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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2024-001554
Case No. 2021-CP-02-02323

Mark Gregory Thompson and Jane Page Thompson, individually and on behalf
of all those similarly situatedRespondent,

v.

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

BRIEF OF *AMICI CURIAE*
GREENVILLE COUNTY AND SPARTANBURG COUNTY

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INTRODUCTION

Greenville and Spartanburg Counties are each defendants in cases that raise some of the same legal issues as this one. In the respective cases, plaintiffs seek the recovery of hundreds of millions of dollars on behalf of a purported class as a refund of road maintenance fees collected from residents over a period of many years. Numerous other counties across the state have also been sued—each complaint resting on a premise that this Court’s ruling in *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) means that all road maintenance fees were improperly imposed and collected and that they may be refunded through a class-action mechanism.

Greenville and Spartanburg Counties generally agree with the arguments submitted by Aiken County and the City of Aiken in this matter as well as those presented in the amicus brief filed by Beaufort County. They file this brief to illustrate why Appellants’ underlying contention that *Burns* invalidated all road maintenance fees is incorrect. Very simply, road maintenance fees have not been found to be illegal across the board. *Burns* merely invalidated one ordinance increasing a road maintenance fee in Greenville County based on the record in that case.

ARGUMENTS

I. The ordinance at issue in *Burns* related to an increase in an existing road maintenance fee.

In 2017, Greenville County Council enacted an ordinance increasing its road maintenance fee from \$15.00 to \$25.00 (Ordinance 4906). *Burns*, 433 S.C. at 585, 861 S.E.2d at 31–32. It is that ordinance that was challenged in *Burns*, not the original \$15.00 fee that had been in place since 1993 (Ordinance 2474). The ruling in *Burns* invalidated the Greenville County ordinance implementing the 2017 increase, not the original 1993 road maintenance fee or any other road maintenance fee.

The 1993 road maintenance fee followed this Court’s opinion in *Brown v. Cnty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992), which upheld Horry County’s road maintenance fee. Under *Brown*, the test for assessing uniform service charges was as follows:

a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

Burns, 433 S.C. at 586–87, 861 S.E.2d at 32–33 (citing *C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) and *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68). Then, in 1997, the General Assembly enacted S.C. Code Ann. § 6-1-300(6) defining “service or user fee”—including “uniform service charges”—as “a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee.” *Id.* at 587, 861 at 33.

The *Burns* court found that the 2017 ordinance increasing the fee did not meet the requirements of § 6-1-306(6)¹ because there was not an adequate showing that the increased fee benefited the fee payors in some manner different than the general public. In reaching this result, this Court was careful to distinguish fees enacted prior to the enactment of S.C. Code Ann. § 6-1-

¹ S.C. Code Ann. § 6-1-300(6) was amended in 2022 to read as follows:

- (6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:
- (a) be used to the benefit of the payers, even if the general public also benefits;
 - (b) only be used for the specific improvement contemplated;
 - (c) not exceed the cost of the improvement; and
 - (d) be uniformly imposed on all payers.

300(6) and to explain the evidence and arguments in the *Burns* relating to the benefit to the fee payors. *Id.* (“After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6).”). The Court determined that general evidence that local drivers are the ones that most use a County’s roads and that a fee will enhance property values did not satisfy the then-enacted version of § 6-1-306(6). *Id.*

Given the broad arguments presented by the Appellants in this appeal, it is important to consider *Burns* in light of the actual ordinances considered and arguments made in that case. *Burns* did not hold that all road maintenance fee ordinances are invalid or that all fees implemented or increased after 1997 are invalid, but rather that the requirements of S.C. Code Ann. § 6-1-300(6) must be satisfied in order for a post-1997 ordinance to validly enact a service or user fee.

II. Spartanburg County’s road maintenance fee was previously upheld by this Court in 2007.

Spartanburg County promptly repealed its road maintenance fee after *Burns* was issued. There has not been any judicial finding that its road maintenance fee was invalid. To the contrary, this Court has previously found that the ordinance implementing its original road maintenance fee in 2005 was validly enacted. *McSherry v. Spartanburg Cnty. Council*, 371 S.C. 586, 641 S.E.2d 431 (2007). Spartanburg County seeks to bring this fact to the Court’s attention to highlight that there is no one size fits all analysis applicable to the validity of the underlying ordinances relating to road maintenance fees.

CONCLUSION

These cases have tremendous implications for local governments. Given the stakes, Greenville and Spartanburg Counties believe that an additional perspective on *Burns* and

McSherry will be helpful to the Court. These Counties respectfully urge this Court to affirm the circuit court's order dismissing this case.

Respectfully submitted,

s/ Sarah P. Spruill

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