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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000791

Lower Court Case No. 2023-CP-40-05877

Cameron M. Butler, on behalf of himself and all others similarly situated, ... Appellant,

v.

Kevin A. Shwedo, Director of the Department of Motor Vehicles and Marcia S. Adams,
Director of the Department of Administration, in their individual and official capacities,
and all others similarly situated, ... Respondents.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
1. Relevant Statutes Concerning Agency Fees and Credit Card Payments to State Agencies	3
2. The Contractual Basis for Creation of the Challenged Payment Processing Fees	6
3. Appellant’s Credit Card Transaction at the DMV	7
STANDARD OF REVIEW	9
ARGUMENT	10
I. S.C. CODE ANN. § 8-21-15(B)(8), WHICH BECAME EFFECTIVE MAY 18, 2023, SHOULD NOT BE APPLIED RETROACTIVELY TO APPELLANT’S JULY 26, 2022 CREDIT CARD TRANSACTION BECAUSE THE STATUTE IS NOT REMEDIAL AND THE GENERAL ASSEMBLY DID NOT EXPRESS ANY INTENT THAT THE AMENDMENT SHOULD BE APPLIED RETROACTIVELY.....	10
A. Because S.C. Code Ann. § 8-21-15(B)(8) Made a Substantive Amendment to the Section 8-21-15(B), Rather than a Remedial or Clarifying Change, It Cannot Overcome the Presumption Against Retroactive Application to Credit Card Transactions Made Prior to Its 2023 Effective Date.....	10
1. S.C. Code Ann. § 8-21-15(B)(8) is not a Remedial Statute.....	10
2. Section 8-21-15(B)(8) is also not a Clarifying Amendment and can not be Applied to Appellate’s Pre-enactment Transaction.....	13
B. S.C. Code Ann. § 8-21-15(B)(8) Was Enacted With A Prospective Effective Date And There Is No Language Contained In 2023 Act No. 51 From Which The Trial Court Could Deduce A Legislative Intent To Make § 8-21-15(B)(8) Retroactive To Appellant’s 2022 Credit Card Transaction.....	15

II.	THE LOWER COURT ERRED IN HOLDING THAT, PRIOR TO ENACTMENT OF § 8-21-15(B)(8), THESE FEES WERE AUTHORIZED BY EXISTING SOUTH CAROLINA STATUTES.....	23
A.	The Trial Court Wrongly Held That S.C. Code Ann. § 8-21-15(B)(5) Authorized These Payment Processing Fees Because The DMV “Sold” Documents To Appellant As “Goods” Or “Tangible Products.”.....	23
B.	The Trial Court Wrongly Held That The State Procurement Code And Statutes Authorizing The State Treasurer To Negotiate And Contract For Payment Processing Services And Fees Also Grant Respondents The Authority To Collect Payment Processing Fees.....	28
III.	THE PENALTY PROVISION CONTAINED IN S.C. CODE ANN. § 8-21-30 APPLIES EQUALLY TO STATE AGENCIES AS WELL AS CERTAIN LOCAL OFFICERS WHEN EITHER CHARGE NON-STATUTORILY AUTHORIZED FEES.....	32
	CONCLUSION	37

TABLE OF AUTHORITIES

Federal Cases:

<i>Cherokee Nation of Oklahoma v. Leavitt</i> , 543 U.S. 631, 646–47, 125 S.Ct. 1172, 161 L.Ed.2d 66 (2005).....	14
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244, 280, 114 S.Ct. 1483 (1994).....	19
<i>Middleton v. City of Chicago</i> , 578 F.3d 655 (7th Cir. 2009).....	14
<i>Republic of Austria v. Altmann</i> , 541 U.S. 677, 692, 124 S.Ct. 2240, 159 L.Ed.2d 1 (2004).....	13
<i>Rivers v. Roadway Exp., Inc.</i> , 511 U.S. 298, 307, 114 S.Ct. 1510, 128 L.Ed.2d 274 (1994).....	14
<i>United States v. Kmart Corp.</i> , 824 F.3d 632, 642 (7th Cir. 2016).....	13, 14
<i>Ward v. Dixie Nat’l Life Ins. Co.</i> , 595 F.3d 164, 174 (4th Cir. 2010).....	19

State Cases:

