Court of Appeals found that the subcontractor was no more than an incidental beneficiary of the contract between the Highway Department and the general contractor and therefore could not recover against the Highway Department. The same is true here. There has been no showing that the Plaintiffs were ever intended by the contracting parties to be direct beneficiaries. For that additional reason, the City is entitled to summary judgment on any third party beneficiary contract claim as may have been pled.

IV. Quantum Meruit

The Plaintiffs' have also asserted a cause of action for quantum meruit. The City submits that it cannot be held liable on a quantum meruit claim by a subcontractor where there is no evidence that the City has retained any amount of the contract price or failed to pay the full contract price. This Court agrees. In *Columbia Wholesale Company, Inc. v. Scudder May N.Y.*, 312 S.C. 259, 440 S.E.2d 129 (1994), the Supreme Court held that "[c]ourts addressing a claim



of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor." 440 S.E.2d at 131. Here, it is undisputed that the City has paid the full contract price. On that basis, the Court finds that the City cannot be held liable for quantum meruit.

Moreover, in *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000), the South Carolina Supreme Court clarified the standard applicable to quantum meruit claims. The Court adopted as the "sole test" the following elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." 532 S.E.2d at 872. The retention of the benefit by the City is not inequitable under these facts because the City has fully paid the value of the benefit by paying out the entire contract price. This Court thus concludes that the Plaintiffs cannot as a matter of law prove their claim for quantum meruit.

In addition, the City maintains that the quantum meruit claim is barred by sovereign immunity. This Court agrees. In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*." S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

In reaction to *McCall*, the General Assembly reinstated sovereign immunity subject *only* to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for a non-tort cause of action for unjust enrichment or quantum

meruit. Moreover, the General Assembly has not enacted any other legislation that expressly or implicitly waives sovereign immunity for an unjust enrichment or quantum meruit claim.

The City's position that a governmental entity is entitled to sovereign immunity for a quantum meruit claim is well supported by case law from North Carolina. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where the Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

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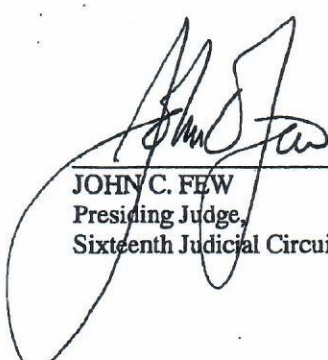
The North Carolina case law is equally persuasive in the present case. Given the absence of any statutory law or case law providing for a waiver of sovereign immunity in a quantum meruit claim and given the lack of consent by the City to be sued, the City is also entitled to sovereign immunity on the quantum meruit claim. On each of these bases, the Court concludes that the Plaintiffs' quantum meruit claim must be dismissed.

V. Conclusion

IT IS, THEREFORE, ORDERED that the Plaintiffs' motion for summary judgment is denied.

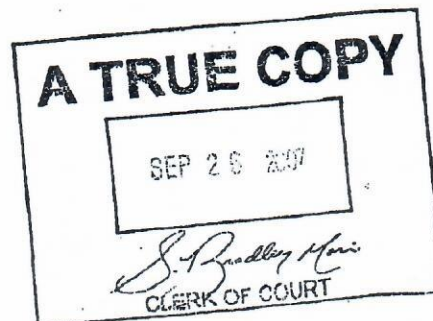
IT IS FURTHER ORDERED that the Defendant City's motion for summary judgment is granted, and the Plaintiffs' Amended Complaint against the City is dismissed with prejudice.

AND IT IS SO ORDERED.


JOHN C. FEW
Presiding Judge,
Sixteenth Judicial Circuit

Greenville, South Carolina

September 29, 2007



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Benjamin P. Fields,

Civil Action No. 2020-CP-40-2621

Plaintiff,

v.

ORDER

Richland County, Richland County Sheriff's
Department, and Leon Lott,

Defendants.

This matter is before this Court on the Motion to Dismiss and/or for Judgment on the Pleadings and Motion to Strike filed by the Defendants. With these Rule 12 motions, Defendants seek the following relief:

- (1) Dismissal of Defendant Richland County with respect to the Second Cause of Action;
- (2) Dismissal of Defendant Leon Lott with respect to the Third Cause of Action;
- (3) Striking of Plaintiff's prayers for attorney's fees from each cause of action and prayer of Plaintiff's Complaint;
- (4) Striking of Plaintiff's prayer for pre-judgment interest from Plaintiff's Third Cause of Action;
- (5) Striking Plaintiff's prayer for punitive damages from Plaintiff's Complaint; and
- (6) Striking Plaintiff's references to joint and several liability as set forth in Paragraph 59 and in the prayer.

A hearing was held by video conference with all counsel of record present on August 12, 2020. After a review of the written submissions of the parties, the record presented, and the oral arguments of counsel, this Court GRANTS Defendants' motions as discussed below.

I. Introduction

This litigation is related to a prior action brought by Plaintiff Benjamin P. Fields ("Plaintiff") against Richland County Sheriff's Department ("RCSD"), Richland County School District Two ("District"), Sheriff Leon Lott ("Sheriff Lott"), and Richland County in the United States District Court. That action was captioned *Benjamin P. Fields v. Richland County Sheriff's Department*, Civil Action Number 3:17-0443-MGL-TER. Plaintiff is a former Deputy Sheriff who was terminated by Sheriff Lott. The federal court case, which was commenced in 2017 by Plaintiff, alleged a Section 1983 claim against Sheriff Lott and state law tort claims against RCSD and District. By Order entered August 22, 2018, United States District Judge Mary Geiger Lewis dismissed all claims against RCSD and the District. Only the Section 1983 claim against Sheriff Lott remained.

Sheriff Lott and RCSD were represented by attorney Vance Bettis in the federal action. According to Plaintiff's allegations, in May 2019, his counsel, Ryan Hicks, and Mr. Bettis negotiated a settlement of the remaining Section 1983 claim against Sheriff Lott. The proposed settlement required the dismissal of the remaining claim against Sheriff Lott, the joinder of Richland County as a party-defendant, and a settlement for \$35,000 being consummated with Richland County. Plaintiff claims that such a settlement was reached with RCSD, District, Sheriff Lott, and Richland County, and that it was reduced to a "settlement agreement" signed by Plaintiff on June 12, 2019. Plaintiff alleges that Mr. Bettis was also representing Richland County at the time, which is denied by Richland County. Instead, in its Answer, Richland County affirmatively pleads that Mr. Bettis was never retained to represent them nor did he make an appearance for Richland County in Civil Action Number 3:17-0443-MGL-TER. Instead, according to the Answer filed

by Richland County, Mr. Bettis was retained to represent solely Sheriff Lott and RCSD in Civil Action Number 3:17-0443-MGL-TER.

In the federal action, Richland County denied that the parties reached a valid and binding settlement. Ultimately, the Plaintiff filed a Motion to Enforce Settlement. Richland County likewise filed a Motion for Judgment on the Pleadings and to Dismiss after being named in that action. By Order filed February 10, 2020, Judge Lewis granted Richland County's motion finding "there is no actionable claim against them under § 1983 regarding Plaintiff's termination." See, Order filed February 10, 2020, p. 4. Judge Lewis also dismissed the Motion to Enforce Settlement finding that the Federal Court lacked subject matter jurisdiction to consider that motion.

Plaintiff subsequently filed the current action in state court. Plaintiff has alleged causes of action for breach of contract and unjust enrichment/promissory estoppel against Richland County. He has also alleged a cause of action for tortious interference with contractual relationship against the RCSD and Sheriff Lott. In his Complaint, Plaintiff does not specifically plead whether Sheriff Lott is sued in his official capacity or his individual capacity.

II. Legal Analysis

A. Dismissal of Second Cause of Action

Richland County contends that Plaintiff's Second Cause of Action for unjust enrichment/promissory estoppel is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment or promissory estoppel to be prosecuted against a governmental entity. This Court agrees.

By way of background, sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided the landmark case of *McCall v.*

Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background is well summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Supreme Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*." S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

Thus, in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Tort Claims Act. The Court agrees with County that the Tort Claims Act does not include a waiver of sovereign immunity for non-

tort/equitable causes of action such as unjust enrichment or promissory estoppel.¹ Moreover, the General Assembly has never enacted any legislation that explicitly waives sovereign immunity for an unjust enrichment or promissory estoppel claim nor any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). See also, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The Court finds case law from North Carolina to be instructive. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

¹ Recently, in *Thomerson v. DeVito*, 430 S.C. 246, 844 S.E.2d 378 (2020), the South Carolina Supreme Court confirmed that "South Carolina courts have consistently characterized promissory estoppel as an equitable claim." 844 S.E.2d at 384. The Court further explained that "[m]onetary relief is not available at law for enforceable promise. Thus, monetary relief is not properly characterized as legal if the source for its recovery lies solely in a principle of equity. The claim -- and the remedy -- are still equitable because the recovery does not exist at law but is provided solely to avoid injustice in a court of equity." 844 S.E.2d at 385. Likewise, in *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), the Supreme Court explained that "unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." 678 S.E.2d 434.

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where that Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

Similarly, South Carolina law recognizes that "by entering a contract, the State waives its sovereign immunity and consents to be sued for breach thereof." *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263, 268 (2001). However, that is true for an express contract. The Court agrees with Richland County that sovereign immunity may not be deemed waived for causes of action sounding in equity for unjust enrichment or promissory estoppel. As a result, this Court rules that the Plaintiff's cause of action for unjust enrichment/promissory estoppel, which are both non-tort/equitable claims, is barred by sovereign immunity. As a matter of law, the Court acknowledges that the General Assembly has never explicitly waived sovereign immunity for such equitable claims, like it has for tort claims.

B. Dismissal of Third Cause of Action

Plaintiff's Third Cause of Action is a claim for intentional interference with contractual relations. To state such a claim, a plaintiff must allege and show "(1) the existence of a valid contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence

of justification; and (5) resulting damages.” *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726, 731 (2007). Plaintiff has asserted this cause of action against both RCSD and Sheriff Lott. The Court does not decide this issue on the merits as it relates to Sheriff Lott. Instead, after carefully reviewing the allegations in the Complaint, the Court finds dismissal proper because Fields has not specifically pled whether Sheriff Lott is being sued in his official capacity or his individual capacity.

Sheriff Lott argues that he should be dismissed regardless of capacity. He argues that, in his official capacity, he is the alter ego of RCSD, and thus, the naming of Sheriff Lott as a defendant in his official capacity is duplicative and unnecessary in that RCSD is already named. Moreover, Sheriff Lott argues that, if sued in his individual capacity, he should also be dismissed because he is entitled to absolute employee immunity under the Tort Claims Act. *See*, S.C. Code Ann. § 15-78-70(a); *Fleteau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2004). According to Sheriff Lott, the Complaint includes no allegations that he was acting outside the scope of his official duties as Richland County Sheriff or that any of the exceptions set forth in S.C. Code Ann. § 15-78-70(b) are applicable because a claim for intentional interference with contractual relations does not include “actual fraud” or “intent to harm” as an element of the cause of action. *See, Loadholt v. South Carolina State Budget & Control Board*, 339 S.C. 165, 528 S.E.2d 670, 674 (2000) (recognizing that “[t]he hiring and firing of employees clearly falls within the scope of Loadholt’s official duties as Sheriff of Hampton County”).

Further, in the event that Plaintiff intends to pursue an individual capacity claim against Sheriff Lott, Plaintiff has not specifically alleged facts to show that Sheriff Lott was acting outside the scope of his official duties so as to avoid the bar of S.C. Code Ann. § 15-78-70(a). In *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), the Supreme

Court explained that “[a] circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint.” 826 S.E.2d at 592. As a result, the Court is dismissing the Third Cause of Action against Sheriff Lott *without prejudice*, and Plaintiff may file a motion to amend the Complaint to plead specific facts to show that Sheriff Lott was acting outside the scope of his official duties.²

C. Striking of Attorney’s Fees and Pre-Judgment Interest

In his Complaint, Plaintiff seeks the recovery of attorney’s fees and pre-judgment interest against Richland County, RCSD, and Sheriff Lott. Plaintiff has consented to striking the prayer for attorney’s fees and pre-judgment interest.

D. Striking of References to Joint and Several Liability

Lastly, Richland County, RCSD, and Sheriff Lott request that the Court strike Plaintiff’s references to joint and several liability as set forth in Paragraph 59 and in the prayer of the Complaint. In footnote #1 of his opposition memorandum, he has stipulated that Richland County, RCSD, and Sheriff Lott may not be held jointly and severally liable under the Tort Claim Act. That resolves that issue.

IT IS, THEREFORE, ORDERED that Defendants’ Motion to Dismiss and/or for Judgment on the Pleadings is granted such that Plaintiff’s Second Cause of Action is dismissed with prejudice as a matter of law and Plaintiff’s Third Cause of Action is dismissed only against Sheriff Lott and without prejudice.

² In his Third Cause of Action, Plaintiff also seeks an award of punitive damages against Sheriff Lott. The dismissal of the Third Cause of Action without prejudice also includes the dismissal of the prayer for punitive damages.

IT IS FURTHER ORDERED that the prayer for attorney's fees and pre-judgment interest in Plaintiff's Complaint are hereby stricken.

IT IS FURTHER ORDERED that Plaintiff's references to joint and several liability as set forth in Paragraph 59 and in the prayer of the Complaint are hereby stricken.

AND IT IS SO ORDERED.

Jocelyn Newman
CIRCUIT COURT JUDGE

November 6, 2020
Columbia, South Carolina.



Richland Common Pleas

Case Caption: Benjamin P Fields vs Richland County , defendant, et al

Case Number: 2020CP4002621

Type: Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2020-11-19 11:42:49 page 10 of 10

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

)

Mark Gregory Thompson and Jane Page
Thompson, individually and on behalf of
all those similarly situated,) Civil Action No.: 2021-CP-02-02323
)
)
)*Plaintiffs,*

)

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

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

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Defendants.

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Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiffs, Mark Gregory Thompson and Jane Page Thompson, respectfully request the Court reconsider its Order dated August 8, 2022, regarding the Motion to Dismiss filed by Defendants, Clay Killian, in his official capacity as Aiken County Administrator; Jason Goings, in his official capacity as Aiken County Treasurer; Aiken County Council; Aiken County; City of Aiken; Aiken City Council; and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (collectively "Defendants") seeking clarification as to whether the Court meant to dismiss *all* claims against Defendants and to prevent a manifest injustice to Plaintiffs and the putative class based on the Court's error of law.

The current Order's error is two-fold. First, the Court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case in the first place. The clear legislative intent of the Revenue Procedures Act ("RPA"), specifically § 12-60-20, dictates the RPA's non-application in this

matter. Yet, the Court has applied a subsection beyond this scope to abolish Rule 23 of the South Carolina Rules of Civil Procedure if a political subdivision is involved.

Second, this Court holding that a citizen may not bring a class action against a political subdivision would only *prevent class certification*. Plaintiffs' *individual* claims are not impacted by § 12-60-80(C). If § 12-60-80(C) does apply, it only prevents claims being raised in a representative capacity; it does not prevent an individual claim from proceeding against a political subdivision. When class certification is denied, the underlying individual claim is not dismissed.

Plaintiffs ask this Court to reconsider and/or clarify its holding. If the Court maintains that § 12-60-80(C) bars class certification in this case – despite the clear legislative intent set out in § 12-60-20 – then this Court must not dismiss Plaintiffs' individual claim, as class certification has no impact on the underlying validity of the individual claim.

LEGAL STANDARD

Under Rule 59(e) of the South Carolina Rules of Civil Procedure, a party may timely move “to alter or amend the judgment.” Rule 59(e), SCRPC. A motion for reconsideration pursuant to Rule 59(e), SCRPC, is appropriate to “correct a clear error of law or prevent manifest injustice.” *Collison v. Int’l Chem. Workers Union*, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which Rule 59(e), SCRPC, is modeled). A party may file a motion for reconsideration “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Motions for reconsideration are completely within the Court's discretion. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 841 (Ct. App. 2012).

ARGUMENT

I. The Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 *et seq.*, does not apply to a case that does not name the South Carolina Department of Revenue, nor involves property taxes.

A. The Class Action Bar at S.C. Code Ann. § 12-60-80(C) does not apply.

Plaintiffs request this Court clarify the applicability of the Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 *et seq.* (the “RPA”), in a revised Order prior to concluding that the class action bar in S.C. Code Ann. § 12-60-80(C) applies and warrants dismissal. Respectfully, Plaintiffs believe that a pivotal step is missing in the Court’s analysis. The Court acknowledges the struggle with *Aiken* in its order. *Aiken v. South Carolina Department of Revenue*, 429, S.C. 414, 839 S.E.2d 96 (2020). However, unlike the Court here, the Court in *Aiken* **did** find that the RPA applied in the case. *See Aiken*, 429 S.C. at 422 (“we express no opinion as to whether the Revenue Procedures Act applies to **other issues** in this case.”) (emphasis supplied). Indeed, this Court noted that the presence of the South Carolina Department of Revenue, in *Aiken*, clearly brought that action under the RPA. Order at. p 5. This is the critical element lacking in this case. There is simply no connection to the RPA in this case. This is not *Aiken* where the “Department,” as defined in the RPA, was being sued via a class action.

Here, the Court must consider § 12-60-20 mandate that all sections in the RPA construed with that intent. This was not an issue in *Aiken* due to the presence of the Department of Revenue. Indeed, Section 12-60-20 unambiguously sets forth the General Assembly’s intent in promulgating the RPA:

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, 230 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Id.*; *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” *State v. Sweat*, 386 S.C. at 351, 688 S.E.2d at 575 (citing *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)).

The first step in the analysis of whether the RPA applies in this case is S.C. Code Ann. § 12-60-20. The statute makes clear that the RPA applies in two scenarios: **(1) disputes with the South Carolina Department of Revenue (“SCDOR”)**, and **(2) disputes concerning property taxes**. *Aiken* was the first scenario.

Further, the South Carolina Supreme Court, in *Lightner v. Hampton Hall Club, Inc.*, addressed the control of § 12-60-20 on the RPA’s scope, 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. at 365 (emphasis supplied).

Therefore, the RPA does not apply to Plaintiffs’ claims, as Plaintiffs have not named the SCDOR, nor does this case concern property taxes. Thus, because the RPA does not apply to

Plaintiffs' claims, neither does the class action bar in S.C. Code Ann. § 12-60-80(C). To hold otherwise, would be to extend one subsection beyond the scope of the Act in which it resides.

This Court must not dismiss the fact that SCDOR was a named Defendant in *Aiken*, when applying its analysis in this case. The Court's holding was specific: "the plain language of subsection 12-60-80(C) prohibits this action from proceeding as a class action." *Aiken*, 429 S.C. at 417, 839 S.E.2d at 97. (emphasis supplied). Despite this holding, the Court reads § 12-60-80(C) to have sweeping application, when in fact, § 12-60-80(C) has only ever been (and should only be) applied within the much narrower legislative intent of the RPA. Indeed, this subsection, passed in 2003, has only ever been applied to cases involving property taxes or cases brought against the SCDOR. See e.g., *Aiken v. S.C. Dep't of Rev.*, 429 S.C. 414, 839 S.E.2d 96 (2020); *Drummond v. State, Dep't of Revenue*, 378 S.C. 362, n.5, 662 S.E.2d 587, 591 (2008); *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017).

In sum, Plaintiffs' case is entirely distinguishable from *Aiken*, which is precisely the type of case that falls within the purview of the RPA because it is a case against SCDOR. Plaintiffs' case is not. Taking *Lightner v. Hampton Hall Club, Inc.*, and *Aiken v. S.C. Dep't of Rev.*, together, this Court should not have applied 12-60-80(C) beyond the stated intent of § 12-60-20.¹

¹ Plaintiffs direct the Court to a number of class actions which have proceeded against political subdivisions post the passage of 12-60-80(C) See e.g., *Brown v. Cnty. of Aiken*, 308 S.C. 180, 417 S.E.2d 565 (1992); *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021) (allowing a class action to proceed against the Town of Summerville prior to becoming moot); *Colleton County Taxpayers Assn. v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 638 S.E.2d 685 (2006); *S.C. Pub. Interest Found. v. City of Columbia*, 431 S.C. 164, 847 S.E.2d 257 (Ct. App. 2020); *Azar v. City of Columbia*, 414 S.C. 307, 778 S.E.2d 315 (2015); *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E.2d 808 (2005).

B. Plaintiffs' Individual Claims Are Not Impacted by § 12-60-80(C).

If this Court chooses to hold that § 12-60-80(C) applies in this case, such a holding would only prevent class certification. There is nothing in § 12-60-80(C) warranting dismissal of individual claims. *See* § 12-60-80(C). Plaintiffs' individual claims have merit, and after a ruling that class claims may not be brought, Plaintiffs' individual claims remains and may proceed as an individual action.

This is routine class procedure. Indeed, our courts have routinely held that an order denying class cert is not appealable because it is *not* a ruling on the merits, even if the motion is tailored as a motion to strike. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304–05, 705 S.E.2d 475, 479 (Ct. App. 2011) (“We find this order is not immediately appealable because its effect was not to strike a pleading, as its label suggests, but rather to deny class certification on the merits of Rule 23(a), SCRCF. On remand, the order shall be treated as an order denying class certification which, under Rule 23(d)(1), ‘may be altered or amended before the decision on the merits.’”); *see also* *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 448, 661 S.E.2d 81, 85 (2008); *Knowles v. Standard Sav. & Loan Ass’n*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (rejecting the argument that “**class certification** is a decision on the **merits** and affects substantial rights, therefore, appealable by virtue of S.C. Code [Ann.] § 14-3-330 (1976)” (emphasis supplied)). Class rulings are not rulings on the merits. Should this Court maintain that § 12-60-80(C) prevents a class from being brought, such a ruling cannot be construed as a ruling on the underlying merits of Plaintiffs' individual claims. To do so, as the Order currently does, is a manifest error of law simply not contemplated nor authorized by § 12-60-80(c) nor any case law surrounding class certification.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court reconsider its Order dated August 8, 2022 and revise accordingly.

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**
BY: 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)
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@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 LAW FIRM, 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 Plaintiff and the Class

Dated: August 15, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

)

)

Mark Gregory Thompson and Jane Page
Thompson, individually and on behalf of
all those similarly situated,) Civil Action No.: 2021-CP-02-02323
)
)*Plaintiffs,*

)

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

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

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Defendants.

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Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiffs, Mark Gregory Thompson and Jane Page Thompson, respectfully request the Court reconsider its Order dated August 8, 2022, regarding the Motion to Dismiss filed by Defendants, City of Aiken; Aiken City Council; and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (collectively "City Defendants"), seeking clarification as to whether the Court meant to dismiss *all* claims against City Defendants and to prevent a manifest injustice to Plaintiffs and the putative class based on the Court's error of law.

The current Order's error is two-fold. First, the Court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case in the first place. The clear legislative intent of the Revenue Procedures Act ("RPA"), specifically § 12-60-20, dictates the RPA's non-application in this matter. Yet, the Court has applied a subsection beyond this scope to abolish Rule 23 of the South

Carolina Rules of Civil Procedure if a political subdivision is involved.

Second, this Court holding that a citizen may not bring a class action against a political subdivision would only *prevent class certification*. Plaintiffs' *individual* claims are not impacted by § 12-60-80(C). If § 12-60-80(C) does apply, it only prevents claims being raised in a representative capacity; it does not prevent an individual claim from proceeding against a political subdivision. When class certification is denied, the underlying individual claim is not dismissed.

Plaintiffs ask this Court to reconsider and/or clarify its holding. If the Court maintains that § 12-60-80(C) bars class certification in this case – despite the clear legislative intent set out in § 12-60-20 – then this Court must not dismiss Plaintiffs' individual claim, as class certification has no impact on the underlying validity of the individual claim.

LEGAL STANDARD

Under Rule 59(e) of the South Carolina Rules of Civil Procedure, a party may timely move “to alter or amend the judgment.” Rule 59(e), SCRPC. A motion for reconsideration pursuant to Rule 59(e), SCRPC, is appropriate to “correct a clear error of law or prevent manifest injustice.” *Collison v. Int’l Chem. Workers Union*, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which Rule 59(e), SCRPC, is modeled). A party may file a motion for reconsideration “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Motions for reconsideration are completely within the Court's discretion. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 841 (Ct. App. 2012).

ARGUMENT

I. The Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 *et seq.*, does not apply to a case that does not name the South Carolina Department of Revenue, nor involves property taxes.

A. The Class Action Bar at S.C. Code Ann. § 12-60-80(C) does not apply.

Plaintiffs request this Court clarify the applicability of the Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 *et seq.* (the “RPA”), in a revised Order prior to concluding that neither the RPA nor the class action bar in S.C. Code Ann. § 12-60-80(C) applies to this case. As such, this Court has subject matter jurisdiction to hear this matter.

Respectfully, Plaintiffs believe that a pivotal step is missing in the Court’s analysis. The Court acknowledges the distinguishing facts in *Aiken*, both that the fees at issue were “taxes” under the RPA, and the fact that the “Department” was named. *Aiken v. South Carolina Department of Revenue*, 429, S.C. 414, 839 S.E.2d 96 (2020). Critically differing from here is the fact that the Court in *Aiken* **did** find that the RPA applied in the case. *See Aiken*, 429 S.C. at 422 (“we express no opinion as to whether the Revenue Procedures Act applies to **other issues** in this case.”) (emphasis supplied). Indeed, this Court noted that the presence of the South Carolina Department of Revenue, in *Aiken*, clearly brought that action under the RPA. Order at. p 4. This is the critical element lacking in this case. There is simply no connection to the RPA in this case. This is not *Aiken* where the “Department,” as defined in the RPA, was being sued via a class action, nor could these fees fall under the definition of “tax” as they are not subject to collection of the department. *Compare* with FN. 4 of Court’s order.

Here, the Court must consider § 12-60-20 mandate that all sections in the RPA construed with that intent. This was not an issue in *Aiken* due to the presence of the Department of Revenue. Indeed, Section 12-60-20 unambiguously sets forth the General Assembly’s intent in promulgating

the RPA:

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, 230 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Id.*; *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” *State v. Sweat*, 386 S.C. at 351, 688 S.E.2d at 575 (citing *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)).

The first step in the analysis of whether the RPA applies in this case is S.C. Code Ann. § 12-60-20. The statute makes clear that the RPA applies in two scenarios: (1) **disputes with the South Carolina Department of Revenue (“SCDOR”)**, and (2) **disputes concerning property taxes**. *Aiken* was the first scenario.

Further, the South Carolina Supreme Court, in *Lightner v. Hampton Hall Club, Inc.*, addressed the control of § 12-60-20 on the RPA’s scope, 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. at 365 (emphasis supplied).

Therefore, the RPA does not apply to Plaintiffs' claims, as Plaintiffs have not named the SCDOR, nor does this case concern "taxes," as that term is defined in the RPA. Thus, because the RPA does not apply to Plaintiffs' claims, neither does the class action bar in S.C. Code Ann. § 12-60-80(C). To hold otherwise, would be to extend one subsection beyond the scope of the Act in which it resides. Further, § 12-60-80(C) does not deal with subject matter jurisdiction but simply a bar to bringing class actions.

This Court must not dismiss the fact that SCDOR was a named Defendant in *Aiken*, when applying its analysis in this case. The Court's holding was specific: "the plain language of subsection 12-60-80(C) prohibits this action from proceeding as a class action." *Aiken*, 429 S.C. at 417, 839 S.E.2d at 97. (emphasis supplied). Despite this holding, the Court reads § 12-60-80(C) to have sweeping application, when in fact, § 12-60-80(C) has only ever been (and should only be) applied within the much narrower legislative intent of the RPA. Indeed, this subsection, passed in 2003, has only ever been applied to cases involving property taxes or cases brought against the SCDOR. See e.g., *Aiken v. S.C. Dep't of Rev.*, 429 S.C. 414, 839 S.E.2d 96 (2020); *Drummond v. State, Dep't of Revenue*, 378 S.C. 362, n.5, 662 S.E.2d 587, 591 (2008); *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017).

In sum, Plaintiffs' case is entirely distinguishable from *Aiken*, which is precisely the type of case that falls within the purview of the RPA because it is a case against SCDOR. Plaintiffs' case is not. Taking *Lightner v. Hampton Hall Club, Inc.*, and *Aiken v. S.C. Dep't of Rev.*, together,

this Court should not have applied 12-60-80(C) beyond the stated intent of § 12-60-20.¹ As such, this Court is not deprived of subject matter jurisdiction. Thus, its dismissal of the Unjust Enrichment claim at p. 5, should be reconsidered.

B. Plaintiffs' Individual Claims Are Not Impacted by § 12-60-80(C).

If this Court chooses to hold that § 12-60-80(C) applies in this case, such a holding would only prevent class certification and not dictate dismissal for lack of subject matter jurisdiction. There is nothing in § 12-60-80(C) warranting dismissal of individual claims, nor anything regarding lack of subject matter jurisdiction. It is simply a class action bar. *See* § 12-60-80(C). Plaintiffs' individual claims have merit, and after a ruling that class claims may not be brought, Plaintiffs' individual claims remain and may proceed as an individual action.

This is routine class procedure. Indeed, our courts have routinely held that an order denying class cert is not appealable because it is *not* a ruling on the merits, even if the motion is tailored as a motion to strike. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304–05, 705 S.E.2d 475, 479 (Ct. App. 2011) (“We find this order is not immediately appealable because its effect was not to strike a pleading, as its label suggests, but rather to deny class certification on the merits of Rule 23(a), SCRCP. On remand, the order shall be treated as an order denying class certification which, under Rule 23(d)(1), ‘may be altered or amended before the decision on the merits.’”); *see also* *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 448, 661 S.E.2d 81, 85 (2008); *Knowles v. Standard*

¹ Plaintiffs direct the Court to a number of class actions which have proceeded against political subdivisions post the passage of 12-60-80(C) *See e.g.*, *Brown v. Cnty. of Aiken*, 308 S.C. 180, 417 S.E.2d 565 (1992); *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021) (allowing a class action to proceed against the Town of Summerville prior to becoming moot); *Colleton County Taxpayers Assn. v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 638 S.E.2d 685 (2006); *S.C. Pub. Interest Found. v. City of Columbia*, 431 S.C. 164, 847 S.E.2d 257 (Ct. App. 2020); *Azar v. City of Columbia*, 414 S.C. 307, 778 S.E.2d 315 (2015); *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E.2d 808 (2005).

Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (rejecting the argument that “**class certification** is a decision on the **merits** and affects substantial rights, therefore, appealable by virtue of S.C. Code [Ann.] § 14-3-330 (1976)” (emphasis supplied)). Class rulings are not rulings on the merits. Should this Court maintain that § 12-60-80(C) prevents a class from being brought, such a ruling cannot be construed as a ruling on the underlying jurisdiction/merits of Plaintiffs’ individual claims. To do so, as the Order currently does, is a manifest error of law simply not contemplated nor authorized by § 12-60-80(c) nor any case law surrounding class certification.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court reconsider its Order dated August 8, 2022 and revise accordingly.

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

BY: 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)
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@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 LAW FIRM, 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 Plaintiff and the Class

Dated: August 18, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated,	)	C/A no. 2021-CP-02-02323
	)	
<i>Plaintiffs,</i>	)	PLAINTIFFS' MEMORANDUM IN
	)	SUPPORT OF RECONSIDERATION
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 City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken.	)	
	)	
<i>Defendants.</i>	)	
	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF RECONSIDERATION

Plaintiffs, Mark Gregory Thompson and Jane Page Thompson, have moved this Court to reconsider its August 8, 2022 Order regarding the Motion to Dismiss filed by Defendants, City of Aiken; Aiken City Council; and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (collectively "City Defendants"). In that Order, the Court dismissed all claims against City Defendants.¹ However, in so holding, the Court made two errors.

¹ In footnote 2 of its Order, the Court suggests total abandonment of the declaratory judgment action brought against all Defendants. Because the City Defendants have ceased charging the Road Maintenance Fee at issue, the declaratory judgment action is moot as to the City Defendants.

Plaintiffs seek clarification from the Court that its Motion to Reconsider the Order granting the motion to dismiss as to Aiken County and Aiken County Treasurer, Jason Goings, filed on August 15, 2022, remains pending before the Court. As a result, the declaratory judgment action should not be abandoned as to "all Defendants," rather as to the City Defendants only.

First, the Court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case in the first place, despite the clear legislative intent of the Revenue Procedures Act (“RPA”) in S.C. Code Ann. § 12-60-20. Second, this Court held that a citizen may not maintain this class action against a political subdivision and dismissed all claims against the City Defendants. The Court’s holding, that a citizen may not bring a class action against a political subdivision, only prevents class certification. It does not impact Plaintiffs’ individual claims from proceeding against a political subdivision. Therefore, Plaintiffs submit this memorandum in support of its Motion to Reconsider this Court’s August 8, 2022 Order.

ARGUMENT

I. This Court has subject matter jurisdiction over this dispute because the Revenue Procedures Act only applies to cases involving property taxes and/or the South Carolina Department of Revenue, and this case concerns neither.

As noted above, the Court’s August 8 Order finds the Revenue Procedures Act, S.C. Code Ann. § 12-60-10 *et seq.* (“RPA”), applies and bars this case from going forward in the Circuit Court. Plaintiffs’ Omnibus Response in Opposition to Defendants’ Motions to Dismiss and Motion to Reconsider set forth the full argument on which Plaintiffs rely. At the outset, Courts around the State of South Carolina addressing this issue have also held that the class action bar in § 12-60-80(C) does not apply to these illegal Road Fee actions. *See* Exhibits A-G, I-J (Greenville County, Beaufort County, Georgetown County, Orangeburg County proceeding with declaratory judgment, Spartanburg County denying motion to dismiss via Form 4,); *but see* Exhibit H (The Honorable Judge Curtis in Horry County granted the defendants’ motion to dismiss, however the plaintiff’s Motion to Reconsider is currently pending before the Court).

