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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Circuit Court Judge of the Ninth Judicial Circuit

App. Case No. 2023-001552

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

Appellants,

v.

Chas. Cty. Assessor,

Respondent.

MOTION FOR RECONSIDERATION AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULE 240(j), SCACR, *DE NOVO* APPEAL OF DISMISSAL WITHOUT FACTUAL SUPPORT OR RECORD ON APPEAL BY AN INDIVIDUAL, AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULE 221, SCACR, PETITION FOR REHEARING, AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

COME NOW THE APPELLANTS respectfully and timely submitting motion for reconsideration and motion for abeyance of time limits pending resolution and, if denied, Rule 240(j),SCACR, *de novo* appeal of lack of jurisdiction pending exclusive jurisdiction in the upper appellate court as well as the pattern and practice of what is essentially improper procedural default, ex parte summary dismissal, and/or denial by a single individual without factual support or record on appeal (ROA) of taxpayers appeal by right and motion for abeyance of time limits pending resolution and, if denied, Rule 221, SCACR, petition for rehearing with a panel which does not include direct or indirect participation by the Rule 240(j), SCACR, panel judges or the single individual judge who signed that order. Accordingly, the appellants respectfully and timely object to denial of substantial rights guaranteed by State and Federal Constitutions including the right and duty of the lower appellate court, in the interest of the citizens of this great State, to enforce statutory taxpayer protections for tax collectors' unauthorized conduct.

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. Lack of fundamental fairness led to the birth of this Great Nation. 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 ministerial clerk uses the South Carolina Rules of Court to gleefully and cavalierly trap 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 sign-off on 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. 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.

FACTS

Facts pertinent to the matter are as follows. Timely objection to the tax collector's assessment was entered. The tax collector reassessed even higher without explanation thereby undercutting reliability of the tax collector's differing appraisals by the same appraiser for the same point in time. The taxpayers appealed to the Board supported by multiple experts including appraiser and professional engineer. Timely appeal to the Administrative Law Court was denied. But for lack of compliance with statutory mandates for taxpayer protections, the outcome should and would be different in the public interest and in favor of the taxpayers. The taxpayers are prejudiced thereby. 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 taxpayers appeals by right. 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. But for lack of statutory compliance, lack of fundamental fairness, and/or denial of substantial Constitutional rights, the outcome should and would be in favor of the taxpayers. In the public interest, overreaching attempts by a single individual to sua sponte ex parte summarily dismiss meritorious taxpayer appeals by right without adequate, if any, factual basis, without compliance with Constitutional and statutory mandates or due process, and without adequate explanation for meaningful review cannot pass State or Federal Constitutional muster.

Out of nowhere, the ministerial clerk of court sent an "Ad Hoc By Clerk" letter without notice, without explanation, and without citation to authority, unreasonably questioning the taxpayers employment and threatening improper procedural default of the taxpayers appeal by right. See

Appendix. To the extent the unequal treatment is influenced in whole or in part by discrimination against a protected class, that conduct is against public policy and the taxpayers object. Objecting to ministerial clerk's overreaching attempts in violation of the SCACR to dismiss taxpayers appeals by right, the taxpayers motioned the lower appellate court. The ministerial clerk of court's next power grab is to entice a single individual lower appellate court judge to engineer sua sponte ex parte summary dismissal of the taxpayers objection before the BAA, the taxpayers appeal before the ALC, and the taxpayers lower appellate court appeal by right without notice to the adversely affected taxpayers, without opportunity to respond, without adequate explanation, and without citation to authority. Many attorneys, if not the majority, and most members of the general public may be unfamiliar with the SCACR. The record reflects abundant examples of ministerial clerk taking unfair advantage of that fact, bending/misrepresenting the rules as a trap for the unwary to evade the merits, failing to comply with the SCACR, changing contact information without notice to adversely affected parties in the middle of appeal in violation of the SCACR without required notice or authorization, entering/threatening unauthorized improper procedural default, failing to forward fee paid motions/petitions to the lower appellate court for interpretation of law, and failing a ministerial clerk's solemn oath and sworn duty to facilitate appeals with even-handedness, transparency, and fundamental fairness as well as multiple examples of what a ministerial clerk could and/or would do and is capable of, when she thinks no one is looking. 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 of undivided interest who are aggrieved and recognized as proper parties below without objection. S.C. Code § 1-23-310(5). The term "party" is defined as each person named or admitted as a party below, as in this case, and as captioned in the proceedings below. To the extent there is ambiguity, the rule of lenity supports the position of the taxpayers. To the extent the tax collector or one of the five (5) or more taxpayer-funded, tax collector attorneys telegraphed direct or indirect objection without copying the taxpayers or filing motion to dismiss, that conduct is unprofessional and opposing counsel waived

