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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable ALJ Durden

ALC Case No. 22-ALJ-17-0398-CC

J.K. Holmes and C.C. Holmes,

Appellants,

v.

Chas. Cty. Assessor,

Respondent.

MOTION FOR ABEYANCE OF ALL TIME LIMITS PENDING RECONSIDERATION AND/OR RESOLUTION OF TIMELY PETITION FOR WRIT OF CERTIORARI AND CONSTITUTIONAL CHALLENGE TO A SINGLE INDIVIDUAL'S OVERREACHING EX PARTE SUMMARY DISMISSAL OF TAXPAYERS' APPEAL BY RIGHT, TO FAILURE TO COMPLY WITH STATUTORY AND CONSTITUTIONAL MANDATES FOR TAXPAYERS' APPEALS, AND/OR TO APPLICATION OF THE IMPROPER LEGAL STANDARD ON APPEAL OF A SINGLE INDIVIDUAL'S OVERREACHING EX PARTE SUMMARY DISMISSAL

The taxpayers timely and respectfully motion this Honorable Court for abeyance of time limits pending reconsideration and/or resolution of timely petition for writ of certiorari and Constitutional challenge to a single individual's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right, to failure to comply with statutory and Constitutional mandates for taxpayers' appeal by right, and/or to application of the improper legal standard on appeal of a single individual's overreaching impermissible sua sponte ex parte dismissal of taxpayers' appeal by right capable of repetition, capable of evading review, and incapable of vindication on appeal. Further, State and Federal case law, statutory laws, and Constitutional laws provide citizens as taxpayers with guarantees, protections, and rights which have been denied including due process, required notice at a meaningful time before disposition, and meaningful opportunity to respond at a meaningful time before disposition. At a minimum, briefing prior to dispositional decision is required and a single individual's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right is reversible error. Further, in the *Navistar* case, the Fourth Circuit ruled that reconsideration is no substitute for pre-decision meaningful opportunity to respond. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). It is unlikely a lower appellate court single individual judge is unfamiliar with this Honorable Court's multiple routine reversals of trial courts for failure to provide due process including required notice and meaningful opportunity to respond at a meaningful time. The appellants are prejudiced thereby. But for denial of substantial rights including due process and fundamental fairness, the outcome should and would be in the taxpayers' favor. Accordingly, it is respectfully requested the motions be granted. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657

S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

The following statutes and South Carolina Constitutional protections, privileges, and immunities are pertinent:

Art. 1, § 23. Provisions of Constitution mandatory.
The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. I, § 22. No person "shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard … and he shall have in all such instances *the right to judicial review*." (Emphasis supplied.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.
The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and *to petition the government or any department, including the matter herein for a redress of grievances.* (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.
The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property, *including taxpayers' appeal by right*, without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.
No bill of attainder, ex post facto law, *no law impairing the obligation of contracts,* nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.
The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; *to be confronted with the witnesses* against him; to have compulsory process for obtaining witnesses in his favor, and *to be fully heard* in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. V, § 8. Election of members of Court of Appeals.
The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.
The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court *shall bind the Court of Appeals as precedents.* (1985 Act No. 9.) (Emphasis supplied.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding.
The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court *shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term.* They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) (Emphasis supplied.)

S.C. Code § 14-8-220

Power of Court and judges to administer oaths and writs; **appeal**. The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** (Emphasis supplied).

S.C. Code § 14-8-80

By statute, the Legislative intent, letter, and spirit of the law *require at least three judges* to constitute a quorum of the Court of Appeals *for de novo interpretation of the law, to decide appeals, and for disposition of appeals by right.* The concurrence of a majority of the judges is necessary to decide cases and there is *no statutory authority* for a single individual's overreaching impermissible sua sponte ex parte dismissal of taxpayers' appeal by right herein. S.C. Code § 14-8-80. (Emphasis supplied.)

Accordingly, a single individual's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right lacks statutory authority and is void/voidable.

INTRODUCTION

The Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in *2024*, what did we do to make sure we kept our democracy intact?" Emphasis supplied. Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of steadfast bravery and unremitting courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our State and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government.

Both State and Federal Constitutions were deliberately crafted to foreclose those abuses here. The framers did not need computers, tablets, or smart phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review.

