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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442
Case No. 2021-CP-02-02323

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

v.

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

BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

The Appellants Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit as a class action against the Respondents to challenge the alleged wrongful collection of road maintenance fees that were imposed by ordinance by the Aiken County Council in 1992 and by the Aiken City Council in 2016. The Appellants 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 violates the requirements of S.C. Code Ann. § 6-1-630 and is actually an illegal tax. The Supreme Court thus "declare[d] the road maintenance taxes … are invalid under South Carolina law." 861 S.E.2d at 31. The Appellants contend that the Respondents' road maintenance fees are indistinguishable from the similar fee imposed by Greenville County and invalidated as a "tax" in *Burns*.

In 1992, the Aiken County Council adopted Ordinance Number 92-5-19 which imposes a fifteen-dollar road maintenance fee "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." *See*, Complaint, ¶ 22. (R. 45). Aiken County's road maintenance fee was adopted weeks after the Supreme Court issued its opinion in the case of *Brown v. County of Horry,* 308 S.C. 180, 417 S.E.2d 565 (1992), where the Court upheld a fifteen-dollar road maintenance fee on all vehicles registered in the county as a valid uniform service charge under S.C. Code Ann. § 4-9-30(5)(a).

In 2016, the Aiken City Council passed Ordinance Number 06202016 which amended the Aiken City Code to establish a road maintenance fee which became effective January 1, 2017. (R. 74-75). Following the *Burns* decision, on August 23, 2021, the 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. (R. 73). In addition, Ordinance Number 08232021F required the City to reimburse all road maintenance fees that have been paid since July 1, 2021. (R. 73).

The Appellants allege that the Respondents' road maintenance fees are invalid. They sought a declaratory judgment to that effect. They also sought monetary relief in the form of a refund of the road maintenance fees previously paid. The Appellants asserted three causes of action seeking that monetary relief: (1) an equitable claim for unjust enrichment against all Respondents; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 which is asserted again the Aiken County Treasurer only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Respondents.

The Aiken County Respondents filed a motion to dismiss on December 1, 2021. (R. 86-87). The Aiken City Respondents filed a motion to dismiss and/or motion for judgment on the pleadings on December 8, 2021. (R. 172-176). Those motions were heard by Circuit Court Judge William P. Keesley at a hearing held on April 30, 2022.

Prior to that hearing, the parties entered into a Partial Stipulation of Dismissal filed April 13, 2022, which narrowed some of the claims and dismissed several of the parties. The Appellants agreed to dismiss this action against Aiken County Council and Clay Killian in his official capacity as Aiken County Administrator. (R. 225-226). The Appellants also 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." (R. 225). That was the only claim alleged against Bedenbaugh, and accordingly, he was dismissed from this action.

During the hearing held on April 30, 2022, the Appellants, through their counsel, also conceded that the First Cause of Action seeking a declaratory judgment is moot as to the City of Aiken because the Aiken City Council repealed the City's road maintenance fee ordinance effective July 1, 2021. (R. 452). At the hearing, the Appellants, through their counsel, also agreed to the dismissal of their Fourth Cause of Action because they cannot seek monetary relief pursuant to the South Carolina Constitution. (R. 451). Thus, as the trial court determined, the Appellants' First and Fourth Causes of Action against the City Respondents were dismissed by consent. That left the Second Cause of Action for unjust enrichment as the only remaining claim against the City Respondents. (R. 10).

By companion Orders filed August 8, 2022, the trial court initially addressed the Respondents' Rule 12 motions. Those companion Orders dismissed the Appellants' Complaint without prejudice for lack of subject matter jurisdiction. The trial court declined to reach certain jurisdictional defenses and sovereign immunity defenses asserted by the Respondents, and instead ruled that this class action lawsuit is barred by operation of S.C. Code Ann. § 12-60-80(C) and its construction by the Supreme Court in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). (R. 1-17).

In response thereto, the Appellants filed motions for reconsideration as to the dismissal of their Complaint. (R. 257-271). The trial court then disposed of those reconsideration motions by companion Orders filed January 4, 2023, where the court "reaffirm[ed] its prior ruling that the remaining … defendants cannot be sued in a class action." (R. 14, 16). In those same January 4,

2023 Orders, the trial court explained that "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 relating to the remaining issues that were not specifically ruled upon." (R. 14, 16). Subsequently, the trial court held a hearing on January 13, 2023, and received additional arguments on the remaining claims and defenses.

