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**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 FOR RECONSIDERATION, MOTION FOR STAY, AND  
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,  
RULE 240(j), SCACR, *DE NOVO* PANEL APPEAL OF DISMISSAL WITHOUT FACTUAL  
SUPPORT OR RECORD ON APPEAL BY A SINGLE 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

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Without being disagreeable, there is disagreement with the December 30, 2024, opinion: It is respectfully submitted that opinion's reliance on Rule 221(c), SCACR, is misplaced. As a threshold matter, that opinion overlooks or misapprehends the fact that the action of the lower appellate court herein has the effect of finally deciding the taxpayers' appeal by right from the ALC. Impermissible sua sponte ex parte summary dismissal by a single individual without factual support or ROA of taxpayers' appeal by right as captioned in the ALC effectively dismisses and/or finally decides the taxpayers' appeal by right as captioned and decided in the ALC. Rule 221, SCACR. Further, there is no authority for substitution of parties regarding taxpayers' appeal by right from the ALC. In fact, impermissible sua sponte ex parte summary substitution of parties in a taxpayers' appeal by right is a violation of Rule 265, SCACR. Rule 265(c), SCACR, provides, "If substitution of a party is desired for any reason other than death or incompetency, substitution shall be by motion to the appellate court." The record reflects there is no motion for substitution and no factual support for death or incompetency of James Kevin Holmes, taxpayer appellant. There is no motion and no opportunity to respond at a meaningful time. The taxpayers are prejudiced thereby and object. But for denial of substantial rights including due process, transparency, and/or fundamental fairness, the outcome should and would be in the taxpayers' favor. To the extent, there is ambiguity, the rule of lenity supports the taxpayers' appeal by right as captioned in the ALC. Accordingly, the December 30, 2024, opinion's reliance on Rule 221(c), SCACR, is misplaced. In addition, motion for stay is respectfully requested pending disposition of taxpayers' appeal by right in the superior appellate court regarding denial of substantial rights capable of repetition, capable of evading judicial review, and incapable of vindication after-the-fact.

The following statutes and South Carolina Constitutional protections, privileges, immunities, and rights 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.)

**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

from the ALC. 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 judge to sua sponte ex parte summarily dismiss meritorious taxpayer appeals by right from the ALC 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 from the ALC. To the extent that 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 from the ALC, 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, Judge Paula Thomas, to rubber-stamp a ministerial clerk's wrongdoing 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 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 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. There are abundant 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 in the ALC, 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), SCRCR, dismissal by a single individual judge herein is timely appealed and the proper legal standard, *de novo* panel appeal pursuant to S.C. Code § 14-8-220 is respectfully requested. 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* panel appeal of overreaching sua sponte ex parte summary dismissals of taxpayer appeals by right from the ALC. But for denial of substantial State and Federal statutory and Constitutional rights, 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, not to mention lack of uniformity, regarding the proper legal

standard on Rule 240(j), SCACR, panel appeal is a denial of State and Federal statutory and Constitutional substantial rights.

## DISCUSSION

**I. Jurisdiction vests with the superior appellate court and motion for stay with abeyance is respectfully requested. S.C. Const. Art. V, § 9 (*supra*).**

The certiorari petition is timely filed vesting jurisdiction in the superior appellate court regarding taxpayers appeal by right as captioned in the ALC, capable of repetition, capable of evading review, and incapable of vindication after-the-fact. S.C. Const. Art. V, § 9 (*supra*). As such, there is no jurisdiction in the lower appellate court and jurisdiction can be raised at any time. Jurisdiction cannot be waived. In re *Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994). Accordingly, motion for stay with abeyance 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).

**II. The taxpayers are proper parties in this taxpayers' appeal by right from the ALC. S.C. Code § 1-23-310(5).**

The taxpayers are property owners who are proper parties in the ALC below and in this taxpayers' appeal by right from the ALC. 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). The Legislature created the Administrative Law Court (ALC) to provide an objective body to hear contested cases arising out of state agency decisions. The purpose of the ALC is to provide due process of law when a right to a hearing is specifically granted, as in this case, by statute or regulation and by the South Carolina and United States Constitutions. S.C. Code § 1-23-600. S.C. Code § 1-23-610 provides for judicial review. Toal *et al.*, *Appellate Practice in South Carolina* (2016), Third Ed., p. 41. Accordingly, a single individual judge's overreaching impermissible sua sponte ex parte summary dismissal of taxpayers' appeal by right from the ALC lacks statutory authority/jurisdiction and is void/voidable. "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).

**III. Objection to parties by the other side, if any, is waived below. Rule 12, SCRCP.**

Objection to parties by the other side, if any, is waived below. Rule 12, SCRCP. Under the facts, the taxpayers on appeal herein are proper parties in the ALC below and in the taxpayers' appeal by right from the ALC 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. Accordingly, reversal is respectfully requested. In the alternative, motion for stay is respectfully requested pending disposition of taxpayers' appeal by right in the superior appellate court regarding denial of substantial rights capable of repetition, capable of evading judicial review, and incapable of vindication after-the-fact. "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).

**IV. Taxpayers “shall have in all such instances the right to judicial review” on the merits of taxpayers appeal by right from the ALC. S.C. Const. Art. I, § 22.**

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 taxpayers appeal by right from the ALC 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 from the ALC 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 from the ALC, 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 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).