<i>American Nat’l Fire Ins. Co. v. Smith Grading and Paving, Inc.</i> , 317 S.C. 445, 454 S.E.2d 897 (1995).....	16
<i>Anderson Consulting, LLP v. Gene Gavin Comm. of Revenue Services</i> , 255 Conn. 498, 767 A.2d 692 (2001).....	28
<i>Austin v. Stokes-Craven</i> , 387 S.C. 22, 691 S.E.2d 135 (2010).....	12
<i>Bartley v. Bartley Logging Co.</i> , 293 S.C. 88, 359 S.E.2d 55 (1987).....	11, 13
<i>Bazzle v. Huff</i> , 319 S.C. 443, 462 S.E.2d 273 (1995).....	29
<i>Beaufort Co. v. S.C. State Elections Comm’n</i> , 395 S.C. 366, 718 S.E.2d 432 (2011).....	33
<i>Boyd v. Boyd</i> , 277 S.C. 416, 289 S.E.2d 153 (1982).....	19
<i>Bryant v. State</i> , 384 S.C. 525, 683 S.E.2d 280 (2009).....	35
<i>Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n</i> , 417 S.C. 562, 790 S.E.2d 783	

(Ct. App. 2016).....	10
Carolina Power & Light Co. v. Town of Pageland, 321 S.C. 538, 471 S.E.2d 137 (1996)...	20, 21
Childers v. Parker’s, Inc., 274 N.C. 256, 162 S.E.2d 481 (1968).....	25
Creswick v. University of South Carolina, 434 S.C. 77, 862 S.E.2d 706 (2021).....	19
Doe v. Crooks, 364 S.C. 349, 613 S.E.2d 536 (2005).....	11
Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008).....	26
Edwards v. State Law Enforcement Division, 395 S.C. 571, 720 S.E.2d 462 (2011).....	11, 15, 26
Gay v. Ariail, 381 S.C. 341, 673 S.E.2d 418 (2009).....	36
Goff v. Mills, 279 S.C. 382, 308 S.E.2d 778 (1983).....	12
Gressman v. State of Utah, 745 Utah Adv. Rep. 24, 323 P.3d 998 (2013).....	27
Hardaway v Southern Ry. Co., 90 S.C. 475, 73 S.E. 1020 (1912).....	36
Hercules v. South Carolina Tax Comm’n, 274 S.C. 137, 262 S.E.2d 45 (1980).....	18
Higgins v. State, 307 S.C. 446, 415 S.E.2d 799, 801 (1992).....	35
Hock R.H., LLC v. S.C. Dept. of Revenue, 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018).....	26
Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986).....	11
Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978).....	10, 16, 17
Jennings v. Jennings, 401 S.C. 15, 736 S.E.2d 242 (2012).....	24
Kennedy v S.C. Retirement System, 345 S.C. 339, 549 S.E.2d 243 (2001).....	19
Kneisley v. Lattimore-Stevens Co., 40 Ohio St.3d, 533 N.E.2d 743 (1988).....	13
Lambries v, Saluda Cnty. Council, 409 S.C. 1, 760 S.E.2d 785 (2014).....	23
Lancaster v. Barnwell County, 40 S.C. 445, 19 S.E. 74 (1894).....	30
Meier v. Burnsed, 438 S.C. 362, 882 S.E.2d 863 (Ct. App. 2023).....	9, 18

Merchants Mut. Ins, Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982).....	11, 17
Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (1948).....	36
Moore v. Regents of the Univ. of California, 248 Cal.App. 4th, 216, 206 Cal. Rptr.3d 841 (2016).....	27
Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n, 310 S.C. 539, 426 S.E.2d 319 (1992).....	29
Oliver v. S.C. Dept. of Highways and Public Transportation, 309 S.C. 313, 422 S.E.2d 128 (1992).....	31
Pulliam v. Doe, 246 S.C. 106, 142 S.E.2d 861 (1965).....	20
Quicken Loans, Inc. v. Wilson, 425 S.C. 574, 823 S.E.2d 697 (Ct. App. 2019).....	9
Ray v. N.C. Dept. of Transportation, 366 N.C. 1, 727 S.E.2d 675 (2012).....	26
Rehkopf v. Kuland, 30 S.C. 234, 9 S.E. 99 (1889).....	17
Schall v. Sturm, Ruger Co., Inc., 278 S.C. 646, 300 S.E.2d 735 (1983).....	18, 22
Smith v. Eagle Constr. Co., Inc., 282 S.C. 140, 318 S.E.2d 8 (1984).....	11
Smith v. South Carolina Retirement System, 336 S.C. 505, 520 S.E.2d 339 (Ct. App. 1999)...	17
Snavelly v. Perpetual Fed. Sav. Bank, 306 S.C. 348, 412 S.E.2d 382 (1991).....	17
16 Jade Street, LLC v. R. Design Const. Co., LLC, 398 S.C. 338, 728 S.E.2d 448 (2012).....	37
S.C. Dep’t of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 528 S.E.2d 416 (2000).....	20
S.C. Dep’t of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).....	9