By Order filed February 23, 2023, the trial court dismissed the Appellants' Complaint against the Aiken City Respondents. (R. 18-23). The trial court found that "[t]he 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," specifically pursuant to the South Carolina Revenue Procedures Act. (R. 20-21). The trial court further ruled that "[t]he plaintiffs have administrative remedies that they have not exhausted under the RPA." (R. 21). Finally, the trial court concluded that the remaining cause of action for unjust enrichment against the City is barred by sovereign immunity. (R. 22).

Thereafter, by Order filed March 9, 2023, the trial court similarly dismissed the Complaint without prejudice as to the Aiken County Respondents. (R. 24-36). In addition to the same rulings as to subject matter jurisdiction and sovereign immunity, the trial court also dismissed the cause of action alleged against the Respondent Goings pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30. (R. 34).

The Appellants thereafter filed two Notices of Appeal. No further Rule 59(e) motions were filed.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning,* 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

In *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993), this Court explained that "[t]he question of subject matter jurisdiction is a question of law for the court." 431 S.E.2d at 631. This Court reaffirmed the long-standing principle that "every court has the power and duty to determine whether it has jurisdiction which includes the power to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." 431 S.E.2d at 632.

ARGUMENTS

I. The trial court correctly ruled that the Circuit Court lacks subject matter jurisdiction over the Appellants' claims because claims for the alleged illegal or wrongful collection of taxes are exclusively heard pursuant to the South Carolina Revenue Procedures Act.

The Appellants allege that the Respondents wrongfully collected road maintenance fees, and in making that claim, they rely on the holding 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.

As a threshold issue, the Respondents challenged whether the Circuit Court lacks subject matter jurisdiction to decide a case involving the wrongful collection of taxes. The trial court determined that "the challenges raised in the Complaint are to [be] addressed through the RPA," which is a reference to the Revenue Procedures Act (RPA), S.C. Code Ann. § 12-60-10, *et seq*. (R. 28). The trial court's jurisdictional ruling is correct and should be affirmed.

An action for the wrongful collection of taxes falls within the scope of the RPA. 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 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(8). (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 Respondents' road maintenance fees.

The Appellants counter by arguing that the RPA is not applicable to the road maintenance fees because they are not a "tax" as defined under the RPA. Curiously, the Appellants now suggest that the decision of the Supreme Court in Burns referring to the road maintenance fee as a "tax" is

mere dicta.[1] In *Burns*, the Supreme Court writes: "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." *Burns*, 861 S.E.2d at 34. The Appellants' suggestion that the road maintenance fees are not a "tax" is curious because their claim that the road maintenance fees have been wrongfully collected is premised entirely on them actually being a tax. The trial court recognized that very premise: "Based on the pleading, any invalidity of the Aiken County ordinance requires its [sic] actually being a tax." (R. 27).

At any rate, 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. Notably, S.C. Code Ann. § 12-45-430 provides in relevant part: "A county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, *and all other charges included on the tax bill* have been paid in full. S.C. Code Ann. § 12-45-430." (Emphasis added). Ordinance Number 06202016, as enacted by Aiken City Council, provided as follows prior to its repeal:

> 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 of Aiken* 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

[1] *See, Drummond v. Beasley,* 331 S.C. 559, 503 S.E.2d 455 (1998) (characterizing as dicta certain language in a case concerning a subject not within the question before the court); *Hampton v. Richland County,* 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of a legal principle in an opinion was dicta where it was "clearly unnecessary to a resolution of the issue before the court"); *Dennis v. South Carolina National Bank,* 299 S.C. 34, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing language in a case as dicta because it was "an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof").

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

See, Complaint, ¶ 27. (R. 45-46). (Emphasis added). As the italicized language provides, the "tax" as found by the Supreme Court, was assessed "on each motorized vehicle licensed in the City of Aiken." Similarly, pursuant to Ordinance No. 92-5-19, the Aiken County Council adopted a fifteen-dollar vehicle road maintenance fee on all motorized vehicles licensed in Aiken County, and that fee is collected with other real and personal property taxes. Aiken County's road maintenance fee is not tied to the use but instead to the ownership of personal property. Ordinance No. 92-5-19 reads:

> 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.