The Court’s Order concluded that the Revenue Procedures Act and specifically the class action bar in S.C. Code Ann. § 12-60-80(C) apply to this dispute. The Court’s analysis relies on the

South Carolina Supreme Court’s decision in *Aiken v. South Carolina Department of Revenue*, which can be completely distinguished from this case. 429 S.C. 414, 839 S.E.2d 96 (2020). The *Aiken* decision is easily distinguishable from the present action because the fees at issue in that case were “taxes” under the RPA, and the “Department” was named. The Supreme Court in *Aiken* found that the RPA applied, as those facts are precisely the scenario for which the RPA should apply. *See Aiken*, 429 S.C. at 422. This Court noted that the presence of the South Carolina Department of Revenue in *Aiken* clearly brought that action under the RPA. *See Order* at. p 4. This is the critical element lacking in this case. There is simply no connection to the RPA in this case as the South Carolina Department of Revenue is not named nor involved in this case, and the fees at issue are not property taxes. This Court must not dismiss the fact that SCDOR was a named Defendant in *Aiken*, when applying its analysis in this case.

Moreover, section 12-60-20 of the RPA unambiguously sets forth the General Assembly’s “Legislative Intent” in promulgating the RPA:

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 first step in the analysis of whether the RPA applies in this case starts with the Legislative intent at S.C. Code Ann. § 12-60-20. The statute makes clear that the RPA applies in only two scenarios: **(1) disputes with the South Carolina Department of Revenue (“SCDOR”),** and **(2) disputes concerning property taxes.**

Further, the South Carolina Supreme Court, in *Lightner v. Hampton Hall Club, Inc.*, addressed the control of § 12-60-20 on the RPA’s scope, 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. at 365 (emphasis supplied).

Given the legislative intent and the Supreme Court’s holding in *Lightner*, the RPA does not apply to Plaintiffs’ claims. Plaintiffs have not named the SCDOR, nor does this case concern “taxes,” as that term is defined in the RPA. Thus, because the RPA does not apply to Plaintiffs’ claims, neither does the class action bar in S.C. Code Ann. § 12-60-80(C). To hold otherwise, would be to extend one subsection beyond the scope of the Act in which it resides.

In sum, Plaintiffs’ case is entirely distinguishable from *Aiken*, which is precisely the type of case that falls within the purview of the RPA. Plaintiffs’ case is not. Taking *Lightner v. Hampton Hall Club, Inc.*, and *Aiken v. S.C. Dep’t of Rev.*, together, this Court should not have applied 12-60-80(C) beyond the stated intent of § 12-60-20.² As such, this Court is not deprived of subject matter jurisdiction. Thus, the dismissal of the Unjust Enrichment claim at page 5 of the Order should be reconsidered.

B. Plaintiffs’ Individual Claims Are Not Impacted by § 12-60-80(C).

² Plaintiffs direct the Court to a number of class actions which have proceeded against political subdivisions post the passage of 12-60-80(C) *See e.g., Brown v. Cnty. of Aiken*, 308 S.C. 180, 417 S.E.2d 565 (1992); *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021) (allowing a class action to proceed against the Town of Summerville prior to becoming moot); *Colleton County Taxpayers Assn. v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 638 S.E.2d 685 (2006); *S.C. Pub. Interest Found. v. City of Columbia*, 431 S.C. 164, 847 S.E.2d 257 (Ct. App. 2020); *Azar v. City of Columbia*, 414 S.C. 307, 778 S.E.2d 315 (2015); *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E.2d 808 (2005).

If this Court chooses to hold that § 12-60-80(C) applies in this case, such a holding would only prevent class certification and not dictate dismissal of the entire action for lack of subject matter jurisdiction. There is nothing in § 12-60-80(C) warranting dismissal of individual claims, nor anything regarding lack of subject matter jurisdiction. It is simply a class action bar. *See* § 12-60-80(C). Plaintiffs' individual claims have merit, and after a ruling that class claims may not be brought, Plaintiffs' individual claims remain and may proceed as an individual action.

In sum, if the Court maintains that § 12-60-80(C) bars class certification in this case – despite the clear legislative intent set out in § 12-60-20 – then this Court must not dismiss Plaintiffs' individual claim, as class certification has no impact on the underlying validity of the individual claim.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court reconsider its Order dated August 8, 2022 and revise accordingly.

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

BY: 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)
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
T: (803) 281-8145
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@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 LAW FIRM, 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 Plaintiff and the Class

Dated: October 26, 2022

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jerry A. Bruce, individually and on behalf
of all those similarly situated,

Plaintiff,

v.

Joseph Kernell, in his official capacity as
Greenville County Administrator, Jill Rees
Kintigh, in her official capacity as
Treasurer of Greenville County,
Greenville County Council, and Greenville
County,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C/A no. 2021-CP-23-04996

ORDER

Defendants, Joseph Kernell, Jill Rees, Greenville County, and Greenville County Council ("Defendants") filed a motion to dismiss Plaintiff Jerry A. Bruce's claims. Plaintiff opposes the motion. The parties submitted initial briefs. The Court then held a hearing on March 2, 2022. Having fully reviewed the parties' positions, the Court DENIES Defendants' motion to dismiss.

I. Factual Background.

This is a case about Greenville County's Road Maintenance Fee and Telecommunications Fee enacted pursuant to County Ordinance Nos. 4906 and 4907, respectively. On June 30, 2021, the South Carolina Supreme Court struck down these ordinances, finding Greenville County's Road Maintenance Fee and Telecommunications Fee were both illegal and unauthorized under South Carolina law.

In 1993, Greenville County passed Greenville Ordinance No. 2474, requiring the owner of every vehicle registered in Greenville County to pay \$15.00 a year to the Greenville County Tax Collector.¹ Since then, this fee has remained in effect and in 2017, was raised to \$25.00. Each year, Defendants collected and retained this fee. Specifically, the Treasurer of Greenville County, Defendant Kintigh, is responsible for overseeing the collection of both Fees at issue in this case.

On June 30, 2021, the South Carolina Supreme Court struck down Greenville County Ordinance Nos. 4906 and 4907. These ordinances imposed a Road Maintenance Fee on each citizen with a registered vehicle in Greenville County, and a Telecommunications Fee requiring the owner of every parcel of real property in Greenville to pay \$14.95 per year, for ten years, to the Greenville County Tax Collector. See *Burns v. Greenville County Council*, 433 S.C. 583 (2021).

Our Supreme Court started its analysis that Greenville County may only charge *ad valorem* property taxes or “uniform service charges” as defined by S.C. Code Ann. § 6-1-300(6). *Burns*, 433 S.C. at 586. The Court then found that neither ordinance imposed a value-based property tax, nor did they qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor qualified as a “service or user fee” under S.C. Code Ann. § 6-1-330(A). See *Burns*, 433 S.C. at 587.

Finding neither of the above applied to the Road Maintenance Fee and Telecommunications Fee imposed, collected, and retained by Defendants, our Supreme

¹ For purposes of this order, all facts plead in Plaintiffs Complaint are taken as true pursuant to the applicable standard of review. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

Court struck each ordinance down. However, Defendants continue to retain the fees collected pursuant to the illegal ordinances. As a result, Plaintiff filed this class action on behalf of himself and all others similarly situated.

Defendants argue four grounds in their motion to dismiss that can be distilled into two legal issues: (1) the applicability of the Revenue Procedures Act; (2) the applicability of S.C. Code Ann. § 8-21-30 to the fees charged. The parties have briefed and argued these issues.

For the reasons stated below, the Court DENIES Defendants motion to dismiss in its entirety.

II. Standard of Review

In deciding a motion to dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6), the trial court should consider the allegations set forth on the face of the plaintiff's complaint. See *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The trial court must deny the motion to dismiss if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007); *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states a valid claim for relief, and further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004).

Under South Carolina Rule of Civil Procedure 12(b)(1), a movant challenges the court's power over the subject matter of an action. Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008). As such, "the question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

III. Analysis.

Defendants² argue that this matter should be dismissed because the Legislature has provided a jurisdictional scheme to review the Road Maintenance Fee at issue here, under the Revenue Procedures Act ("RPA"). See S.C. Code Ann. § 12-60-10 *et seq.* Thus, Defendants argue, this Court lacks subject matter jurisdiction over Plaintiff's claims.

Plaintiff contests this. First, Plaintiff argues that the Revenue Procedures Act is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue ("SCDOR"); and 2) disputes concerning property taxes, citing to the legislative intent set forth in S.C. Code Ann. § 12-60-20, and the Supreme Court's holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Additionally, because the Revenue Procedures Act applies only to disputes with the SCDOR and disputes concerning property taxes, Plaintiff argues the class action prohibition in S.C. Code Ann.

² Plaintiff's counsel and Defense counsel have agreed to dismiss any arguments or claims against Joseph Kernell, as Greenville County Administrator, and Greenville County Council. As such, any arguments as against either party are hereby dismissed without prejudice.

§ 12-60-80(C), as well as the administrative remedies provided in the RPA, equally do not apply.

a. The Revenue Procedures Act does not apply to Plaintiff's claims.

The Revenue Procedures Act (“RPA”) does not apply to this dispute because it only applies to “disputes with the Department of Revenue and disputes concerning property taxes.” S.C. Code Ann. § 12-60-20.

The General Assembly left no doubt as to its intent when promulgating the RPA.

Section 12-60-20, titled “Legislative intent,” reads:

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).

In evaluating the RPA's applicability to disputes, the South Carolina Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments and disputes involving the SCDOR. See e.g., *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004). The current matter presents a dispute involving neither property taxes nor the SCDOR.

In South Carolina, the cardinal rule of statutory interpretation gives effect to the intent of the legislature. See *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). “All 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.* Here, the General Assembly intended the RPA to apply to only two disputes: 1) disputes with SCDOR; and 2) disputes over property taxes, neither of which apply here.

Moreover, Plaintiff relies on the South Carolina Supreme Court’s opinion in *Lightner v. Hampton Hall Club, Inc.*, as dispositive of the scope of the RPA. 419 S.C. 357, 798 S.E.2d 555 (2017). In *Lightner*, members of a nonprofit brought a class against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. *Id.* at 359, 798 S.E.2d at 556. In this case, our Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59.

Here, Plaintiff has not sued the SCDOR like the plaintiffs did in *Lightner*, nor do the fees or taxes—whichever way the parties want to characterize them—concern property taxes.³ As such, the RPA does not apply. Correspondingly, the RPA’s class action prohibition, and its requirement of exhaustion of administrative remedies are inapplicable.

³ “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18).

Defendants argue there is no cause of action for Plaintiff to recover the unauthorized Road Maintenance Fee or Telecommunications Fee paid to Defendants. Plaintiff argues that S.C. Code Ann. § 8-21-30 provides the remedy for an unlawful fee charged to individuals by a public officer. The Court disagrees with Defendants.

Section 8-21-30 provides:

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 South Carolina, a fee must be authorized by statute, otherwise it is illegally charged. See S.C. Code Ann. § 8-21-15(A). In addition, “[f]ee statutes must be strictly construed.” *State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941); The Honorable Glenn G. Reese, 2011 WL 5304079, at *1 (S.C.A.G Oct. 11, 2011) (“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.”). Strictly construing this statute against the charging officer, the Court finds § 8-21-30 applies in this case.

1. County Treasurers as “officers”

For this statute to apply to this matter, the fee at issue must have been charged by an “officer.” S.C. Code Ann. § 8-21-30. First, Defendants argue that the Greenville County Treasurer does not qualify as an “officer” under S.C. Code Ann. § 8-21-30. The Court disagrees.

In this action, Plaintiff has named Greenville County Treasurer Jill Rees Kintigh. It is alleged that Treasurer Kintigh is responsible for charging and collecting the Road

Maintenance Fee and Telecommunications Fee at issue in this case. Plaintiff provides that Title 8 of the South Carolina Code is titled, and applies to, Public Officers and Employees, with Chapter 21 titled, and covering, Fees and Costs generally. As Plaintiff points out, in Chapter 21, County Treasurers are expressly named multiple times. See e.g., S.C. Code Ann. § 8-21-310(A)-(C); S.C. Code Ann. § 8-21-1040; S.C. Code Ann. § 8-21-760.

Thus, the Court finds County Treasurer Kintigh to be an “officer” for the purpose of section 8-21-30.

2. Application of S.C. Code Ann. § 8-21-30

Next, Defendants argue that S.C. Code Ann. § 8-21-30 does not apply to this dispute because road maintenance and telecommunications are not enumerated services under S.C. Code Ann. § 8-21-10. Plaintiff argues that Defendants’ reading of the statute is limited, produces an absurd result, and violates the general rules of construction of fee statutes. The Court agrees with the Plaintiff.

Fee statutes must be strictly construed so as to not create an absurd result that is inconsistent with prior construction of the statute. See *Wilder*, 198 S.C. at 390. With limited case law citing S.C. Code Ann. § 8-21-30,⁵ Plaintiff points to persuasive authority from prior South Carolina Attorney Generals supporting the application of the statute in accordance with Plaintiff’s position. Specifically, an opinion suggesting liability on the part of a Sheriff, an officer, for charging a fee for drug sniffing dogs in a school. See *The*

⁵ See *Dean v. Todd*, 49 S.C. 461, 27 S.E.2d 471 (1897); and *Tinsley v. Kirby*, 8 S.C. 113 (1877).

Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011). Despite a lack of “drug sniffing dog” fees expressly enumerated anywhere in Title 8, Chapter 21, the opinion rendered a finding that “§ 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” *Id.* As this opinion suggests, § 8-21-30 has applicability beyond fees discussed in Chapter 21 of Title 8. The Court agrees with Plaintiff that where an officer charges a legally unauthorized fee, he or she may be subject to liability under § 8-21-30.

Applying the statute as Defendants would have this Court do, an officer could avoid reprimand for charging a fee solely because it is not listed in Title 8, Chapter 21. This result would be absurd, leaving an individual charged illegal and improper fees with no recourse and no cause of action. Thus, Defendants’ interpretation cannot stand. Strictly construing this fee statute requires the Court to find that Treasurer Kintigh is an “officer,” and Plaintiff has a claim under S.C. Code Ann. § 8-21-30.

c. S.C. Code Ann. § 8-21-30 has not been implicitly repealed.

Next, Defendants argue that S.C. Code Ann. § 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

Under South Carolina law, “repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation.” *Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). Our Supreme Court has declined to hold that amending a general statute impliedly affects an earlier specific statute. See *id.*

Contrary to Defendants' assertion that the Tort Claims Act impliedly repeals S.C. Code Ann. § 8-21-30, the Tort Claims Act makes no mention of a situation in which a County officer charges an unauthorized fee. Consistent with Plaintiff's position, the Tort Claims Act, a general statute, does not impliedly repeal this earlier and more specific statute: § 8-21-30. In addition, Plaintiff's claim for recovery is found in a statute that is expressly authorized by a statute that contemplates governmental officer liability.

Thus, the Court finds that S.C. Code Ann. § 8-21-30 has not been impliedly repealed by the Tort Claims Act.

IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is DENIED. The Court notes the rulings in this order are based upon the on the allegations in the Complaint, which must be taken as true at this stage. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). Nothing in this order should be construed as a final determination on the merits of any claim or defense.

IT IS ORDERED.

S/R Lawton McIntosh
Circuit Court Judge

Dated: _____
Greenville, South Carolina.



Greenville Common Pleas

Case Caption: Jerry A Bruce vs. Joseph Kernell , defendant, et al

Case Number: 2021CP2304996

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2022-03-29 11:50:58 page 12 of 12

ELECTRONICALLY FILED 2022-03-29 11:50:58 AM BY CLERK OF COURT J. L. McINTOSH FOR THE CLERK OF COURT J. L. McINTOSH

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2021-CP-07-01967
	)	
Jane Calkins, individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AMENDED ORDER
Town of Hilton Head Island; Hilton Head	)	
Island Town Council; Eric Greenway, in his	)	
official capacity as Beaufort County	)	
Administrator; Maria E. Walls, in her official	)	
capacity as Beaufort County Treasurer;	)	
Beaufort County Council; and Beaufort	)	
County, South Carolina,	)	
	)	
Defendants.	)	

Defendants Eric Greenway, Maria E. Walls, Beaufort County Council, and Beaufort County filed a Motion to Dismiss Plaintiff Jane Calkins’s Class Action Complaint (the “Complaint”). Plaintiff opposes the motion as to Defendants Maria Walls and Beaufort County.¹ The Parties submitted initial briefs on the issues raised in Defendants’ Motion and the Court held oral argument on April 5, 2022. Having fully reviewed the parties’ positions, the Court DENIES Defendants’ Motion to Dismiss as to Beaufort County and its Treasurer, Maria Walls.

BACKGROUND

This case arises from Defendants Beaufort County and Hilton Head Island’s imposition, collection, and retention of allegedly illegal “service or user fees” (hereinafter “road maintenance fees”), which were imposed annually upon citizens of those political subdivisions beginning in

¹ Plaintiff has agreed to dismiss Defendants Eric Greenway and Beaufort County Council pursuant to Rule 41, SCRCP, therefore the Court will not reach their arguments to dismiss under Rule 12.

1993 and 2016, respectively.² The Beaufort County Treasurer, Maria Walls, is currently responsible for overseeing the collection of the road maintenance fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road maintenance fees, and she seeks a declaratory judgment that the road maintenance fees Defendants imposed and collected were illegal, along with a refund of the amounts paid by her and putative class members, with interest.

On June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

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.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A).

Plaintiff alleges that the ordinances passed by Beaufort County and Hilton Head Island imposing the road maintenance fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*.

² For purposes of this order, all facts plead in Plaintiff’s Complaint are taken as true pursuant to the applicable standard of review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

In their Motion, Defendants move to dismiss Plaintiff's Complaint based on six grounds. Of those six, four issues are contested: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity; and (4) the applicability of S.C. Code § 8-21-30 to Plaintiff's claims against Treasurer Walls.

For the reasons set forth below, the Court agrees with Plaintiff on these four issues and DENIES Defendants' Motion to Dismiss as to Beaufort County and Treasurer Walls.

STANDARD OF REVIEW

When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *McCormick v. England*, 328 S.C. 627, 632-33 (Ct. App. 1997). "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

"The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* at 633. And "important questions of novel impression should not be decided on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. The Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff's class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff's class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the "RPA"), S.C. Code § 12-60-10, *et seq.*

In response, Plaintiff contends that the RPA is inapplicable to her claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue ("SCDOR"); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court's holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to her claims because the RPA's provisions apply only to disputes with the SCDOR and disputes concerning property taxes.

1. The Revenue Procedures Act does not apply to Plaintiff's underlying claims.

The RPA only applies to "disputes with the Department of Revenue and disputes concerning property taxes." S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

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).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005).

“All 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.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. The Court finds that neither of those circumstances are met in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in Plaintiff’s Complaint, the road maintenance fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds that Plaintiff’s claims do not fall within the RPA’s scope, and thus the Court has subject-matter jurisdiction to hear the case.

2. Section 12-60-80(C) does not bar Plaintiff's class claims.

Next, even though the Court finds that Plaintiff's claims do not meet the threshold jurisdictional requirements of the RPA, the Court will separately address Defendants' assertion that S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against Beaufort County. Section 12-60-80(C) provides that:

(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.

Furthermore, under the RPA:

“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).

In the present action, Plaintiff challenges two separate road maintenance fees imposed by Defendants, neither of which were “imposed by [title 12]” or were “subject to collection by the [D]epartment [of Revenue].” Rather, according to Plaintiff’s allegations, which must be accepted as true at this stage, the road maintenance fees being challenged in this case were imposed pursuant

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road maintenance fees at issue in this case are not taxes (or fees) that would be subject to the RPA's statutory procedures. Therefore, Plaintiff's class claims are not barred by § 12-60-80(C).

This Court's holding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRC. *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).

Regardless, having found that Plaintiff's underlying claims are not subject to the RPA, the Court further finds that S.C. Code § 12-60-80(C) is inapplicable to Plaintiff's class claims. Accordingly, Defendants' Motion to Dismiss Plaintiff's class allegations is DENIED.

B. Sovereign Immunity does not bar Plaintiff's equitable claims.

Defendants next move the Court to dismiss Plaintiff's claim for unjust enrichment pursuant to the doctrine of sovereign immunity. The Court finds that Defendants' argument on this issue is without merit.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity 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 also made clear 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 South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the "TCA"), which "granted" the government qualified immunity for tortious conduct 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. Importantly, the General Assembly has not passed any law after *McCall* that "granted" or "reinstated" sovereign immunity as to equitable claims, including claims for unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*,

409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through her unjust enrichment claim, Plaintiff seeks to be restored the value of the illegal fees she remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants’ Motion to Dismiss Plaintiff’s unjust enrichment cause of action.

C. Plaintiff has adequately alleged her entitlement to attorneys’ fees.

Defendants next ask the Court to dismiss Plaintiff’s request for attorneys’ fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants’ argument lacks any support under South Carolina law.

Section 15-77-300(A) provides that “[i]n any civil action brought by . . . any party who is contesting state action . . . the court may allow the prevailing party to recover reasonable attorney’s fees . . .” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds she has sufficiently alleged “state action” in this case and that Defendants acted without

“substantial justification.” Accordingly, Defendants’ Motion to Dismiss Plaintiff’s request for attorneys’ fees is DENIED.

D. S.C. Code § 8-21-30 applies to Plaintiff’s claims against Treasurer Walls.

Finally, Defendants argue that S.C. Code § 8-21-30 does not apply as a matter of law because: (1) the road maintenance fees are not an enumerated service under § 8-21-10; and (2) those fees are not prescribed in Chapter 21 of Title 8. Plaintiff counters that Defendants’ reading of the statute is limited, produces an absurd result, and violates the general rules of construction of fee statutes. Again, the Court agrees with Plaintiff.

Fee statutes must be strictly construed so as to not create an absurd result that is inconsistent with prior construction of the statute. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941). With limited case law construing § 8-21-30, Plaintiff points to persuasive authority from a prior South Carolina Attorney General that lends support to the application of the statute in this case. Specifically, that opinion suggests that liability would lie on the part of a Sheriff, a public officer, for charging a fee for drug sniffing dogs in a school. *See The Honorable Glenn G. Reese*, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011). Despite a lack of “drug sniffing dog” fees expressly enumerated anywhere in Title 8, Chapter 21, the opinion concludes that “§ 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 . . .’” *Id.* Per that opinion, § 8-21-30 has applicability beyond fees discussed in Chapter 21 of Title 8. The Court agrees with Plaintiff that where an officer charges a legally unauthorized fee, he or she may face liability under § 8-21-30.

Applying the statute as Defendants would have this Court do would mean that a public officer could avoid liability for charging a fee solely because it is not specifically listed in Title 8, Chapter 21. This result would be absurd and could leave a payer charged an illegal or improper



Beaufort Common Pleas

Case Caption: Jane Calkins VS Hilton Head Island Town , defendant, et al

Case Number: 2021CP0701967

Type: Order/Form 4

So Ordered

s/ Robert Bonds, 2770

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EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
Angela Christian, in her official capacity as	)	
Georgetown County Administrator, Miriam	)	
Mace, in her official capacity as Treasurer	)	
of Georgetown County, Georgetown	)	
County Council, and Georgetown County,	)	
South Carolina,	)	
	)	
Defendants.	)	

Defendants Angela Christiaan, Miriam Mace, Georgetown County Council, and Georgetown County filed a Motion to Strike certain allegations from Plaintiff Richard Butts' Class Action Complaint (the "Complaint"). Plaintiff opposes the motion as to Defendants Miriam Mace and Georgetown County.¹ The Parties submitted initial briefs on the issues raised in Defendants' Motion and the Court held oral argument on March 31, 2022. Having fully reviewed the parties' positions, the Court DENIES Defendants' Motion to Strike in its entirety. The Court must highlight that the case is still in its infancy and finds many of the arguments of Defendants to be premature at this juncture.

BACKGROUND

¹ The Parties have stipulated to the dismissal of Defendants Angela Christian and Georgetown County Council pursuant to Rule 41, SCRCP, therefore the Court need not address their motion arguments.

application of *Burns* to the instant case automatically makes the Georgetown County road user fees illegal.

In their Motion, Defendants moved to strike various allegations from Plaintiff's Complaint based on six grounds, five of which remain contested. Defendants' arguments raise four main issues: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) whether Plaintiff can maintain his claim for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity to Plaintiff's claims for monetary relief; and (4) whether Plaintiff can seek monetary damages for his due process claims.

For the reasons set forth below, the Court finds that Plaintiff's allegations are sufficient to maintain his claims at this juncture of the litigation and DENIES Defendants' Motion to Strike in its entirety.

STANDARD OF REVIEW

A motion to strike under Rule 12(f), SCRPC, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRPC. *McCormick v. England*, 328 S.C. 627, 632 (Ct. App. 1997). When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *Id.* at 632-33. "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

"The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* at 633. And "important questions of novel impression should not be decided on a

motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. At this stage of the litigation, the Court finds the Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff's class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff’s class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the “RPA”), S.C. Code § 12-60-10, *et seq.* The Court finds this request to be premature.

In response, Plaintiff contends that the RPA is inapplicable to his claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue (“SCDOR”); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court’s holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to his claims because the RPA’s provisions apply only to disputes with the SCDOR and disputes concerning property taxes

1. At this stage of the litigation, the Court finds the Revenue Procedures Act does not apply to Plaintiff's underlying claims.

The RPA only applies to “disputes with the Department of Revenue and disputes concerning property taxes.” S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

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).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). “All 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.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. Based on the allegations in Plaintiff’s Complaint, the Court finds that neither of those circumstances are met and declines to strike Plaintiff’s class allegations at this stage in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in the Complaint, the road user fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds denies Defendants’ Motion at this time.

2. The Court declines to dismiss the matter pursuant to Section 12-60-80(C).

Next, the Court will separately address Defendants’ assertion that S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against Georgetown County. Section 12-60-80(C) provides that:

(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.

Furthermore, under the RPA:

“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).

In the present action, Plaintiff challenges the road user fees imposed by Defendants, which according to Plaintiff’s allegations were not “imposed by [title 12]” or “subject to collection by

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

Anderson Cty. v. Preston, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through his unjust enrichment claim, Plaintiff seeks to be restored the value of the alleged illegal fees he remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants' Motion to Strike Plaintiff's prayer for monetary recovery in this case.

C. The Court declines to strike Plaintiff's request for attorneys' fees.

Defendants next ask the Court to strike Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants' argument lacks any support under South Carolina law, and Plaintiff may present a request for attorneys' fees in his Complaint.

Section 15-77-300(A) provides that “[i]n any civil action brought by ... any party who is contesting state action ... the court may allow the prevailing party to recover reasonable attorney’s fees” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds

he has sufficiently alleged “state action” in this case and that Defendants acted without “substantial justification.” Accordingly, Defendants’ Motion to Strike Plaintiff’s request for attorneys’ fees is DENIED.

D. Plaintiff has not requested monetary relief for his due process claims.

Next, the Court DENIES Defendants' Motion to Strike Plaintiff's due process claim. A quick review of the Complaint shows that Plaintiff has not requested monetary relief for his due process claims, therefore Defendants' argument has no merit. *See* Compl. ¶¶ 62-67 & Prayer for Relief.

E. Jury Trial

And finally, Defendants argue that Plaintiff's demand for a jury trial should be stricken. The Court notes that this case is still in its infancy and finds this issue is more appropriate for resolution once the record has been fully developed and the claims and defenses have been fully briefed. Accordingly, Defendants' request to strike Plaintiff's demand for a jury trial is DENIED without prejudice.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Strike is DENIED in its entirety.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Circuit Court Judge

Dated: _____
Georgetown, South Carolina.



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)

Civil Action No. 2021-CP-38-1268

Plaintiff,)

v.)

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS
AND MOTION FOR JUDGMENT
ON THE PLEADINGS**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)

Defendants.)

This matter came before the Court on February 2, 2022, on Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF, seeking the dismissal of the Plaintiff's Second Amended Complaint, as filed November 24, 2021, without prejudice for lack of subject matter jurisdiction or alternatively with prejudice as to the merits.

Present at the hearing were William C. Lewis and Terry E. Richardson, Jr., counsel for the Plaintiff, and Andrew F. Lindemann and Bradley T. Farrar, counsel for the Defendants. After a review of the written submissions of the parties, the record presented, and the oral arguments of counsel, this Court grants in part the Defendants' motions on the bases addressed below.¹

¹ At the hearing, counsel for the Plaintiff advised the Court that the Plaintiff intended to dismiss the Orangeburg County Council and the Defendant Harold M. Young, as the Orangeburg County Administrator, from this action without prejudice. The Defendants consented to the dismissal.

BACKGROUND

The Plaintiff Carroll Brown brings his lawsuit to challenge the alleged wrongful collection of the Orangeburg County Road and Bridge Maintenance Service Charge that was imposed by ordinance in 1987, and has continued uninterrupted for each year since. The Plaintiff relies on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that a "road maintenance fee" as implemented by Greenville County Council is actually a tax that violates S.C. Code Ann. § 6-1-630. The Supreme Court thus "declare[d] the road maintenance taxes ... are invalid under South Carolina law." 861 S.E.2d at 31.

The Plaintiff alleges that Orangeburg County Road and Bridge Maintenance Service Charge is likewise invalid. The Plaintiff seeks a declaratory judgment to that effect. The Plaintiff also seeks monetary relief in the form of a refund of the Road and Bridge Maintenance Service Charges previously paid. The Plaintiff asserts three causes of action seeking that monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the Defendant Stokes only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.

LEGAL ANALYSIS

I. Dismissal of First Cause of Action for Quantum Meruit/Unjust Enrichment

The Defendants contend that the Plaintiff's First Cause of Action for quantum meruit/unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not

explicitly waived sovereign immunity to allow a claim for quantum meruit or unjust enrichment or to be prosecuted against a governmental entity. This Court agrees.

By way of background, sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided the landmark case of *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background is well summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Supreme Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*." S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

Thus, in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Tort Claims Act. The Court agrees with the Defendants that the Tort Claims Act does not include a waiver of sovereign immunity for non-tort/equitable causes of action for quantum meruit or unjust enrichment.² Moreover, the General Assembly has never enacted any legislation that explicitly waives sovereign immunity for an quantum meruit or unjust enrichment claim nor any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The Court finds case law from North Carolina to be instructive. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

² In *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), the Supreme Court explained that "unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." 678 S.E.2d 434.

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where that Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

Similarly, South Carolina law recognizes that "by entering a contract, the State waives its sovereign immunity and consents to be sued for breach thereof." *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263, 268 (2001). However, that is true for an express contract. The Court agrees with the Defendants that sovereign immunity may not be deemed waived for causes of action sounding in equity for quantum meruit or unjust enrichment. As a result, this Court rules that the Plaintiff's cause of action for quantum meruit/unjust enrichment, which are both non-tort/equitable claims, is barred by sovereign immunity. As a matter of law, the Court acknowledges that the General Assembly has never explicitly waived sovereign immunity for such equitable claims, like it has for tort claims.

II. Dismissal of Second Cause of Action for Violation of S.C. Code Ann. § 8-21-30

The Plaintiff's Second Cause of Action alleges that the Defendant Matt Stokes, as the Orangeburg County Treasurer, is liable under S.C. Code Ann. § 8-21-30 for "charging" illegal fees

and that he is liable for ten times the amount of the illegal fees that have been paid by the Plaintiff.³

S.C. Code Ann. § 8-21-30 provides:

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.

The Defendants contend that there is no cause of action for the recovery of road maintenance fees pursuant to Title 8, Chapter 21 of the South Carolina Code of Laws. The Defendants thus seek the dismissal of the Second Cause of Action on multiple grounds. The Court finds those arguments to be meritorious and dismisses the Second Cause of Action on the bases set forth below.

A. S.C. Code Ann. § 8-21-30 is Not Applicable to Road Maintenance Fees

The parameters of a cause of action under S.C. Code Ann. § 8-21-30 are established by reference to S.C. Code Ann. § 8-21-10, which provides as follows:

The several officers named in **this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23**, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated.

³ This cause of action was also alleged against the Defendant Harold M. Young, as the County Administrator; however, the Plaintiff agreed at the hearing to the dismissal of the Defendant Young.

S.C. Code Ann. § 8-21-10. (Emphasis added).⁴ Based on that language, a cause of action under S.C. Code Ann. § 8-21-30 may be asserted only against an "officer" identified in the referenced chapters of the Code of Laws where the officer charges fees and costs in different amounts than what is allowed in the referenced chapters for the services described in the referenced chapters.

Therefore, as a starting point, the Court focuses on the referenced chapters. Chapter 21 of Title 8 is entitled "Fees and Costs Generally" and includes a wide range of fees charges by such public officials as the clerk of court, register of deeds, notary public, magistrate, constable, secretary of state, and probate judge. Article 3 of Chapter 11 of Title 14 pertains to fees charged by masters-in-equity. There is no Chapter 19 of Title 14 in the South Carolina Code of Laws. There is no Article 7 of Chapter 23 of Title 14 in the Code. There is no Chapter 19 of Title 19 in the Code. Chapter 7 of Title 22 pertains to magistrates. Article 3 of Chapter 9 of Title 22 consists of one section entitled "Deduction of certain payments to others from constable's salary." Article 1 of Chapter 19 of Title 23 pertains to fees charged by sheriffs.

The Defendant Stokes is the County Treasurer.⁵ Of all the referenced chapters in S.C. Code Ann. § 8-21-10, a county treasurer is mentioned only in a single Code section, that being S.C. Code Ann. § 8-21-310. In that Code section, the county treasurer is named, in addition to the clerk

⁴ For ease of discussion, Chapter 21 of Title 8 (i.e., "this chapter"), Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23 of the Code of Laws (as bolded above) are referred hereafter as the "referenced chapters."