objection in the proceedings below. Each of the taxpayer-funded, tax collector attorneys is requested to forward copies of all contact in this matter. Pursuant to Rule 240(j), SCRCP, dismissal by a single individual herein is timely appealed, however, the proper legal standard, *de novo*, is not applied. S.C. Code § 14-8-220. Overworked and underpaid lower appellate court judges may not be neutral decision makers regarding S.C. Code § 14-8-220 and/or its statutorily mandated *de novo* appeal of sua sponte ex parte summary dismissals of taxpayer appeals by right. But for application of the improper legal standard, the outcome should and would be in favor of the taxpayers, not the tax collector. Lack of uniformity by ministerial clerk of the lower appellate court regarding interpretation and/or application of S.C. Code § 14-8-220 is capable of repetition, capable of evading review, and incapable of vindication on appeal. To the extent there is ambiguity, the rule of lenity supports appeal by right by the taxpayers. Pursuant to S.C. Code § 14-8-220, ambiguity regarding the proper legal standard on Rule 240(j), SCACR, appeal in the lower appellate court is a denial of State Constitutional substantial rights:

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 interpretation of the law, to decide appeals, and for*

disposition of taxpayer appeals by right. The concurrence of a majority of the judges is necessary to decide appeals and there is *no statutory authority* for a single individual's overreaching sua sponte ex parte dismissal of taxpayers' appeal by right herein. S.C. Code § 14-8-80. (Emphasis supplied.)

Without being disagreeable, there is disagreement with the overreaching impermissible sua sponte ex parte dismissal/threatened dismissal of the taxpayers' appeal by right pending petition for a writ of certiorari. Accordingly, reversal is respectfully requested.

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, reversal is respectfully requested.

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 before deciding substantive/dispositive matters. Objection by the other side, if any, is waived below by the five (5) or more tax-payer-funded 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 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 tax collector in whole or in part caused the overreaching 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 in the record for the overreaching sua sponte ex parte summary dismissal. The overreaching ex parte summary dismissal of taxpayers appeal by right undercuts appearance of a disinterested court and violates State and Federal statutory and Constitutional mandates for transparency, even-handedness, fundamental fairness, and taxpayer protections 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, reversal 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 judge'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 judge. 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 constitutional 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).

As a threshold matter, the record reflects no motion to dismiss has been filed in this appeal and objection, if any, is waived in the proceedings below. See Rule 12, SCRCP. 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), lack of affidavit or any factual support for sua sponte ex parte summary dismissal, and lack of adequate record for meaningful review. Material to review, it is unlikely a single individual lower appellate court judge is unaware of the

requirement of adequate record for meaningful review. Further, it is likely a single individual lower appellate court judge has participated in lower appellate court reversals of the trial court based on inadequate record for meaningful review. *See State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982). See, e.g., *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4th Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "As indicated above, the district court's analysis ... was quite abbreviated, and the court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). The sua sponte ex parte summary dismissal of taxpayers appeal by right undercuts appearance of a disinterested court and violates State and Federal statutory and Constitutional mandates for transparency, even-handedness, and fundamental fairness regarding taxpayer protests in the public interest. Accordingly, reversal is respectfully requested.

Further, Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. Binding precedent, in the *Price* case, *supra*, provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. As such, there is no statutory authority which renders the ex parte order void/voidable which is hereby requested. "Section 14-5-10 of the South Carolina Code (2017) provides, 'The circuit courts herein established shall be courts of record . . . .'" *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) . Accordingly, reversal is respectfully requested.

By analogy, Rule 241, SCACR, provides:

An *ex parte* order shall issue **only if**:

(A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and (B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. Rule 241(d)(6), SCACR (emphasis supplied).

The record reflects there is inadequate factual support for the sua sponte ex parte summary dismissal and no affidavits or verified petition claiming immediate and irreparable injury, loss or damage will result before the parties can respond. Moreover, the record reflects there is no required notice and no meaningful opportunity for the adversely affected taxpayers to respond at a meaningful time before dismissal. Significantly and materially, the record reflects there is no moving party, no motion, and there is no assertion of exigent or other circumstances to support a claim that notice should not be required. Accordingly, reversal is respectfully requested.