In the instant case, the taxpayers timely reserve, preserve, do not waive, and expressly request fundamental fairness and substantial rights including but not limited to, meaningful opportunity to be heard at a meaningful time and full, fair, and meaningful review. There are examples of unrepresented parties and traditional filers subjected to a separate second-class system of so-called justice, where the South Carolina Rules of Court are gleefully and cavalierly used as a trap for the unwary. Significantly and materially, there is an abundant body of law decisively declaring separate is never equal. Systemic institutional biases are acknowledged, including but not limited to, prejudice and unequal treatment

with favoritism under Alex Murdaugh's rules of law where the so-called officer of the court enticed judges to authorize his wrongdoing. Unequal treatment and the like threaten our democracy and feed the appearance of the proverbial "rigged" system. This issue is of exceptional importance as it is capable of repetition, capable of evading judicial review, and incapable of adequate remedy on appeal. The following inscription is found at the Four Corners of Law in Charleston, SC: Where the rule of law ends, tyranny begins. The Judge J. Waties Waring Judicial Center is named for the renowned crafter of divine dissents lying in repose in Charleston, who must be turning in his grave at the historically persistent lawlessness of the Four Corners of Law. As set forth more fully below, it is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of smart phones, tablets, computers, and extraordinary and unprecedented public health and affiliated economic emergencies ongoing and still unfolding.

DISCUSSION

To the extent there is no inconsistency, the undersigned incorporates in full by reference the contents of this document. Without being disagreeable, there is disagreement with the overreaching impermissible sua sponte ex parte dismissal of the taxpayers' appeal by right. The caption herein is the same as it appears before the Board below without objection and the same as it appears in the ALC without objection below, the caption reflects the taxpayers who protested below, and the taxpayers are proper parties to taxpayers' appeal by right herein. Objection, if any, is waived. Rule 12, SCRCP. Moreover, the real property is held as tenancy by the entireties. Each party has an undivided interest. Under the facts, the taxpayers on appeal herein are proper indivisible parties in the hearings below and in the taxpayers' appeal by right herein. Under the APA (Administrative Procedures Act), appeal to the Court of Appeals is by right. *See* S.C. Code § § 1-23-380, 1-23-610(A)(1); Toal *et al., Appellate Practice in South Carolina* (2016), Third Ed., p. 85.

The State Constitution mandates that no person "shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... and he shall have in all such instances the right to judicial review." S.C. Const. Art. I, § 22. The South Carolina Constitution mandates hearings and due process for taxpayer protests and taxpayers "**shall have in all such instances the right to judicial review**." S.C. Const. Art. I, § 22 (emphasis supplied). Since 2006, that right to judicial review is the right to appeal the merits to the South Carolina Court of Appeals (COA). *See* S.C. Code § § 1-23-380, 1-23-610(A)(1). Since 2006, taxpayers must file appeals in the COA for that mandatory Constitutional right of judicial review. *See* Toal *et al., Appellate Practice in South Carolina* (2016), Third Ed., p. 84. Accordingly, the taxpayers who are parties to the hearing below must file appeal in the South Carolina Court of Appeals and have a Constitutional right to full, fair, and meaningful judicial review in the public interest. By statute, the Legislative intent, letter, and spirit of the law require at least three judges to constitute a

quorum of the Court of Appeals for interpretation of the law, to decide appeals, and for disposition of the taxpayers' appeal by right herein. The concurrence of a majority of the judges, not a single individual judge, is necessary to decide cases: There is no statutory authority for a single individual judge to decide taxpayers' appeal by right, which renders void/voidable the overreaching impermissible sua sponte ex parte summary dismissal by a single individual of the taxpayers' appeal by right herein. S.C. Code § 14-8-80. Accordingly, it is respectfully requested the motions be granted.

Curiously, the record reflects no motion to dismiss has been filed in this appeal thereby denying the taxpayers substantial rights including due process, required notice, and meaningful opportunity to respond at a meaningful time. Objection, if any, is waived below by the five (5) or more attorneys on the other side. See Rule 12, SCRCP. To the extent, one or more of the five (5) or more attorneys on the other side engaged in impermissible direct or indirect ex parte contact, whether written, oral, email, text, or other, case law directs that the overreaching impermissible sua sponte ex parte summary dismissal by a single individual is void/voidable. See *Burgess v. Stern*, 311 S.C. 326, 428 S.E.2d 880 (1993). To the extent impermissible direct or indirect ex parte contact by untrustworthy assessor in whole or in part caused the overreaching impermissible sua sponte ex parte summary dismissal, that contact is unauthorized and voids the order. The record reflects the taxpayers are denied substantial rights including required notice, lack of meaningful opportunity to be heard at a meaningful time, lack of Record on Appeal (ROA), and lack of affidavit or any factual support for the overreaching impermissible sua sponte ex parte summary dismissal. The ex parte summary dismissal undercuts appearance of a disinterested court and violates State and Federal statutory and Constitutional mandates for transparency, even-handedness, and fundamental fairness regarding taxpayers' appeals by right in the public interest as a matter of public policy. The unequal treatment cannot pass State or Federal Constitutional muster. Accordingly, reversing/vacating the ex parte summary dismissal is respectfully requested.

Further, the underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR,

expressly provide for *de novo* appeal herein of overreaching impermissible sua sponte ex parte summary dismissal by a single judge of taxpayers' appeal by right as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal**.