⁵ S.C. Code Ann. § 8-21-15 provides generally that "[n]o state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation." The statute then includes a number of exceptions. S.C. Code Ann. § 8-21-15 has no application to the present case. The Defendant Stokes, as the County Treasurer, is not a "state agency, department, board, committee, commission, or authority." Instead, he obviously holds a county elected position.

of court and register of deeds, as being authorized to charge filing or recording fees in expressly stated amounts for a variety of legal documents. That is the extent of the fees cited in all of the referenced chapters that may be charged by a county treasurer, and to reiterate, the enumerated services are limited to the filing and recording of legal documents.

Contrary to the Plaintiff's position, a cause of action under S.C. Code Ann. § 8-21-30 is not applicable to all fees and costs generally charged by public officials or governmental entities. As the Defendants point out, the Code of Laws contains numerous fees and costs that can be charged by the government for a myriad of functions. Instead, S.C. Code Ann. § 8-21-30 is limited to the fees and costs charged by an officer for "services enumerated" in the referenced chapters.

The Court thus finds that S.C. Code Ann. §§ 8-21-10 and 8-21-30 have no application to the road maintenance fees at issue for five primary reasons. First, in S.C. Code Ann. § 8-21-310, the only section referencing a county treasurer, there is no mention of road maintenance fees charged by the county treasurer.⁶ Therefore, the Defendant Stokes cannot be held liable under S.C. Code Ann. § 8-21-30 for charging a fee for a service that is not enumerated in S.C. Code Ann. § 8-21-310. Second, consistent with the *Burns* decision, the road maintenance fees at issue were enacted, rightly or wrongly, under S.C. Code Ann. § 6-1-300(6) as a "service or user fee" and are not included within the scope of the referenced chapters. Third, road maintenance is not one of the "services enumerated" in the referenced chapters. Fourth, because the Plaintiff is relying on the *Burns* decision to declare the Orangeburg County Road and Bridge Maintenance Service Charge invalid, it would logically follow that the Road and Bridge Maintenance Service Charge is a tax rather than a fee. The Court does not read S.C. Code Ann. § 8-21-30 as being applicable to

⁶ Moreover, the "road maintenance fee" at issue is not one of the fees and costs provided for in any of the referenced chapters.

a "tax" or as a mechanism to seek a refund or monetary recovery of a paid "tax."⁷ And fifth, the Court finds that the Road and Bridge Maintenance Service Charge at issue in Orangeburg County is not "charged" by the County Treasurer. The fee was established by ordinance and is "charged" by the County, and the County is not one of the express parties that can be held liable under S.C. Code Ann. §§ 8-21-10 and 8-21-30.⁸

For each of these reasons, the Court rules as a matter of law the no cause of action may be maintained by the Plaintiff against the Defendant Stokes for the recovery of the amounts paid to the County as a road maintenance fee pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30. The Second Cause of Action is dismissed with prejudice on that basis.

B. S.C. Code Ann. § 8-21-30 Has Been Implicitly Repealed

S.C. Code Ann. § 8-21-30 is a statute that pre-dates the South Carolina Tort Claims Act and the waiver of sovereign immunity.⁹ The Defendants contend that S.C. Code Ann. § 8-21-30 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. This Court agrees.

⁷ In effect, the Court observes that the Plaintiff cannot have it both ways. He cannot argue that the Road and Bridge Maintenance Service Charge at issue is a "fee" to claim relief under S.C. Code Ann. § 8-21-30 and to avoid the subject matter jurisdiction issues raised by the Defendants, while arguing that the Road and Bridge Maintenance Service Charge is an illegal "tax" to have it declared invalid under the *Burns* decision.

⁸ The Plaintiff clearly recognizes that the County cannot be liable in that the Second Cause of Action is not asserted against the Defendant Orangeburg County.

⁹ The Court observes that S.C. Code Ann. § 8-21-30 was first adopted in 1878. Moreover, as the Court noted above, three of the referenced chapters in S.C. Code Ann. § 8-21-10 do not even exist in the Code of Laws any longer, thereby demonstrating that S.C. Code Ann. §§ 8-21-10 and S.C. Code Ann. § 8-21-30 may be fairly characterized as archaic.

As discussed above, our Supreme Court abrogated sovereign immunity in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In that case, the Supreme Court recognized that "exceptions [to the doctrine of sovereign immunity] that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lack continuity, logic or fairness." 329 S.E.2d at 742. As the Defendants argue, S.C. Code Ann. § 8-21-30 is one example of the statutorily created "scattered patchwork of sovereign liability" referred to in *McCall*.

As discussed above, with the subsequent enactment of the Tort Claims Act in 1986, the General Assembly first reinstated sovereign immunity in full. That had the important effect of eliminating the "scattered patchwork of sovereign liability" that had been created by prior legislation passed to limit or ameliorate the effects of absolute sovereign immunity. The General Assembly then had a "clean slate" from that point forward on which to legislate the waivers and limitations to be placed on sovereign immunity. The legislature then proceeded to set forth specific waivers and limitations on sovereign immunity as reinstated. See, *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995) (as quoted above). In fact, S.C. Code Ann. § 15-78-20(b) of the Tort Claims Act provides that "[t]he General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, **immunity from liability and suit for any tort except as waived by this chapter.**" S.C. Code Ann. § 15-78-20(b). (Emphasis added). In effect, absolute sovereign immunity was no longer the law, but neither was the "scattered patchwork of sovereign liability" including the statute at issue, S.C. Code Ann. § 8-21-30. That "scattered patchwork" had been repealed.

The Supreme Court has explained that "[a] later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject matter." *State v. Hood*, 181 S.C. 488,

188 S.E. 134, 136 (1936). There can be no question that the Tort Claims Act "fully embraces the whole subject matter" of governmental liability. The history set forth in *Murphy* shows that the Tort Claims Act was intended to reinstate sovereign immunity in full thereby eliminating the "scattered patchwork of sovereign liability" that preexisted it, which includes S.C. Code Ann. § 8-21-30. By fully embracing the whole subject matter, statutes such as S.C. Code Ann. § 8-21-30 were impliedly repealed. This is likewise evident from the express language of the Tort Claims Act providing that "[n]otwithstanding any provision of law, this chapter, the South Carolina Tort Claims Act, is the *exclusive and sole remedy* for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200. (Emphasis added).¹⁰ The use of phrase "notwithstanding any provision of law" compels the conclusion that the Tort Claims Act is the exclusive and sole remedy regardless of any other provision of law, which would necessarily include S.C. Code Ann. § 8-21-30.

Although there is no South Carolina appellate decision addressing the implied repeal of S.C. Code Ann. § 8-21-30,¹¹ the federal courts have specifically looked at whether the Tort Claims Act impliedly repealed part of the "scattered patchwork of sovereign liability" referred to in *McCall*. Of particular significance is *Sadek v. Lambert*, 2014 WL 117671 (D.S.C. 2014), in which

¹⁰ Similarly, S.C. Code Ann. § 15-78-20(b) states that the Tort Claims Act is the "exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(b). The exceptions as set forth in S.C. Code Ann. § 15-78-70(b) have no applicability here.

¹¹ See, *Kubric v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595, 598 (2016) ("Although our Court has held that 'important questions of novel impression should not be decided on a motion to dismiss,' this general rule does not apply when the determinative facts are not in dispute. Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression"). (Citation omitted).

United States District Judge Terry Wooten adopted a magistrate judge's report and agreed with the very analysis offered by the City of Georgetown in the present case, except that Judge Wooten was addressing the implied repeal of S.C. Code Ann. § 16-5-60, which is another statute from the 1870s that can be described as archaic.¹² Judge Wooten concluded that "the Tort Claims Act impliedly repealed § 16-5-60." 2014 WL 117671, *3. The federal court determined that S.C. Code Ann. § 16-5-60 is irreconcilable with the Tort Claims Act. The court recognized that "the Tort Claims Act expressly and completely restores sovereign immunity" which is "incapable of reconciliation with § 16-5-60's unlimited waiver of a county's immunity from suit based on wrongful acts of third parties." *Id.* Judge Wooten also explained that "the Tort Claims Act provides for limited liability of a governmental entity for the wrongdoing of its own employees whereas § 16-5-60 contrarily provides for unlimited and strict liability of a county for the acts of others. Such a result is contrary to both the plain language of the Tort Claims Act and the recorded legislative intent of the Act." *Id.* Ultimately, the federal court ruled "that § 16-5-60, enacted to provide strict liability of counties for constitutional torts committed by others, is repugnant to and

¹² S.C. Code Ann. § 16-5-60 made a county strictly liable for a violation of a citizen's political rights that occurred within the county. *See, Brazzill v. Lancaster County*, 132 S.C. 347, 128 S.E. 728 (1925). The statute, as enacted in 1871, provided:

Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof.

S.C. Code Ann. § 16-5-60.

therefore was impliedly repealed by the South Carolina Tort Claims Act's complete restoration of sovereign immunity and limited waiver for certain torts committed by governmental employees. The plaintiff's cause of action against York County under § 16-5-60 therefore fails to state a claim upon which relief can be granted." 2014 WL 117671, *6.¹³

As reflected by Judge Wooten's analysis in *Sadek v. Lambert*, this Court finds that the position taken by the Defendants in the case at bar is a correct one. With the adoption of the Tort Claims Act and its restoration of sovereign immunity in full followed by a limited waiver, the "scattered patchwork of sovereign liability" from pre-Tort Claims Act times was wiped clean. S.C. Code Ann. § 8-21-30, as part of that archaic "scattered patchwork," was impliedly repealed. On this additional basis, the Plaintiff's Second Cause of Action is dismissed with prejudice.

III. Dismissal of Third Cause of Action for Violation of Article I, § 3 of the South Carolina Constitution

In his Third Cause of Action, the Plaintiff alleges a loss of a property interest without due process of law. In his response memorandum, the Plaintiff contends that the Defendant "mischaracterizes" his due process claim because "the claim does not seek monetary relief at all." *See*, Plaintiff's Mem., p. 18. Yet, the only relief sought in the Third Cause of Action is "monetary damages." *See*, Second Amended Complaint, ¶ 65.

Reading the Third Cause of Action as one for "money damages," the Court finds that the Plaintiff does not enjoy a private right of action for money damages for a violation of provisions

¹³ Other federal judges have addressed the same issue and agree with Judge Wooten's analysis. *See, Doe v. Charleston County Sheriff's Office*, 2018 WL 4224063 (D.S.C. 2018) (Judge Richard Gergel); *Doe v. McGowan*, 2017 WL 659938 (D.S.C. 2017) (Judge Richard Gergel); *Mial v. Charleston County Sheriff's Department*, 2018 WL 4725288, *adopted in* 2018 WL 4701366 (D.S.C. 2018) (Judge Joseph F. Anderson, Jr.).

of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021),¹⁴ the South Carolina Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261. Thus, the Court concludes that the Plaintiff is precluded from recovering money damages for the alleged violation of the South Carolina Constitution, and as a result, the Third Cause of Action is dismissed with prejudice.

Because the Court has dismissed each of the Plaintiff's causes of action seeking monetary relief in form of a refund of taxes or fees, it is not necessary for the Court to reach or address the Defendants' subject matter jurisdiction issues. The Plaintiff's remaining Fourth Cause of Action seeks only declaratory relief asking the Court to declare the Orangeburg County Road and Bridge Maintenance Service Charge to be unlawful in accordance with the Supreme Court's decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).¹⁵ The Court finds that it has subject matter jurisdiction to hear a declaratory judgment action on this issue. The Court also finds that the Defendants' exhaustion of administrative remedies defense is rendered moot for this same reason.¹⁶

¹⁴ A petition for writ of certiorari was also denied by the United States Supreme Court on January 10, 2022. *See*, Orders List dated January 10, 2022 for United States Supreme Court.

¹⁵ To the extent that the Plaintiff seeks monetary relief as part of the Fourth Cause of Action in Paragraph 69(C) of the Second Amended Complaint, that relief is denied for the reasons stated with respect to the other causes of action and because monetary relief is not recoverable under the Declaratory Judgment Act. There must be an independent cause of action for the recovery of monetary relief.

¹⁶ The Court also declines to address any issues related to class certification. Those issues and defenses are not ripe until such time as the Plaintiff files a motion for class certification.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings are granted such that the Plaintiff's First Cause of Action, Second Cause of Action, and Third Cause of Action are dismissed with prejudice as a matter of law. The Plaintiff has not sought to amend any of his causes of action, but nonetheless, the Court notes that the First Cause of Action, Second Cause of Action, and Third Cause of Action are each dismissed on purely legal bases and not because of any correctable pleading deficiency. *See, Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

IT IS FURTHER ORDERED that Defendant Orangeburg County Council and the Defendant Harold M. Young, as the Orangeburg County Administrator, are dismissed as party-Defendants without prejudice by the consent of the parties.

IT IS FURTHER ORDERED that the Plaintiff's Fourth Cause of Action for declaratory relief only may proceed forward.

AND IT IS SO ORDERED.

EDGAR W. DICKSON
Presiding Judge,
First Judicial Circuit



Orangeburg Common Pleas

Case Caption: Carroll Brown VS Harold M. Young , defendant, et al

Case Number: 2021CP3801268

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2021-CP-07-01967
	)	
Jane Calkins, individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Town of Hilton Head Island; Hilton Head	)	
Island Town Council; Eric Greenway, in his	)	
official capacity as Beaufort County	)	
Administrator; Maria E. Walls, in her official	)	
capacity as Beaufort County Treasurer;	)	
Beaufort County Council; and Beaufort	)	
County, South Carolina	)	
	)	
Defendants.	)	

Defendants The Town of Hilton Head Island (“Hilton Head”) and Hilton Head Island Town Council (“Town Council”) filed a Motion to Dismiss Plaintiff Jane Calkins’s Amended Class Action Complaint (the “Complaint”). Plaintiff opposes the motion as to Hilton Head.¹ The Parties submitted initial briefs and the Court held oral argument on April 5, 2022. Present on behalf of Plaintiff was Ross A. Appel. Present on behalf of the Town of Hilton Head Island and the Town of Hilton Head Island Council was Curtis L. Coltrane. Present on behalf of Eric Greenway (the Beaufort County Administrator), Maria E. Walls (the Beaufort County Treasurer), Beaufort County Council, and Beaufort County, South Carolina was James K. Gilliam. Having fully reviewed the Parties’ positions, the Court respectfully DENIES Hilton Head’s Motion to Dismiss in its entirety.

¹ Plaintiff has agreed to dismiss Town Council without prejudice pursuant to Rule 41, SCRCP, therefore the Court will not reach its arguments to dismiss under Rule 12.

BACKGROUND

This case arises from Defendants Beaufort County and Hilton Head's imposition, collection, and retention of "service or user fees" (hereinafter "road maintenance fees"), which were imposed annually upon citizens of those political subdivisions beginning in 1993 and 2016, respectively.² According to paragraph 3 of the Amended Complaint, the Town created its road maintenance fee by adoption of an ordinance by the Town Council. Likewise, according to paragraph 2 of the Amended Complaint, the County created its road maintenance fee through an ordinance adopted by County Council. Under the Town ordinance, the Town's Road maintenance fee is \$25.00, charged on every vehicle registered in the Town.

The Beaufort County Treasurer, Maria Walls, is currently responsible for overseeing the collection of both the road maintenance fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road maintenance fees. The Amended Complaint asserts three causes of action against all the Defendants. These three causes of action are for: (1) Declaratory Judgment under S.C. Code Ann. § 15-53-10, et seq. (Supp. 2021), (2) Unjust Enrichment, and (3) Due Process Violation under the State Constitution. The Plaintiff asserts one additional cause of action under S.C. Code Ann. § 8-21-30 (Supp. 2022), against only County Administrator Greenway and County Treasurer Wells.

In addition to a declaratory judgment that the road maintenance fees imposed and collected by the Defendants were illegal, the Plaintiff also seeks a refund of the amounts paid by her and putative class members, with interest.

² For purposes of this order, all facts plead in Plaintiff's Complaint are taken as true pursuant to the applicable standard of review. See *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.").

On June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

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.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A).

Plaintiff alleges that the ordinances passed by Beaufort County and Hilton Head imposing the road maintenance fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*.

In its Motion, Hilton Head raises two arguments in support of dismissal. First, Hilton Head argues that the Revenue Procedures Act, S.C. Code § 12-60-10, *et seq.* (the “RPA”) should apply in this case and that Plaintiff has failed to exhaust her administrative remedies. And second, Hilton Head argues that S.C. Code § 8-21-30 does not apply to Plaintiff’s claims against Hilton Head.

For the reasons set forth below, the Court DENIES Hilton Head’s Motion to Dismiss in its entirety.

STANDARD OF REVIEW

When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *McCormick v. England*, 328 S.C. 627, 632-33 (Ct. App. 1997). “The motion cannot be sustained if the facts alleged and the inferences reasonably

deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

“The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” *Id.* at 633. And “important questions of novel impression should not be decided on a motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. The Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff’s class claims.

In its Motion, Hilton Head first argues that the Court should dismiss Plaintiff’s Complaint because her claims are governed by the RPA.

In response, Plaintiff contends that the RPA is inapplicable to her claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue (“SCDOR”); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court’s holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to her claims because the RPA’s provisions apply only to disputes with the SCDOR and disputes concerning property taxes.

1. The Revenue Procedures Act does not apply to Plaintiff’s underlying claims.

The RPA only applies to “disputes with the Department of Revenue and disputes concerning property taxes.” S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

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).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). “All 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.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. The Court finds that neither of those circumstances are met in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in Plaintiff’s Complaint, the road maintenance fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds that Plaintiff’s claims do not fall within the RPA’s scope. Therefore, the Court has subject-matter jurisdiction to hear the case and Plaintiff is not required to exhaust any administrative remedies.

2. Section 12-60-80(C) does not bar Plaintiff’s class claims.

Next, even though the Court finds that Plaintiff’s claims do not meet the threshold jurisdictional requirements of the RPA, the Court will separately address the issue of whether S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against political subdivisions in South Carolina. Section 12-60-80(C) provides that:

(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

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

instrumentalities may not be named or made a defendant in any other class action brought in this State.

Furthermore, under the RPA:

“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).

In the present action, Plaintiff challenges two separate road maintenance fees imposed by Defendants Hilton Head and Beaufort County, neither of which were “imposed by [title 12]” or were “subject to collection by the [D]epartment [of Revenue].” Rather, according to Plaintiff’s allegations, which must be accepted as true at this stage, the road maintenance fees being challenged in this case were imposed pursuant to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road maintenance fees at issue in this case are not taxes (or fees) that would be subject to the RPA’s statutory procedures. Therefore, Plaintiff’s class claims are not barred by § 12-60-80(C).

This Court’s holding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRCp. *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).

Having found that Plaintiff's underlying claims are not subject to the RPA, the Court further finds that S.C. Code § 12-60-80(C) is inapplicable to Plaintiff's class claims. Accordingly, Hilton Head's Motion to Dismiss Plaintiff's Complaint is respectfully DENIED.

B. Plaintiff has not alleged any § 8-21-30 claims against Hilton Head.

Defendant, Hilton Head argues that the Court should dismiss Plaintiff's claims under §8-21-30 because the "[she] fails to allege any fact that brings Town of Hilton Head Island Ordinance 2016-15 under S.C. Code Ann. § 8-21-30[.]" However, a close review of Plaintiff's Complaint reveals that Plaintiff has not alleged any § 8-21-30 claims against Hilton Head in this case. See Pl.'s Compl. at 11. As a result, Hilton Head has no standing to move for dismissal of Plaintiff's claims under § 8-21-30. Therefore, the Court respectfully DENIES Hilton Head's Motion to Dismiss Plaintiff's claims under § 8-21-30.

C. Plaintiff has adequately alleged her entitlement to attorneys' fees.

Defendant asks the Court to dismiss Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300. The Court finds that Defendant's argument lacks any support under South Carolina law. Section 15-77-300(A) provides that "[i]n any civil action brought by . . . any party who is

contesting state action . . . the court may allow the prevailing party to recover reasonable attorney's fees . . .” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds she has sufficiently alleged “state action” in this case and that Defendants acted without “substantial justification.” Accordingly, Defendants’ Motion to Dismiss Plaintiff’s request for attorneys’ fees is respectfully DENIED.

D. Sovereign Immunity does not bar Plaintiff’s equitable claims.

Defendants next move the Court to dismiss Plaintiff’s claim based on the doctrine of sovereign immunity. The Court finds that Defendants’ argument on this issue is without merit. In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity 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 also made clear 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 South Carolina Tort Claims Act, S.C. Code § 15-78-10, et seq. (the “TCA”), which “granted” the government qualified immunity for tortious conduct 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. Importantly, the General Assembly has not passed any law after *McCall* that “granted” or “reinstated” sovereign immunity as to equitable claims, including claims for unjust enrichment. Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403

S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012). Through her unjust enrichment claim, Plaintiff seeks to be restored the value of the illegal fees she remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation. For these reasons, the Court respectfully DENIES Defendants’ Motion to Dismiss pursuant to Sovereign Immunity.

E. Motion to Dismiss Plaintiff’s Jury Trial Demand is pre-mature.

The Defendants Motion to Dismiss Plaintiff’s prayer for jury trial from the Amended Complaint is respectfully DENIED at this stage of litigation, as it is pre-mature for the Court to make that determination.

CONCLUSION

For the foregoing reasons, Hilton Head’s Motion to Dismiss is respectfully DENIED.

IT IS SO ORDERED!

Robert J. Bonds
Circuit Court Judge

Dated: _____
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Jane Calkins VS Hilton Head Island Town , defendant, et al

Case Number: 2021CP0701967

Type: Order/Dismissal

So Ordered

s/ Robert Bonds, 2770

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EXHIBIT F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2021-CP-07-01967
	)	
Jane Calkins, individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AMENDED ORDER
Town of Hilton Head Island; Hilton Head	)	
Island Town Council; Eric Greenway, in his	)	
official capacity as Beaufort County	)	
Administrator; Maria E. Walls, in her official	)	
capacity as Beaufort County Treasurer;	)	
Beaufort County Council; and Beaufort	)	
County, South Carolina,	)	
	)	
Defendants.	)	

Defendants Eric Greenway, Maria E. Walls, Beaufort County Council, and Beaufort County filed a Motion to Dismiss Plaintiff Jane Calkins’s Class Action Complaint (the “Complaint”). Plaintiff opposes the motion as to Defendants Maria Walls and Beaufort County.¹ The Parties submitted initial briefs on the issues raised in Defendants’ Motion and the Court held oral argument on April 5, 2022. Having fully reviewed the parties’ positions, the Court DENIES Defendants’ Motion to Dismiss as to Beaufort County and its Treasurer, Maria Walls.

BACKGROUND

This case arises from Defendants Beaufort County and Hilton Head Island’s imposition, collection, and retention of allegedly illegal “service or user fees” (hereinafter “road maintenance fees”), which were imposed annually upon citizens of those political subdivisions beginning in

¹ Plaintiff has agreed to dismiss Defendants Eric Greenway and Beaufort County Council pursuant to Rule 41, SCRCP, therefore the Court will not reach their arguments to dismiss under Rule 12.

1993 and 2016, respectively.² The Beaufort County Treasurer, Maria Walls, is currently responsible for overseeing the collection of the road maintenance fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road maintenance fees, and she seeks a declaratory judgment that the road maintenance fees Defendants imposed and collected were illegal, along with a refund of the amounts paid by her and putative class members, with interest.

On June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

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.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A).

Plaintiff alleges that the ordinances passed by Beaufort County and Hilton Head Island imposing the road maintenance fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*.

² For purposes of this order, all facts plead in Plaintiff’s Complaint are taken as true pursuant to the applicable standard of review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

In their Motion, Defendants move to dismiss Plaintiff's Complaint based on six grounds. Of those six, four issues are contested: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity; and (4) the applicability of S.C. Code § 8-21-30 to Plaintiff's claims against Treasurer Walls.

For the reasons set forth below, the Court agrees with Plaintiff on these four issues and DENIES Defendants' Motion to Dismiss as to Beaufort County and Treasurer Walls.

STANDARD OF REVIEW

When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *McCormick v. England*, 328 S.C. 627, 632-33 (Ct. App. 1997). “The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

“The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” *Id.* at 633. And “important questions of novel impression should not be decided on a motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. The Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff's class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff's class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the "RPA"), S.C. Code § 12-60-10, *et seq.*

In response, Plaintiff contends that the RPA is inapplicable to her claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue ("SCDOR"); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court's holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to her claims because the RPA's provisions apply only to disputes with the SCDOR and disputes concerning property taxes.

1. The Revenue Procedures Act does not apply to Plaintiff's underlying claims.

The RPA only applies to "disputes with the Department of Revenue and disputes concerning property taxes." S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

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).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005).

“All 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.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. The Court finds that neither of those circumstances are met in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in Plaintiff’s Complaint, the road maintenance fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds that Plaintiff’s claims do not fall within the RPA’s scope, and thus the Court has subject-matter jurisdiction to hear the case.

2. Section 12-60-80(C) does not bar Plaintiff's class claims.

Next, even though the Court finds that Plaintiff's claims do not meet the threshold jurisdictional requirements of the RPA, the Court will separately address Defendants' assertion that S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against Beaufort County. Section 12-60-80(C) provides that:

(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.

Furthermore, under the RPA:

“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).

In the present action, Plaintiff challenges two separate road maintenance fees imposed by Defendants, neither of which were “imposed by [title 12]” or were “subject to collection by the [D]epartment [of Revenue].” Rather, according to Plaintiff’s allegations, which must be accepted as true at this stage, the road maintenance fees being challenged in this case were imposed pursuant

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road maintenance fees at issue in this case are not taxes (or fees) that would be subject to the RPA's statutory procedures. Therefore, Plaintiff's class claims are not barred by § 12-60-80(C).

This Court's holding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRCP. *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).

Regardless, having found that Plaintiff's underlying claims are not subject to the RPA, the Court further finds that S.C. Code § 12-60-80(C) is inapplicable to Plaintiff's class claims. Accordingly, Defendants' Motion to Dismiss Plaintiff's class allegations is DENIED.

B. Sovereign Immunity does not bar Plaintiff's equitable claims.

Defendants next move the Court to dismiss Plaintiff's claim for unjust enrichment pursuant to the doctrine of sovereign immunity. The Court finds that Defendants' argument on this issue is without merit.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity 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 also made clear 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 South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the "TCA"), which "granted" the government qualified immunity for tortious conduct 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. Importantly, the General Assembly has not passed any law after *McCall* that "granted" or "reinstated" sovereign immunity as to equitable claims, including claims for unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*,

409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through her unjust enrichment claim, Plaintiff seeks to be restored the value of the illegal fees she remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants’ Motion to Dismiss Plaintiff’s unjust enrichment cause of action.

C. Plaintiff has adequately alleged her entitlement to attorneys’ fees.

Defendants next ask the Court to dismiss Plaintiff’s request for attorneys’ fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants’ argument lacks any support under South Carolina law.

Section 15-77-300(A) provides that “[i]n any civil action brought by . . . any party who is contesting state action . . . the court may allow the prevailing party to recover reasonable attorney’s fees . . .” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds she has sufficiently alleged “state action” in this case and that Defendants acted without

fee with no legal recourse. Thus, Defendants’ interpretation of § 8-21-30 must be rejected. Strictly construing this fee statute, as the Court must, requires the Court to find that Treasurer Walls is an “officer” within the meaning of the statute, and that Plaintiff can proceed with her individual and class claims against Treasurer Walls under S.C. Code § 8-21-30.

E. Defendants' Other Miscellaneous Arguments

Because Plaintiff has agreed to dismiss Beaufort County Council, the Court finds Defendants' arguments in Section VI of their Motion are moot. As to Section III of Defendants' Motion, the Court finds that Plaintiff has not requested monetary relief for her due process claims, therefore that argument has no merit. *See* Compl. ¶ 78(f). And finally, at oral argument Defendants asserted that Plaintiff's demand for a jury trial should be dismissed. The Court notes that this case is still in its infancy and finds that issue is more appropriate for resolution after the record has been fully developed and the claims have been fully briefed. Accordingly, Defendants' request to strike Plaintiff's demand for a jury trial is DENIED without prejudice.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss as to Beaufort County and Treasurer Walls is DENIED in its entirety. However, no findings of fact or legal conclusions made by this Court are binding for future hearings.

IT IS SO ORDERED.

Robert J. Bonds
Circuit Court Judge

Dated: _____
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Jane Calkins VS Hilton Head Island Town , defendant, et al

Case Number: 2021CP0701967

Type: Order/Form 4

So Ordered

s/ Robert Bonds, 2770

EXHIBIT G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2021-CP-07-01967
	)	
Jane Calkins, individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER
Town of Hilton Head Island; Hilton Head	)	
Island Town Council; Eric Greenway, in his	)	
official capacity as Beaufort County	)	
Administrator; Maria E. Walls, in her official	)	
capacity as Beaufort County Treasurer;	)	
Beaufort County Council; and Beaufort	)	
County, South Carolina,	)	
	)	
Defendants.	)	

Defendants Eric Greenway, Maria E. Walls, Beaufort County Council, and Beaufort County filed a Motion to Dismiss Plaintiff Jane Calkins’s Class Action Complaint (the “Complaint”). Plaintiff opposes the motion as to Defendants Maria Walls and Beaufort County.¹ The Parties submitted initial briefs on the issues raised in Defendants’ Motion and the Court held oral argument on April 5, 2022. Having fully reviewed the parties’ positions, the Court DENIES Defendants’ Motion to Dismiss as to Beaufort County and its Treasurer, Maria Walls.

BACKGROUND

This case arises from Defendants Beaufort County and Hilton Head Island’s imposition, collection, and retention of allegedly illegal “service or user fees” (hereinafter “road maintenance fees”), which were imposed annually upon citizens of those political subdivisions beginning in

¹ Plaintiff has agreed to dismiss Defendants Eric Greenway and Beaufort County Council pursuant to Rule 41, SCRCP, therefore the Court will not reach their arguments to dismiss under Rule 12.

1993 and 2016, respectively.² The Beaufort County Treasurer, Maria Walls, is currently responsible for overseeing the collection of the road maintenance fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road maintenance fees, and she seeks a declaratory judgment that the road maintenance fees Defendants imposed and collected were illegal, along with a refund of the amounts paid by her and putative class members, with interest.

On June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

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.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A).

Plaintiff alleges that the ordinances passed by Beaufort County and Hilton Head Island imposing the road maintenance fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*.

² For purposes of this order, all facts plead in Plaintiff's Complaint are taken as true pursuant to the applicable standard of review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) ("A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.").

In their Motion, Defendants move to dismiss Plaintiff's Complaint based on six grounds. Of those six, four issues are contested: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity; and (4) the applicability of S.C. Code § 8-21-30 to Plaintiff's claims against Treasurer Walls.

For the reasons set forth below, the Court agrees with Plaintiff on these four issues and DENIES Defendants' Motion to Dismiss as to Beaufort County and Treasurer Walls.

STANDARD OF REVIEW

When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *McCormick v. England*, 328 S.C. 627, 632-33 (Ct. App. 1997). "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

"The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* at 633. And "important questions of novel impression should not be decided on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. The Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff's class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff's class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the "RPA"), S.C. Code § 12-60-10, *et seq.*

In response, Plaintiff contends that the RPA is inapplicable to her claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue ("SCDOR"); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court's holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to her claims because the RPA's provisions apply only to disputes with the SCDOR and disputes concerning property taxes.

1. The Revenue Procedures Act does not apply to Plaintiff's underlying claims.

The RPA only applies to "disputes with the Department of Revenue and disputes concerning property taxes." S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

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).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005).

“All 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.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. The Court finds that neither of those circumstances are met in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has consistently found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

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. at 365, 798 S.E.2d at 558-59 (emphasis added).

to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road maintenance fees at issue in this case are not taxes (or fees) that would be subject to the RPA's statutory procedures. Therefore, Plaintiff's class claims are not barred by § 12-60-80(C).

This Court's holding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRPC. *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).

And finally, court records show that Beaufort County's attorney in this case, James Gilliam of Burr Forman, recently consented to certifying a class action settlement under Rule 23, SCRPC,

in his capacity as counsel for Horry County. See Notice of Motion and Consent Motion to Certify Settlement Class, Preliminarily Approve Settlement, and Approve Notice Plan at 3, *City of Myrtle Beach v. Horry Cnty.*, Case No. 2019-CP-26-01732 (S.C. Ct. C. P. filed on Feb. 12, 2021). Surely if § 12-60-80(C), which was enacted by the General Assembly in 2002, was meant to bar any class action from being maintained against any political subdivision for any reason in South Carolina, Mr. Gilliam would not have consented to Horry County paying \$19 million to settle class allegations against it in 2021.⁴

Regardless, having found that Plaintiff’s underlying claims are not subject to the RPA, the Court further finds that S.C. Code § 12-60-80(C) is inapplicable to Plaintiff’s class claims. Accordingly, Defendants’ Motion to Dismiss Plaintiff’s class allegations is DENIED.

B. Sovereign Immunity does not bar Plaintiff’s equitable claims.

Defendants next move the Court to dismiss Plaintiff’s claim for unjust enrichment pursuant to the doctrine of sovereign immunity. The Court finds that Defendants’ argument on this issue is without merit.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity 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 also made clear 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 South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the “TCA”), which “granted” the government qualified immunity for tortious conduct prospectively, S.C. Code Ann. § 15-78-20(b),

⁴ Notably, the operative claims Horry County settled on a class-wide basis in that case were equitable claims—for unjust enrichment and constructive trust. See Complaint at 15-16, *City of Myrtle Beach v. Horry Cnty.*, Case No. 2019-CP-26-01732 (S.C. Ct. C. P. filed on Mar. 20, 2019). The Court will address Defendants’ conflicting position in this case—that equitable claims cannot lie against political subdivisions—in Section B, *infra*.