The unauthorized sua sponte ex parte summary dismissal wrongfully ends the appeal for the taxpayers who are proper parties below without objection and who are holders of an undivided interest in the family home as marital property. The Fourth Circuit has rejected the argument that a former spouse's undivided interest in the family home is "cut off" and the family court is the proper forum. *See* In re *Roberge*, 188 B.R. 366 (E.D.Va.1995) (unpublished), aff'd, 95 F.3d 42 (4th Cir. 1996). The owners of an undivided interest are proper parties. The sua sponte ex parte summary dismissal wrongfully ends the appeal for proper parties who are holders of an undivided interest in the marital property. Accordingly, reversal is respectfully requested.

In addition, pursuant to S.C. Code § 1-23-310(5), the taxpayers are owners who are proper parties. The term "party" is defined as each person named or admitted as a party below, as in this case. S.C. Code § 1-23-310(5). Due process of law for taxpayers appeals, as in this case, expressly requires compliance with statutes and regulations providing taxpayer protections as well as with the South Carolina and United States Constitutions. S.C. Code § 1-23-600. S.C. Code § 1-23-610 provides for judicial review of taxpayers appeals by right. Toal *et al., Appellate Practice in South Carolina* (2016), Third Ed., p. 41. Accordingly, reversal is respectfully requested.

Moreover, the sua sponte ex parte summary dismissal appears to violate the SCACR. Pursuant

to Rule 260(c), SCACR, no party motioned for dismissal, due process has not been provided, required notice has not been provided, and no meaningful opportunity to respond at a meaningful time has been provided. As such, the sua sponte ex parte summary dismissal is void/voidable. Further, Rule 265(c), SCACR, provides that the appellate court may not on its own order substitution of parties except for death or incompetency: "(F)or any reason other than death or incompetency, substitution **SHALL** be by motion." Rule 265(c), SCACR (emphasis supplied). "Substitution for any other reason must be by motion to the appellate court. Rule 265(c), SCACR." Toal *et al., Appellate Practice in South Carolina* (2016), Third Ed., p. 377. The record reflects there is no death or incompetency and no "motion to the appellate court." Rule 265(c), SCACR. The sua sponte ex parte summary dismissal is in violation of the lower appellate court's own SCACR Rules. Accordingly, reversal is respectfully requested.

"Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure" in all courts of the state. S.C Const. art. V § 4. The statute, S.C. Code § 14-8-220, provides for *de novo* review of the order by a single individual dismissing meritorious taxpayers appeals by right without any factual support or ROA. That statute provides 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).

S.C. Code § 14-8-220 provides protections for the citizens of this great State and for individual judges as well as protections for the integrity of the lower appellate court. Significantly and materially, there is no record on appeal (ROA), no affidavit, no factual basis, or adequate record for meaningful review supporting ex parte summary dismissal herein. In the alternative, the taxpayers respectfully request consideration of dismissal be deferred to provide, including but not limited to, full, fair, and adequate

record for meaningful review after filing of the jointly filed Record on Appeal (ROA) with briefs herein.

Further, the lower appellate court conflates Rule 221, SCACR, petition for rehearing, which has a different legal standard, with Rule 240(j), SCACR, petition for rehearing appeal, which has a higher *de novo* legal standard, of a single individual's overreaching sua sponte ex parte summary dismissal of taxpayers appeal by right. S.C. Code § 14-8-220. It is respectfully submitted the Legislature enacted S.C. Code § 14-8-220 with the intention in whole or in part to protect the public including the taxpayers herein as well as the integrity of the lower appellate court and single individual judges therein. Moreover, lack of uniformity in interpretation and application of the SCACR in the lower appellate court is a denial of substantial Constitutional rights including prejudicial denial of due process. But for unconstitutional conflation with Rule 221, SCACR, petition for rehearing and application of the improper legal standard, the outcome should and would be in the taxpayers favor. The taxpayers are prejudiced thereby. Accordingly, reversal is respectfully requested.

Significantly and materially, that statute, S.C. Code § 14-8-220, 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, and the statute's plain language applies to "an order of an individual judge," without limitation to dismissal. Materially, the Legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. Pursuant to S.C. Code § 14-8-220, the proper legal standard, *de novo*, is 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 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 lower appellate 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 judge'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 judge. 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. The legal standard of review under these circumstances for Rule 240(j), SCACR, appeal of a single individual judge's overreaching sua sponte ex parte dismissal of taxpayers appeal by right is *de novo*. The single individual judge's opinion herein is reversible as a matter of law for failure to apply the proper legal standard. Accordingly, reversal is respectfully requested. "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).