See, Complaint, ¶ 22. (R. 45). (Emphasis added).

Thus, the trial court correctly found that the road maintenance fees, if deemed a "tax" as in *Burns*, would be a "property tax" under the RPA. As the trial court explained, "[t]he only way [plaintiffs] 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." (R. 19).

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 his 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). As the Supreme Court explained in *Brackenbrook North Charleston LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004), when the RPA was first enacted in 1995, S.C. Code Ann. § 12-60-20 stated the RPA was intended "to provide the people of this State with a straight forward procedure to determine any disputed revenue liability." 602 S.E.2d at 42, *citing* S.C. Code Ann. § 12-60-20 (1995). Although the precise verbiage of that section was revised in 2000 and again in 2007, it is generally recognized that the RPA was designed and intended to address tax disputes including property tax disputes with local governmental entities.

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 Supreme 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. As indicated, the Appellants rely on *Burns* in arguing that the Respondents' road maintenance fees are an illegal tax (despite now erroneously referring to that as "dicta"). 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).

Based thereon, the trial court correctly ruled that the Circuit Court lacks subject matter jurisdiction, and consistent with S.C. Code Ann. § 12-60-3390, this action is dismissed without prejudice. The trial court correctly ruled that the Appellants' exclusive remedy is pursuant to the RPA and must be pursued in the Administrative Law Court.

II. The trial court correctly ruled that the Appellants' class action lawsuit is barred by operation of S.C. Code Ann. § 12-60-80(C).

The trial court also ruled that the Appellants' class action lawsuit is barred by operation of S.C. Code Ann. § 12-60-80(C) and its construction by the Supreme Court in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). The Appellants challenge that ruling.

This trial 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 be affirmed. 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 Respondents which both clearly qualify as "political subdivisions," 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. *See also, Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555, 560 (2017) ("[t]he plain language of [S.C. Code Ann. § 12-60-80(C)] prohibits a claim for a tax refund from being brought as a class action in any court of law in this state").

Importantly, and as properly analyzed by the trial 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. The same is true in the case at bar.

In the lower court, the Appellants insisted 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 the trial court correctly ruled, the prohibition on class actions applies not only to the Department of Revenue hut also to "political subdivisions or their instrumentalities" which is inclusive of counties and municipalities, including Aiken County and the City of Aiken.[2] On appeal, the Appellants now argue that the prohibition on class action applies only to claims for declaratory or injunctive relief asserted against "political subdivisions or their instrumentalities." That limiting language appears nowhere in S.C. Code Ann. § 12-60-80(C).

The Appellants also argue 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.[3]

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[2] The Appellants do not dispute that Aiken County and the City of Aiken qualify as "political subdivisions."

[3] To support their position that S.C. Code Ann. § 12-60-80(C) does not prohibit class actions against political subdivisions, the Appellants in footnote #1 cite to several lawsuits involving "class actions certified under Rule 23, SCRCP. litigated, and resolved against political subdivisions, none of which involve SCDOR or Title 12." *See*, Appellants' Opening Brief, p. 20. However, that argument is not persuasive. It is axiomatic that a court's 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). The same is true for trial courts which only address issues and defenses raised by the parties. *See, City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462, 464 (Ct. App. 2004) ("[i]t is an error of law for a court to decide a case on a ground not before it"). A review of the cases cited by the Appellants does not show that S.C. Code Ann. § 12-60-80(C) was ever raised to nor addressed by the courts in any of those cases. Certainly, none of those

In sum, the trial court's analysis and application of S.C. Code Arm. § 12-60-80(C) as construed by the Supreme Court in *Aiken* is a correct one.[4] The Appellants are barred from bringing a class action against the Respondents for the refund of the road maintenance fees that have been paid by the purported class members, including under a theory of unjust enrichment.

III. The trial court correctly ruled that no cause of action may be maintained by the Appellants against the Respondent Goings pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30 for the recovery of the amounts paid to Aiken County as a road maintenance fee.