“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. Importantly, the General Assembly has not passed any law after *McCall* that “granted” or “reinstated” sovereign immunity as to equitable claims, including claims for unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep’t*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through her unjust enrichment claim, Plaintiff seeks to be restored the value of the illegal fees she remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants’ Motion to Dismiss Plaintiff’s unjust enrichment cause of action.

C. Plaintiff has adequately alleged her entitlement to attorneys' fees.

Defendants next ask the Court to dismiss Plaintiff's request for attorneys' fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants' argument lacks any support under South Carolina law.

Section 15-77-300(A) provides that "[i]n any civil action brought by . . . any party who is contesting state action . . . the court may allow the prevailing party to recover reasonable attorney's fees . . ." Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the "prevailing party" and the Court must find that: (1) Defendants "acted without substantial justification," and (2) "there are no special circumstances that would make the award of attorney's fees unjust." S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds she has sufficiently alleged "state action" in this case and that Defendants acted without "substantial justification." Accordingly, Defendants' Motion to Dismiss Plaintiff's request for attorneys' fees is DENIED.

D. S.C. Code § 8-21-30 applies to Plaintiff's claims against Treasurer Walls.

Finally, Defendants argue that S.C. Code § 8-21-30 does not apply as a matter of law because: (1) the road maintenance fees are not an enumerated service under § 8-21-10; and (2) those fees are not prescribed in Chapter 21 of Title 8. Plaintiff counters that Defendants' reading of the statute is limited, produces an absurd result, and violates the general rules of construction of fee statutes. Again, the Court agrees with Plaintiff.

Fee statutes must be strictly construed so as to not create an absurd result that is inconsistent with prior construction of the statute. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941). With limited case law construing § 8-21-30, Plaintiff points to persuasive authority from a prior South Carolina Attorney General that lends support to the application of the statute in this case.

Specifically, that opinion suggests that liability would lie on the part of a Sheriff, a public officer, for charging a fee for drug sniffing dogs in a school. *See* The Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011). Despite a lack of “drug sniffing dog” fees expressly enumerated anywhere in Title 8, Chapter 21, the opinion concludes that “§ 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 . . .’” *Id.* Per that opinion, § 8-21-30 has applicability beyond fees discussed in Chapter 21 of Title 8. The Court agrees with Plaintiff that where an officer charges a legally unauthorized fee, he or she may face liability under § 8-21-30.

Applying the statute as Defendants would have this Court do would mean that a public officer could avoid liability for charging a fee solely because it is not specifically listed in Title 8, Chapter 21. This result would be absurd and could leave a payer charged an illegal or improper fee with no legal recourse. Thus, Defendants’ interpretation of § 8-21-30 must be rejected. Strictly construing this fee statute, as the Court must, requires the Court to find that Treasurer Walls is an “officer” within the meaning of the statute, and that Plaintiff can proceed with her individual and class claims against Treasurer Walls under S.C. Code § 8-21-30.

E. Defendants’ Other Miscellaneous Arguments

Because Plaintiff has agreed to dismiss Beaufort County Council, the Court finds Defendants’ arguments in Section VI of their Motion are moot. As to Section III of Defendants’ Motion, the Court finds that Plaintiff has not requested monetary relief for her due process claims, therefore that argument has no merit. *See* Compl. ¶ 78(f). And finally, at oral argument Defendants asserted that Plaintiff’s demand for a jury trial should be dismissed. The Court notes that this case is still in its infancy and finds that issue is more appropriate for resolution after the

record has been fully developed and the claims have been fully briefed. Accordingly, Defendants' request to strike Plaintiff's demand for a jury trial is DENIED without prejudice.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss as to Beaufort County and Treasurer Walls is DENIED in its entirety.

IT IS SO ORDERED.

Robert J. Bonds
Circuit Court Judge

Dated: _____
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Jane Calkins VS Hilton Head Island Town , defendant, et al

Case Number: 2021CP0701967

Type: Order/Dismissal

So Ordered

s/ Robert Bonds, 2770

EXHIBIT H

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

FIFTEENTH JUDICIAL CIRCUIT

Baylis Griffin Hyman, individually and on
behalf of those similarly situated,

Case No. 2021-CP-26-07309

Plaintiff,

vs.

Steve Gosnell, in his official capacity as Horry
County Administrator, Angie Jones, in her
official capacity as Treasurer of Horry County,
Horry County Council, and Horry County,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Defendants.

Pending before the Court is Defendants' motion to dismiss filed on December 6, 2021. Having carefully considered the briefs submitted by the parties, the arguments raised by counsel at the hearing held on March 8, 2022, and the relevant authorities, it is the judgment of the Court that Defendant's motion to dismiss is granted, and Plaintiff's claims in the Complaint are dismissed.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff brought this action on behalf of herself and a putative class seeking a refund of all payments ever made to Defendant Horry County for its road maintenance fee (the "Charge") and a penalty of ten times that amount. *See* Compl. The Charge was implemented by Horry County in 1987 for the purpose of funding road maintenance and has been in place ever since. *Id.* ¶¶ 2, 16, 17. The South Carolina Supreme Court upheld the Charge in 1992 in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992). On June 30, 2021, the South Carolina Supreme Court held in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), that Greenville County's road maintenance fee was an invalid tax.

Plaintiff's Complaint alleges that Horry County's Charge is invalid pursuant to *Burns v. Greenville County Council*. Compl. ¶¶ 4, 21. The *Burns* decision is Plaintiff's sole basis for arguing that Horry County's Charge is invalid. See Compl. Each of Plaintiff's claims is asserted on behalf of a proposed class composed of all individuals who have ever paid the Charge at any time during the past thirty-five years. *Id.* at ¶¶ 39, 50-73. Plaintiff seeks a refund on behalf of herself and the putative class members of all amounts Horry County has ever collected in connection with the Charge, as well as a penalty of ten times that amount from Defendants Steve Gosnell and Angie Jones under S.C. Code § 8-21-30. *Id.* at ¶¶ 8, 54, 61, 67, 72-73. Unlike the Plaintiff in this case, the plaintiffs in *Burns* did not seek any refund or other monetary relief, nor did they assert their claims on behalf of a purported class.

Plaintiff filed her Complaint on November 2, 2021. On December 6, 2021, Defendants moved to dismiss the Complaint under South Carolina Civil Procedure Rule 12(b)(6). Defendants' motion to dismiss was fully briefed, and the Court held a hearing on March 8, 2022, during which counsel for Plaintiff and Defendants were present. Defendants' motion to dismiss is now ripe for resolution.

STANDARD OF REVIEW

"Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). The court should dismiss a complaint when the defendant demonstrates that the complaint fails to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCF; see also, e.g., *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001).

ANALYSIS

Defendants maintain that each of Plaintiff's claims must be dismissed pursuant to S.C. Code § 12-60-80(C) because the statute prohibits class actions for the refund of taxes as well as any class action against a political subdivision, such as Horry County. Plaintiff responds that the South Carolina Revenue Procedures Act (the "Act"), of which § 12-60-80(C) is a part, is inapplicable to this case. Plaintiff argues that the Act, including the class action prohibition in § 12-60-80(C), applies only to disputes with the South Carolina Department of Revenue and disputes concerning "property taxes" as defined by the Act, and Plaintiff contends this case is not a dispute involving either. Plaintiff argues that interpreting the final clause of § 12-60-80(C) to prohibit all class actions against political subdivisions would be "nonsensical." Defendants reply that the plain language of § 12-60-80(C), as well as precedent from the South Carolina Supreme Court, make clear that the statute prohibits any class action against a political subdivision in addition to any class action for the refund of taxes.

S.C. Code § 12-60-80(C) provides:

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.**

(emphasis added). The South Carolina Supreme Court has upheld § 12-60-80(C) and dismissed or affirmed the dismissal of class actions based on the statute multiple times. *Aiken v. S.C. Dep't of Rev.*, 429 S.C. 414, 422, 839 S.E.2d 96, 100 (2020); *Lightner v. Hampton Hall Club*, 419 S.C. 357, 368, 798 S.E.2d 555, 560 (2017); *Drummond v. State*, 378 S.C. 362, 370 n. 5, 662 S.E.2d 587, 591 n. 5 (2008); *see also Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 576, 703 S.E.2d

197, 204 (2010); *Morgan v. S.C. Dep't of Rev.*, No. 2012-CP-40-7331, 2013 S.C. C.P. LEXIS 2, 26 (Feb. 27, 2013).

The language of § 12-60-80(C) is clear and unambiguous. The Court agrees with Defendants that the statute prohibits any class action against the Department of Revenue, political subdivisions, such as Horry County, and their instrumentalities. Plaintiff's argument that interpreting the final clause of § 12-60-80(C) to prohibit all class actions against political subdivisions would be "nonsensical" is contradictory to the plain language of the statute, which states that "political subdivisions, or their instrumentalities may not be named or made a defendant **in any other class action** brought in this State." § 12-60-80(C) (emphasis added).

The South Carolina Supreme Court has clearly established that "[w]here [a] statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Senate of the State of S.C. v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); see also, e.g., *Creswick v. Univ. of S.C.*, 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021) (per curium) ("If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning." (citation omitted)); *Aiken*, 429 S.C. at 419, 839 S.E.2d at 99; *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 82 (2013). The Supreme Court has further directed that "[u]nder the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute." *Creswick*, 434 S.C. at 81-82, 862 S.E.2d at 708 (citations omitted). Here, the plain language of § 12-60-80(C) provides that

a political subdivision and its instrumentalities, including Horry County, may not be named as a defendant in *any* class action.

Contrary to Plaintiff’s suggestion, the language in § 12-60-80(C) barring “any other class action” against a political subdivision and its instrumentalities does not mean only class actions involving certain types of taxes, and the plain meaning rule prevents it from being narrowed in that way. The Court must enforce the clear and unambiguous language of § 12-60-80(C) as written. *See, e.g., McMaster*, 425 S.C. at 322, 821 S.E.2d at 912. Furthermore, interpreting the second half of the statute as only barring class actions involving certain types of taxes, as Plaintiff urges, would render that portion of the statute meaningless and superfluous to the first part of the statute, which prohibits all class actions for the refund of taxes. Such an interpretation must be avoided. *See McMaster*, 425 S.C. at 322, 821 S.E.2d at 912 (“[N]o word, clause, provision or part [of a statute] shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” (internal quotations omitted) (alterations in original) (citation omitted)).

Moreover, the South Carolina Supreme Court has already ruled on this issue. In *Aiken v. S.C. Dep’t of Rev.*, 429 S.C. 414, 422, 839 S.E.2d 96, 100 (2020), the court held that the second half of § 12-60-80(C), which bars class actions against political subdivisions, is not limited to certain types of class actions. *Id.*, 429 S.C. at 419, 839 S.E.2d at 99. When considering the scope of the second half of § 12-60-80(C) in *Aiken*, the Supreme Court dubbed that portion of the statute the “catchall clause.” *Id.*, 429 S.C. at 418, 839 S.E.2d at 98. The court held that the catchall clause of § 12-60-80(C) is not limited to certain types of class actions, and that to interpret it that way would be “absurd and forced”:

We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words “any other class action” in the catchall clause of subsection (C) to the specific

subject of “taxes” set forth in the first portion of subsection (C). To interpret the catchall clause in this fashion would simply amount to an unnecessary re-recitation of the first portion of subsection (C); this would be an absurd and forced construction of the catchall cause of subsection (C).

Id., 429 S.C. at 419, 839 S.E.2d at 99 (citation omitted). The court explained that “the plain language of subsection (C), by itself, clearly prohibits the instant action from proceeding as a class action[,]” and it further held that § 12-60-80(C) prohibited the *Aiken* case from proceeding as a class action regardless of whether the Revenue Procedures Act otherwise applied to the case. *Id.*, 429 S.C. at 421-422, 839 S.E.2d at 100 (“We hold the plain language of subsection 12-60-80(C) prohibits this action from proceeding as a class action. We therefore reverse the circuit court [W]e express no opinion on the merits of the case, and we express no opinion as to whether the Revenue Procedures Act applies to other issues in this case.”). Thus, controlling case law from the South Carolina Supreme Court holds that the second half of § 12-60-80(C) must be enforced according to its plain meaning, which means that the statute bars *all* types of class actions against political subdivisions, not just class actions relating to certain types of taxes or even taxes generally.

Accordingly, this Court holds that, pursuant to the plain language of § 12-60-80(C) as well as precedent from the South Carolina Supreme Court, Plaintiff is prohibited from bringing this case as a class action because it is asserted against a political subdivision (Horry County) and its instrumentalities. Therefore, Plaintiff’s claims, which are each asserted on behalf of a purported class, fail as a matter of law and must be dismissed. Because the Court holds that § 12-60-80(C) mandates dismissal of Plaintiff’s claims, the Court need not address the parties’ remaining arguments.

CONCLUSION

For the foregoing reasons, it is the judgment of the Court that Defendants' motion to dismiss is GRANTED, and Plaintiff's claims are dismissed.

The Honorable Kristi F. Curtis
South Carolina Circuit Judge, Fifteenth Circuit

_____, 2022

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Horry Common Pleas

Case Caption: Baylis Griffin Hyman VS Steve Gosnell , defendant, et al

Case Number: 2021CP2607309

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2022-05-09 10:41:41 page 8 of 8

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EXHIBIT I

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2021-CP-42-03595

Anne H. Hargrove, individually and on behalf of
all others similarly situated,Cole Alverson, in his official capacity as
Spartanburg County Administrator, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Ross A. Appel, Esq.

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **After careful consideration of the written motion and arguments of counsel, the Court denies the Motion to Dismiss. Neither the Revenue Procedures Act, § S.C. Code 12-60-80(C), nor § S.C. Code 8-21-30 bar the Plaintiff's claims for purposes of Rule 12, SCRCP.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Ross A. Appel, Esq.
McCullough Khan, LLC
2036 eWall Street
Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

CLERK OF COURT

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Spartanburg Common Pleas

Case Caption: Anne H. Hargrove VS Cole Alverson , defendant, et al

Case Number: 2021CP4203595

Type: Master/Order/Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-06-15 14:07:51 page 5 of 5

ELECTRONICALLY FILED 2022-06-15 14:07:51 BY SPARTANBURG COMMON PLEAS CLERK/CLERK ASSOCIATE/CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Richard A. Butts individually and on behalf)
of all others similarly situated,)
Plaintiffs,)
vs.)
Miriam Mace, in her official capacity as)
Treasurer of Georgetown County and)
Georgetown County South Carolina,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-22-00928

**ORDER DENYING
DEFENDANTS' MOTION
TO ALTER OR AMEND**

This matter came before the Court through the Defendants' Motion to Reconsider the Order of this Court dated May 23, 2022, denying Defendants' Motion to Strike/Motion to Dismiss. After careful consideration, the Court finds that the Motion to Reconsider should be denied.

The Defendants' Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.

_____, 2022
Anderson, South Carolina



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2022-06-07 12:47:12 page 2 of 2

ELECTRONICALLY FILED 2022-06-07 12:47:12 PM BY CLERK OF COURT J. CORDILL MADDIX JR. EAS SE#282#20220623280928

EXHIBIT J

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021-CP-02-2323

v.)

**CITY DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR RECONSIDERATION**

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 City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)
Defendants.)

The Plaintiffs Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit as a class action to challenge the alleged wrongful collection of a road maintenance fee that was imposed by ordinance by the Aiken City Council in 2016. In its Order filed August 8, 2022, this Court dismissed by consent the Plaintiffs' First and Fourth Causes of Action against the Defendants City of Aiken and Aiken City Council (referred to collectively as "City Defendants"). The Plaintiffs do not seek reconsideration of that ruling. The Court thus recognized that the Plaintiffs' Second Cause of Action for unjust enrichment as the only remaining claim against the City Defendants. The Plaintiffs likewise do not seek reconsideration of that ruling. This Court then declined to reach certain jurisdictional defenses and sovereign immunity defenses asserted by the City Defendants, and instead this Court ruled that this class

action lawsuit is barred by operation of S.C. Code Ann. § 12-60-80(C) and its construction by the South Carolina Supreme Court in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). The Plaintiffs seek reconsideration of that ruling.

This Court’s application of the so-called “catchall clause” in S.C. Code Ann. § 12-60-80(C) as interpreted in *Aiken* is correct and should not be altered or amended on reconsideration. S.C. Code Ann. § 12-60-80(C) provides as follows: “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.” S.C. Code Ann. § 12-60-80(C). (Emphasis added). The italicized language demonstrates that a political subdivision, such as the City of Aiken which clearly qualifies as a “political subdivision,” may not be a defendant in *any* class action brought in this State. That is the plain and ordinary meaning of the clause “any other class action,” and frankly, that is precisely how the Supreme Court in *Aiken* interpreted and applied that language.

Importantly, and as properly analyzed by this Court, the Supreme Court in *Aiken* held that “subsection 12-60-80(C) indicates no intent to limit or restrict the general words ‘any other class action’ in the catchall clause of subsection (C) to the specific subject of ‘taxes’ set forth in the first portion of subsection (C).” 839 S.E.2d at 99. Thus, the Supreme Court broadly construed “any other class action” consistently with its plain meaning and concluded that “the plain language of subsection (C), by itself, clearly prohibits the instant action from proceeding as a class action.” 839 S.E.2d at 100. As this Court correctly concluded, the same is true in the case at bar.

On reconsideration, the Plaintiffs insist that *Aiken* should be read as a prohibition on class actions that can be brought only against the Department of Revenue. However, that reading would render meaningless and essentially delete from the statute the words “political subdivisions or their instrumentalities.” As this Court correctly ruled, the prohibition on class actions applies not only to the Department of Revenue but also to “political subdivisions or their instrumentalities” which is inclusive of municipalities such as the City of Aiken.¹ The Plaintiffs also argued that the prohibition on class actions only applies to disputes involving taxes brought under the Revenue Procedures Act; however, the Supreme Court already rejected that limiting construction of the “catchall clause.” The Supreme Court stated: “To interpret the catchall clause in this fashion would simply amount to an unnecessary re-recitation of the first portion of subsection (C); this would be an absurd and forced construction of the catchall clause of subsection (C).” 839 S.E.2d at 99.²

In sum, this Court’s analysis and application of S.C. Code Ann. § 12-60-80(C) as construed by the Supreme Court in *Aiken* is a correct one. The Plaintiffs are barred from

¹ The Plaintiffs do not dispute that the City of Aiken qualifies as a “political subdivision.”

² To support their position that S.C. Code Ann. § 12-60-80(C) does not prohibit class actions against political subdivisions, the Plaintiffs in footnote #2 cite to several appellate decisions involving “class actions which have proceeded against political subdivisions post the passage of 12-60-80(C).” However, that argument is not persuasive. As the City Defendants have previously pointed out, it is axiomatic that an appellate courts’ silence on an issue does not mean the issue does not exist or is not meritorious. As former Chief Judge Alex Sanders so aptly stated, “appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811, 817 (Ct. App. 1991). A review of the cases cited by the Plaintiffs does not show that S.C. Code Ann. § 12-60-80(C) was ever raised to or addressed by the courts in any of those cases. Moreover, S.C. Code Ann. § 12-60-80(C) was not in effect until June 18, 2003, and, as a result, was not in existence so as to even be applicable to at least two of those cited cases.

bringing a class action against the City of Aiken for the refund of the road maintenance fees that have been paid by the purported class members, including under a theory of unjust enrichment.

As a second issue, the Plaintiffs contend that, even if they are unable to bring this action as a class action due to the prohibition of S.C. Code Ann. § 12-60-80(C), the Plaintiffs should be able to bring their own personal claims and that this Court erred in dismissing their personal claims. The City Defendants submit that the Court properly construed the Plaintiffs' Complaint as alleging only a class action. As this Court analyzed the issue, the Plaintiffs brought what they explicitly called a "class action" where they seek in a representative capacity to sue on behalf of all citizens of the City of Aiken who have paid road maintenance fees. *See*, Complaint, ¶ 52 ("pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves, and all others similarly situated, as representative of the following class"). Accordingly, there are no allegations in the Complaint suggestive that the Plaintiffs sought to bring anything other than a class action, and as a result, this Court was correct in construing the Complaint as alleging a class action only.

Nonetheless, in the event the Plaintiffs wish to bring their personal claims, they are not precluded from doing so by this Court's dismissal of the action without prejudice. However, if that occurs, the City Defendants preserve all jurisdictional and liability defenses as asserted in their Rule 12 motions. Moreover, if the Court grants reconsideration to the Plaintiffs on either issue asserted in the Rule 59(e) motion, the City Defendants respectfully request that the Court also adjudicate the various jurisdictional and liability defenses that the Court did not find it necessary to reach in dismissing the action pursuant to S.C. Code Ann. § 12-60-80(C). The City Defendants rely on and incorporate herein their previous filings, including their memorandum of

law filed April 20, 2022, and their proposed order submitted May 23, 2022, as to those defenses raised but left undecided.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

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

November 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
Mark Gregory Thompson and Jane Page	)	C/A No. 2021-CP-02-02323
Thompson, individually and on behalf of	)	
all those similarly situated,	)	
	)	
<i>Plaintiffs,</i>	)	PLAINTIFFS' REPLY IN SUPPORT
	)	OF RECONSIDERATION
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 City Council, and Stuart	)	
Bedenbaugh, in his official capacity as	)	
City Manager of Aiken.	)	
	)	
<i>Defendants.</i>	)	

Plaintiffs, Mark Gregory Thompson and Jane Page Thompson, submit this reply to Defendant City of Aiken's¹ Memorandum in Opposition to Plaintiffs' Motion to Reconsider, electronically filed with the Court on November 7, 2022.²

¹ Of the "City Defendants," Plaintiffs have dismissed all but the City of Aiken. In addition, Plaintiffs respectfully remind the Court that there are two Road Maintenance Fees at issue in this case, and this Reply pertains to the Road Maintenance Fee charged by Defendant City of Aiken. Defendant has ceased charging the Road Maintenance Fee at issue.

² Of the "County Defendants," Plaintiffs dismissed Defendants Clay Killian and Aiken County Council in their Response to the County Defendants' Motion to Dismiss. The remaining County Defendants, Jason Goings and Aiken County, have filed a return to the Motion to Reconsider. The Court's Order filed October 14, 2022, only requested materials regarding the City Defendants' positions. As such, Plaintiffs will not submit a Response to the County Defendants' briefing. Should the Court require anything from Plaintiffs as to the County Defendants, we will be happy to submit, but Plaintiffs will not add anymore briefing on this issue unnecessarily.

Defendant does not bring forth any new arguments in its Memorandum in Opposition. As a result, these issues have already been extensively briefed before this Court, and Plaintiffs will not unnecessarily rehash their responses. Though, in regard to Defendant's contention that Plaintiffs have only brought a class action and have not brought individual claims, this is not true. One need only look at the caption for confirmation that Mark and Jane Thompson bring their claims against the City of Aiken (and the other Defendants in this action) "*individually*, and on behalf of those similarly situated." Caption; *see also* Compl. ¶¶43-46 (factual allegations specific to named plaintiffs); and *see* Compl. ¶ 91(b)-(m) (seeking damages and relief individually and on behalf of the putative class).

Plaintiffs respectfully request this Court reconsider its order dated August 8, 2022 and revise accordingly.

Respectfully submitted,

RICHARDSON THOMAS, LLC

BY: 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)
 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

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 LAW FIRM, 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 Plaintiffs and the Class

Dated: November 10, 2022
Columbia, SC

State of South Carolina)
) Court of General Sessions
County of Aiken) 2021-CP-02-02323

Mark Gregory Thompson)
)
 vs.) Transcript of Record
)
Clay Killian, et al.)

April 20, 2022
Aiken, South Carolina

B E F O R E:

The Honorable William Keesley, Judge.

A P P E A R A N C E S (All present by video or telephone):

Will Lewis
Attorney for the Plaintiff

Bradley T. Farrar
Attorney for the Defendants

Andrew F. Lindemann
Attorney for the Defendants

Khaleelah Gantt
Transcriber



1 THE COURT: All right. And let's go on the record on
2 2021-CP-0200071, Debrar, D-E-B-R-A-R C. Renenue,
3 R-E-N-E-N-E-U. I'm sorry I'm reading the wrong caption. I
4 apologize to you, let me start over.

5 Let's go on the record on 2021-CP-02-02323, which is Mark
6 Gregory Thompson v. Clay Killian and others. The date is
7 April 20th, 2022, the time is 2:04 p.m. This hearing's been
8 scheduled using the Webex virtual courtroom. Supreme Court of
9 South Carolina has recently adopted a procedure whereby
10 nonjury hearings conducted by virtual court are not assigned a
11 court reporter. The Webex platform will record the
12 proceedings and if a transcript is needed, one would be
13 prepared by a transcriptionist using the Webex recording. If
14 it is determined that a court reporter is necessary, this
15 hearing will be continued until a later date when a court
16 reporter is available. The orders from the Supreme Court,
17 including one issued in August of 2021, required the consent
18 of all parties in order to proceed in this fashion.

19 The roster indicates that four motions were scheduled,
20 but two have been resolved. I have a motion by the City of
21 Aiken, Aiken City Council, Bedenbaugh is the manager, Motion
22 to Dismiss. Andrew Lindemann, L-I-N-D-E-M-A-N-N, represents
23 the City of Aiken. Do you consent to hearing this by Webex,
24 Mr. Lindemann?

25 MR. LINDEMANN: Yes, Your Honor.

1 THE COURT: And Mr. Lewis represents the plaintiff on the
2 entire suit, William Lewis. Do you consent, Mr. Lewis?

3 MR. LEWIS: Yes, Your Honor.

4 THE COURT: Then I have another motion on behalf of the
5 Aiken County Council, Killian, K-I-L-L-I-A-N, as administrator
6 and Goings as treasurer, also seeking to dismiss the action.
7 And I have Mr. Bradley Farrar, F-A-R-R-A-R, for the Aiken
8 County defendants.

9 Do you consent to do this by Webex, Mr. Farrar?

10 MR. FARRAR: Yes sir I do, Your Honor.

11 THE COURT: I'm asked to indicate to you that you should
12 speak clearly so that we have an accurate record, that you not
13 talk over each other. Since there is no court reporter who
14 will be present taking down who is speaking at any given time,
15 you're asked to state your name before you speak, unless
16 you're responding directly to an indication where it's clear
17 that I'm directing the next person to speak.

18 Is there a preference as to how we proceed with these
19 motions, Mr. Farrar?

20 MR. FARRAR: Yes sir. Mr. Lindemann and I have discussed
21 this and we -- if it's okay, I'd be happy to go first on
22 behalf of the Aiken County defendants.

23 THE COURT: All right. I'll be happy to hear from you,
24 thank you.

25 MR. FARRAR: Yes sir, may it please the Court. Yes, this

1 is Brad Farrar, I'm the Aiken County attorney. I represent
2 the Aiken County defendants in this case. Your Honor, this is
3 a motion to dismiss, 12(b)(6) for a lack of -- first of all
4 for lack of subject matter jurisdiction, which obviously, we
5 can raise at any time, but also failure to state a cause of
6 action. This case involves a challenge to Aiken County's road
7 maintenance fee, which was imposed by a county ordinance in
8 1992. The fee has continued and the ordinance has continued
9 uninterrupted for 30 years.

10 It's been part of every budget ordinance, every road
11 maintenance fee, and included in the budget ordinance for the
12 past 30 years. It has been approved by three readings in a
13 public hearing, every procedural requirement met in connection
14 with it. There's no indication that either the plaintiffs
15 every contacted Aiken county to ask about the fee prior to
16 filing this lawsuit. Obviously, they don't have to do that,
17 but if they had, we could have talked to them about what may
18 be a little bit unique to Aiken County in terms of our
19 legislative history for this particular fee. And also in
20 terms of when it was adopted. It was adopted 30 years ago,
21 it's a first challenge in its history.

22 Your Honor, fees of this kind are expressly permitted
23 under home rule Title 4-9-30 and this is subsection 5. And 4-
24 9-30 says that each county government of the state shall have
25 the following powers, which shall be exercised by the

1 respective governing bodies. So I'll pause right there
2 because Mr. Goings, who's the treasurer, has nothing to do
3 with the road maintenance fee. He did not impose it. He is
4 not the one who put the fee in place. It's the county
5 governing body. It's also not Mr. Killian. I understand
6 prior to this hearing that the plaintiffs have offered to drop
7 Mr. Killian as one of the defendants and obviously we don't
8 oppose that and don't oppose it without prejudice for the
9 reasons that I'll state later on in the argument, as well as
10 the country governing body. And this is just a matter against
11 Aiken County if I've stated that correctly.

12 Is that correct, Mr. Lewis?

13 MR. LEWIS: County Council. County Council and the
14 administrator are out, we've done that in all the suits.

15 MR. FARRAR: Thank you. Okay. So 4-9-30(5)(a) says that
16 one of the powers that the county governing body can exercise
17 is to assess property and levy ad valorem property taxes and
18 impose uniform service charges, including the power to tax
19 different areas at different rates based on the level of
20 services. For the functions and operations of the county,
21 including but not limited to, appropriations for general
22 public works, including roads. So it goes on to list 30
23 separate government functions that the county can impose
24 uniform service charges for and one of the first is roads and
25 then it talks about drainage, street lighting, that sort of

1 thing. So this is a basic core function of government to have
2 roads provided for and the uniform service charge is a very
3 common means of providing for that funding.

4 This is important because the authority for counties in
5 South Carolina to impose a road maintenance fee is found in
6 Title 4 home rule, it's not located in Title 8. I don't know
7 of any municipality or county that would attempt to impose a
8 road maintenance fee under Title 8, that's just not where they
9 would do that sort of thing.

10 Municipalities in South Carolina -- and of course, Mr.
11 Lindemann can address this, but they have exactly the same
12 powers the counties do, but they're in Title 5, 5-7-30. And
13 of course, Title 4 is counties, Title 5 is municipalities and
14 we're not in Title 8, that's not where we live. In addition
15 to Title 4 and not in lieu of Title 4, section 6-1-300
16 specifically empowers local governments to impose service or
17 user fees and that terms also includes a phrase, uniform
18 service charges under subsection 6 of 6-1-300, so it marries
19 up -- it dovetails back to 4-9-30(5) talking about uniform
20 service charges, which is what Aiken County's ordinance
21 imposed. So that's kind of the scene setter.

22 Last summer, South Carolina Supreme Court made a ruling
23 in the case of Burns v. Greenville County. Burns involved a
24 challenge to Greenville County's two of their ordinances, one
25 was a road maintenance fee and the other was a

1 telecommunications fee and these were in separate ordinances.
2 And so in that case, in delivering the court's opinion in the
3 Burns case, Justice Few said that the plaintiffs claimed that
4 the two charges, the road maintenance fee and the
5 telecommunications fee are taxes. That was their claim in
6 that lawsuit; and therefore, they violate 6-1-310 for the
7 reasons stated in that opinion. And the court very plainly
8 says, next Justice Few says, we declare the road maintenance
9 and telecommunications taxes are invalid under South Carolina
10 law. So they stopped calling them fees right in that order
11 and started referring to them as taxes. And it said the
12 plaintiffs filed a lawsuit on several grounds, including the
13 claim that the ordinance imposed a tax and not a permissible
14 fee.

15 Okay, so the court in Burns invalidated no other
16 ordinances in the state, except for Greenville County's road
17 maintenance fee and telecommunications fee. And they
18 similarly made no mention of refunds, they didn't order
19 Greenville County to issue any refunds, they did not enjoin
20 any other county or municipality in the state from imposing a
21 road maintenance fee. They did not order any county or
22 municipality to issue a refund for any payment of those fees.
23 It applied solely to those two particular fees out of
24 Greenville County.

25 Nevertheless, once that decision was issued -- obviously,

1 you get a Supreme Court opinion -- folks around the state
2 started looking for other places that had similar fees,
3 counties and municipalities. And so what we started seeing
4 was a kind of one-size-fits-all complaints, where you just
5 kind of cut and paste the name of the county and the town in
6 there and say, well this county's looks like Greenville
7 County, so they must also have a problem. And so the mantra
8 that you kind of heard was unlawful taxes, unlawful taxes and
9 these lawyers were going to get refunds of taxes wrongfully
10 paid by taxpayers.

11 And then very interestingly, that talk just stopped. I
12 mean just overnight and what we found out was that these --
13 the lawyers and their clients who wanted these types of
14 refunds read Title 12. And what Title 12 says in the revenue
15 procedure act is that 12-60-80(A), except as provided in
16 subsection B, which deals with the constitutional challenge,
17 there is no remedy, none; "no remedy other than those provided
18 in this chapter", which is the revenue procedure act, "in any
19 case involving the illegal or wrongful collection of taxes" --
20 and this is critical -- comma, "or attempt to collect taxes".
21 What the court is saying in the Burns case is, Greenville
22 County, you're attempting to collect taxes through an
23 impermissible fee.

24 The intent section of the revenue procedure act at 12-60-
25 20 says that "it's the intent of the General Assembly to

1 provide the people of this state with a straightforward
2 procedure to determine a dispute" -- and this is important,
3 "with the Department of Revenue and a dispute concerning
4 property taxes". Okay. And so the notes of decision -- if
5 you look online you're not going to see this, but if you go
6 into the hardbound code, you'll see in the case of B & A
7 Development v. Georgetown County, which is a 2004 South
8 Carolina Court of Appeals case at 605 S.E.2d 551. It says
9 that the revenue procedure acts, administrative procedures and
10 remedies are not limited to a narrow case of taxpayer suits.
11 Rather, the acts provisions are sufficiently expansive to
12 include any relevant claims of a legal or factual nature,
13 which therefore vest county administrative bodies with
14 jurisdiction -- county bodies with jurisdiction, not DOR, to
15 hear and decide in the first instance a broad range of
16 taxpayer suits.