Without being disagreeable, there is disagreement with the overreaching sua sponte ex parte dismissal of the taxpayers' appeal by right. The caption herein is the same as it appears before the BAA below without objection and the same as it appears in the ALC below without objection; the caption reflects the taxpayers who protested below, and the taxpayers are proper parties to taxpayers' appeal by right herein. Objection by the other side, if any, is waived in the proceedings below. Rule 12, SCRCP. Moreover, each party holds an undivided interest in the real property. Under the facts, the taxpayers on appeal herein are proper 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 lower appellate court 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 on the merits 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. S.C. Code § 14-8-80; *see State v. McMillan*, 349

S.C. 17, 561 S.E.2d 602 (2002) (reversing where hearing was conducted with only two of three panel judges present). The concurrence of a majority of the judges, at least two or more, 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 sua sponte ex parte summary dismissal by a single individual of the taxpayers' appeal by right herein. S.C. Code § 14-8-80. Accordingly, reversal is respectfully requested.

Curiously, the record reflects no motion to dismiss has been filed thereby denying the taxpayers substantial rights including due process, required notice, and meaningful opportunity to respond at a meaningful time before deciding substantive/dispositive matters. Objection by the other side, if any, is waived below by the five (5) or more taxpayer-funded, tax collector attorneys on the other side. See Rule 12, SCRCP. To the extent, one or more of the five (5) or more taxpayer-funded, tax collector attorneys on the other side engaged in impermissible direct or indirect ex parte contact with the single individual judge or the lower appellate court, whether written, oral, email, text, or other, case law directs that the overreaching 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 tax collector in whole or in part caused the overreaching 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 in the record for the overreaching sua sponte ex parte summary dismissal. The overreaching sua sponte ex parte summary dismissal of taxpayers appeal by right undercuts appearance of a disinterested court and violates State and Federal statutory and Constitutional mandates for transparency, even-handedness, fundamental fairness, and taxpayer protections regarding taxpayers appeals by right in the public interest as a matter of public policy. The denial of substantial rights and/or unequal treatment cannot pass State or Federal Constitutional muster.

Accordingly, reversal is respectfully requested. "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).

It is respectfully submitted sua sponte summary dismissal of taxpayers appeal by right requires, at a minimum, briefing prior to dispositional decision. The taxpayers timely request reversal with Constitutional challenge to a single individual's overreaching sua sponte ex parte summary dismissal of taxpayers appeals by right, to failure to comply with statutory and Constitutional mandates for taxpayers appeals by right, akin to mode of trial to be preserved inviolate, and/or to application of the improper legal standard on appeal of a single individual's overreaching sua sponte ex parte dismissal of taxpayers appeals by right capable of repetition, capable of evading review, and incapable of vindication on appeal. Further, State and Federal case law, statutory law, and Constitutional law provide citizens as taxpayers with guarantees, protections, and rights which have been denied including due process, required notice at a meaningful time before disposition, meaningful opportunity to respond at a meaningful time before disposition on substantive/dispositive matters, and adequate record for meaningful review. At a minimum, briefing prior to dispositional decision is required and a single individual's overreaching 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 likely that a lower appellate court single individual judge is or should be familiar with the Court of Appeals' multiple routine reversals of the trial court for failure to provide due process including required notice and meaningful opportunity to respond at a meaningful time before deciding dispositive/substantive matters. The taxpayers 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, a single individual's overreaching sua sponte ex parte summary dismissal and/or threatened dismissal of taxpayers appeals by right lack statutory authority and are void/voidable. See S.C. Code § 14-8-80 (*supra*). "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, 14, 22, 23; S.C. Const. art. V, sec. 4,5, 8, 9, 16; 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).

A ministerial clerk is not nominated, vetted, and voted for interpretation of law by the Legislature and a ministerial clerk's failure and/or the lower appellate court's failure to comply with S.C. Code § 14-8-220 fee paid *de novo* appeal to a panel of the lower appellate court for interpretation of the law is reversible as a matter of law. Article V, § 16 of the South Carolina Constitution provides that the Judges of the Court of Appeals (COA) shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term:

> 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.) South Carolina Constitution Art. V, § 16.

By analogy, the U.S. Constitution provides similar protections for Article III Judicial Officers:

These protections are designed to ensure the independence and impartiality of the judicial officers **authorized to decide the merits of a litigant's case**. The Supreme Court has held that litigants in federal court have a personal right, conferred by Article III, to insist upon adjudication of their claims by a judge who enjoys the salary and tenure *protections afforded by Article III. Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986) ; *see Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.* , 725 F.2d 537, 542 (9th Cir. 1984) (en banc). *Roell v. Withrow*, 538 U.S. 580, 590, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003)....

Barring unusual circumstances, the named plaintiffs will have as strong an interest as the absent class members in having their claims adjudicated by an independent and impartial decisionmaker. *Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071, 1078 (9th Cir. 2017) (emphasis supplied).