In their Third Cause of Action, the Appellants allege that the Respondent Jason Goings, as the Aiken County Treasurer, is liable under S.C. Code Ann. §§ 8-21-10 and 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 Appellants.[5] S.C. Code Ann. § 8-21-30 provides:

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cases were reviewed by an appellate court where S.C. Code Ann. § 12-60-80(C) was raised and adjudicated.

[4] Despite the Supreme Court's broad reading of the scope of the RPA in *Aiken*, the Appellants point to the earlier case of *Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636 (2006), as requiring a narrow reading of S.C. Code Ann. § 12-60-80(C). The Appellants' reliance on *Buist* is misplaced. *Buist* involved a claim for a refund of interest paid to a delinquent tax collector under the Alternate Procedure for Collection of Property Taxes Act, S.C. Code Ann. § 12-51-40, *et seq*. The Court of Appeals issued an unpublished opinion in September 2003, which was then affirmed as modified by the Supreme Court in January 2006. The interest at issue was paid in 1997. At that time, the controlling version of S.C. Code Ann. § 12-60-80 read differently than what it provides today. S.C. Code Ann. § 12-60-80 was later amended in 2003 to include the subparts at issue in the case at bar, including S.C. Code Ann. § 12-60-80(C).

[5] The Third Cause of Action was brought against Clay Killian, in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Aiken County Treasurer, and Stuart Bedenbaugh, in his official capacity as the City Manager for the City of Aiken. In the Partial Stipulation of Dismissal filed April 13, 2022, the Appellants stipulated to the dismissal of this cause of action against Killian and Bedenbaugh. (R. 225). The Third Cause of Action proceeded only against Goings.

> 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 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.

S.C. Code Ann. § 8-21-10. (Emphasis added).[6]

As the trial court noted, "[t]he Supreme Court in *Burns* makes no mention of the invalidity of Greenville County's ordinances under § 8-21-10, *et seq.* It discussed 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." (R. 32). Ultimately, the trial court dismissed the Appellants' Third Cause of Action on the basis that "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

[6] 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."

S.C. Code Ann. § 8-21-310." (R. 34). On appeal, the Appellants contend that the trial court erred in dismissing their cause of action brought pursuant to S.C. Code Ann. § 8-21-30.

As the trial court correctly recognized, a cause of action under S.C. Code Ann. § 8-21-30 may be asserted only against an "officer" identified in the chapters of the Code of Laws as referenced in the highlight portion of S.C. Code Ann. § 8-21-30 above. A cause of action exists only 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 an appropriate starting point, the trial court focused on the referenced chapters in S.C. Code Ann. § 8-21-10. 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**,** treasurer, 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 Respondent Goings is the Aiken County Treasurer.[7] 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

[7] 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 Respondent Goings, as the County Treasurer, is not a "state agency, department, board, committee, commission, or authority." Instead, he holds a county elected position.

being S.C. Code Ann. § 8-21-310. In that code 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. 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 Appellants' 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. The Code of Laws contains numerous fees and costs that can be charged by the government for a myriad of functions.[8] 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. However, the "road maintenance fee" at issue is not one of the fees and costs provided for in any of the referenced chapters.

Consistent with the trial court's ruling, 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. which is the only section referencing a county treasurer, there is no mention of road maintenance fees charged by the county treasurer. S.C. Code Ann. § 8-21-310 applies only to a myriad of "filing fees." Therefore, as the trial court ruled, the Respondent 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.

[8] The trial court recognized that 59 of the 63 titles that make up the South Carolina Code of Laws include references to various fees. In fact, there are in excess of five hundred separate fees codified in the Code of Laws. (R. 33).

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 chapters referenced in S.C. Code Ann. § 8-21-10.

Third, road maintenance is not one of the "services enumerated" in the chapters referenced in S.C. Code Ann. § 8-21-10.

Fourth, because the Appellants are relying on the *Burns* decision to declare the Aiken County road maintenance fee invalid, it would logically follow that the road maintenance fee is a tax rather than a fee. S.C. Code Ann. § 8-21-30 is not applicable to a "tax" or as a mechanism to seek a refund or monetary recovery of a paid "tax." In effect, the Appellants cannot have it both ways. They cannot argue that the road maintenance fee at issue is a "fee" to claim relief under S.C. Code Ann. § 8-21-30, while arguing that the road maintenance fee is an illegal "tax" to have it declared invalid under the *Burns* decision. The trial court recognized this inconsistency:

> 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, <u>any invalidity of the Aiken County ordinance requires it actually being a tax</u>.