17 12-60-80 subsection A is interesting, it uses the word
18 taxes and there are a bunch of terms of art in Title 12 in the
19 revenue procedure act, in providing there's no remedy other
20 than those provided in this chapter, in any case involving the
21 collection or attempted collection of taxes. So they could
22 have used assessment, they could have used classification,
23 they could have used property tax, property tax assessment,
24 proposed assessment, special use value, state tax, on down the
25 line. But they chose to use taxes.

1 And the definition of taxes is very interesting. It
2 says, used in this act, taxes means taxes, licenses, permits,
3 fees; I'm going to stop right there. It means fees, or other
4 amounts including interest, regulatory or other penalties,
5 civil fines -- and then here's some important language --
6 imposed by this title, Title 12, or subject to assessment or
7 collection by the Department. So the plaintiffs contend that
8 the road maintenance fee is first of all not a tax because
9 they want to avoid that word, but it's not a tax imposed by
10 Title 12, nor is it an assessment or a collection by the
11 Department, which means the Department of Revenue.

12 But let's take a look at that. Here's what the Aiken
13 County road maintenance ordinance says that the fee is on;
14 this is from 1992. Effective July 1, 1992, a road maintenance
15 fee of 15 dollars on each motor vehicle. Each motor vehicle
16 licensed in Aiken County is to be included on motor vehicle
17 tax notices. Okay? So it is a motor vehicle, that is
18 personal property. These are personal property tax notices
19 and they have to be property taxes, there's no other tax they
20 can be.

21 The revenue procedure acts apply to a road maintenance
22 fee that's alleged to be improperly imposed, basically be an
23 extra property tax on motor vehicles. Motor vehicles are
24 taxes are imposed in Title 12. There's an entire article
25 devoted to that. Chapter 12 -- Chapter 37, excuse me, of

1 Title 12 is called assessment of property taxes and it says in
2 12-37-10, subsection 2, "personal property shall mean all
3 things other than real estate, which have any pecuniary
4 value". So anything of value that's other than a real
5 property or the metaphysical is personal property, that's what
6 that definition means.

7 Article 5 of Chapter 37 says that every person -- and
8 this is 12-37-710, "every person shall annually list for
9 taxation all the tangible personal property in the state owned
10 or controlled by him". That goes back to the ordinance. It
11 says we're going to tax motor vehicles registered in Aiken
12 County. 12-37-800, "if a person fails to list personal
13 property required by law to be listed, the value of that
14 property may be charged against the person with ten percent
15 penalty added" and collected in other cases, which means you
16 can force collect delinquent personal property taxes. This is
17 very interesting, 12-37-905 says, notwithstanding any other
18 provision in this title, every person required by law to make
19 a property tax return to the county auditor -- it's not a
20 county treasurer. Mr. Goings, my client, the treasurer does
21 not belong in this lawsuit. He does not make a return of
22 personal property, that's the county auditor. Must file a
23 return with the county auditor on or before April 30th of the
24 property owned the preceding December 31st.

25 Okay, so the plaintiffs have listed the county treasurer

1 in a case involving tax on motor vehicles and treasurers have
2 nothing to do with imposing car taxes, that's the auditor.
3 They got the wrong defendant. Treasurers collect, they don't
4 impose; they receive, they don't hit you with a charge. Car
5 tax bills are prepared by auditors. Article 21 of chapter 37
6 is entitled motor vehicles, that's where the taxes on motor
7 vehicles are in South Carolina, it's in Title 12. Each county
8 auditor, this is 12-37-2650, "Each county auditor shall
9 prepare a tax notice on all vehicles".

10 And this is where the treasurer comes in, "The notice
11 must be delivered to the county treasurer who must collect or
12 receive payment of the taxes". Got a ministerial duty to
13 receive a check, that's what he does. But it's imposed, the
14 tax or the fee or whatever it's called in this situation, is
15 imposed by the county auditor. And included in that 12-37-
16 2650 notification, is that the county auditor must include
17 notification of a taxpayers appeal rights if they feel like
18 they've been aggrieved. So there is an avenue to redress for
19 somebody who feels like they have been overly taxed as it
20 relates to their motor vehicle.

21 So Your Honor, here's the box that the plaintiffs are in.
22 On the one hand, they invoke the Burns case to say that a road
23 maintenance fee is per se and proper in South Carolina, even
24 though Titles 4 and 6 expressly authorize local governments to
25 impose fees and even through 59 of the 63 titles of the South

1 Carolina Code of Law has authorized governments to impose some
2 kind of fees. That's their problem initially, but on the
3 other hand, they distance themselves from the holding in Burns
4 that fees are really considered to be taxes because that would
5 mean they have to go through the Revenue Procedure Act, which
6 they don't want to do because that means you can't have a
7 class action under the Revenue Procedure Act.

8 But then knowing they have to deal with the elephant in
9 the room, they clearly, the court in Burns, said that the fees
10 are actually taxes, the plaintiffs say, well okay they're
11 taxes, but they're not property taxes. Well, okay, what kind
12 of taxes are they if they're not property taxes? Is it an
13 income tax; counties don't impose income taxes, that's the
14 federal government and that's the state. Is it a hospitality
15 tax; those taxes on prepared meals and beverages sold in
16 establishments. It's not a hospitality tax. Is it a local
17 accommodations tax; those are taxes on gross proceeds derived
18 from rent to transients. Is everybody living in their car in
19 Aiken County; this is not a tax on accommodations. Is it a
20 business license tax? Is every car that comes through Aiken
21 County an Uber driver; this is not a business license tax.

22 This is a personal property tax, which is what 12-60-20
23 provides is to dispute concerning property taxes under the
24 Revenue Procedure Act. There's no other kind of tax one can
25 impose on a motor vehicle. And so that's taxes imposed by

1 Title 12. So we hit that wicket. Regarding taxes subject to
2 assessment or collection by the Department, listen to what
3 this section of Title 12 says. 12-45-70 says, "All taxes are
4 due and payable between" -- they give you the dates. Then
5 here's this sentence, "The County treasurer acting under the
6 direction and supervision of the department" -- that's the
7 Department of Revenue -- "shall collect taxes in the manner
8 described by law and give receipts for the person paying
9 them." County treasurers in South Carolina operate under the
10 direction and supervision of the Department of Revenue.

11 Now Your Honor, if this was an employment case, that's
12 huge language. If we direct and supervise, we can hire and
13 fire. The Department of Revenue has that sort of control over
14 county treasurers that they actually direct their activities
15 and supervise their activities. The department and local
16 governments is a symbiotic inseparable relationship between
17 the two because they are directed and controlled by the
18 Department of Revenue. The Department may extend time
19 limitations imposed in a county tax case, sua sponte under 12-
20 60-40. Under 12-60-1710, "procedure provided in this
21 article ... apply to all property tax assessments made for real
22 or personal property tax purposes." So if you're going to
23 appeal a tax case assessment in South Carolina, you have to go
24 through the Revenue Procedure Act. "Property tax assessors,
25 auditors, and taxpayers shall comply with the department", and

1 it's the Department of Revenue's, "regulations, rules, and
2 procedures and shall use the forms the department prescribes."
3 DOR's DNA is all over county tax collection.

4 "The department shall provide" the "protest forms, and
5 the property tax assessor shall make the forms available to ...
6 taxpayers", and so shall the auditor. "A property taxpayer
7 may object to a personal property tax assessment made the by
8 the county auditor", pursuant to 12-60-2910 by requesting to
9 do so in writing. If the taxpayer requests a contested case,
10 it goes through the Administrative Law Court after that
11 taxpayer has exhausted his administrative remedies. All of
12 this is under the Revenue Procedure Act. You can make a claim
13 for a refund of personal property under 12-60-2940, also under
14 the revenue procedures act. Subject to the limitations of 12-
15 54-85, which is the statute of limitations, that's another
16 Title 12 statute.

17 So Your Honor, what we have here is a situation where
18 there is a tremendous administrative remedy already available
19 under the Revenue Procedures Act and the plaintiffs have not
20 chosen to go that route. Now what we're asking for is for
21 this case to be dismissed without prejudice under the subject
22 matter jurisdiction argument so they can turn around and go to
23 the Administrative Law Court and bring their case. It's just
24 not going to be as a class action because you can't do that
25 for a tax case in South Carolina.

1 But let me throw this last one out from 12-60-3330.
2 Listen to what this says. In view of the -- this is not in
3 the footnotes, this is the statute. "In view of the
4 desirability of consistent property tax treatment throughout
5 the State and of the department's oversight", DOR's oversight
6 "of county property tax matters, the administrative law judge
7 can request the participation of the department in a case
8 before it which arose from a property tax assessed by a county
9 assessor or a county auditor, and the department may intervene
10 at the administrative law judge level in a case which arose
11 from a property tax assessed by a county auditor." So there
12 is statutory joinder provision for DOR to basically come in
13 and say, look, DOR, did the county get it right, again,
14 because the County's operating under the direction and control
15 and supervision of the Department of Revenue.

16 When the appeal to the -- Court of Appeals is the next
17 route after Administrative Law Court and the history of that
18 act of 12-60-3380 from the 2006 amendment to that, it says,
19 "this act is intended", this being the Revenue Procedure Act,
20 "to provide a uniform procedure for contested cases and
21 appeals from administrative agencies and to the extent that a
22 provision of this act conflicts with an existing statute or
23 regulation, the provisions of this act are controlling." So
24 the Revenue Procedure Act trumps the other statutes that are
25 invoked in any sort of situation that might take it out of the

1 Administrative Law Court's lane.

2 Lastly, to just put a double tap on this in case the
3 legislature thinks they haven't done the belts and suspenders
4 treatment at this point by emphatically saying this, they say
5 in 12-60-3390, if a taxpayer brings an action covered by this
6 chapter" -- it's the Revenue Procedure Act, "if a taxpayer
7 brings an action covered by this chapter in circuit court, the
8 circuit court shall dismiss the case without prejudice".

9 There's no discretion. So if you get one of these --

10 It's kind of interesting, Your Honor because earlier
11 today when I was trying to figure out how to log onto the
12 virtual courtroom, I just went on to eflex or efile or
13 whatever it is we use. And you know what; if you go in there
14 and try to file a new case, it pops up and it says, what type
15 of case is it. And it's like common pleas or appeals, that
16 kind of thing. But then it goes to -- okay, that's where
17 you're going to file it -- then it goes to subtype cases.

18 And I don't know if y'all noticed but there are 58
19 different subtypes of cases that you could file in common
20 pleas. There's not a category called taxes in all 58 of them.
21 There are cases for constructions, employment, contract,
22 dental, legal malpractice, motor vehicle, premise liability,
23 products liability -- motor vehicle accident, excuse me,
24 personal injury, wrongful death, et cetera. There's not a
25 single -- among the 58 types of cases you can file in circuit

1 court, a category called taxes. And Your Honor can just ask
2 yourself in your history as a circuit court judge, how many
3 taxes have you heard? These appeal to the Administrative Law
4 Court, that's where they go and that's what the legislature
5 has set up.

6 All right. So back to 12-60-80, I mentioned there's a
7 subsection B. That's the one little carve-out that says you
8 can bring a case in circuit court where "an action for
9 declaratory judgment where the sole issue is whether a statute
10 is constitutional". That Your Honor can hear in Circuit
11 Court. That's not what we have in this case, this case
12 involves a county ordinance and a municipal ordinance, it's
13 not a state statute and they're not challenging the
14 constitutionality of the statute.

15 And then finally, in that particular statute, 12-60-80
16 subsection C and this is the killer for these types of cases.
17 It says, "Notwithstanding A and B, a claim or action for a
18 refund of taxes", that's what we've got in this case, a refund
19 of taxes, "may not be brought as a class action in the
20 Administrative Law Court or any court in this state and the
21 department, political subdivisions" -- that's Aiken County and
22 the City of Aiken, "or their instrumentalities may not even be
23 named or made a defendant in any other class action brought in
24 this state." That's what's called the catch-all phrase of 12-
25 60-80. And that says you cannot have a class action for a

1 recovery of anything that is a tax in South Carolina.

2 Plaintiffs have not exhausted their administrative
3 remedies. They say that the revenue procedure act does not
4 apply to this particular case or to counties. And of course,
5 there's an entire sub article, number 9 of revenue and
6 procedure act that deals with county assessors. It tells you
7 how to take a case through those types of appeal process. Sub
8 article 13 of the act deals with county auditors, how to
9 appeal from them.

10 And it's interesting, I went on the Administrative Law
11 Court's website and they actually have a category, unlike the
12 Circuit Court. They have a category called DOR 17 county tax
13 cases. And there are over -- from 1995 to the present, there
14 are 980 Administrative Law Court opinions dealing with county
15 taxes. That's because that's what they do, they deal with
16 taxes, y'all don't. And so the claim that the Revenue
17 Procedure Act does not deal with county taxes is specious.

18 In terms of exhausting the taxpayer's pre-hearing remedy,
19 that means filing under subsection 15 of the definitions
20 section of the Revenue Procedure Act, it means you filed a
21 written protest as required by this chapter. Plaintiffs did
22 not do that. It means you attended a conference or met with
23 the auditor for purposes of subarticle 13, which they didn't
24 do that. And you provided the facts and law or other
25 authorities supporting the taxpayer's position to the auditor

1 during that meeting. They didn't do that. So plaintiffs have
2 not only not even exhausted their administrative remedies,
3 they haven't even attempted their administrative remedies.

4 So also just in terms of -- since I got a lot of stats
5 today, the word county appears 123 times in an act that the
6 plaintiffs say doesn't apply to counties. So that's kind of
7 what we're dealing with, Your Honor.

8 Okay, so let me give you a little bit of law here, Your
9 Honor. In the Burns case, the court went on to say South
10 Carolina permits counties to levy ad valorem property taxes
11 and uniform service charges. They say you can do that, that's
12 not illegal to do that. Under Title 4 and Title 6, it's also
13 authorized to impose uniform service charges. Supreme Court
14 in the Burns case makes absolutely no mention of the
15 invalidity of Greenville County's ordinances under Title 8,
16 which is the exclusive authority identified -- statutory
17 authority identified in the complaint. They discuss
18 Greenville County's shortcomings with respect to Title 4, 4-9-
19 30 and 6-1-330. They don't mention Title 8 whatsoever.

20 The collection of taxes in South Carolina is governed by
21 Title 12, with mostly ministerial duties for folks like my
22 client, the treasurer. And I mentioned the treasurer acts
23 under the direction and supervision of DOR. 12-4-10 says that
24 DOR "is created to administer and enforce the revenue laws of
25 this State." That's not some of the law, that's all of the

1 revenue laws of this state, DOR administers those. "County
2 treasurer may not issue a tax receipt", this is 12-45-430,
3 "unless all the taxes, penalties, costs, and all other charges
4 included on the tax bill have been paid in full." That's
5 where these motor vehicle charges appear, they appear on motor
6 vehicle tax bill. The court went on in Burns to say that in
7 determining whether legislature is -- I'm sorry, this is the
8 Unisys Corporation v. Budget and Control Board, 551 S.E.2d
9 263, a 2001 case. In determining whether the legislature has
10 given another entity exclusive jurisdiction over a case, a
11 court must look to the relevant statute. Your Honor, that's
12 what my first 30 or so minutes of this argument's been, is the
13 Revenue Procedure Act. Clearly, that applies to this case.

14 In a case of B & A Development v. Georgetown County, a
15 2004 South Carolina Court of Appeals, 605 S.E.2d. 551:

16 "Taxpayers first argue the Revenue Procedure Act does not
17 apply to their cause for a legal taxation against the county.
18 We disagree says the court, the revenue procedure acts
19 prescribes the procedures for resolving claims for the
20 wrongful collection of taxes in our state. The language of
21 its operative provisions signals the Act's broad and
22 comprehensive application." The court goes on to say that the
23 Act provides ... a taxpayer may contest real property taxes
24 assessed by the ... assessor by filing a claim for refund" under
25 12-60-2560. "The same basic procedures for taxpayers

1 contesting a county's personal property tax assessment are
2 also provided under the RPA." And they cite 12-60-2940, a
3 2000 statute.

4 Court goes on to say, "While the Act contains many
5 specific procedures for taxpayers challenging their" property
6 tax assessments, the "relief under the Act is not limited to
7 these types of protests."

8 "Looking first to the Act, as we must, we hold that the
9 Taxpayers' remedy is not this direct circuit court refund, but
10 rather an administrative refund pursuant to 12-60-2560."

11 "RPA vests county administrative bodies with jurisdiction
12 to hear and decide in the first instance a broad range of
13 taxpayers suits."

14 "Had the legislature intended to allow for a direct
15 action in circuit court -- in contravention of the broadly
16 defined scope" of the Act -- "it could have expressly provided
17 for such immediate judicial" relief (sic).

18 A couple more cases I'll cite, Your Honor. A recent
19 case, 2017 South Carolina Supreme Court, Lightner v. Hampton
20 Hall Club, 798 S.E.2d. 555. In the Lightner case, the Supreme
21 Court considered a challenge by the plaintiff and similarly
22 situated individuals -- okay, looking to be a class here -- to
23 Hampton Hills Club collection of admission taxes, so some type
24 of a club. Defendants contend the dispute should be heard
25 under the Revenue Procedure Act and the plaintiffs argue that

1 that act didn't apply since the case did not involve a dispute
2 with DOR. And the court went on to say, "Giving effect to
3 each word in the statute, we do not believe that the General
4 Assembly intended to limit the application of the Act to
5 property tax disputes with" DOR.

6 And they go on to say, "It is clear the act concerns more
7 than property tax disputes with the" Department of Revenue.
8 Therefore, limiting the Act's application to property tax
9 disputes with" DOR "would effectively render the remaining
10 provisions under the Act concerning," for example, "the
11 adjudication of licensing of beer, wine, or liquor superfluous
12 and meaningless. 'The Court will not construe a statute in
13 the way" that "leads to an absurd result or renders it
14 meaningless."

15 And even the court in Lightner, they even reference the
16 prefatory language to the Revenue Procedure Act. And they
17 say, "In the preamble" of that act, it's "intended 'to include
18 disputes concerning property taxes.'"

19 "By stating its intent was 'to include disputes
20 concerning property taxes', we do not believe the General
21 Assembly intended to limit the Act's application to property
22 tax disputes with" DOR.

23 "For these reasons, we find the circuit court erred in
24 determining the Act as limited to property tax disputes with"
25 DOR."

1 "Therefore, because this action does not challenge the
2 constitutionality of the statute, but rather the wrongful
3 collection of taxes, Respondent is limited to the
4 administrative remedies available under the Act."

5 And the court immediately cites thereafter 12-60-3390,
6 "If a taxpayer brings an action covered by this chapter in
7 circuit court, the circuit court shall dismiss the case
8 without prejudice."

9 And it says finally, on 12-68-80 subsection (C), "The
10 plain language of the statute prohibits a claim for a tax
11 refund from being brough as a class action in any court ... in
12 this state. Therefore, Respondent is prohibited from
13 proceeding as a class action for the refund" -- and listen to
14 what these were -- "of the state admissions taxes."
15 (Indiscernible) property taxes. They can't even bring it for
16 admissions taxes.

17 And the last case I'll cite Aiken v. -- this is an Aiken
18 case v. SCDOR (2020). The Court says that "We hold the
19 catchall" phrase of 20-60-80(C), which I just read to Your
20 Honor, "of the RPA prohibits this action from seating as a
21 class action against" DOR. "Where the statute's language is
22 plain and unambiguous, and conveys a clear and definite
23 meaning, the rules of statutory interpretation are not needed
24 and the court has no right to impose another meaning."

25 Okay, so we hold that "12-60-80(C) indicates no intent to

1 limit or restrict the general words, quote, 'any other class
2 action' in the catchall clause ... to the specific subject of
3 'taxes'". They said it doesn't even include taxes. "To
4 interpret the catchall phrase in this fashion would simply
5 amount to an unnecessary re-recitation of the first portion"
6 of the section. This would be an absurd result. "We hold the
7 plain language" of "12-60-80(C) prohibits this act from
8 proceeding as a class action."

9 So plaintiffs have no constitutional challenge in this
10 case. They haven't exhausted or even attempted their
11 administrative remedies, and they present no novel issue in
12 this case, Your Honor. This is just simply another claim to
13 get a refund of -- of some payment that the fee payers or
14 taxpayers feel like they should not have paid.

15 All right, Your Honor, that is it for subject matter
16 jurisdiction. Mercifully, let me now briefly move -- I'll try
17 to cover the rest of this a little bit quicker. The Title 8,
18 chapter 21 claims that the plaintiff makes.

19 When Aiken County's fee came in in 1992, it came in under
20 a standard known as the Brown standard. That was a case Brown
21 v. Horry County, 417 S.E.2d. 565 (1992). Under Brown, a fee
22 is a valid uniform service charge if: 1) the revenue
23 generated is used for the benefit of the payors, even if, even
24 if it also generally benefits the public; the revenue, 2)
25 generated is used only for the specific improvement

1 contemplated; 3) the revenue generated by the fee does not
2 exceed the cost of the improvement; and 4) the fee is
3 uniformly imposed on all payers. So that's exactly what Aiken
4 County had in 1992 and that's the law and the standard they
5 had from the South Carolina Supreme Court in which to adopt
6 this ordinance. And so in adopting its ordinance, here's what
7 the -- this is ordinance 92-5-19 from Aiken County. Whereas
8 the South Carolina Supreme Court has upheld its ruling that a
9 road maintenance fee is a valid service charge. That's how we
10 started our ordinance. We didn't pass this ordinance until
11 the Brown case came out to make sure we had a clean bill of
12 health.

13 Several years after Aiken County passed its ordinance, in
14 1997, five years later, the Burns court goes on to cite the
15 "General Assembly enacted subsection 6-1-300(6), which defines
16 'service or user'" charge, "including 'uniform service
17 charges' -- as 'a charge required to be paid in return for a
18 particular government service or program made available to the
19 payer" -- and this was the key language -- "that benefits the
20 payer in some manner different from the members of the general
21 public not paying the fee." Then they say this, after
22 1997, -- "After 1997, therefore, when a local government
23 imposes a charge it contends is not a tax, the charge arguably
24 must meet the requirements we set forth in Brown but certainly
25 must meet the requirements of 61-300(6).

1 "Our analysis of the two ordinance" issues "begins and
2 ends in subsection 61-300(6)." Burns court doesn't even
3 consider Title 8.

4 This language, "After 1997", Your Honor, our ordinance
5 was passed five years before the law changed. We got it
6 grandfathered-in road maintenance fee. That right there, I
7 could rest on, but we'll go ahead and address all their
8 concerns. But they make it clear that before 1997, it's not
9 even clear you have to satisfy the Brown requirements. We not
10 only satisfy the Brown requirements, we also satisfy the Burns
11 standard, which I'll end up with. And so Your Honor, let's
12 just get to the specifics of the complaint.

13 8-21-15 is cited, no state agency -- okay, we're not a
14 state, we're a county. "No state agency, department, board,
15 committee, commission, or authority initially may set a fee
16 for performing any duty, responsibility, or function unless
17 the fee for performing the particular duty, responsibility, or
18 function is authorized by statutory law and set by regulation
19 as provided in this section." Okay. That section then
20 proceeds to say absolutely nothing about road maintenance
21 fees. There's no cause of action for a road maintenance fee
22 issue under Title 12 -- Title 8, excuse me, chapter 21.

23 The second section listed 8-21-10 provides that the
24 several officers named in this chapter. County councilmembers
25 and counties are not among the officers listed in 8-21-10.

1 The services enumerated are not listed in 8-21-10 to include
2 road maintenance fees. Your Honor, what does that chapter
3 then govern; it talks about fees such as things such as
4 reimbursing the mileage of jurors and witnesses, the circuit
5 court issuing an execution, the Secretary of State charging a
6 fee for searching and recording documents, a Notary public's
7 charge a fee for taking an oath, that sort of thing. It's not
8 a road maintenance fee, which is a county governing body home
9 rule power. No Aiken County defendant is a state officer. It
10 says at 8-21-15, "No state agency".

11 Mr. Killian is a county administrator, he's not a state
12 officer. His duties are imposed by Title 4 under home rule.
13 Defendant Goings is a treasurer, not a state officer. 8-15-65
14 says that the "General Assembly shall appropriate annually
15 salary supplements for the following county officers", and
16 numbers (5) and (6) are the auditors and treasurers. So state
17 law says that auditors and treasurers are county officers,
18 they're not state officers.

19 4-9-60 says under the council-administrator form of
20 government, the county treasurer and county auditor shall be
21 elected. County administrator form of government, they're
22 elected at the county level. 4-11-10 says "time for the
23 commencement of terms of office of the various county
24 officers", and it goes on to list that, except that the terms
25 of county auditors and county treasurers all commence on a

1 different day. No Aiken County defendant is appointed by the
2 Governor. Aiken County operates under the council-
3 administrator form of government. Their local officials must
4 be elected from defined single-member district areas. County
5 councilmembers are subject to the dual office holding
6 prohibition of 4-9-100. They can't be in another office,
7 except in the military. They can't simultaneously be a county
8 and a state officer.

9 Public officers are defined in Title 8, which is the same
10 title that plaintiff's raised for the fee issue. Term public
11 officers shall be construed to mean all officers of the state
12 that have heretofore been commissioned and trustees of the
13 various colleges. Title 8 distinguishes between public
14 officers of county and state in 8-15-30, which says, "Each
15 state and county officer" and talks about entitlement to
16 receive a copy of the state law -- South Carolina Code of
17 Laws, each state and county officer clearly defined. And so
18 the -- but really, probably, the most striking thing in 8-21-
19 15, "unless the fee for performing the particular duty ... is
20 authorized by statutory law and set by regulation". So if you
21 go back to the very beginning of my argument, Your Honor,
22 which says 4-9-30, road maintenance fees are authorized under
23 4-9-35(A), it says this, "and to provide for the regulation
24 and enforcement of the above." So it talks about the verbatim
25 language used in 8-21-15.

1 Okay. Let's see, just about to wrap it here, Your Honor.
2 Okay. All right. So 8-21-30 also deals with the charging of
3 fees, not the collecting of fees. Defendant Goings does not
4 charge the Aiken County road maintenance fee. That was
5 imposed by county council and the bill prepared for that by
6 the county auditor, not Mr. Goings. Title 8 chapter 21 does
7 not contain all the fees, obviously, the South Carolina
8 permits to be charged. There's a pretty ludicrous section of
9 my 60-something page memo, Your Honor, about 20 pages where I
10 list 500 different fees that are imposed in the 59 of the 63
11 titles of the South Carolina Code that have nothing to do with
12 Title 8. So our fee comes out of Title 4 and Title 6, not
13 Title 8.

14 But here, Your Honor, and I'll wrap with this, this is
15 the coupe de gras. And nowhere in plaintiff's complaint or in
16 its 21-page memo in opposition to our motion do they mention
17 the legislative history of Aiken County's road maintenance
18 fee. You say well what does that mean? Well, here's what the
19 court said in Burns. If the governing body -- this is what
20 Greenville County did not do. "If the governing body actually
21 addresses the effect on property value", actually does that,
22 "and deems an anticipated enhancement significant enough to
23 differentiate the benefit to those paying the fee from the
24 benefit everyone else receives, then it is likely the courts
25 will uphold the decision, as we did in the C.R. Campbell

1 Construction. In the first instance, however, the question
2 whether an ordinance actually enhances property values must be
3 addressed by the local governing body."

4 Your Honor, when does any Supreme Court give you an
5 advisory opinion; that's exactly what this court did. They
6 said, if the -- that's the classic if-then statement. If you,
7 then us; if you do X, we will do Y. If the governing body
8 actually addresses the property-value nexus to the fee payer,
9 which is what the court in Burns said needs to happen, we'll
10 probably -- no, it says very -- we will likely "uphold the
11 decision, as we did in C.R. Campbell".

12 Well, I mentioned, to start off where the plaintiffs
13 never bothered to get in touch with us to talk about our
14 legislative history. If they had, I would have given them a
15 copy of the 16-page single-spaced findings of fact that my
16 client, the County Council of Aiken, adopted as part of its
17 budget. And what they did was they said that we're going to
18 tell you why we passed this ordinance and why we continue to
19 pass it. And it includes to our budget ordinance an exhibit
20 entitled "Service and User Fees and Uniform Service Charges in
21 South Carolina Counties". And it says, this exhibit contains
22 a discussion of South Carolina statutes authorizing counties
23 to impose service and user fees and uniform service charges
24 along with the review of various South Carolina Supreme Court
25 cases involving such fees and charges. Exhibit 1 and its

1 findings and conclusion are incorporated in and made a part of
2 this ordinance. We created exactly the legislative history
3 that the Burns court, as Justice Few articulated said if we
4 did, we got a good ordinance.

5 Aiken makes the following findings of fact. We came in
6 grandfathered under the Brown decision. Nonetheless, we're
7 going to go above and beyond and say that we're going to meet
8 the Burns standard and we're going to cite various studies
9 that we researched that show the nexus between property values
10 and the benefits the fee payers get. We included such things
11 as a 20-year study -- I'm sorry, an 18-year study of land
12 values to look at the total improvements of those values based
13 upon the infrastructure and their valuation. We looked at
14 highway capitalization and effects of construction on
15 residential sale prices. We looked at a 1997 study of median
16 housing prices. We looked at international studies. We
17 looked at infrastructure. We looked at classic economic
18 theory. All of this was adopted by my client to basically
19 fulfill what the court said that we had to do.

20 We looked at a study from the Tax Policy Center data
21 query system of the U.S. Department of Transportation. It
22 said in the United States, the 1,400 consumers across the
23 United States they surveyed, that South Carolina has the worst
24 roadways in America. Yeah, do we want to improve
25 infrastructure; you dang right we do. We've got the worst

1 roadways in America, so we impose a road maintenance fee to
2 improve the roads and that's increased our property values and
3 that's in the record.

4 So if you skip down to about page 69 of what I filed in
5 my memo of support of our motion to dismiss, it goes through
6 the next 16 pages listing fact after fact. We've got 37
7 findings of fact related to establishing the nexus that the
8 Burns court said we need to. So Your Honor, with that, I
9 would ask that you dismiss this case based on lack of subject
10 matter jurisdiction because the plaintiff sued the wrong
11 defendants under the wrong law in the wrong court, and dismiss
12 it without prejudice. Alternatively, dismiss it on merits.

13 I mean this is a question of law. Your Honor has enough
14 before you on the pleadings and these motions and the
15 arguments of counsel to realize that Title 8, chapter 21 has
16 absolutely nothing to do with road maintenance fees and that
17 we satisfy the Brown standard in '92, which is what the court
18 told us we need to to have a good road maintenance fee. And
19 we established the Burns standard -- we satisfy that what the
20 Supreme Court most recently told us to have a valid road
21 maintenance fee. So Your Honor, in conclusion, if Aiken
22 County does not have a valid road maintenance fee, there's not
23 a government in South Carolina that does. Thank you.

24 THE COURT: Yes sir. Mr. Lindemann, do you have
25 anything? You're muted, let me see.

1 MR. LINDEMANN: Your Honor, there's some additional
2 grounds that are asserted as part of my motion. I don't know
3 if you want to hear from Mr. Lewis first as far as what Mr.
4 Farrar said. Or you want to go ahead and hear from me, I'm
5 happy to handle it either way. I certainly will be adopting
6 Mr. Farrar's argument on the points that he covered.

7 THE COURT: Mr. Lewis, do you want to address them
8 separately or do you want him to go ahead and --

9 MR. LEWIS: I can address them all at once, Your Honor,
10 there's a lot of crossover amongst both and I think it'd
11 probably be easier for Your Honor, and I can just tick them
12 off, if you're okay with that.

13 THE COURT: That's fine. Mr. Lindemann, go ahead,
14 please.

15 MR. LINDEMANN: Thank you, Your Honor. May it please the
16 Court, I represent the Aiken City defendants, which is the
17 City of Aiken, the Aiken City Council, and Stuart Bedenbaugh
18 as the City Manager in his official capacity in that role,
19 Your Honor.

20 Prior to this motion hearing, there was actually a
21 partial stipulation of dismissal that was entered last week
22 and I did want to call that to the Court's attention. As far
23 as my client's concerned, the third cause of action, which is
24 the Title 8 claim that Mr. Farrar has just spoken about, that
25 was asserted only against the defendant, Bedenbaugh as far as

1 the Aiken City defendants are concerned, and that cause of
2 action has been dismissed without prejudice by the plaintiff.
3 So I will not be addressing the Title 8 issues.

4 In addition, just to piggyback on what Mr. Farrar said,
5 Clay Killian, in his official capacity as the Aiken County
6 Administrator and Aiken County Council were also dismissed by
7 that partial stipulation. So that's already been entered that
8 Your Honor will not have to deal with in this -- in your order
9 adjudicating these two motions.

10 Just to briefly add to the background, Your Honor, the
11 lawsuit that has been brought in this particular case -- and
12 they differ around the state -- what the plaintiffs have
13 brought here is a cause of action for declaratory relief where
14 they're asking the Court to declare, not provide anything
15 other than declaratory relief, but to declare that the City of
16 Aiken's road maintenance fee was void ab initio based upon the
17 Burns decision from the Supreme Court. And also to issue a
18 declaratory judgement that the defendants owe a, quote, "full
19 refund for the invalid and unlawful road maintenance fee". Of
20 course, that's not declaratory relief, that's asking for
21 monetary relief. Or certainly, at least prospective -- at
22 least in the terms of the injunction, it's requiring the
23 payment of money. So that's not appropriate as a declaratory
24 judgement, but it's asserted against all the defendants, which
25 would include my three defendants as well.