#### **V. The record reflects no motion to dismiss.**

The record reflects no motion to dismiss the taxpayers appeal 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 finally deciding to dismiss the taxpayers appeal by right from the ALC. To the extent, the tax collector and/or one or more of the five (5) or more tax collector attorneys on the other side engaged in impermissible direct or indirect ex parte contact, 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). The taxpayers hereby request copies of direct or indirect ex parte contact, whether written, oral, email, text, or other. 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).

**VI. The record reflects the taxpayers are denied substantial rights including due process.**

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 by a single individual of taxpayers appeal by right from the ALC. 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 from the ALC 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. "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).

**VII. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the taxpayers expressly request *de novo* panel appeal of the taxpayers appeal by right from the ALC regarding overreaching impermissible sua sponte ex parte summary dismissal by a single individual with no factual basis, factual support, or ROA. In the alternative, the taxpayers request deferral pending jointly-filed ROA and briefs.**

The underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for *de novo* panel appeal herein of overreaching impermissible sua sponte ex parte summary dismissal by a single individual of taxpayers' appeal by right from the ALC 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. Accordingly, pursuant to S.C. Code § 14-8-220, the proper legal standard for the taxpayers appeal by right from the ALC is *de novo* panel appeal which is hereby requested. 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. *Ríce v. McKenzíe*, 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* panel 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 from the ALC 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 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).

**VIII. Lack of adequate record for meaningful review requires reversal.**

The record reflects the taxpayers are denied substantial rights including required notice, lack of meaningful opportunity to respond at a meaningful time, lack of Record on Appeal (ROA), lack of affidavit, and lack of any factual support for the overreaching sua sponte ex parte summary dismissal by a single individual of taxpayers appeal by right from the ALC. The taxpayers are prejudiced thereby and object to 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 from the ALC by a single individual with no factual basis in the record undercuts appearance of a disinterested court and violates State and Federal statutory and Constitutional mandates for transparency, even-handedness, and fundamental fairness regarding taxpayers appeal by right from the ALC in the public interest. 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).

**IX. “[A]ll courts shall be public.” S.C. Const. art. I, sec. 9.**

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 provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. 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. “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).

**X. The overreaching sua sponte ex parte summary dismissal of taxpayers appeal by right from the ALC by a single individual without factual support or ROA is a violation of Rule 241, SCACR, and reversible as a matter of law.**

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, if any, 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 taxpayers 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 sua sponte ex parte summary 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 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).

#### **XI. The taxpayers are proper parties.**

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 State and Federal Constitutional substantial rights. S.C. Code § 1-23-600. S.C. Code § 1-23-610 provides for judicial review of taxpayers appeals by right from the ALC. Toal *et al.*, *Appellate Practice in South Carolina* (2016), Third Ed., p. 41. 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).

**XII. The overreaching sua sponte ex parte summary dismissal of taxpayers appeal by right from the ALC by a single individual without factual support or ROA is a violation of Rule 265(c), SCACR, and reversible as a matter of law.**

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 evidence of James Kevin Holmes' 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. "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).

**XIII. 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 from the ALC. S.C. Code § 14-8-80.**

Statutory authority and 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 from the ALC. 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 from the ALC, which renders void/voidable the overreaching sua sponte ex parte summary dismissal by a single individual of the taxpayers' appeal by right from the ALC herein. S.C. Code § 14-8-80. 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).

**XIV. Sua sponte ex parte summary dismissal of taxpayers appeal by right from the ALC requires, at a minimum, briefing prior to dispositional decision.**

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 without factual support or jointly-filed ROA 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).

**XV. The South Carolina Constitution and S.C. Code § 14-8-80 provide a panel of State Constitutional Judicial Officers of the Court of Appeals (COA) for interpretation of the law and/or disposition of taxpayers appeal by right from the ALC which is hereby requested. S.C. Const, art. V, § 16.**

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:

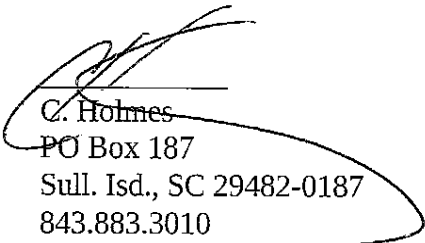
The Clerk of Court's duty is not discretionary. **The Clerk of Court should not construe a filing...** it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely. 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court 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 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).

## CONCLUSION

For substantial justice affecting substantial rights including the taxpayers appeal by right from the ALC, it is respectfully submitted the December 30, 2024, opinion's reliance on Rule 221(c), SCACR, is misplaced. Overreaching sua sponte ex parte summary dismissal by a single individual without factual support or ROA of taxpayers' appeal by right from the ALC effectively dismisses and/or finally decides the taxpayers' appeal by right from the ALC. Rule 221, SCACR. Moreover, motion for stay is respectfully requested pending disposition of taxpayers' appeal by right in the superior appellate court regarding denial of substantial rights capable of repetition, capable of evading judicial review, and incapable of vindication after-the-fact. In the alternative, deferral of disposition with abeyance pending jointly-filed ROA and briefs is respectfully requested.

Respectfully submitted,



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

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**Jan 09 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden

COA App. Case No. 2023-001552

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

Appellants,

v.

Chas. Cty. Assessor,

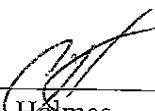
Respondent.

PROOF OF SERVICE

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 1.9.25

  
\_\_\_\_\_  
C. Holmes  
PO Box 187  
Sullivans Island, SC 29482  
843.883.3010

Hard copy  
available  
on request -

Thank  
you!