(R. 27). (Emphasis in original).

And fifth, S.C. Code Ann. § 8-21-30 authorizes a claim "[i]f any officer herein named shall any other fee or fees for any services herein mentioned." S.C. Code Ann. § 8-21-30. The road maintenance fee at issue, while not for "any services herein mentioned, is also not "charged" by the Aiken 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. As the trial court explained, the Treasurer fulfills

a ministerial duty of "collecting" taxes, fees, and service charges that are included by law on tax bills. The Treasurer does not impose or "charge" the road maintenance fee. (R. 33).[9]

For each of these reasons, the trial court correctly ruled as a matter of law the no cause of action may be maintained by the Appellants against the Defendant Goings pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30 for the recovery of the amounts paid to the County as a road maintenance fee. The dismissal of the Third Cause of Action on these bases should be affirmed.

IV. The trial court correctly ruled that the Appellants' claim for unjust enrichment is barred by sovereign immunity.

The trial court correctly ruled that the Appellants' Second Cause of Action for unjust enrichment is barred by sovereign immunity because "[t]he 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." (R. 29).

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 banned from bringing tort claims against governmental entities. The doctrine of sovereign immunity

[9] The Appellants clearly recognize that the County cannot be liable in that the Third Cause of Action is not asserted against the Respondent Aiken County.

> 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 reinstated sovereign immunity and declared "the public policy of the State of South Carolina [to be] 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." S.C. Code Ann. § 15-78-20(a). (Emphasis added). Moreover, the General Assembly stated its intent as follows:

> "The 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. The General Assembly additionally 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). Furthermore, the General Assembly clearly announced that "[a]ll other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

As the trial court correctly recognized, the General Assembly included "an explicit carveout for actions arising in contract." (R. 30). S.C. Code Ann. § 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." S.C. Code Ann. § 15-78-20(d). This demonstrates, as the

trial court notes, that "the General Assembly considered the impact upon other remedies, including equitable remedies, in making its determination to reestablish sovereign immunity." (R. 30).

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.[10] 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); *Sandel v. State*, 126 S.C. 1, 119 S.E. 776, 793 (1922) (recognizing that "[s]tatutes in derogation of the sovereignty of the state must be strictly construed, and a waiver of immunity from liability must be clearly expressed").

The trial court's ruling that a governmental entity is entitled to sovereign immunity for equitable claims such as unjust enrichment is also 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

[10] 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.

> 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).

To support their position that a claim for unjust enrichment is not barred by sovereign immunity, the Appellants cite several appellate decisions, where "claims for unjust enrichment [were allowed] to proceed against the State." However, that argument is flawed. As noted above, 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 Appellants does not reflect that the defense of sovereign immunity was

even raised, let alone addressed, on appeal. It is also well settled that sovereign immunity is an affirmative defense, which if not raised, is waived. *See, Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894, 898 (1994) ("sovereign immunity is an affirmative defense that must be pled"). Therefore, if sovereign immunity was not raised in the cases cited by the Appellants, then the appellate courts could not have addressed an unpled and waived defense. To suggest that the appellate courts implicitly ruled that an unjust enrichment claim is *not* barred by sovereign immunity lacks merit.

The Appellants place considerable weight on the decision of the Supreme Court in the 1937 case of *United States Rubber Products v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937), in which the plaintiff was permitted to sue in equity based upon the sale of a fire hose to a municipal fire department. While the Appellants describe the action as one for unjust enrichment, the opinion reflects that "the plaintiff is not suing upon contract, but for goods had and received." 190 S.E. at 123. The trial court, as affirmed by the Supreme Court, struck two of the defenses asserted by the town. Notably, the opinion describes the defenses as alleged, and the Town did not assert sovereign immunity as an affirmative defense, and sovereign immunity accordingly is not addressed in the opinion. Instead, the town asserted a general denial as well the following two defenses which were ultimately stricken:

> The second defense is a denial that the hose was ordered or accepted from the plaintiff, or its assignor, by any officer or agent having authority to bind the defendant, except one item of 750 feet of hose, the purchase of which was authorized by the town council on July 6, 1931. It is also alleged that the defendant had no funds with which to pay for such purchase, as all available revenues for the current year had been previously pledged and appropriated to other purposes, and that the effect of said attempted contract to purchase the hose was an effort to illegally create a debt to be paid at a future date, as evidenced by the contract for the 750 feet of hose attempted to be executed on July 6, 1931.