1 And I did want to touch on that real briefly because the
2 City of Aiken is in a somewhat different position than Aiken
3 County, in that the City of Aiken in response to the Burns
4 decision did repeal their road maintenance fee, effective June
5 1, 2021. So ultimately, Your Honor, I believe that that moots
6 any claim for injunctive relief or declaratory relief as they
7 have phrased it. And the reason being, Your Honor -- we
8 covered this in our motion and in section 2 of our
9 memorandum -- as Your Honor well knows from being on the bench
10 for years and years and prior in private practice, all
11 legislative acts, and that includes legislative acts by local
12 legislators, in this case Aiken City Council -- have a
13 presumption of being legal and valid until a court says
14 otherwise. And what's important here is this is not a
15 constitutional challenge to the road maintenance fee. If you
16 look at Burns, the South Carolina Supreme Court invalidated
17 Burns purely on a statutory analysis, not a constitutional
18 analysis.

19 And that's significant because a statute is, as I
20 indicated, presumptively valid and legal until it's overturned
21 by a court. It's not been overturned in a court in this
22 instance even though the City of Aiken acted based on the
23 Burns decision and went ahead and repealed it. But it's not
24 void ab initio, it's going to be valid and in existence until
25 such time as it's either determined by a court to be invalid,

1 which again that's mooted because we actually repealed the
2 road maintenance fee as a result of the Burns decision. But
3 the bottom line is -- the point of all this is, can't seek any
4 type of a refund, can't seek any type of declaratory relief,
5 as they've phrased it which I think is improper, because the
6 law was valid up until the time that the court -- the Aiken
7 City Council repealed the road maintenance fee itself. So I
8 think that's one major point that I wanted to bring to the
9 Court's attention.

10 I join in Mr. Farrar's detailed analysis of why this
11 Court doesn't have subject matter jurisdiction to start with.
12 And I probably should have started with that issue because,
13 obviously, if Your Honor finds that you don't have subject
14 matter jurisdiction, you don't reach any of the merits, and
15 you dismiss this case without prejudice based upon the
16 provisions in the Revenue Procedures Act that Mr. Farrar
17 covered in quite some detail. As I said, I join that
18 argument.

19 But I did want to emphasize one additional point. We
20 covered this in our memo. One of the last cases Mr. Farrar
21 mentioned is the most recent South Carolina Supreme Court
22 decision. It's Aiken v. South Carolina Department of Revenue,
23 which is a 2020 decision at 839 S.E.2d. 96. And what is
24 significant about this decision, Your Honor, is it showed how
25 broadly the Supreme Court applies 12-60-80, which is the

1 section that deals with subject matter jurisdiction and what
2 is within the purview of the Administrative Law Court versus
3 the Circuit Court.

4 In that particular case, the Supreme Court voided the
5 question and said, we don't need to decide the question as to
6 whether the issue there deals with taxes because they broadly
7 applied 15-60-30 -- I mean 80, to apply to the situation at
8 hand in that case.

9 The situation at hand in that case had dealt with two
10 collective statutes: the GEAR statutory program which is any
11 acronym for the Government Enterprise Accounts Receivable
12 program, and then the more common one which is the Setoff Debt
13 Collection Act. And both of those provisions did not
14 specifically deal with taxes in the colloquial sense or the
15 literal sense, what it dealt with was collection programs that
16 are sponsored by statute, obviously and are administered by
17 both governmental entities, political subdivisions including
18 counties and municipalities, in conjunction with the
19 Department of Revenue to be able to collect overdue expenses
20 of all kinds, not just taxes, any type of things that are owed
21 by taxpayers to governmental entities, and to be able to use
22 or set off the amounts that are being received from income tax
23 refunds to pay that indebtedness in various government
24 entities.

25 And then the issue in Aiken v. South Carolina Department

1 of Revenue actually dealt with debts that were owed to
2 governmental hospitals and ultimately the Supreme Court did in
3 the Aiken case, which I think is very telling and very
4 persuasive to this Court, they found that for a debt
5 collection claim (audio interference) -60-80 applied and that,
6 of course is part of the Revenue Procedures Act. In that
7 particular case, they applied the bar on class actions, but
8 what is key there is that the (indiscernible) that we are
9 relying on, both the City and the County to argue that this
10 court doesn't have subject matter jurisdiction because it's a
11 tax case and the exclusive remedy as indicated by 12-60-80 is
12 in the Administrative Law Court.

13 The Supreme Court applied that in Aiken to a case dealing
14 with indebtedness that was owed a hospital. So again, I think
15 that shows just how broad the Court has interpreted the web or
16 the net of the reparation -- the RPA, the revenue procedures
17 act, should be applied. So I did want to highlight and
18 emphasize that case a little bit more than Farrar did in his
19 analysis to the Court.

20 Let me just touch on a couple of other issues. Assuming
21 that the Court is willing to exercise jurisdiction over this
22 case and I submit that the Court should not and it should be
23 before the Administrative Law Court. But I do want to address
24 a couple of other purely legal issues that we raised in our
25 motion to dismiss and our motion for judgement on the

1 pleadings. Specifically, Your Honor, I've already touched on
2 why the declaratory judgment act claim, the first cause of
3 action should be dismissed as to the City defendants because
4 it's moot.

5 Second of all, Your Honor, we have raised a sovereign
6 immunity challenge to the second cause of action, which is a
7 cause of action for unjust enrichment. And Your Honor, that
8 analysis is pretty straightforward. I know Your Honor
9 probably recalls years and years ago when sovereign immunity
10 (indiscernible) South Carolina and you couldn't bring a claim
11 against a governmental entity except for very limited
12 circumstances to what the South Carolina called in McCall v.
13 Batson, a scattered patchwork of governmental liability cases
14 such as automobile wreck cases, (indiscernible) covered now by
15 statute.

16 But ultimately in 1985, in McCall v. Batson, the South
17 Carolina Supreme Court declared sovereign immunity --
18 abrogated the concept of sovereign immunity, (indiscernible)
19 the General Assembly a certain amount of time, recognizing of
20 course that absolutely getting rid of all sovereign immunity
21 was not wise public policy. It gave the General Assembly time
22 to implement a limited scope of sovereign immunity, which of
23 course the General Assembly did when, in 1986, they enacted
24 the South Carolina Tort Claims Act. And as part of enacting
25 the Tort Claims Act, the General Assembly redacted sovereign

1 immunity in its totality. And there is not a better
2 description of the historical background that I'm giving to
3 the Court and relying on than the 1995 decision of the South
4 Carolina Supreme Court in Murphy v. Richland Memorial
5 Hospital.

6 Page 7 of my memorandum, what the Supreme Court said is
7 this. They said, In response to our decision in McCall, the
8 legislature implemented a comprehensive act" allotting "for
9 the logical disposition of governmental liability". Here's
10 the key language, "The Act first completely restores sovereign
11 immunity and then provides" specific limitations and waivers
12 "on actions against governmental entities." "Thus the Tort
13 Claims Act is a limited waiver of governmental immunity". The
14 key language there for purposes of assessing what are purely
15 equitable claims, such as unjust enrichment, which is what was
16 brought in this particular case, is that the General Assembly
17 first completely restored sovereign immunity and then waived
18 it in certain particulars -- for certain torts. Unjust
19 enrichment is not a tort, it is a cause of action at law, it
20 is an equitable claim. And ultimately, the General Assembly
21 has never, since 1986, ever waived sovereign immunity for any
22 (audio interference) claim.

23 And as both the United States Supreme Court case law and
24 South Carolina case law make clear, that sovereign immunity be
25 unequivocally stated and expressed in legislation. There is

1 no legislation that unequivocally waives sovereign immunity
2 for an equitable claim. Now this was not something that I
3 have just dreamed up, Your Honor. I -- and I usually am very
4 reluctant to citing to Circuit Courts other Circuit Court
5 opinions. I did so and attached it to my memo, too, (audio
6 interference) primarily because the plaintiffs are trying to
7 get this Court to rely on Circuit Court opinions. So I
8 figured, if that's persuasive to Your Honor, I might as well
9 give you two opinions where Judge Few -- or then Judge Few,
10 now Justice Few, in 2003 in the Shirley's Iron Works case made
11 the exact same argument that I'm making to Your Honor today.
12 And more recently in 2020, by Judge Jocelyn Newman in a case
13 against Richland County, adopted the exact same argument I'm
14 making today.

15 Both of those judges, as well as our argument rely on
16 that case law -- I mean not just the arguments that I'm making
17 in the background that was provided in the Murphy case.
18 There's clear case law from North Carolina that we have cited,
19 stating that sovereign immunity is still in place in North
20 Carolina for equitable claims. And it's still in place for
21 equitable claims in South Carolina. Now, I noticed in a
22 footnote in the brief that was submitted by the plaintiff in
23 this particular case, an argument that always -- I see this
24 all the time and I always have some (audio interference), this
25 idea that I've provided to the court about two or three or

1 maybe four cases where unjust enrichment claims were pursued
2 against governmental entities (audio interference) the
3 Appellate Court didn't throw them out on the basis of
4 sovereign immunity.

5 The court looked at each of those cases, immunity was
6 never raised as a defense. Sovereign immunity is an
7 affirmative defense and if it's not raised, it's waived. The
8 simple fact that the Supreme Court or Court of Appeals in
9 those decisions disposed of that case based on sovereign
10 immunity, there's an obviously reason for that. Because if it
11 wasn't raised it's not an issue that an appellate court can
12 rule on.

13 And I know Your Honor has served as an acting Supreme
14 Court Justice on several cases that I'm aware of, so you know
15 what standard of review is for our appellate courts. But I
16 think it's best stated, and this is a quote that I use in
17 numerous appellate briefs that's attributed to Chief Judge
18 Alex Sanders or former Chief Judge Alex Sanders, cited by both
19 the Supreme Court and Court of Appeals numerous times. And he
20 wrote, "Appellate Courts, like well-behaved children, do not
21 speak unless spoken to and do not answer questions they are
22 not asked". And that's our standard of review in South
23 Carolina, (audio interference) not a (indiscernible) state.

24 So ultimately pointing out to the Court that there were a
25 handful of unjust enrichment claims that were pursued against

1 governmental entities or (audio interference) because of
2 sovereign immunity should be absolutely meaningless to this
3 Court in your analysis because those decisions were based on
4 whether sovereign immunity applies because the issue wasn't
5 raised, number one; and number two, wasn't addressed by the
6 Appellate Court because it wasn't raised. So again, the
7 unjust enrichment case, Your Honor, we believe is barred by
8 sovereign immunity and believe the analysis is solid,
9 obviously. Judge Few (audio interference) adopted those
10 arguments in the past and we would ask the Court to do so as
11 well. Sovereign immunity was reinstated in 1986, never been
12 waived for those particular claims.

13 The next cause of action that the plaintiff has brought,
14 Your Honor, because the third cause of action, as I indicated,
15 has been dismissed against my clients. The last cause of
16 action that has been alleged in the complaint is a cause of
17 action for the violation of due process not under the United
18 States Constitution, which would be actionable under 1983,
19 there is enabling legislation for that. They brought it
20 solely under Article 1, section 3 of the South Carolina
21 Constitution. And the South Carolina Court of Appeals spoke
22 to that in 2019 in the Palmer v. South Carolina case (audio
23 interference) very clear -- I mean, we've been waiting for an
24 appellate decision on that case for years and years.

25 In Palmer, South Carolina Court of Appeals indicated that

1 there is no private right of action for monetary relief under
2 the South Carolina Constitution. As there is no enabling
3 legislation like section 1983 which is in place for federal
4 claims, no such enabling legislation has ever been enacted by
5 the South Carolina General Assembly. So the Palmer case, Your
6 Honor, I would point out to the Court, too, and in my brief,
7 the certiorari was denied by the South Carolina Supreme Court
8 in May of 2021.

9 And the plaintiff in that particular case actually
10 appealed the United States Supreme Court in the Palmer case
11 and the State Supreme Court denied certiorari in January of
12 this year. And we include all those cites. So (audio
13 interference) Palmer, Your Honor, you can't have a claim for
14 monetary relief. Whether it's a refund or whatever it is that
15 they're claiming, you can't have a claim for monetary relief
16 under the South Carolina Constitution.

17 So ultimately, Your Honor, where does that leave the City
18 of Aiken defendants? And this is just to summarize very
19 quickly. Number one, we don't believe this Circuit Court has
20 jurisdiction. And obviously, if Your Honor agrees with our
21 application of 12-60-80, the RPA specifically provides in 12-
22 60-3390, which Mr. Farrar cited, that says, If a taxpayer
23 brings an action covered by this chapter in circuit court, the
24 circuit court shall dismiss the case without prejudice." So
25 we believe that the proper result here is a dismissal of this

1 case without prejudice and these taxpayers can go to ALC and
2 pursue their claims there.

3 But if Your Honor does exercise jurisdiction over this
4 case, we believe the first cause of action is moot because the
5 City of Aiken has repealed its road maintenance fee and it was
6 presumptively valid and legal up until the time of that
7 repeal. Number two, (audio interference) action claim, which
8 is the second cause of action, is (indiscernible) by sovereign
9 immunity. The third cause of action has already been dismissed
10 against the Aiken defendant. And lastly, the fourth cause of
11 action, which is the due process claim, Your Honor, is
12 (indiscernible) the Court of Appeals decision in Palmer v.
13 South Carolina.

14 I would point out that we have raised these points not
15 only on a motion to dismiss under rule 12(b)(1) and 12(b)(6),
16 but also a judgment on the pleadings. Therefore -- and these
17 are all purely legal issues. These are not arguments that
18 would suggest somehow that the pleading has factual
19 deficiencies. So ultimately, the authority out there that
20 suggests a 12(b)(6) motion, a party should be allowed to
21 amend, that doesn't apply in this particular case
22 (indiscernible) legal issues before the Court. And again,
23 we've also asserted it as a judgement -- as a (audio
24 interference) pleadings as well, Your Honor.

25 We would ask the Court to either dismiss this case

1 without prejudice for lack of jurisdiction or (indiscernible)
2 if the Court finds that you have jurisdiction and reaches the
3 merits.

4 THE COURT: All right. Thank you. I need to get another
5 legal pad, can y'all bear with me a minute?

6 MR. LEWIS: Yes, Your Honor.

7 THE COURT: We're at ease for a few minutes.

8 (Pause.)

9 THE COURT: All right, Mr. Lewis.

10 MR. LEWIS: Yes, Your Honor, Will Lewis for the plaintiff
11 in this case, and you've had a lot thrown at you this
12 afternoon, so I'm going to try to simplify it just a little
13 bit from the plaintiffs' perspective. I will give a little
14 bit of background since it was referenced. I think this is
15 about the sixth one of these arguments that I've done on the
16 various counties that are facing this around the state. And
17 that's predominantly because in the Burns decision.

18 Your Honor, if you go to the concurrence in that, Justice
19 Kittridge goes out of his way to tell and put all counties on
20 notice that these type of road maintenance fees are going to
21 be under heavy scrutiny, which is why I imagine Mr.
22 Lindemann's client, Aiken City, stopped collecting their fee.
23 And interestingly, you can look in our complaint, Your Honor.
24 The Aiken City ordinance and the Aiken County ordinance are
25 verbatim, I mean they are like -- they are identical.

1 So any argument that Burns doesn't apply, I mean I know
2 this is factual, we're on 12(b) is a little bit dubious when
3 we've got the exact same ordinance by two parties, one being
4 treated differently than the other based on the Burns decision
5 and I put that before you. But Your Honor, if you want to
6 look at what the analysis that we would propose you apply,
7 it's just the two exhibits that we put in our omnibus
8 response, Your Honor. And the only court so far to rule on
9 these RPA issues and 8-21-30, I call it the 10X statute, thus
10 far, in this round of motions to dismiss around our state, is
11 Judge Lawton McIntosh. And he addresses Mr. Farrar went
12 through a lot more titles, but at least the argument about
13 subject matter jurisdiction and the application of the RPA to
14 these type of fees -- fees, excuse me. And we just ask you
15 to follow his analysis directly.

16 And in addition to that, in a separate case, Judge
17 Jefferson applies another similar analysis, this is not
18 dealing with a roads maintenance fee, but if you were trying
19 to target the analysis that we'd ask you to apply in a
20 simplified manner, those are the orders that we would ask that
21 you follow. I know they're persuasive, but indeed, if you go
22 through the statutory authority, I think it makes a lot of
23 sense. And at its base, Your Honor, I want to address first
24 what's a little different that's come up in this one, by Mr.
25 Farrar in his argument because he seems to state that we are

1 under the RPA because these road maintenance fees are property
2 taxes. All right. And I think we're in agreement that the
3 RPA and he cited to it, 12-60-20, applies to two types of
4 disputes, disputes with the Department of Revenue is one
5 bucket and disputes involving property taxes is another
6 bucket.

7 We know we don't have a dispute with the Department of
8 Revenue, they are not a party to this case, Your Honor. And I
9 think if you go through all of the cases that they cited to
10 you, and in fact, I know it, dealing with any type of tax that
11 is not a property tax -- this is specifically Aiken, you will
12 see that the Department of Revenue was a party. And that's
13 because that's when the RPA's going to apply, a dispute with
14 the DOR.

15 The other bucket that the RPA will apply to is disputes
16 involving property taxes. Mr. Farrar cited the Lightner case,
17 we quoted at page 8 in our brief, an opinion where they
18 clarify. And this is in 2017, when they clarify B & A, the
19 case he first talked about with the breadth of the RPA was
20 decided in 2007. So Lightner's the more recent case, a decade
21 later. If you look at that quote, the court goes out and
22 says, we clarify that the scope of the RPA is going to apply
23 with disputes with the Department of Revenue, which may not
24 involve property taxes, or disputes that involve property
25 taxes which may not involve the Department of Revenue. So

1 that would be county cases.

2 And to be clear, Your Honor, the RPA will apply to county
3 suits where the dispute is over property taxes. And this is
4 what gets missed a lot in the arguments by the defendants is
5 the term property taxes and taxes are expressly defined in the
6 RPA, Your Honor. And I think the most important provision to
7 go through is 12-60-30 and that's the definitions in the RPA.
8 And the first one I'd like you to go through, Your Honor is
9 18. And that's defining property tax because Mr. Farrar said
10 that what was charged by Aiken, this flat fee as to every
11 owner of a car is property tax. Well, property tax is defined
12 as ad valorem taxes on real and personal property. That's
13 coming out of 12-60-30, Your Honor.

14 Ad valorem means proportional. We all know what ad
15 valorem is. That's a millage rate. It's going to go up with
16 the value of the property and that's not a flat fee based on a
17 classification of property. In fact, Burns, the court
18 addressing the two fees that it did in 2021, flat out said the
19 road maintenance fee is not a property tax. And they footnote
20 that statement -- and this is right in the beginning of our
21 brief, Your Honor, but in the Burns decision they footnote
22 that holding and cite to 12-60-30(18) noting that property
23 taxes is an ad valorem property tax. So I want to make this
24 very clear. Under the statutory framework that we're dealing
25 with a flat road maintenance fee for one amount is not an ad

1 valorem property tax.

2 They next go on and just try to say that because the word
3 tax is mentioned that we're in the RPA. All right? And we've
4 already talked about those two buckets, and this was cited to
5 Mr. Farrar, and I point this out because it's somewhat a
6 little inconsistent. But he pointed out the definition of
7 taxes in 12-60-30, and it does list a very broad meaning at
8 first and it does list taxes, licenses, permits, fees, and
9 other things. And then it qualifies that list, imposed by
10 this title or subject to assessment or collection by the
11 department. We know that these fees were not collected by the
12 Department of Revenue, so you can stack off that second
13 bucket. The other bucket is imposed by this title, Title 12.
14 You'll remember throughout Mr. Farrar's argument, he kept
15 talking about Title 4 and Title 6, which are these user fees.
16 That's what these things were enacted under, not Title 12.

17 And we kind of get into this semantics argument about
18 what are these? Are these hospitality taxes, I think he
19 mentioned or this tax or that tax; it's an illegal act by the
20 government, Your Honor. That's what happened. They passed an
21 illegal fee. If you want to call it an illegal tax or an
22 illegal fee, whatever you want to call it, it's illegal. They
23 were not allowed to do it. Burns put these counties on blast
24 and told them not to and the counties are still collecting it.

25 And at the end of the day their decision to keep

1 collecting it, they want to say all right, well if you want to
2 sue us, you got to go under the RPA because these are taxes
3 now; Burns told us that. This ordinance wasn't passed as a
4 tax, and it doesn't fit the definition of taxes under the RPA.
5 And most certainly, it does not fit the definition of property
6 taxes, so we do not have an ad valorem charge, Your Honor.

7 So I just think if -- the simplest analysis, if you start
8 with 12-60-20 and that's at page 7 of our brief and you go to
9 Lightner case, page 8, and then you look at the definitions of
10 taxes and property taxes inside of the RPA, this case does not
11 fit. It's not property taxes and it's not a dispute with the
12 DOR. Indeed, these don't even fit the definition of taxes
13 under the RPA, Your Honor. And that's why we're not there.
14 That's why this court has subject matter jurisdiction. That's
15 what Judge McIntosh found in Greenville County using similar
16 arguments. We'd ask this Court apply the same. I think if
17 you look at Judge Jefferson, similar arguments were raised in
18 that case, I believe it was Buford County. And you'll see it
19 wasn't road maintenance fees, but you'll see very similar
20 analysis.

21 So I think the RPA is kind of easily disposed of. That
22 handles 12-60-80 as well, which is subsection C, that class
23 action bar that you've seen raised. If the RPA doesn't apply,
24 how a subsection inside of the RPA is going to apply is beyond
25 me. Not to mention, if you go inside of 12-60-80, it mentions

1 the phrase taxes. I've already covered why this is not a tax
2 as defined by the RPA because it is not imposed by Title 12
3 nor collected by the Department of Revenue. So that handles
4 the RPA, Your Honor. You have subject matter jurisdiction to
5 hear this case. We are not in the RPA world.

6 The next argument that came up was the 8-21-30 argument.
7 This is the 10X statute. I'll just be pretty brief on this.
8 We're at a pleading stage. That's going to apply to any
9 officer mentioned and a county treasurer is mentioned in that
10 trash -- excuse me, statutory framework. And the charge is an
11 illegal fee.

12 And here's how we know that. That statute is very old,
13 Your Honor. And full disclosure, it's only been cited in two
14 cases, written -- reported cases since its enactment. I
15 believe they're all the way back in the 1800s.

16 But most recently, and we cite these in our brief,
17 there's some Attorney General opinions that are discussing the
18 application of 8-21-30 and some sheriffs who are county
19 officers have asked opinions of the AG about certain fees they
20 can charge. And one of them that we highlight that I think is
21 explicative or sheds light on the issue that we have is a
22 sheriff asked if they could charge for drug-sniffing dogs --
23 they could charge a school for drug-sniffing dogs, and the
24 Attorney General said you're nowhere authorized to do that
25 under the law; and if you do, you may be subject to liability

1 under 8-21-30, because it's not the fact that the fee is in
2 Title 8 or Title 9 or 10 or wherever. It's that it's illegal.
3 And when you have an officer that's named there that has
4 charged something that's illegal, then they'd be subject to
5 liability.

6 And that's what we have here, Your Honor. The County
7 Treasurer is most definitely in charge of retrieving the fees
8 here, whatever. The treasury of the county, they're in charge
9 of. And to the extent that we have some sort of factual
10 dispute, there are lots of talks about this is what happens
11 here or this is our bases for passing an ordinance, we're not
12 at that stage, Your Honor, we're at 12(b). Everything that we
13 pled is to be taken as true, Your Honor. That disposes of Mr.
14 Farrar's arguments. Basically, those are the two. He talked
15 about RPA and then he talked about 8-21-30.

16 Moving on to Mr. Lindemann's arguments, I can dispose of
17 one quickly. The due process argument, we're not seeking
18 monetary damages under the due process claim, I've told
19 that -- I think it was actually in our stipulation. It may
20 not have been. It's been in a number of ours, so you don't
21 need to address that.

22 Sovereign immunity, it's been raised in a number of these
23 cases. I would note, Your Honor, the reason we cited the
24 footnote for the unjust enrichment is, those are a lot of very
25 significant cases against the political subdivisions in this

1 state and hundreds of millions of dollars in damages in which
2 the state political subdivisions were paying these out. And
3 if there was sovereign immunity applicable, I would think that
4 somebody would raise it, and there's simply no reported
5 decision to support what Mr. Lindemann says.

6 And here's why: sovereign immunity was abolished by
7 McCall, and the only reinstatement of it has been dealing with
8 torts, the South Carolina Tort Claims Act. And what we have
9 brought, the two causes of action, are not a tort. We have an
10 equitable cause of action, unjust enrichment, and a statutory
11 cause of action, 8-21-30 that expressly contemplates this type
12 of liability. And so Your Honor, we can move past that
13 argument as well.

14 The last, I guess, argument I didn't know we'd be
15 addressing, I guess I probably should have foreseen it, the
16 mootness argument on declaring the City of Aiken's ordinance
17 invalid, I mean, I would have to agree with Mr. Lindemann. At
18 this point, if they are no longer enforcing it or charging it,
19 that would be moot. There's nothing for you to declare that
20 is invalid at that point. So I would agree with Mr. Lindemann
21 to make something easier for all of us here. I don't want to
22 fight over something that we both agree on and I respect Mr.
23 Farrar and Mr. Lindemann, which is why we were able to reach
24 some stipulations earlier.

25 Your Honor, I wanted to keep it short. This has been

1 extensively brief on all sides. I'm happy to answer any
2 question you have, but I would encourage Your Honor, most
3 importantly on the RPA. The definitions are the driver of
4 this case, and this Court is required to apply specific
5 definitions when interpreting statutes and when the General
6 Assembly explicitly defines them. And they did in this case.

7 Thank you, Your Honor.

8 THE COURT: Mr. Farrar, you have anything else?

9 MR. FARRAR: Your Honor, I think I fully covered it in my
10 initial argument and I rest on that. Thank you, Your Honor.

11 THE COURT: Mr. Lindemann, do you have anything else?

12 MR. LINDEMANN: Your Honor if I -- and I know it's been a
13 long hearing, if Your Honor will give me a couple of minutes
14 to make a few points in reply?

15 THE COURT: Sure.

16 MR. LINDEMANN: The reference to Judge McIntosh's order,
17 it kind of goes back to what I said earlier, that I always
18 cringe a bit when other people cite other Circuit Court
19 opinions and suggest that that should somehow govern a
20 decision that's before Your Honor. I would raise this point
21 and have utmost respect for Judge McIntosh, but again, Judge
22 McIntosh is only deciding the issues that are presented to
23 him, and if you take a close look at his opinion, he never
24 cites to or addresses or distinguishes the Aiken v. South
25 Carolina Department of Revenue case. I would point out also

1 the plaintiffs in this case don't address the impact of the
2 Aiken case. And again, I won't belabor that point, Your
3 Honor, but in Aiken the Supreme Court didn't care about
4 whether or not, quote, "taxes were at issue" because what they
5 looked at was uncollected debts owed to the hospital and
6 whether or not that could be paid through garnished income tax
7 return refunds.

8 And again, they found that the applicable provisions
9 under the Revenue Procedure Act, specifically 12-60-80, did
10 apply in that particular setting. And again, I don't know
11 that I recall pulling the briefs in Greenville and I don't
12 believe the Aiken v. Department of Revenue case was cited to
13 Judge McIntosh. But certainly, if you read his opinion,
14 there's no suggestion that he even considered that. And it is
15 an important case because the Supreme Court's most recent
16 decision in applying the RPA -- we've cited a number of cases
17 throughout the last 20 years, but that is the most recent one.
18 So I would call that to the Court's attention, number one.

19 Number two, to the extent that plaintiff's counsel is
20 looking for this court to rule on whether or not a class
21 action is appropriate in this particular case, the issue about
22 class action is only before Your Honor on the jurisdictional
23 issue. If Your Honor finds that the Circuit Court has
24 jurisdiction, I would suggest that Your Honor -- or request
25 that Your Honor not decide the class certification issue

1 because it wouldn't be before you if it's not a jurisdictional
2 argument.

3 I noticed that, if I remember correctly, Judge McIntosh
4 has like one sentence in his opinion that really, quite
5 frankly, in my opinion doesn't belong there because a
6 determination of whether or not a class action can be brought
7 on the merits, on the merits is not even before Your Honor
8 because there's been no motion made to certify a class. And
9 there are a lot of grounds to argue why class certification
10 isn't appropriate even in the Circuit Court, not least of
11 which is the Aiken v. South Carolina Department of Revenue
12 case, which didn't allow a class action to be pursued under
13 the GEAR Act or the debt collection -- Debt Setoff Collection
14 Act. So I believe that the merits, if the Court is looking at
15 the merits, the merits of whether a class action can be
16 brought or not, should be reserved until they make an
17 appropriate motion before the Court.

18 Two other points, Your Honor, and this doesn't bear on
19 me, but I obviously want to make certain that the Court is
20 aware of the very clear case law. Mr. Lewis -- and it may
21 have been a slip of the tongue -- said that the sheriff -- and
22 when he was referencing the AG's opinions, that the sheriff is
23 a county officer. South Carolina's very unique; the sheriff
24 is a state constitutional officer and they have been in
25 numerous cases that have upheld that, the first of which was

1 Cone v. Nettles that I handled years ago. And I think Your
2 Honor actually handled Edwards v. Lexington Sheriff's
3 Department, which reaffirmed Cone v. Nettles. So again, that
4 bears on the Title 8 claim that I just felt -- I felt the need
5 to make certain that that mistaken statement of law is
6 corrected.

7 And lastly, I will accept the stipulation that money
8 damages aren't being claimed under the due process claim. I
9 would ask then that that cause of action be dismissed. And I
10 certainly am in agreement with the argument that the -- or the
11 concession that the declaratory judgment against the City of
12 Aiken defendants is moot.

13 The last point that I would make, Your Honor, on the
14 unjust enrichment claim. Mr. Lewis' historical recitation to
15 the Court is not consistent with the Supreme Court's. And
16 again, I would call the Court's attention because there's not
17 a better recitation of the impact of McCall v. Batson and then
18 the subsequent period of time when sovereign immunity was the
19 law in this state and then ultimately with the Tort Claims
20 Act. I point to this very, very clear sentence from the South
21 Carolina Supreme Court in Murphy that says, "The act first
22 completely restores sovereign immunity", completely restores
23 sovereign immunity. And that's important because it
24 eliminated the scattered patchwork of governmental liability
25 that McCall v. Batson was attempting to address.

1 And I would call the Court's attention, I don't have the
2 cite, but it's called Sadik v. Lambert. So District Court of
3 South Carolina case that dealt with the particular issue --
4 and I can get the Court the cite, it's a case I actually
5 handled in front of and Judge Holt decided it. Not Judge
6 Holt, I'm blanking out on the judge's name. But it was a case
7 where the old sheriff's -- or the old county civil rights
8 statute that was adopted in the 1870s basically created
9 liability for a county where civil rights of the citizen was
10 denied and it provided for liability for that for that county.
11 And ultimately in Sadek, the Federal Court found that that
12 scattered patchwork of liability was eliminated when the Tort
13 Claims Act was passed and restored sovereign immunity as a
14 whole, basically wiped the slate clean. Sovereign immunity
15 was readopted and then it was waived for certain particulars.

16 One of the things that wasn't waived was claims for
17 equitable relief that required monetary payments, on merit,
18 unjust enrichment. Those sorts of things cannot be pursued
19 against the State of South Carolina. And again, the fact that
20 there's some opinions out there where that defense was not
21 asserted, I don't know why it wasn't asserted, maybe somebody
22 didn't come up with this idea, but the fact that it wasn't
23 asserted is not probative as to whether sovereign immunity
24 applies or not. And I don't know of any opinion that actually
25 has held where sovereign immunity was raised in an unjust

1 enrichment claim where a court actually held that sovereign
2 immunity didn't apply to an equitable claim. And I've cited
3 you two Circuit Court decisions that have said otherwise; and
4 to my knowledge, that has not been addressed by an Appellate
5 Court. But the reasoning is rock solid, it's based on the
6 historical premises stated in Murphy. And to the extent
7 Murphy is inconsistent with what Mr. Lewis has described, I
8 would ask the Court obviously to follow Murphy. Thank you,
9 Your Honor.

10 THE COURT: Yes sir. Do you have anything else, Mr.
11 Lewis?

12 MR. LEWIS: No, Your Honor.

13 THE COURT: I would like for all three of you to submit
14 proposed orders, how much time you need?

15 MR. LEWIS: I can make it work however y'all can, Brad, I
16 know you had orders sometimes, so you tell me.

17 MR. FARRAR: I hope they're not sending me anywhere any
18 time soon. Yeah, I don't know. What do you guys -- what are
19 you giving in other case, 30 days, something like that or --

20 MR. LINDEMANN: 30 days, yeah, I mean at least three
21 weeks if not a tad bit longer.

22 MR. FARRAR: That's fine with me.

23 MR. LEWIS: Will 30 days work for Your Honor?

24 THE COURT: Yes.

25 MR. LEWIS: Works for me.

1 THE COURT: All right. Try to keep them reasonably
2 short. I understand the difficulty. But if I get a 40-page
3 order or a 50-page order the first thing that's going to come
4 in my mind is I've got to cut it. So try to keep them
5 reasonably brief. Send them to me by email and to my law
6 clerk by email with a Word attachment so I can join them
7 together, cut and paste, and move things around if I need to.
8 All right.

9 MR. FARRAR: You don't want them efiled as well?

10 THE COURT: I really don't want them efiled because it
11 kind of just clutters up my queue.

12 MR. FARRAR: I understand.

13 THE COURT: But I'm not going to get upset if you efile
14 them, I just have to remember which ones are proposed and
15 which ones I told the lawyers to send on an actual ruling.

16 MR. FARRAR: Right.

17 THE COURT: All right. The hearing is concluded at 3:41
18 p.m. Thank you, gentlemen.

19 MR. LEWIS: Thank you, Your Honor.

20 MR. FARRAR: Thank you, Your Honor. Thank you for giving
21 us that much time, Your Honor.

22 THE COURT: Well, it worked out fine. We have one more
23 hearing.

24 (End of Transcript of Record)

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Aiken)

I, KHALEELAH GANTT, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 20th day of April, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 11, 2023



Khaleelah Gantt, CDLT-285
Transcriber

State of South Carolina)
) Court of General Sessions
County of Aiken) 2021-CP-02-02323

Mark Gregory Thompson)
)
 vs.) Transcript of Record
)
Clay Killian, et al.)

