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**Dec 02 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT  
The Honorable ALJ Durden

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Case No. 23-1552  
ALC Case No. 22-ALJ-17-0398-CC

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

Appellants,

v.

Chas. Cty. Assessor,

Respondent.

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MOTION TO CLARIFY AND FOR DISPOSITION BY CONSTITUTIONAL JUDICIAL OFFICERS  
NOMINATED, VETTED, AND VOTED FOR INTERPRETATION OF THE LAW, AND  
MOTION FOR ABEYANCE OF ALL TIME LIMITS PENDING DISPOSITION BY  
CONSTITUTIONAL JUDICIAL OFFICERS AND PENDING JURISDICTION IN THE SUPERIOR  
APPELLATE COURT REGARDING DENIAL OF SUBSTANTIAL RIGHTS AND DISMISSAL OF  
TAXPAYERS APPEAL BY RIGHT CAPABLE OF REPETITION, CAPABLE OF ESCAPING  
REVIEW, AND INCAPABLE OF FULL AND FAIR VINDICATION AFTER-THE-FACT

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The taxpayers timely and respectfully motion this Honorable Court for disposition regarding ministerial Clerk Kitchings' refusal to file and to forward to the Court for interpretation of the law as stated in the attached copy of correspondence dated November 22, 2024, and postmarked November 25, 2024, along with request for refund of the November 1, 2024, filing fee. Moreover, that ministerial Clerk Kitchings' November 22, 2024, correspondence, (copy attached), is internally inconsistent and/or in violation of Rule 240, SCACR, as it threatens "your appeal will be dismissed" while incoherently claiming there is no "effect of dismissing or finally deciding a party's appeal." November 22, 2024, correspondence attached. Further, the cert petition is timely filed vesting jurisdiction in the superior appellate court regarding taxpayers appeal by right, capable of repetition, capable of evading review, and incapable of vindication after-the-fact. As such, there is no jurisdiction in the lower appellate court and jurisdiction can be raised at any time. Significantly and materially, 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).

Without being disagreeable, there is disagreement: "The Clerk of Court should not construe" the timely November 1, 2024, filing as she is not a Constitutional Judicial Officer nominated, vetted, and voted for interpretation of the law. *Id.* Ministerial Clerk Kitchings repeats her pattern and practice of impermissible overreaching sua sponte ex parte summary dismissals of appeals thereby violating her sworn oath and duty to facilitate appeals with transparency, even-handedness, and fundamental fairness as well as undercutting appearance of a disinterested court. There is no pending or timely motion to dismiss. There is no objection by the other side, if any, which is waived below by the five or more

taxpayer-funded, tax collector attorneys. Further, the Motion for Reconsideration herein is not a request for rehearing. "There is no limit to the type of motion that could be filed in the appellate courts. For example, the Supreme Court routinely receives motions to amend, to clarify, to compel, for oral argument, to recall remittitur, etc." Toal *et al.*, *Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 379. Importantly, it is respectfully submitted that the taxpayers appeal by right of the taxpayers protest below incorporates S.C. Code § 1-23-380 which provides the taxpayers are owners who are aggrieved and recognized as proper parties before the BAA and ALC below without objection. S.C. Code § 1-23-310(5). The term "party" is defined as each person named as a party below, as in this case, and as captioned in the proceedings below. S.C. Code § 1-23-310(5); ALC Rule 2(H). 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 impermissible overreaching sua sponte ex parte summary dismissal by a single individual of the taxpayers' appeal by right herein. S.C. Code § 14-8-80. In any case, to the extent there is ambiguity, the rule of lenity supports the taxpayers position including denial of substantial rights which is capable of repetition, capable of evading review, and incapable of vindication on appeal. Accordingly, we are requesting abeyance pending resolution by Constitutional Judicial Officers regarding taxpayers appeal by right timely filed below, timely filed in the ALC, and timely filed in the lower appellate court herein. Accordingly, interpretation of law by Constitutional Judicial Officers along with abeyance of time limits pending resolution 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, 9, 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. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

The taxpayers timely and respectfully motion this Honorable Court for abeyance of time limits pending reconsideration by Constitutional Judicial Officers and/or resolution of timely petition for writ of certiorari: Constitutional challenge is raised to a single individual's impermissible overreaching 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 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 permissive 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

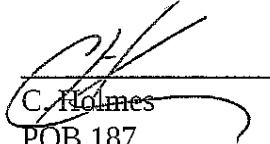
By statute, the Legislative intent, letter, and spirit of the law *require at least three judges to constitute a quorum of the Court of Appeals for de novo interpretation of the law, to decide appeals, and for disposition of appeals by right*. The concurrence of a majority of the judges is necessary 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/jurisdiction and is void/voidable.

## 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 impermissible overreaching 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. Accordingly, the taxpayers respectfully request the motions be granted including refund of the November 1, 2024, filing fee, abeyance pending disposition by Constitutional Judicial Officers, and abeyance pending jurisdiction and resolution by the superior appellate court regarding taxpayers appeal by right and denial of substantial rights which is capable of repetition, capable of evading review, and incapable of vindication on appeal.

Respectfully submitted,

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



## The South Carolina Court of Appeals

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CLERK

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November 22, 2024

Cynthia Holmes  
PO Box 187  
Sullivan's Island SC 29482

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

Dear Ms. Holmes:

This office is in receipt of your Motion for Reconsideration filed November 1, 2024. Rule 221 of the South Carolina Appellate Court Rules states that the appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. No action will be taken on your motion.

You must file the Appellant's initial brief and designation of matter within thirty (30) days of the date of this letter or your appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

cc: Natalie Armstrong Ham, Esquire  
Bernard E. Ferrara, Jr., Esquire  
Marc Graylynn Belle, Esquire  
Kevin Michael DeAntonio, Esquire  
Andrew LaRoche Hethington, Esquire

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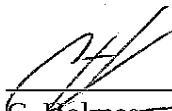
PROOF OF SERVICE

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I certify that a 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 12.1.24

  
\_\_\_\_\_  
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843.883.3010

Hard copy  
available  
on request -

Thank you!