> Also that the contract to purchase the hose is illegal because the payment of the purchase price was to be made out of taxes of another fiscal year and not out of current funds; and that no officer or agent of the town had the power thus to create a future obligation, or a bonded debt; and that the acts of the town council, or any officer or agent of the town, are ultra vires, in regard to the debt created by reason of the purchase of the hose.
>
> The third defense is that the debt created is not authorized by law but violates the Constitution, because no election was held to authorize the creation of the debt, and because the current taxes were not available to pay the debt.

190 S.E. at 122-123. The Supreme Court later summarized those defenses as follows:

> The defenses struck out by the court do not deny that the goods were received or used by or in behalf of the defendant and for its benefit and gain, but only denies the authority of the defendant's agents to do so. The material issue under the allegations of the complaint is, not what the claimant has parted with to officers who are not authorized to take the goods for the town, but whether the town has been benefited, and to what extent, or how much is the reasonable value of the goods had and received.

190 S.E. at 123. Clearly, the issue decided on appeal was not a sovereign immunity defense, which either was not pled or was not adjudicated by the trial court before this interlocutory appeal was taken. Instead, the issue on appeal revolved around the authority of the town officials to have incurred debt in purchasing the fire hose. In short, the *United States Rubber Products* case does not stand for the proposition that sovereign immunity had been waived in 1937 for the government to be liable for money damages under an unjust enrichment theory.

Nonetheless, even if a governmental entity was subject to suit for money damages in 1937 on an equitable theory, that would have been part of the "scattered patchwork of sovereign liability" described in *McCall* and *Murphy,* as discussed above. As the Supreme Court explains in *Murphy,* that "scattered patchwork of sovereign liability" was wiped clean with the enactment of the Tort Claims Act which first restored sovereign immunity in total (with an exception for

contract claims) and then provided for a "limited waiver of governmental immunity." *Murphy*, 455 S.E.2d at 690. That limited waiver of governmental immunity did not include a waiver of immunity for equitable claims seeking monetary relief.

In sum, the Appellants' 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.[11]

V. The trial court correctly dismissed the Appellants' claim for a violation of procedural due process under the South Carolina Constitution.

In their Fourth Cause of Action, the Appellants allege a loss of a property interest without due process of law. Construing that as a claim for monetary relief, the trial court correctly ruled that the Appellants 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),[12] 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

[11] This very reasoning was applied in two earlier Circuit Court decisions which are submitted not as precedent 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 is included in the lower court record. (R. 235-256).

[12] 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.

S.E.2d at 261. Thus, the Appellants are precluded from recovering money damages for the alleged violation of the South Carolina Constitution.

On appeal, the Appellants argue that the trial court erroneously dismissed their due process claim. The Appellants have confirmed that they "do not seek monetary relief from the violation of due process that Appellants alleged against Respondents." *See*, Appellants' Opening Brief, p. 31. Instead, they reference paragraph 91(f) of the Complaint and claim they are seeking presumably a declaratory judgment "finding that [Defendants] deprived Plaintiffs and Class members of rights secured by the Laws of South Carolina." *See*, Appellants' Opening Brief, pp. 31-32.

The trial court did not interpret the Fourth Cause of Action as a claim for declaratory relief. When the trial court did not address the claim as such, the Appellants had a duty to raise that exception for the first time by way of a Rule 59(e) motion to allow the trial court the opportunity to address the issue. While the Appellants did file a Rule 59(e) motion, that issue was never raised. As the Supreme Court has explained, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731, 733 (1998).[13]

[13] In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by*, the trial court." *Id*. (Emphasis in original).