January 13, 2023
Aiken, South Carolina

B E F O R E:

The Honorable William Keesley, Judge.

A P P E A R A N C E S (All present by video or telephone):

Will Lewis
Attorney for the Plaintiff

Bradley T. Farrar
Attorney for the Defendants

Andrew F. Lindemann
Attorney for the Defendants

Khaleelah Gantt
Transcriber



1 THE COURT: Let's go on the record on 2021-CP-02-02323,
2 Mark Gregory Thompson and others v. Clay Killian,
3 K-I-L-L-I-A-N, and others. Today is January 23rd, 2023. It's
4 10:01 a.m.

5 Scheduled this hearing via the Webex virtual courtroom.
6 The court administration does not assign court reporters for
7 these types of proceedings. If a transcript were to be
8 needed, one will be prepared by a transcriptionist using the
9 Webex recording. The Supreme Court requires consent of all
10 parties in order to proceed in this fashion.

11 For the plaintiff, I was William C. Lewis, L-E-W-I-S. Do
12 you consent, Mr. Lewis?

13 MR. LEWIS: Yes, Your Honor.

14 THE COURT: And for the City defendants, I have Andrew F.
15 Lindemann, L-I-N-D-E-M-A-N-N. Do you consent, Mr. Lindemann?

16 MR. LINDEMANN: I do, Your Honor.

17 THE COURT: And for the Aiken County defendants, I have
18 Bradley T. Farrar, F-A-R-R-A-R. Do you consent?

19 MR. FARRAR: Yes sir, I do, Your Honor.

20 THE COURT: I'm requested to ask that you speak clearly,
21 that you not talk over each other and since no court
22 reporter's taking down who is speaking at any given time,
23 you're asked to say your name before you speak. The court
24 issued an order concerning motions filed by the defendants and
25 following that there was a timely motion to reconsider, two

1 separation motions, one filed on behalf of the City defendants
2 and one on behalf of the County defendants. I got that wrong.

3 There were two separate reconsideration motions, if I
4 remember right, filed related to the City defendants and the
5 County defendants. I apparently had a misunderstanding from
6 my reading of the complaint as to the fact that I believe that
7 the plaintiffs were asserting this only as a class action and
8 I did not overlook the fact that it had individually and as
9 members of a class. But I just thought from the argument and
10 from the reading of the complaint that it was a class action
11 suit. So part of the reconsideration motion was that I allow
12 the individual claims to proceed without waiving any
13 objections to the rulings that were made related to the class
14 action not being permissible.

15 The second part of the reconsideration motion, I fi
16 recall correctly was that because I had ruled based on the
17 class action not being allowed to go forward, I had not made
18 rulings on other arguments that had been addressed -- other
19 issues that had been raised by the plaintiffs in opposition to
20 the motions. So I thought I had to reconvene a hearing.

21 And I looked at the order again this morning. It may
22 have only addressed the City or the County. I think it was
23 just the City. That was probably an error. But that's the
24 purpose for me calling this hearing. So unless anybody else
25 needs to put anything on the record, my question would be from

1 the reconsideration motion, what issues are out there I have
2 not ruled upon? So let me hear from the plaintiffs' attorney.

3 MR. LEWIS: Yes, Your Honor. And just to give you some
4 background of kind of why we're here. We've got orders on
5 these cases all over the state, and there's going to be
6 something -- this is going to Columbia, one way or the other,
7 because we're going to have different counties. And we're
8 just trying to get as many rulings as we can to get that up
9 from efficiency standpoint, so we're not going to come back
10 here and ping-pong back and forth between the Court of
11 Appeals.

12 So the rulings that we would ask for you to rule on are
13 one, since we have these individual claims, whether you have
14 subject matter jurisdiction, that argument, whether we need to
15 be under the RPA or not; the unjust enrichment argument as
16 well, whether we are able to bring an unjust enrichment claim;
17 and then whether we're able to proceed on our declaratory
18 judgement calls of action in these individual capacities.

19 The defendants raised a lot of arguments. I mean there's
20 16 paragraphs in the original motion to dismiss by Mr.
21 Lindemann. I think that covers kind of all of the arguments
22 raised. I would think for judicial economy, so we're all on
23 the same page, if defense counsel thinks that anything needs
24 to be ruled on from an efficiency standpoint for the appeal,
25 I'm happy to hear from them. I think we're all just trying to

1 get some guidance here on how these are going to proceed in
2 light of inconsistent rulings across the various Circuit
3 Courts, Your Honor.

4 THE COURT: Okay. Do either of you wish to speak for the
5 defense on this, or?

6 MR. FARRAR: Your Honor, if I may, yeah. Brad Farrar for
7 Aiken County. Yeah, I think I'll just start with the last
8 thing Mr. Lewis said, the inconsistent rulings. That assumes
9 that all these cases are the same. You think about this and I
10 see this in government, I've dealt with this for 30 years
11 representing counties and the Department of Defense and what
12 not. One size fits all is great if all are the same size. If
13 I've got a church basketball team and my team has on it
14 Shaquille O'Neal and the jockey who just won the recent
15 Kentucky Derby, if I get team shirts, one size fits all is not
16 really going to work. Shaquille O'Neal is going to be wearing
17 a tube top or the jockey's going to be wearing a dress. So to
18 kind of say the origin of all these cases is a ruling because
19 of how Greenville went about inartfully adopting their road
20 maintenance fee. And so this is really kind of like profiling
21 every other county and municipality in the state to say that
22 because Greenville messed it up every other county did too.

23 So we don't have inconsistent rulings, we've got a very
24 (indiscernible) ruling consistent with precedent dismissing
25 this case because you can't have a class action against a

1 local government, that's just you can't do that. And Your
2 Honor knows that because Your Honor has never issued an order
3 in a class action against a local government, and none of your
4 contemporaries have because you can't do that in South
5 Carolina. And so I come back to that, Your Honor, you said we
6 just thought it was a class action because of the way it was
7 argued and the way it was presented. Well, I did, too. And
8 the reason for that is if you look at page 1 of the complaint,
9 there's a section called "Introduction". Sometimes, people
10 will do one of these background scene setter type things.

11 Here's the opening sentence of the introduction, I'll
12 just give you the first five words, this is a class action.
13 That's how the introduction begins. So if you say can you
14 explain your case to me in a 100 words or less, no I don't
15 need 100, I need 5, this is a class action. So they brought
16 this case as a class action. Every single cause of action is
17 as a class action.

18 And you think about this, Your Honor, if you turn to the
19 last page of the complaint -- well, actually, it goes over two
20 pages for the signature blocks -- there are three law firms
21 and seven lawyers bringing this case. Now, who's going to
22 hire three law firms and seven lawyers to try and make a claim
23 for a 25-dollar fee refund? Quite obviously, this was styled
24 as a class action. And so we think Your Honor's original
25 order dismissing the whole thing is appropriate because the

1 whole thing is a class action lawsuit.

2 Moving on beyond that, Your Honor, subject matter
3 jurisdiction. We hit that pretty heavily, as Your Honor said,
4 and exhaustively briefed and argued earlier hearing on that
5 issue. But there is no other place you can go for the refund
6 of a fee in South Carolina law other than the RPA. And the
7 reason I say that is the definition of tax in the RPA includes
8 fees. So this is classes -- nobody's going to put the South
9 Carolina code of laws in a time capsule with the works of
10 Shakespeare and Tolstoy and Dickens and, say, 100 years from
11 now open this and you'll see the height of human writing. I
12 mean, it's got all sorts of inconsistencies and that's what's
13 in there.

14 So Title 12 has got this thing that says a fee is a tax
15 and a tax is a fee. That's the place you go in the RPA and
16 there is an exhaustion of administrative remedies that needs
17 to take place, and the plaintiffs didn't even attempt their
18 administrative remedies.

19 There is a statute in Title 12 that deals with refunds
20 and that's what we think the plaintiffs should have done and
21 that section is 12-60-1740. And tax refunds -- and actually,
22 the title of that section says it has "preference over any
23 other claims". And so if it's determined that any tax and the
24 definition -- this doesn't say property tax, the definition of
25 tax includes fee, in excess of the amount due was paid or

1 collected by a county, municipality, or other political
2 subdivision -- so remember all this talk we had about the
3 Department of Revenue. This isn't dealing with any of that,
4 this is dealing with collected by a county, the treasurer
5 within 30 days of the final determination shall refund the
6 taxes and penalties if any so paid -- and listen to this, the
7 refund must be paid in preference to all other claims against
8 the county, municipality, or political subdivision if the
9 treasurer collected and distributed the incorrectly collected
10 tax for the county. And so it says "Tax refund", which
11 includes fees and it doesn't have anything to do with property
12 tax.

13 So if the plaintiffs had just picked up the phone and
14 called us and said, hey we got questions about your road
15 maintenance fee, that would have been the start of their
16 administrative remedy. Then they could have pursued this
17 under the refund statute. And the thing about that is that
18 goes to the county treasurer, that doesn't go to my corporate
19 client, the County Council. I mean, the treasurer's an
20 independently elected official. I represent him if he asks
21 me, but if he doesn't, I'm not on the case for him. I can't
22 descend upon his office and say let me handle the case for
23 you, he has to come to us and so that would have been a
24 completely separate remedy. They didn't exhaust that. So if
25 Your Honor determines that this is styled as an individual

1 claim -- and with all due respect, I don't think putting
2 individually on behalf of those similarly situated in a case
3 caption dictates what the body of the complaint says. And the
4 complaint says this is a class action.

5 So Your Honor, if you determine it's not simply a class
6 action and if you determine they don't have to exhaust their
7 administrative remedies, then we actually get to the merits of
8 the case, of course once you move beyond the subject matter
9 jurisdiction argument, if you determine you have jurisdiction.
10 And the merits of the case -- in the case of Aiken County, 46
11 counties in South Carolina probably ten times as many
12 municipalities. Aiken County is the worst place to bring a
13 challenge to the road maintenance fee. And the reason for
14 that is we adopted our fee five years before the standard
15 that's being argued in this case applied, so we're
16 grandfathered in. And we created the very legislative history
17 that the Burns court said if you had that they'd give you the
18 benefit of the doubt that you've got a good fee. So it's a
19 very, very different case and we talked about inconsistent
20 rulings; no, it's not a one size fits all. Aiken County is
21 good to go in terms of the timing of its road maintenance fee
22 and the specific adoption.

23 In addition to -- when we're talking about the refund,
24 this is really at stake, if you get a declaration that our fee
25 is unlawful, then you're talking about a refund. That statute

1 is not in the RPA. The refund statute is in 12-54-85, which
2 is titled "Time Limitation for Assessment of Taxes or Fees" --
3 or fees, okay. So you get to that section and what it says
4 is, in subsection F, "claims for credit or refund must be
5 filed within three years from the time the return was filed or
6 two years from the date the tax was paid, whichever is later".
7 All right so this is the scope of what we're talking about in
8 this case, Your Honor, either two years or three years
9 depending on when you paid the tax. Aiken County's road
10 maintenance fee is 25 dollars. Going back three years would
11 be 75 dollars. Going back two years would be 50 dollars. I
12 don't sue a lot of people, so I don't currently know what it
13 costs to file a lawsuit, but I think it's around 150 dollars.
14 Filing a lawsuit for an individual claim is two to three times
15 what they'd be playing for in terms of a return. And Your
16 Honor, I can't say I haven't stood on principle and -- but
17 usually it's to right some manifest injustice or some great
18 wrong.

19 In this case, Aiken County's fee was passed 31 years ago
20 in an open session, unanimously voted on by the elected
21 officials in Aiken County. The plaintiffs and nobody came
22 forward in opposition to the fee. It has been in place,
23 uninterrupted for 31 years and it was adopted under the Brown
24 standard that is cited exhaustively in our brief and if you
25 look at Aiken County's ordinance, which is Exhibit 2 to one of

1 the 60-plus page filings I submitted. The very first whereas
2 clause says in the 1992 ordinance of Aiken County adopting the
3 road maintenance fee, which is five years before the law
4 changed with this new Burns standard. This is the first
5 whereas clause, the South Carolina Supreme Court has upheld a
6 ruling that a road maintenance fee is a valid service charge.
7 Okay, that was the case of Brown v. Horry County. When the
8 court said, you know what; a service charge for road
9 maintenance fee is legitimate in South Carolina. That's when
10 Aiken County adopted its ordinance.

11 So we're five years before. We're grandfathered in. And
12 if you look at, let's see, back when that ordinance was
13 adopted -- if you go back to the Burns case from last year, I
14 guess maybe two years ago now, what Justice Few wrote is
15 "after 1997". And this is when 6-1-300 changed to have the
16 requirement that there be some benefit unique to the fee payer
17 when the previous statute didn't have that requirement. After
18 1997, therefore when a local government imposes a charge it
19 contends is not a tax, the charge arguably must meet the
20 requirements set forth in Brown but certainly must meet the
21 requirements set forth by the General Assembly 6-1-300(6).

22 What about before 1997? The court draws this very bright
23 line and we're on the other side of it; we're on the good side
24 of that bright line, Your Honor. We came in grandfathered in,
25 but even if we hadn't been grandfathered in, the Burns court

1 says if the governing body actually addresses the effect on
2 property value and deems an anticipated enhancement
3 significant enough to differentiate the benefit to those
4 paying the fee from the benefit everyone receives -- and this
5 is what the quote says. This is an if-then statement, "If we
6 do that then it is likely the courts will uphold the decision,
7 as we did in the CR Campbell Construction case".

8 When do you get an advisory opinion from the South
9 Carolina Supreme Court? They gave you one right here. And so
10 we said, that's fantastic; we'll take you up on it. So Aiken
11 County adopted in its most recent budget a 16-page single-
12 spaced findings of fact that contains -- looks like we've got
13 37 separate findings of fact to create the very legislative
14 history that the court says if we have, we've got a good fee.
15 Greenville County didn't do that and they adopted their fee
16 under the Burns standard of 6-1-300(6) post-1997. So it's not
17 an inconsistent ruling, Your Honor.

18 Your Honor hit is exactly on the head. Aiken County's
19 got a legitimate fee, it always has had. And if you want to
20 just go straight to the merits of this case, the case should
21 be dismissed with prejudice. If you rule on the
22 jurisdictional issue, Your Honor, it could be dismissed
23 without prejudice, their individual claim.

24 If they want to try to recover 75 or 50 dollars through
25 the Administrative Law Court, they've got an opportunity to do

1 that, and we'll defend it there. But Your Honor got the first
2 ruling right. The entire case should be dismissed because it
3 was styled as a class action. But if you want to go on the
4 merits, it should be dismissed because Aiken County has got an
5 unassailable fee under either of the standards the Supreme
6 Court's imposed. Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Farrar.

8 All right, Mr. Lindemann, you want to say anything?

9 MR. LINDEMANN: Yes, Your Honor, if I can briefly touch
10 on the issues.

11 I agree with Mr. Farrar's comments regarding construction
12 of the complaint itself, Your Honor, as we indicated in
13 response to the 59(e) motion. I believe the complaint was
14 brought as a class action, Your Honor, in its initial
15 construction of it was correct. But ultimately, Your Honor,
16 if you do address the individual claims that are being
17 asserted based upon that motion for reconsideration, we would
18 ask the Court to address the jurisdictional issue as well as
19 the merits issues -- the defenses that we had previously
20 raised. And I'll try to be fairly quick.

21 But to point the Court in the direction of our argument,
22 the proposed order that we submitted following the hearing, I
23 think it was in April, spells out -- and I'm happy to refile
24 or send you or email you an additional copy of that proposed
25 order. But it definitely sets forth our position on the

1 remaining issues separate and apart from the class action
2 issue.

3 And namely, there are three arguments. Primarily, one is
4 what Mr. Farrar's already mentioned, which is that the Circuit
5 Court lacks subject matter jurisdiction over any claim
6 addressing the illegality or the illegal collection of taxes.
7 Number two, the only claim that remains against the City of
8 Aiken, because the City of Aiken did repeal its road
9 maintenance fee in response to the Burns case. And that, of
10 course, as I believe the plaintiffs have already conceded,
11 that has mooted the declaratory judgment action and the only
12 claim that remains against the City of Aiken is the unjust
13 enrichment claim.

14 So ultimately on the unjust enrichment claim, if Your
15 Honor reaches the merits of that, we take the position that
16 it's barred by sovereign immunity. We also take the position
17 as previously briefed and in the proposed order I just
18 mentioned, that a statute or an ordinance in this particular
19 case is fairly debatable and, therefore, presumptively valid
20 until such time as it is determined by a competent court of
21 law to be invalid. And in this particular case, Your Honor,
22 the presumption of validity applies beyond the date that the
23 City voluntarily repealed the fee. So for any prior fees, any
24 fees that were collected prior to the repeal, the ordinance
25 itself should be deemed presumptively valid and, therefore,

1 collectible and ultimately cannot get retroactive relief for a
2 statute -- I mean for an ordinance, retroactive to any
3 declaration by a court, which has not yet occurred, that it is
4 or was illegal or improper in any way.

5 So what I would like to do is just touch on those first
6 two issues in a little bit more detail. And again, I don't
7 want to repeat what Mr. Farrar said. But ultimately, Your
8 Honor, it's the Revenue Procedures Act, we believe provides
9 the subject matter jurisdiction for the plaintiffs if they
10 pursue an individual claim in this case. And what that boils
11 down to, Your Honor, is an application of 12-60-80, which
12 clearly is applicable to this case. Your Honor has already
13 applied subsection C of that provision based upon the Aiken v.
14 South Carolina Department of Revenue case, and we certainly
15 are not going to revisit that because Your Honor has already
16 ruled on denying the motion for reconsideration. But 12-60-80
17 and its other components also apply to this case, which deals
18 with -- I mean the title to the statute, which I understand is
19 not part of the statute, but the code commissioner has
20 obviously said, the wrongful collection of taxes.

21 And it specifically provides in subsection B that the
22 Circuit Court only has jurisdiction in one very limited
23 circumstance and that's where there is a declaratory judgement
24 being sought where the sole issue -- and again, it said the
25 sole issue is whether a statute, in this case, an ordinance,

1 is unconstitutional. That can be brought in Circuit Court.
2 There is no claim in the plaintiff's complaint that the road
3 maintenance fee was unconstitutional. And certainly, that's
4 not the sole issue. And so ultimately, the Circuit Court just
5 doesn't have jurisdiction over this case.

6 The appropriate process that follows exactly what Mr.
7 Farrar spelled out, exhaust the administrative remedies, if
8 you're not satisfied with the administrative remedies, you
9 pursue a matter, you pursue an appeal to the Administrative
10 Law Court under the RPA. And clearly, that has not been done.

11 In addition to 12-60-80(b) that I just cited to the
12 Court, I would point out that 12-60-3390 specifically states,
13 quote, "If a taxpayer brings an action covered by this chapter
14 in circuit court, the circuit court shall dismiss the case
15 without prejudice." Again that's another jurisdictional
16 statute and note the mandatory language of "shall". So
17 ultimately, Your Honor, this case should be dismissed for lack
18 of subject matter jurisdiction.

19 The plaintiff argues that -- and this is an inconsistent
20 argument -- in order to rely on Burns and the Supreme Court
21 decision in Greenville County, they have to take the position
22 that the road maintenance fee is a tax. Because if it's not a
23 tax they don't have a claim. So they can't argue it's a fee
24 for purposes of jurisdiction and then turn around and say, it
25 was an illegal tax relying on Burns. But that's what they do.

1 They're arguing that this case is properly in the Circuit
2 Court because this is not a tax that falls under the RPA.

3 And I would point out to the Court -- and again, this is
4 in our brief, as well as our proposed order I mentioned --
5 that the intent or the scope of the RPA was expanded to
6 include not just disputes with the Department of Revenue but
7 any dispute concerning property taxes. And I would submit to
8 Your Honor that if the road maintenance fee is a tax as the
9 plaintiff is alleging, as the Supreme Court ruled Greenville
10 County's road maintenance fee is a tax, well, then it's
11 property tax. Because the way that it is imposed in Aiken
12 County, as I'm sure in just about every other jurisdiction, it
13 is based upon each motorized vehicle licensed in the City of
14 Aiken.

15 And the ordinance that was enacted in 2017, specifically
16 states that. It says a mandatory road maintenance fee is
17 established in the annual city operating budget ordinance on
18 each motorized vehicle licensed in the City of Aiken is to be
19 included on motor vehicle tax notices with the proceeds going
20 into a separate fund for accounting purposes specifically to
21 be used for the maintenance and improvements of the city road
22 system. So it is imposed on each motorized vehicle and it is
23 included on a tax notice. So it is a property tax.

24 And any type of dispute involving property taxes, based
25 upon 12-60-20, falls within the scope of the Revenue

1 Procedures Act. So that is the appropriate forum for any
2 remedy that they are seeking in this particular case. And
3 again, we point out that the Aiken v. South Carolina
4 Department of Revenue decision applied, as this Court has as
5 well, 12-60-80. And in that particular case, one of the
6 arguments was, the RPA only deals with taxes and the Debt
7 Setoff Act and the GEAR Act don't involve taxes. And the
8 Supreme Court were not swayed by that decision. Of course,
9 they didn't reach the decision or the question as to whether
10 those were taxes or not. They said they didn't have to reach
11 that decision.

12 So in a nutshell, Your Honor, I believe that there's
13 strong precedent that if this is a tax and that's the only way
14 that they can argue it's a tax to win on the merits, it should
15 be handled under the RPA. And any action brought in Circuit
16 Court, which this has been, should be dismissed without
17 prejudice as the statutes state using the term "shall".

18 If the Court reaches the merits, if I can touch on the
19 unjust enrichment claim very quickly, our argument on unjust
20 enrichment. Again, that's the only cause of action that
21 remains after concessions that were made by the plaintiff that
22 are outlined in Your Honor's original order and they did not
23 seek reconsideration on that. The only claim that remains is
24 the unjust enrichment claim. Our position on that case, and
25 we cited to the Court -- I mean I know both sides have

1 submitted Circuit Court decisions in this case. I typically
2 don't do that, but I felt like that was appropriate after the
3 plaintiffs submitted Circuit Court decisions, Your Honor. And
4 I recognize they're not precedent, but we did provide you a
5 decision from a number of years ago with Judge Few -- or
6 Justice Few when he was Judge Few in Shirley's Iron Works v.
7 Union County agreed that unjust enrichments barred by
8 sovereign immunity. And more recently, Jocelyn Newman in the
9 Fields v. Richland County Sheriff's Department ruled in my
10 favor on the same issue. And we submitted those orders that
11 were attached to our memorandum; I'm happy to send Your Honor
12 an additional copy.

13 And again, I know you are not bound by those decisions by
14 any means, but just essentially wanted to make the point that
15 this is not some novel theory that I'm throwing out at you,
16 Your Honor. Other judges have adopted this as far back as
17 when Judge Few was on the Circuit bench. And also in one of
18 the road maintenance fees in the Orangeburg case, Judge
19 Dickson also adopted that reasoning even though the motion for
20 reconsideration's still pending in that case.

21 But the nuts and bolts of the decision is this, prior to
22 McCall v. Batson, I know Your Honor knows this background,
23 sovereign immunity was the law in this state. But it was what
24 the Supreme Court called a scattered patchwork of liability.
25 Sovereign immunity had been waived here, there, for various

1 things, auto wrecks, road maintenance type claims; there were
2 a host of issues. And that's what the Supreme Court called
3 the scattered patchwork of liability. And so when McCall v.
4 Batson came out, it gave the General Assembly time to adopt
5 some type of tort claims act. And they ultimately adopted the
6 Tort Claims Act. But part of the Tort Claims Act -- and this
7 history is spelled out very well in the 1995 decision of
8 Murphy v. Richland Memorial Hospital, and the main quote of it
9 we put in our brief and I think I included in the proposed
10 order as well, I did -- which spells out how the General
11 Assembly responded to McCall. McCall abolished the doctrine
12 of sovereign immunity. And the Supreme Court says in our
13 response to our decision in McCall, the legislature
14 implemented a comprehensive act providing for the logical
15 disposition of governmental liability. Key language, the act
16 first completely restores sovereign immunity. The act then
17 provides specific waivers and limitations actions against
18 governmental entities, thus the Tort Claims Act is a limited
19 waiver of governmental immunity.

20 So sovereign immunity was fully restored. What does that
21 mean? That means that any claims that are not waived by the
22 Tort Claims Act and are not handled under the case law that
23 applies to express contracts, sovereign immunity has not been
24 waived. And what is required is an explicit waiver by the
25 General Assembly of sovereign immunity in order for a cause of

1 action that falls outside the Tort Claims Act and is not an
2 express contract, an explicit waiver of sovereign immunity.
3 The United States Supreme Court has said, in fact, that,
4 quote, Waivers of government sovereign immunity to be
5 effective, must be unequivocally expressed in the
6 legislation". And I think that's a well settled principle of
7 law that would certainly apply in South Carolina as well.

8 So what we have here is an equitable claim, unjust
9 enrichment, it's purely an equitable claim, it's not a tort,
10 doesn't fall under the Tort Claims Act. And sovereign
11 immunity has never been waived for any type of equitable
12 claims, which includes quantum merit, unjust enrichment. And
13 ultimately, Your Honor, until the General Assembly explicitly
14 waives sovereign immunity and allows governmental entities to
15 be sued under equitable theories, sovereign immunity exists.
16 And that's the basis of our argument.

17 I think the best argument that the plaintiff has made
18 against us on this issue, and we touched on that in a footnote
19 in the proposed order, is they pointed to several cases over
20 the years, reported decisions where unjust enrichment cases
21 went up on appeal and were decided against governmental
22 entities. And as we pointed out to Your Honor in the first
23 argument in this case as well as in that proposed order, I
24 always cite back to Chief Judge Sanders' statement in State v.
25 Austin where he said appellate courts act like well-behaved

1 children, they only speak when spoken to.

2 Sovereign immunity is an affirmative defense. It is
3 waived unless it is asserted. In each of those cases that Mr.
4 Lewis relies on, where sovereign immunity was not applied to
5 an unjust enrichment case, there's no discussion whatsoever of
6 sovereign immunity. And you can't expect because it would be
7 totally improper, for an Appellate Court to step in and say,
8 oh this case can't go forward because sovereign immunity bars
9 it, when the defendant itself, for whatever reason, doesn't
10 assert sovereign immunity. It is an affirmative defense.

11 And in fact, in *Washington v. Whitaker*, a 1994 Supreme
12 Court case, the Supreme Court very clearly indicated that
13 sovereign immunity is an affirmative defense. And in that
14 particular case because the defendant has not actually pled it
15 in his answer -- because I remember, there was a lot of
16 governmental defense lawyers in the *Washington v. Whitaker*
17 case was a real eye opener. You couldn't assert any type --
18 you can assert the Tort Claims Act, you can assert anything if
19 it hadn't been affirmatively pled. And so clearly, that's
20 what we have here.

21 Those cases he cited, I'm sorry, the governmental
22 entities hadn't raised sovereign immunity. I wish they had
23 because I think they would have prevailed. But just because
24 those cases went forward on the merits is not a -- shouldn't
25 even be persuasive to this Court, that the argument that we're

1 making is incorrect.

2 The argument that we're making too, Your Honor, has
3 support not only in the Circuit Court decisions I've
4 mentioned. I have similarly made this argument as in terms of
5 dealing with statutes that pre-existed the Tort Claims Act,
6 such as the sheriff's liability statute, the county liability
7 statute that came from the 1870s, all those statutes were not
8 explicitly repealed, but Courts have found that they were
9 implicitly repealed by the Tort Claims Act under this same
10 logic. That the Tort Claims Act went it was passed in
11 response to McCall v. Batson, sovereign immunity was
12 reinstated in whole and then there was only a limited waiver
13 of it based upon the Tort Claims Act.

14 And we cite the Sadek v. Lambert case where I believe it
15 was Judge Wooten, definitely a federal judge, I believe it was
16 Judge Wooten, adopted that same analysis in finding that the
17 sheriff's statute -- actually, I'm sorry that was the county
18 liability statute was implicitly waived. So again, this is
19 not -- it may come across as novel, but it's not novel, it's
20 been applied by other courts and I believe it is absolutely
21 solid on its foundational base.

22 Lastly, Your Honor, I've already touched on this as much
23 as I probably need to, but again we're arguing that Burns
24 should only have a prospective effect for the reasons I
25 previously stated and, therefore, as an additional reason that

1 the plaintiffs can't prevail on the merits. Since the City
2 did repeal its road maintenance fee, they don't have a claim
3 for any type of recovery, monetary recovery against the City
4 of Aiken, and they've already agreed that declaratory relief
5 that they seek was properly dismissed by this Court.

6 Your Honor, unless you have any questions, that is our
7 position. And again, it's spelled out in the proposed order
8 that we submitted after the last hearing, as well as the brief
9 that we submitted originally. Thank you, Your Honor.

10 THE COURT: Mr. Lewis, you have anything else?

11 MR. LEWIS: Yes, Your Honor, extremely briefly. I did
12 not know that we were going to retouch on the arguments based
13 on the Court's order, so I just want to make sure that I
14 preserve everything, and I've been writing down to make sure.

15 The first thing is on the class action argument, Your
16 Honor, I can't have a class action until you certify it under
17 Rule 23, so this, like, styling argument that I can only bring
18 a class action is just procedurally incorrect. And just to
19 direct you to the complaint, page 6 has specific individual
20 allegations as to the individual defendants, as I'm required
21 to do. I cannot bring a class action without the court
22 certifying it. It does not work that way, you can style it
23 but until something is certified, it is indeed not a class
24 action under Rule 23.

25 On all of the arguments and the RPA and the various

1 statutes, Your Honor, and whether these are taxes, property
2 taxes, we briefed this extensively. The word, tax, is defined
3 in the RPA. The phrase, property tax, is defined in the RPA.
4 When the Supreme Court in Burns says the word, tax, it does
5 not have the same definition as the expressed definition as
6 the RPA. And all of those limit the definitions of those
7 terms to not apply in this case. Property tax defined as ad
8 valorem, these are flat fees, can't be a property tax. Tax in
9 the RPA is either imposed by the Title or subject to
10 assessment and collection by the department, neither of which
11 apply here. So we just don't have the definitions that
12 they're trying to fit these fees into with illegal conduct by
13 a government that they did wrong under this statute -- or
14 excuse me, as they passed the ordinance, it does not fit into
15 this statute.

16 On the unjust enrichment, Your Honor, the one thing I
17 would raise in addition to our briefs is suits for illegal
18 collections by the government have been going on since
19 government's collected taxes and fees in this state. This is
20 not a sovereign immunity issue, it's not a tort liability
21 issue, we have a claim where the government took money and
22 those suits have been going on well before McCall, everything
23 else that is discussed by Mr. Lindemann. And in addition, it
24 happens all the time, and I understand Mr. Lindemann's
25 position that they weren't raised. I do concede that they did

1 not raise those affirmative defenses in the cases that I
2 cited, so I do want to make sure that I'm not disagreeing with
3 Mr. Lindemann on that.

4 Lastly, Your Honor, on this argument about presumptive
5 validity, under Mr. Lindemann's argument it is I can pass an
6 illegal fee, you can challenge it, if I moot if -- if I stop
7 collecting it, you have no remedy to go back and get it
8 because now it's presumptively valid forever because I'm not
9 going to be able to challenge the presumptive validity of that
10 ordinance because now I have stopped collecting it. And I
11 just think that's backwards. We've got to have some remedy
12 here for the wrong and I find it interesting that we have two
13 ordinances that are completely identical in this City and the
14 County and one is withdrawn, and yet everybody's saying they
15 did the right thing.

16 But I do think if you rule on what's raised here, we'll
17 be able to proceed, Your Honor. I'm sorry this went longer, I
18 wanted to -- my goal was to just keep it tight, just tell you
19 what you needed to rule on and we can go from there. I do
20 appreciate everybody's efforts on it.

21 THE COURT: Thank you. Mr. Farrar?

22 MR. FARRAR: Nothing further, Your Honor. Thank you so
23 much.

24 THE COURT: Mr. Lindemann?

25 MR. LINDEMANN: Nothing further from me either. And Your

1 Honor, I apologize if Your Honor was not intending this to
2 rehear the merits, that was my understanding of what Your
3 Honor was looking for, so if I misunderstood that, I
4 apologize.

5 THE COURT: You didn't misunderstand anything. I wanted
6 to know what issues are being claimed in the reconsideration
7 motion that I have not ruled upon, that if the individual
8 claims are allowed to continue, I need rule upon from prior
9 motion. So if everybody's addressed all those, then we'll
10 conclude the hearing. Anything else?

11 MR. LINDEMANN: One quick logistical question, do you
12 wish for us to take our previous proposed order and modify it
13 to treat this as an individual claim and resubmit it or -- I
14 mean, I'm happy to assist in any way as far as that's
15 concerned. And I can send you another copy of the previous
16 proposed order if that helps.

17 THE COURT: Made my last statement, I was debating in my
18 head as to whether to go ahead and request proposed orders.
19 And then I thought I would try to digest this a little bit and
20 then maybe ask you in writing to -- or email to submit
21 proposed orders, but it's likely that I will ask for that, Mr.
22 Lindemann.

23 MR. LINDEMANN: All right. Thank you, Your Honor.

24 THE COURT: All right. And I'm trying to get us a ruling
25 made for y'all because I know this has been going on a long

1 time and probably -- the issue will probably go on for years
2 to come.