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Moreover, Rule 240(j), SCACR, is independent of Rule 240(i), SCACR. Significantly and materially, the Legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. S.C. Code § 14-8-220 provides protection for the public, for the integrity of the courts, and for individual judges. Pursuant to S.C. Code § 14-8-220, the proper legal standard, *de novo*, was not applied herein. Accordingly, application of the improper legal standard to the S.C. Code § 14-8-220 appeal herein is reversible as a matter of law. See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the

legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the 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. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

This Honorable Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the Legislature, so the plain language of the statute is given effect. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C., 2000).

"In that vein, we must read the statute so that no word, clause, sentence, provision or part 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." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor,* 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Accordingly, application of the improper legal standard to Rule 240(j), SCACR, appeal herein of a single individual's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right cannot pass statutory or Constitutional muster.

In addition, pursuant to S.C. Code § 14-8-220, the taxpayers respectfully submit Rule 240(j),

SCACR, appeal requires *de novo* review by the court or panel which does not include participation, influence, or direct or indirect ex parte contact by the individual judge who signed the order which is the subject of the Rule 240(j), SCACR, appeal. Appellant filed the motion under Rule 240(j), SCACR, for appeal of a single justice's order, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single justice. S.C. Code § 14-8-220. Meaningful review requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie,* 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). In that case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however:

as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, **it would be unbecoming for a judge**" to sit on the appeal panel for review of his or her own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978) (emphasis supplied). In consideration of legislative intent and the overarching principles incorporated in the State Constitution by its framers, due process requires the lower appellate court judge who individually signed the order not participate, directly or indirectly, on appeal of her decision which is the subject of the Rule 240(j), SCACR, appeal. Accordingly, pursuant to S.C. Code § 14-8-220, the plain language of the statute and due process mandate non-participation in the Rule 240(j), SCACR, appeal by the individual judge who signed the order.

Materially, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal pursuant to S.C. Code § 14-8-220, which is different than the standard of review for Rule 221, SCACR, rehearing. The Rule 240(j), SCACR, motion is an appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted

in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially in that case, the denial of a transfer motion does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, review is that the order is signed by a single judge. Accordingly, the legal standard of review under these circumstances for Rule 240(j), SCACR, appeal is *de novo* and the single individual judge's opinion is reversible as a matter of law in failing to apply the proper legal standard.

The taxpayers reserve, preserve, and do not waive any rights, privileges, or protections. Pursuant to S.C. Code § 1-23-380, the taxpayers are owners who are aggrieved and recognized as proper parties below without objection. S.C. Code § 1-23-310(5). To the extent there is ambiguity, the rule of lenity supports the taxpayers' position. Accordingly, it is respectfully requested the motions be granted.

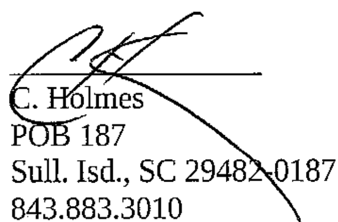
Significantly and materially, the Legislature intended to provide and the letter and spirit of the applicable statutes including S.C. Code § 12-60-2530, provide for taxpayer protections and fundamental fairness in the taxpayers' appeal by right herein. The Legislature mandated statutory protections knowing that lack of fundamental fairness breeds unrest. In fact, that is what led to the birth of this great nation. There is lack of statutory compliance, lack of fundamental fairness, and denial of substantial rights. The taxpayers are prejudiced thereby. But for lack of statutory compliance, lack of fundamental fairness, and/or denial of substantial rights, the outcome should and would be in the taxpayers' favor. In the interests of the public, overreaching attempts to sua sponte ex parte summarily dismiss meritorious taxpayer appeals by right without adequate, if any, factual basis, without mandated due process, without adequate explanation for meaningful review, and without a determination on the

merits cannot pass State or Federal Constitutional muster. Accordingly, it is respectfully requested the motions be granted. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects againsts "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

For substantial justice affecting substantial rights and for good cause, the taxpayers timely motion for abeyance of time limits pending reconsideration and/or resolution of timely petition for writ of certiorari and Constitutional challenge to a single individual's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right, to failure to comply with statutory and Constitutional mandates for taxpayers' appeal by right, and/or to application of the improper legal standard on appeal of a single individual's overreaching impermissible sua sponte ex parte dismissal of taxpayers' appeal by right capable of repetition, capable of evading review, and incapable of vindication on appeal. Accordingly, the taxpayers respectfully request the motions be granted. In the alternative, dismissal should be deferred until final briefing and jointly filed ROA are complete.

Respectfully submitted,



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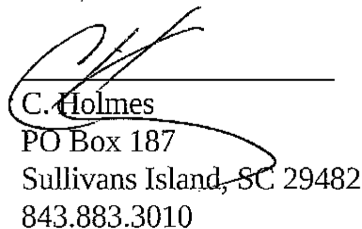
PROOF OF SERVICE

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address:

Chas. Cty. Atty.
4045 Bridge View Dr.
North Chas., SC 29405

Dated 9/29/2024



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