Nonetheless, to the extent that the Fourth Cause of Action seeks only a declaratory judgment, that due process claim is easily disposed of by way of additional sustaining ground. It is well settled in constitutional law that where a litigant challenges a legislative enactment as violative of procedural due process, it is the legislative process itself that provides all of the process that is due. The United States Supreme Court explained this principle in *Atkins v. Parker*, 472 U.S. 115 (1985), which addressed a procedural due process challenge to a congressional reduction in food stamps benefits. The Supreme Court explained that "[t]he procedural component of the Due Process Clause does not impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits." 472 U.S. at 129. Accordingly, "a welfare recipient is not deprived of due process when the legislature adjusts benefit levels. The legislative determination provides all the process that is due." 472 U.S. at 129-130.

The Eleventh Circuit has explained the rationale for this rule of law in *75 Acres, LLC v. Miami-Dade County, Fla.*, 338 F.3d 1288 (11th Cir. 2003). The court explained:

> [I]f government action is viewed as legislative in nature, property owners generally are not entitled to procedural due process. Or, as one set of commentators has summarized, "When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process - the legislative process. The challenges to such laws must be based on their substantive compatibility with constitutional guarantees." By contrast, if government conduct is viewed as adjudicative in nature, property owners may be entitled to procedural due process above and beyond that which already has been provided by the legislative process. When an adjudicative act deprives an individual of a constitutionally-protected interest, procedural due process is implicated, and a court would apply the familiar three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), to determine the dictates of due process in that particular situation.

338 F.3d at 1294. (Citation omitted). Similarly, in *Bauer v. Summey*, 568 F.Supp.3d 573 (D.S.C. 2021), Judge David C. Norton, Jr. recognized that "[a]n essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. However, an individual's due process rights are not violated by a law of general applicability since 'the legislative determination provides all the process that is due.'" 568 F.Supp.2d at 588, *citing Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982).

In the case at bar, the Appellants are asserting a procedural due process claim against the Respondents for the enactment of ordinances requiring annual payment of road maintenance fees. Those ordinances are laws of general applicability enacted by legislative bodies, namely the governing bodies of Aiken County and the City of Aiken. As such, the Appellants have already received all the process that is due. The due process was supplied by the legislative process. For these reasons, to the extent that the Appellants' Fourth Cause of Action seeks declaratory relief for a violation of procedural due process, as they now assert on appeal, that claim was properly dismissed.

VI. As an additional sustaining ground, the Respondents' road maintenance fees ordinances are presumptively legal and valid, and for this additional reason, the Appellants are not legally entitled to a refund of fees paid at the very least prior to the *Burns* decision.

Even if this Court were to hold that the Respondents' road maintenance fees are illegal taxes and that the Appellants have stated a claim to seek a refund in the Circuit Court, the Appellants should be precluded from recovering any fees paid prior to the *Burns* decision. The

trial court did not reach this issue, and as a result, it is submitted as an additional sustaining ground.[14]

The legislative actions taken by the Aiken County Council and the 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* 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. Gen. Op., September 24, 2070, 1970 WL 16966. (Citation omitted).

Based on the presumption of validity, the road maintenance fees collected by Aiken County and the City of Aiken are considered presumptively valid and enforceable. The

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[14] In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id*. *See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

Appellants are therefore not entitled-to the declaratory judgment they seek nor a refund of any fees paid at the very least prior to the *Burns* decision.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents request that this Court affirm the orders of Circuit Court Judge William P. Keesley dismissing the Appellants' Complaint against all Respondents.

Respectfully submitted,

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November 12, 2023

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondents certify that the Final Brief of Respondents complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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November 12, 2023

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court' s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann Law Firm, P.A., does hereby certify that service of the **Final Brief of Respondents** in the above-captioned matter was made upon all counsel of record by email only this the 12th day of November 2023 as follows:

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Via Email and U.S. Mail
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RE: Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated v. Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County, City of Aiken, Aiken City Council, and Stuart Bedenbaugh in his official capacity as City Manager of Aiken
SCCA Appellate Case Number: 2023-000442
Civil Action Number: 2021-CP-02-2323
Claim Number: SF-21-1122-0001
Our File Number: 321.20529

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing the **Final Brief of Respondents** in the above referenced matter. In accordance with Section (d)(1) of this same Order, I am hereby serving copies on all counsel of record by email only.

The bound copy as requested by the Court will mailed to the Court via U.S. Mail. If you have any questions, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Terry E. Richardson, Jr., Esquire *(w/ Enclosure, Via Email Only)*
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