The protections found in Article V, §§ 13 and 16 of the South Carolina Constitution apply to South Carolina Constitutional Judicial Officers who are nominated, vetted, and voted by the Legislature to interpret the law and decide appeals. These are protections which a ministerial clerk, who is not nominated, vetted, and voted by the Legislature to interpret the law, lacks. It is respectfully submitted that, under the facts, the violations of State Constitutional, statutory, and case law are reversible error. The taxpayers as well as the taxpayers appeal by right is prejudiced thereby. Matters of great public importance have been overlooked or misapprehended.

In addition, the Legislature authorized interpretation of the law by those nominated, vetted, and voted to the bench. The South Carolina Clerk of Court Manual and the *Miller* case provide as follows:

The Clerk of Court's duty is not discretionary. **The Clerk of Court should not construe a filing**.... it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely. 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court cannot ordinarily determine questions of law [or] render judgments."). *Miller v. State*, 659 S.E.2d 492, 377 S.C. 99 (S.C. 2008) (emphasis supplied).

Many attorneys, if not the majority, and most members of the general public may be unfamiliar with the SCACR. The record reflects abundant examples of a ministerial clerk taking unfair advantage of that fact, bending/misrepresenting the rules as a trap for the unwary to evade the merits, failing to comply with the SCACR, changing contact information without notice to adversely affected parties in the middle of appeal without authorization, entering/threatening improper procedural default, failing to forward fee paid motions/petitions and/or appeals to the lower appellate court panel for S.C. Code § 14-8-220 *de novo* appeal and/or failing a ministerial clerk's solemn oath and sworn duty to facilitate appeals with even-handedness, transparency, and fundamental fairness. Accordingly, reversal is respectfully requested. "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

WHEREFORE appellants pray this Honorable Court issues its order granting appellants' motion for reconsideration and motion for abeyance of time limits pending resolution and, if denied, Rule 240(j),SCACR, *de novo* appeal of lack of jurisdiction while pending in the upper appellate court as well as improper default, dismissal, threatened dismissal, and/or denial by a single individual without factual support or record on appeal (ROA) of taxpayers appeal by right and motion for abeyance of time limits pending resolution and, if denied, Rule 221, SCACR, petition for rehearing with a panel which does not include direct or indirect participation by the Rule 240(j), SCACR, panel judges or the single individual judge. In the alternative, deferral of disposition with abeyance pending filing of jointly filed ROA and final briefs is respectfully requested.

Respectfully submitted,

C. Holmes
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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October 4, 2023

Ms. Cynthia E. Collie, Esquire
PO Box 187
Sullivan's Island SC 29482

Re: James K. Holmes v. Charleston County Assessor
Appellate Case No. 2023-001552

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

James Kevin Holmes and C. Collie Holmes, Appellants,

v.

Charleston County Assessor, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Catherine Harrison, deputy

CLERK

cc: James K. Holmes, Esquire
Natalie Armstrong Ham, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
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January 30, 2024

Ms. Cynthia E. Collie, Esquire
PO Box 187
Sullivan's Island SC 29482

Re: James K. Holmes v. Charleston County Assessor
Appellate Case No. 2023-001552

Dear Counsel:

The Court has received your email response indicating you are retired. You must clarify, within five (5) days from the date of this letter, whether you are a retired member of the bar who may not engage in the practice of law in South Carolina as set forth by Rule 410, SCACR.

Very truly yours,

Jenny A. Kitchings

CLERK

cc: James K. Holmes, Esquire
Natalie Armstrong Ham, Esquire
Bernard E. Ferrara, Jr., Esquire
Marc Graylynn Belle, Esquire
Kevin Michael DeAntonio, Esquire
Brittney Marie Darnell, Esquire

The South Carolina Court of Appeals

James Kevin Holmes and C. Collie Holmes, Appellants,

v.

Charleston County Assessor, Respondent.

Appellate Case No. 2023-001552

The Honorable Deborah Brooks Durden
Trial Court Case No. 2022ALJ170398CC

ORDER

The Court has received your correspondence dated February 4, 2024, in which we construe as a motion for extension of time to reply to our January 30, 3024 letter. The time for filing a reply is hereby extended until February 12, 2024.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

cc:
James K. Holmes, Esquire
Cynthia E. Collie, Esquire
Natalie Armstrong Ham, Esquire
Bernard E. Ferrara, Jr., Esquire
Marc Graylynn Belle, Esquire
Kevin Michael DeAntonio, Esquire
Brittney Marie Darnell, Esquire

FILED
Feb 07 2024

Fax Cover:

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Hard copy
available
on request

Thank you!