3 All right. Thank you very much, gentleman. The
4 hearing's concluded at 10:42 a.m.

5 MR. LEWIS: Thank you, Judge.

6 MR. FARRAR: Thank you, Your Honor.

7 MR. LINDEMANN: Everybody have a good day.

8 MR. LEWIS: Andrew, Brad, good to see y'all.

9 MR. LINDEMANN: Yep, good to see you.

10 MR. LEWIS: (Indiscernible).

11 MR. LINDEMANN: Thank you, Your Honor.

12 THE COURT: Yes, sir.

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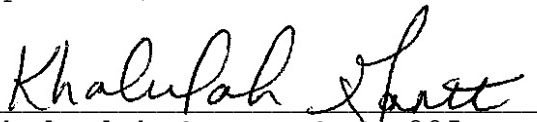
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Aiken)

I, KHALEELAH GANTT, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 13th day of January, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 12, 2023


Khaleelah Gantt, CDLI-285
Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

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

Plaintiffs,

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-02-02323

**NOTICE OF APPEAL OF ORDER ON
PLAINTIFFS' MOTION TO ALTER OR
AMEND AS TO CITY DEFENDANTS**

Notice is hereby given that Plaintiffs Mark Gregory Thompson and Jane Page Thompson hereby appeal to the Court of Appeals for the State of South Carolina from the Court's Order granting Motion to Dismiss by Defendants City of Aiken and Aiken City Council¹ entered on August 8, 2022, and the Court's Order on Plaintiffs' Motion to Alter or Amend dated February 23, 2023, which re-affirms the August 8, 2022 Order and dismisses Plaintiffs' Complaint against City Defendants.

¹ Of the "City Defendants," including City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken, Plaintiffs have dismissed all but Defendant City of Aiken.

Respectfully submitted,

RICHARDSON THOMAS, LLC

BY: 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 LAW FIRM, 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 Plaintiffs and the Class

Dated: March 14, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	Case Number: 2021CP0202323
MARK GREGORY THOMPSON,	)	
ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON PLAINTIFFS' MOTION TO ALTER
	)	OR AMEND AS TO CITY OF AIKEN
CLAY KILLIAN, ET AL.,	)	DEFENDANTS
	)	
Defendants.	)	

The plaintiffs filed a motion to alter or amend an order issued on August 8, 2022, which dismissed the case against the remaining City of Aiken defendants, without prejudice, on the sole remaining cause of action against them for unjust enrichment. The basis of the prior ruling was that a class action is not permitted. Rulings were not made on other issues because of the dismissal. Having reconsidered the matter, the court finds that the plaintiffs who are suing in their individual capacity would not be barred from seeking relief, but that their claim is predicated on their assertion that they are entitled to an assertion that the road maintenance fee is a tax. The exclusive means for securing the relief they seek as individuals would be through administrative procedures. The claims of all plaintiffs are dismissed, without prejudice. The plaintiffs have failed to exhaust their administrative remedies. In addition, the prior order did not decide whether the cause of action for unjust enrichment is barred by sovereign immunity. Having reconsidered the matter, the court finds that the plaintiffs are barred from seeking this claim of unjust enrichment.

The motion asserts that the prior order contains a two-fold error. First, that the court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case. It is argued that the clear

legislative intent of the Revenue Procedures Act (“RPA”), specifically § 12-60-20, dictates the RPA’s non-application in this matter. Second, the holding that a citizen may not bring a class action against a political subdivision would only prevent class certification, and the plaintiffs’ individual claims are not barred by § 12-60-80(C). The court has previously stated in a Form 4 order that it affirms the prior order in finding that the determination that this class action cannot proceed. However, upon reconsideration, the court agrees with the second argument. While the language in the Complaint repeatedly states that this is a class action lawsuit, the standards applicable to summary dismissal would require the court to allow the plaintiffs to pursue individual claims, if they were not otherwise barred from maintaining this action in common pleas court.

An interesting and well-stated argument has been made by the plaintiffs concerning the RPA. There are problems with accepting their position. The only way they can recover for unjust enrichment based on the *Burns* case which they cite is if the City of Aiken’s road maintenance fee is declared to be a tax. The definition of tax in the RPA uses the word “fee,” as stated in the prior order. It is undisputed that the road maintenance fee was assessed based on the ownership of an item of personal property – a vehicle.

The plaintiffs argue that the court has misapplied or ignored legislative intent in enacting the RPA. S.C. Code Section 12-60-20 states:

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. (emphasis supplied).

The plaintiffs rely upon *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), claiming that the dispute with the Department of Revenue makes *Aiken*

distinguishable. The prior order discussed *Aiken* in the context of prohibiting class action lawsuits. The Supreme Court in *Aiken* interpreted the language of statutory intent cited above to mean that a dispute concerning property taxes is covered, whether or not the Department of Revenue is a party.

The court did not address the other grounds related to subject matter jurisdiction. The prior order stated, “The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.” The parties now seek rulings.

The plaintiffs abandoned their declaratory judgment action against the City of Aiken defendants. That cause of action is moot because the City repealed its ordinance after *Burns*. In a footnote, the prior order states:

Plaintiffs' counsel stated on page 62 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. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot.” The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs’ lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of “tax” under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The administrative procedure includes the ability to appeal issues raised before the Administrative Law Court. The plaintiffs' claims seeking a refund or recovery of any illegal or wrongfully collected taxes as claimed by the plaintiffs may be pursued through administrative

channels. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The plaintiffs are not challenging the constitutionality of any statute. Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." The prior order dismissed the claims without prejudice, leaving the plaintiffs the ability to assert their claims. The plaintiffs have administrative remedies that they have not exhausted under the RPA.

Another issue related to subject matter jurisdiction is the contention of the City of Aiken defendants that the unjust enrichment claim is barred by sovereign immunity. The City defendants contend that the plaintiffs' Second Cause of Action for unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment or to be prosecuted against a governmental entity.

Sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background has been summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. ***In response to our decision in McCall, the legislature implemented a***

comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity. 455 S.E.2d at 690. (Emphasis added)(Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein.*" S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

The reinstatement of sovereign immunity is subject only to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for the non-tort/equitable cause of action for unjust enrichment. Moreover, the General Assembly has not enacted any other legislation that explicitly waives sovereign immunity for an unjust enrichment or any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The plaintiffs' cause of action for unjust enrichment is a non-tort/equitable claim, barred by sovereign immunity. It is dismissed because the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.¹

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature appears on separate page]

¹ Two earlier Circuit Court decisions were called to the attention of the court, not as precedent, but argued as being persuasive. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621.



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2021CP0202323

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 City)
 Council, and Stuart Bedenbaugh in his)
 official capacity as City Manager of Aiken,)
)
 Defendants.)

**ORDER GRANTING
 MOTION TO DISMISS BY
 DEFENDANTS CITY OF AIKEN
 AND AIKEN CITY COUNCIL**

Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants" or the "City")¹ move to dismiss and for judgment on the pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF. Present for the hearing were William C. Lewis, counsel for the Plaintiffs, and Andrew F. Lindemann for the City Defendants, and Bradley T. Farrar as counsel for the Aiken County Defendants. The motion seeks dismissal without prejudice for lack of subject matter jurisdiction, or alternatively for dismissal with prejudice as to the merits. If the court understood correctly the concessions stated in oral argument by the Plaintiffs concerning withdrawal of certain claims against the City, the only cause of action remaining against the City Defendants is for unjust

¹ By Partial Stipulation of Dismissal filed April 13, 2022, the Plaintiffs stipulated that "the Third Cause of Action for violation of S.C. Code Ann. § 8-21-30 against the Defendant Stuart Bedenbaugh in his official capacity as City Manager of Aiken is dismissed." Therefore, the Defendant Bedenbaugh has been dismissed from this action.

enrichment.² The court finds that this class action lawsuit is not permitted in circuit court and dismisses this action, without prejudice, based on a lack of subject matter jurisdiction.

BACKGROUND

The Plaintiffs Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit to challenge the alleged wrongful collection of a road maintenance fee that was imposed by Aiken City ordinance in 2016, effective January 1, 2017. The Defendants associated with county government have also filed a similar motion to dismiss concerning the County's ordinances, and that motion is addressed in a separate order.

The Plaintiffs rely on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that Greenville County's "road maintenance fee" is actually a tax.

Following the *Burns* decision, on August 23, 2021, the Aiken City Council rescinded or repealed the road maintenance fee effective July 1, 2021. As a result, the road maintenance fee is no longer being collected. In addition, the City decided to reimburse all road maintenance fees that have been paid since July 1, 2021.

² Plaintiffs' counsel stated on page 62 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. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot." The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of "tax" under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The Plaintiffs conceded at the hearing that the declaratory judgment cause of action is moot due to the rescission of the City's ordinance. There being no remaining case or controversy as to the declaratory judgment action, it is inappropriate for the court to address it here.

The Plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The Complaint states three causes of action for monetary relief, but only one is currently asserted against the City Defendants, the Second Cause of Action for unjust enrichment.³ Thus, the Plaintiffs' First and Fourth Causes of Action against the City Defendants are dismissed by consent, without prejudice.

I. Lack of Subject Matter Jurisdiction

With the withdrawal of all but the unjust enrichment claims, many of the arguments in support of the City's motion are now immaterial. Issues do remain as to whether the action for unjust enrichment is a claim covered by the RPA, which must be addressed through administrative action, and whether this class action lawsuit against a governmental agency and its officials is barred by the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.

Aiken was decided based on a catchall phrase that is unique to class actions. (§12-60-80(C)). The dispute in *Aiken* concerned hospital debts from governmentally owned hospitals, which are permitted to contract with the Department of Revenue to collect those debts under §12-4-580. The term "tax" is a defined term under the RPA, and arguments were raised in the Supreme

³ The Complaint raised monetary damages on the following theories: (1) an equitable claim for unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 which is asserted against the County Defendants only; and (3) a claim for violation of Article I, § 3 of the South Carolina Constitution against all Defendants. The Plaintiffs agreed to dismissal of their Fourth Cause of Action because they cannot seek monetary relief pursuant to the South Carolina Constitution. *See, Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255, 261 (Ct. App. 2019) (certiorari denied on May 28, 2021) ("the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute").

Court, as they have been here, that the RPA is inapplicable because the contested charges do not fall within the definition of "tax." In *Aiken*, the Supreme Court did not deem it necessary to decide that issue.⁴

The Court in *Aiken* focused on §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" [the catchall clause] *Aiken* states:

[S]ubsection 12-60-80(C) provides:

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.* (emphasis added to catchall clause). The answer to the question of whether this action may proceed as a class action is found in our analysis of the catchall clause of subsection (C). Therefore, we need not address the issue of whether the debts purportedly owed by Respondents to the hospitals are "taxes" as that term is defined in subsection 12-60-30(27) of the RPA. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when the disposition of a prior issue is dispositive of the appeal).

We reverse the circuit court and hold this case cannot proceed as a class action against the Department.

While *Aiken* involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection, all of the City Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the

⁴ In this court's view, there was a stronger argument for dismissal in *Aiken* because the collection of these debts fell within the definition of "tax" because they were subject to "collection by the department."

Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

Most critically regarding the pending motion, *Aiken* states, "We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class action' in the catchall clause of subsection (C) to the specific subject of taxes." 429 S.C. 414, at 420.

II. Dismissal of Second Cause of Action for Unjust Enrichment

Since the court has decided that it lacks subject matter jurisdiction, this order does not address the argument for dismissal on the merits based on sovereign immunity concerning the unjust enrichment cause of action. (See *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the South Carolina Tort Claims Act enacted in 1986, and *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995)).

THEREFORE, IT IS ORDERED that this case against the City Defendants is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

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

Plaintiffs,

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

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-02-02323

**NOTICE OF APPEAL OF ORDER ON
MOTION TO ALTER OR AMEND
REGARDING COUNTY DEFENDANTS**

Notice is hereby given that Plaintiffs Mark Gregory Thompson and Jane Page Thompson hereby appeal to the Supreme Court for the State of South Carolina from the Court's Order granting Defendants' Motion to Dismiss by Aiken County Defendants¹ entered on August 5, 2022. The Court's Order on Plaintiffs' Motion to Alter or Amend was entered in this action on March 9, 2023.

¹ Of the "County Defendants," including 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, Plaintiffs have dismissed all but Aiken County and Jason Goings in his official capacity as Treasurer of Aiken County.

Respectfully submitted,

RICHARDSON THOMAS, LLC

BY: 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 LAW FIRM, 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 Plaintiffs and the Class

Dated: March 14, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Mark Gregory Thompson and Jane Page	)	Civil Action Number 2021CP0202323
Thompson, individually and on behalf	)	
of all those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ON MOTION TO ALTER
	)	OR AMEND REGARDING COUNTY
	)	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, Aiken	)	
County, City of Aiken, Aiken City Council,	)	
and Stuart Bedenbaugh in his official	)	
capacity as City Manager of Aiken,	)	
	)	
Defendants.	)	
	)	

Heard: January 13, 2023 via Webex Virtual Courtroom by consent
Attorney for Plaintiffs: William C. Lewis
Attorney for Aiken County Defendants¹ (Goings & Aiken County): Bradley T. Farrar
Attorney for City of Aiken Defendants (City Council, Bedenbaugh, & the City):
Andrew Lindemann
Court Reporter: None – Webex recording procedure, by consent

Plaintiffs move to alter or amend an order of dismissal dated August 8, 2022. The basis of that ruling was that the plaintiffs cannot bring this case as a class action. A partial ruling on the motion for

¹ Clay Killian and Aiken County Council have been dismissed. The remaining County defendants, Jason Goings and Aiken County, have filed a return to the Motion to Reconsider. The rulings in this case have been segregated with an order related to the action against the City of Aiken defendants and the Aiken County defendants. An order filed October 14, 2022, indicated that written submissions were requested, but only requested asked for the City defendants' positions. However, in early January of 2023, two orders were issued establishing that a hearing would be conducted on the claims of both City and County. The court is considering the motion to alter or amend as having been fully argued as to the County defendants, and that no further briefing has been requested. Plaintiff's counsel may notify the court within 5 days of the filing of this order if they have a different interpretation and feel they were deprived of an opportunity to brief the issues.

reconsideration was issued January 3, 2023, declining to modify the ruling that a class action is barred in this circumstance. The prior order did not rule on other matters raised. The parties now request rulings on those issues. The motion to alter or amend is granted in part and denied in part, as set forth below. However, the net effect is that the case is dismissed, without prejudice.

BACKGROUND

This lawsuit relates to road maintenance fees imposed under separate ordinances by the City of Aiken and Aiken County. The initial order dismissed this case against both the City and County defendants, without prejudice, finding that class action lawsuits cannot be brought against political subdivisions.² A separate order dealing with the motion to alter or amend the rulings related to the City of Aiken has been filed. This order deals with the County ordinances and fees.

First, the plaintiffs' request the court to rule that the lawsuit may proceed by the plaintiffs in their individual capacities. The court had read the action as a class action because of certain averments in the Complaint, but upon reconsideration finds that there were sections of the Complaint that sought relief in individual capacities. Because of the strict standards applicable to dismissal at this stage, the court now agrees that the Complaint should have been construed so that the plaintiffs might sue in their individual capacities, if those claims are not subject to dismissal on other grounds. The other grounds for dismissal are discussed below, and those result in dismissal of the individual claims, as well.

The plaintiffs' causes of action are predicated on the assertion that the road maintenance fee is actually a tax. *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). *Burns* determined that the Greenville County road maintenance fee ordinance imposed an impermissible tax. The City of Aiken rescinded its road maintenance fee following *Burns*, but the

² *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020)

County did not. This prompted the plaintiffs to differentiate between the claims against the City and those lodged against the County.

AIKEN COUNTY DEFENDANTS

The plaintiffs allege wrongful collection of the Aiken County road maintenance fee that was imposed by ordinance in 1992 and has continued uninterrupted for each year since. *Burns* ruled that a "road maintenance fee" as implemented by the Greenville County Council is actually a tax that violates S.C. Code Ann. § 6-1-630. It declared the Greenville fees to "invalid under South Carolina law." 861 S.E.2d at 31.

This lawsuit includes a request for a declaratory judgment establishing that Aiken County's fee is an impermissible tax. The plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The plaintiffs raise three causes of action seeking the monetary relief against the County defendants: (1) an equitable claim for unjust enrichment; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the defendants Aiken County and Goings as its Treasurer; and (3) a claim for violation of Article I, § 3 of the South Carolina Constitution.

RECOVERY FOR INVALID IMPOSITION OF A TAX

The plaintiffs' contention is that the ordinances passed over the applicable years by Aiken County are essentially the same as the ones in Greenville County and were reached in the same impermissible way. That is a heavily disputed factual issue. *Burns* does not declare all road maintenance fees to be taxes. Instead, the Supreme Court recognized that there is a permissible way to have an enforceable road maintenance fee. *Burns* affirms a county's authority to impose uniform service charges under two separate statutes, stating:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); see also S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service

or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("Service or user fee' also includes 'uniform service charges'").

There are many assertions of fact concerning differences between Aiken County's ordinances and Greenville's. Those are outside the four corners of the Complaint and not permitted to be considered in a Rule 12(b)(6) motion. The question before the court is whether the plaintiffs can seek a declaration from this court that the fees are actually taxes or whether they are required to pursue their claims of invalidly collected taxes through administrative channels.

While basing their Complaint on the *Burns* court's ruling of an impermissibly imposed tax, the plaintiffs then style Aiken County's road maintenance uniform service charge as a fee. This wordplay is inconsistent. Recognizing that a plaintiff may plead in the alternative, that is not what is being done here. Based on the pleading, any invalidity of the Aiken County ordinance requires its actually being a tax.

The plaintiffs argue that the court has misapplied or ignored legislative intent in enacting the Revenue Procedures Act (RPA). S.C. Code Section 12-60-20 states:

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. (emphasis supplied).

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.

The Plaintiffs rely upon *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), claiming that the dispute with the Department of Revenue makes *Aiken* distinguishable. The prior order discussed *Aiken* in the context of prohibiting class action

lawsuits. The Supreme Court in *Aiken* interpreted the language of statutory intent cited above to mean that a dispute concerning property taxes is covered, whether or not the Department of Revenue is a party.

Having reconsidered the matter, the court finds that the challenges raised in this Complaint are to addressed through the RPA.³ The action for declaratory relief remains dismissed.

SUBJECT MATTER JURISDICTION

REVENUE PROCEDURES ACT

The prior order stated, “The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.” The parties now seek rulings.

The administrative procedure includes the ability to appeal issues raised before the Administrative Law Court. The Plaintiffs' claims seeking a refund or recovery of any alleged illegal or wrongfully collected taxes may be pursued through administrative channels. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The plaintiffs are not challenging the constitutionality of any statute.⁴ Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." The prior order dismissed the

³ The court does have a practical concern in that the *Burns* case was initiated in circuit court.

⁴ In a footnote, the prior order notes: “Plaintiffs' counsel stated on page 62 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.’”

claims without prejudice, leaving the plaintiffs the ability to pursue relief elsewhere. They have not exhausted administrative remedies under the RPA.

SOVEREIGN IMMUNITY

Another issue related to subject matter jurisdiction is the contention that the unjust enrichment claim is barred by sovereign immunity. The court agrees. The South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment to be prosecuted against a governmental entity.

The common law doctrine of sovereign immunity was abrogated in 1986. *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). However, in 1986, and in response to the Supreme Court's abrogation of sovereign immunity, the General Assembly enacted the Tort Claims Act. In so doing, the legislature first reinstated sovereign immunity in full, subject only to express waivers and limitations on actions against governments in South Carolina. *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688, 690 (1995) announced that, "...[i]n *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity." (Internal citations omitted).

In S.C. Code Ann. § 15-78-20(a), the General Assembly determined that:

[i]t is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein."

The Tort Claims Act further provides that the General Assembly, "[i]ntends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty,

immunity from liability and suit for any tort except as waived by this chapter,” and, “[o]nly to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.” See § 15-78-20(b) [Emphasis added].

The question is whether this Act only intended to bar liability for tortious conduct as opposed to other theories of recovery such as non-tort/equitable remedies. The Tort Claims Act contains an explicit carveout for actions arising in contract. Section 15-78-20(d) reads, “Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.” Including reference to actions in contract within the Tort Claims Act indicates that the General Assembly considered the impact upon other remedies, including equitable remedies, in making its determination to reestablish sovereign immunity.

S.C. Code § 15-78-20(f) states, “[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.”

The Tort Claims Act does not include a waiver of sovereign immunity for equitable causes of action for unjust enrichment or *quantum meruit* that do not lie in tort. While these are quasi contract actions, our Supreme Court held in *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), that “unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.” 678 S.E.2d 434. The State has never explicitly waived sovereign immunity for unjust enrichment, or any other equitable claim against the State or its political subdivisions.⁵ It is well settled that “[w]aivers of

⁵ “[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed' in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). See also, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The plaintiffs' cause of action for unjust enrichment is a non-tort/equitable claim, barred by sovereign immunity. It is dismissed because the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.⁶

RETURN OF FEES PLUS TENFOLD PENALTY

Plaintiffs assert that they are entitled to return of fees, plus a penalty, presumably if the road maintenance fees are not declared to have been taxes. S.C. Code § 8-21-10 prohibits officers listed in that section from improperly imposing fees and states that the provisions are not applicable to other officers.

S.C. Code Section 8-21-10 provides:

The several officers named in this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated. (Emphasis supplied herein).

S.C. Code § 8-21-15 reads, in part:

No fee for performing duty, responsibility, or function of agency unless authorized by statute and regulation; exceptions.

(A) No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section.

⁶ Two earlier Circuit Court decisions were called to the attention of the court, not as precedent, but argued as being persuasive. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621.

Section 8-21-30 establishes a penalty of ten times the illegally charged fee.

The Supreme Court in *Burns* makes no mention of the invalidity of Greenville County's ordinances under §§ 8-21-10, et seq. It discusses deficiencies under § 4-9-30(5)(a) and § 6-1-330(A), specifically finding that Greenville County's failure to comply with § 6-1-330(A) makes its fees taxes.

Pursuant to § 8-21-10, only the fees and costs prescribed in Chapter 21 are recoverable. Road maintenance is not one of the "services enumerated" in that limited fee statute. Rather, Chapter 21 deals with fees charged and collected for such things as mileage reimbursement for jurors and witnesses (§ 8-21-20), fees for recording a mark or brand imposed by the Secretary of State (§ 8-21-110), fees of appraisers of homestead and commissioners in dower or partition (§ 8-21-120), fees of twenty-five cents that county auditors shall receive for every entry and endorsement on any deed of conveyance of real property recorded in their offices (§ 8-21-130), notary public fees (§ 8-21-140), fees of deputy surveyors (§ 8-21-150), and other similar charges for mainly ministerial duties of select officials in limited circumstances. Road maintenance is nowhere mentioned or contemplated in §§ 8-21-10 et seq., the same being prescribed under the Home Rule statutes of Title 4, and the tax and uniform service charge provisions of Title 6 for counties as adopted by their governing bodies and not by any of the individual officials named in § 8-21-10.

In this regard, Defendants contend that the Title 8 chapter dealing with "Fees and Costs Generally" contains a fraction of the fees and uniform service charges the General Assembly has

prescribed.⁷ The Court agrees, taking note of the hundreds of such fees cited by Defendants that are not contained in Title 8, Chapter 21.

Further, § 8-21-15(A) provides:

No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section. (Emphasis added).

Road maintenance fees are permitted by §§ 4-9-30(5) and 6-1-300 et seq., unless the governing body does not follow the requirements discussed in *Burns*. S.C. Code §§ 8-21-10, et seq. have no application to such fees.

Section 8-21-30 provides for the tenfold penalty. It reads:

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. (Emphasis supplied herein).

The Defendants argue that County Treasurer Goings does not charge a road maintenance fee. Rather, his ministerial duty is to collect taxes, fees, and charges that are listed on tax bills. That is a logical argument with which the Court has wrestled. This Treasurer did not impose or decide to impose a road maintenance fee. These fees clearly were collected after they were created by the County's governing body. Plaintiffs did not allege this Cause of Action against the Aiken

⁷ Defendants note that, "[t]he South Carolina Code of Laws is set forth in sixty-three (63) titles. "Fees" are prescribed in fifty-nine (59) of them: Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63. Only Titles 10, 18, 21, and 53 contain no references to fees." Memorandum in Support of Motion to Dismiss, filed on December 1, 2021. Defendants then proceed to list five hundred (500) separate fees codified in the South Carolina Code of Laws. *Id.* at pp. 18-45.

County Council.⁸ Imposing a tenfold penalty makes sense when there is an unauthorized charge created and levied by a ministerial official. Here, the Treasurer was merely collecting pursuant to County ordinances.

S.C. Code Ann. §§ 8-21-10 and 8-21-30 have no application to these road maintenance fees, and the Defendant Goings cannot be held liable under S.C. Code Ann. § 8-21-30 for charging a fee for a service that is not enumerated in S.C. Code Ann. § 8-21-310.

The Plaintiffs' Third Cause of Action against the County Treasurer for the recovery of what are alleged to be improperly assessed and collected fees pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30 is dismissed.⁹

ARTICLE I, § 3 OF THE SOUTH CAROLINA CONSTITUTION

Plaintiffs allege in their Fourth Cause of Action a loss of a property interest without due process of law. Plaintiffs do not have a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. See *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019), where the South Carolina Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261.

⁸ Of all the chapters referenced in S.C. Code Ann. § 8-21-10, a county treasurer is mentioned only in a single Code section, S.C. Code Ann. § 8-21-310. In that section, the county treasurer is named, in addition to the clerk of court and register of deeds, as being authorized to charge filing or recording fees in expressly stated amounts for a variety of legal documents.

⁹ There is not a sufficient record at this stage to adopt the Defendants' argument that S.C. Code Ann. § 8-21-30 has been impliedly repealed by the South Carolina Tort Claims Act. It is argued that § 8-21-30 pre-dates the South Carolina Tort Claims Act and the waiver of sovereign immunity.⁹ For the reasons set forth in the discussion on Plaintiffs' Second Cause of Action, the Defendants contend that § 8-21-30 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. This Court declines to rule on this issue in light of the other bases for dismissal.

Therefore, the Court concludes that the Plaintiffs are precluded from recovering money damages for the alleged violation of the South Carolina Constitution, and as a result, the Fourth Cause of Action is dismissed.

THEREFORE, IT IS ORDERED, after reconsideration, that the Defendants' Motion to Alter or Amend is granted in part and denied in part, as set forth above. The Complaint remains dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Mark Gregory Thompson and Jane Page)
Thompson, individually and on behalf)
of all those similarly situated,)
Plaintiffs,)
vs.)
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 City Council,)
and Stuart Bedenbaugh in his official)
capacity as City Manager of Aiken,)
Defendants.)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

Civil Action Number: 2021CP0202323

**ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
WITHOUT PREJUDICE JASON GOINGS,
IN HIS OFFICIAL CAPACITY AS
TREASURER OF AIKEN COUNTY,
and AIKEN COUNTY, and DISMISSING
BY CONSENT CLAY KILLIAN, IN
HIS OFFICIAL CAPACITY AS AIKEN
COUNTY ADMINISTRATOR, and
AIKEN COUNTY COUNCIL**

Heard: April 20, 2022 via Webex Virtual Courtroom by consent

Attorney for Plaintiffs: William C. Lewis

Attorney for Aiken Co. Defendants (Killian, Goings, County Council, & Aiken County): Bradley T. Farrar

Attorney for City of Aiken Defendants (City Council, Bedenbaugh, & the City): Andrew Lindeman

Court Reporter: None – Webex recording procedure, by consent

A Rule 12(b)(6) motion to dismiss the Complaint, with prejudice, or, in the alternative, to dismiss the case without prejudice for lack of subject matter jurisdiction has been brought by the Defendants Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, and Aiken County.¹ Because the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) is binding upon this court, the class action lawsuit against

¹ Two Defendants were dismissed by agreement. The motion was originally brought by 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. Plaintiffs agreed to dismiss, without prejudice, Aiken County Council and Clay Killian, as Aiken County Administrator.

the parties designated above is dismissed, without prejudice. Because of the dismissal on this ground, this order does not address the other issues raised.

BACKGROUND

The Plaintiffs challenge the alleged wrongful collection of the Aiken County Road Maintenance Fee beginning in 1992 and continuing each year since. The Plaintiffs rely on *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court ruled that a Greenville County road maintenance fee is invalid because it is actually a tax that violates S.C. Code Ann. § 6-1-310. Properly enacted service or user fees are permitted under § 6-1-330.

The First Cause of Action seeks a judgment declaring the current and former Aiken County's fees are taxes disguised as fees. In the other causes of action, the Plaintiffs seek for themselves and as a class to recover monetary relief for refunds of fees previously paid. The Plaintiffs assert three causes of action for monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 for illegally collected fees and for a penalty of ten times the fees against the Treasurer only; and (3) a claim for violation of Article I, § 3 of the South Carolina constitution against all Defendants.

The Plaintiffs' memo in support of the motion begins, as follows:

On June 30, 2021, the South Carolina Supreme Court announced to all counties in this state that fees, like the Road Maintenance Fees at issue, are illegal and not authorized under South Carolina law. See *Burns v. Greenville County Council*, 433 S.C. 583, 590 (2021) (“Going forward, courts will carefully scrutinize so-called ‘service or user fees.’”) (J. Kittredge, concurring). The Defendants in this action (both Aiken County and the City of Aiken) had all but identical Road Maintenance Fees to the one invalidated in *Burns*. Given this, post the *Burns* decision, Aiken City Defendants have repealed their illegal Road Maintenance Fee, but have failed to refund any of the illegal fees collected. Compl. ¶ 37. Interestingly, despite having an identical ordinance, Aiken County continues to collect monies pursuant to this illegal fee. *Id.* ¶ 26. As a result, Defendants are

hoarding millions in illegally collected Road Maintenance Fees that they refuse to return to their citizenry. Id. ¶¶ 10, 42.

Contrary to this argument, *Burns* does not appear to declare all such fees invalid, and it leaves open the ability to collect maintenance fees, if the proper procedures are followed. A main question concerning this motion is the appropriate forum for determining whether Aiken County's fees are permissible or are taxes disguised as fees. The court does not reach that issue because the Plaintiffs cannot proceed in a class action under the statute.

STANDARD

At the Rule 12(b)(6) stage, the court is required to take all averments in the Complaint and all reasonable inferences therefrom in the light most favorable to the Plaintiffs. Dismissal is a drastic remedy that is to be invoked cautiously, and the inquiry is generally limited to reviewing the four corners of the Complaint.

GROUND'S ASSERTED FOR DISMISSAL

The Defendants raise several grounds for dismissal of the Complaint. They maintain that the Plaintiffs' claims are premised on their assertion that the fee is actually a tax and that challenges of taxes fall within the Revenue Procedures Act ("RPA"). The RPA establishes that claims for refunds of money paid for taxes are made through an administrative process, that declaratory judgment actions are barred in circuit court (except where there is a constitutional challenge to the tax), and that class actions are prohibited. Defense counsel has also raised the issue that the claims are barred by sovereign immunity, but that relates only to the unjust enrichment claim.

Subject Matter Jurisdiction

The Defendants argue that the RPA vests exclusive jurisdiction over tax disputes to an administrative process, with review by the Administrative Law Court and the South Carolina Court of Appeals. Subsections (A) and (B) of § 12-60-80 read:

§ 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) Except as provided in subsection (B), *there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.*

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

The undersigned judge has wrestled extensively with the issues related to this motion and has asked for additional input of counsel following the hearing. Both sides have responded, and both have submitted orders from learned circuit judges who reached different conclusions.² The court is particularly concerned about whether the Plaintiffs can seek relief in the circuit court to answer the fundamental question of whether Aiken County's fees are unlawful, perhaps through a bifurcated procedure. The court is also concerned about the impact of the definitions section of the RPA, such as the definition of the words "tax" and "Department."³ Definitions may impact the analysis by limiting the ordinary and customary scope and meaning of words. Ultimately, this court cannot get around the holding in *Aiken*.

Aiken was decided based on a catchall phrase that is unique to the class actions. (§12-60-80(C)). The dispute in *Aiken* concerned hospital debts from governmentally owned hospitals, which are permitted to contract with the Department of Revenue to collect those debts under §12-

² Motions to alter or amend have been filed with some or all of those circuit judges who have ruled.

³ The definitions section of the Revenue Procedures Act, §12-60-30(27) defines the term "tax," as follows: "'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." "Department" is defined as the South Carolina Department of Revenue.

4-580. An issue was raised as to whether these debts fell within the definition of taxes in the RPA, but the Supreme Court did not deem it necessary to decide that issue.⁴

Our Supreme Court in *Aiken* focused on the so-called "catchall" provision of §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" *Aiken* states:

[S]ubsection 12-60-80(C) provides:

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.* (emphasis added to catchall clause). The answer to the question of whether this action may proceed as a class action is found in our analysis of the catchall clause of subsection (C). Therefore, we need not address the issue of whether the debts purportedly owed by Respondents to the hospitals are "taxes" as that term is defined in subsection 12-60-30(27) of the RPA. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when the disposition of a prior issue is dispositive of the appeal).

We reverse the circuit court and hold this case cannot proceed as a class action against the Department.

While *Aiken* involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection, all of the Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

⁴ In this court's view, there was a much more solid position in *Aiken* that the collection of debts fell within the definition of "tax" because they were subject to "collection by the department."

Most critically regarding the pending motion, Aiken states, "We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class action' in the catchall clause of subsection (C) to the specific subject of taxes." 429 S.C. 414, at 420.

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice, as to the Defendants named as bringing this motion or being dismissed by consent. Since the case is being dismissed as to these Defendants, the other issues raised by the parties are not addressed in this order.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

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RECEIVED

Oct 12 2023

SC Court of Appeals

Certification of Counsel

The undersigned hereby certifies that the record on appeal contains all materials proposed to be included by any of the parties and not any other materials.

/s/ William C. Lewis

William C. Lewis

will@richardsonthomas.com

Richardson Thomas, LLC

1513 Hampton Street, First Floor

Columbia, SC 29201

(803) 281-8150

Dated: October 12, 2023