S.C. Energy Users Comm. v. S.C. Elec. & Gas, 410 S.C. 348, 764 S.E.2d 913 (2014).....	33
S.C. Nat’l Bank v. S.C. Tax Comm’n, 297 S.C. 279, 376 S.E.2d 512 (1989).....	16
S.C. Pub. Int. Found. v. Calhoun Cnty. Council, 432 S.C. 492, 854 S.E.2d 836 (2021).....	9
S.C. Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 22 S.E.2d 252 (1942).....	31
S.C. State Ports Authority v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)...	35
Southeastern Site Prep, LLC v. Atl Coast Builders, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011).....	11, 13
Stardancer Casino, Inc. v. Stewart, 347 S.C. 377, 556 S.E.2d 357 (2001).....	36
State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008).....	36
State v. Johnson, 396 S.C. 424, 721 S.E.2d 786 (Ct. App. 2012).....	36
State v. Wilder, 198 S.C. 390, 18 S.E.2d 324 (1941).....	29
State v. Sweat, 386 S.C. 339, 688 S.E.2d 569 (2010).....	37
State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645 (Ct. App. 2008).....	35
State ex rel. Callison v. Nat. Linen Service Corp., 225 S.C. 232, 81 S.E.2d 342, 344 (1954).....	35
Stuckey v. State Budget & Control Bd., 339 S.C. 397, 529 S.E.2d 706 (2000).....	26
Wiesart v. Stewart, 379 S.C. 300, 665 S.E.2d 187 (Ct. App. 2008).....	11
Wigeon v. U.S. Auto. Ass’n, 391 S.C. 159, 705 S.E.2d 432 (2011).....	9
Woodward v. State Rural Electrification Auth., 190 S.C. 465, 3 S.E.2d 539 (1939).....	35

Statutes:

S.C. Code Ann. § 6-1-330.....	23
S.C. Code Ann. § 8-21-10.....	passim
S.C. Code Ann. § 8-21-15(A).....	passim

S.C. Code Ann. § 8-21-15(B).....	passim
S.C. Code Ann. § 8-21-15(B)(8).....	passim
S.C. Code Ann. § 8-21-30.....	passim
S.C. Code Ann. § 8-21-50.....	5, 36, 37
S.C. Code Ann. § 8-21-110.....	33, 36
S.C. Code Ann. § 12-4-395.....	3, 5, 6
S.C. Code Ann. § 12-54-75.....	2, 3, 6, 28
S.C. Code Ann. § 14-1-214.....	3, 6, 8, 32
S.C. Code Ann. § 56-1-40.....	8
S.C. Code Ann. § 56-3-620.....	8
S.C. Code Ann. § 56-3-627.....	8
S.C. Code Ann. § 56-19-420.....	8
S.C. Code Ann. Regs. 117-304.....	25

Other Authorities:

2023 Act No. 51 (May 30, 2023).....	2, 4, 14, 15, 17, 18
Black’s Law Dictionary 1163 (5th ed. 1979).....	12
67 C.J.S. Officers § 385.....	30
Op. S.C. Atty. Gen., March 3, 1997.....	25
Op. S.C. Att’y Gen., April 5, 2013.....	30
Op. S.C. Atty. Gen., Oct. 11, 2011.....	31
Op. S.C. Atty. Gen., March 16, 2011.....	31
Pat McDonell, The Doctrine of Clarification, 119 Mich. L. Rev. 797 (2021).....	27

STATEMENT OF ISSUES ON APPEAL

1. Whether the lower court erred in ruling that the 2023 enactment of S.C. Code Ann. § 8-21-15(B)(8) applies retroactively to Appellant's 2022 credit card payment.
2. Whether the lower court erred in ruling that state agencies had the statutory authority to charge payment processing fees for non-cash payments prior to enactment of S.C. Code Ann. § 8-21-15(B)(8).
3. Whether the lower court erred in holding that S.C. Code Ann. § 8-21-30, which provides for a monetary penalty when public officers charge an illegal fee, does not apply to state agency public officers, such as the heads of the Department of Administration or Department of Motor Vehicles.

STATEMENT OF THE CASE

On July 26, 2022, Appellant Cameron M. Butler visited the Blythewood, South Carolina office of the South Carolina Department of Motor Vehicles ("DMV") to transfer his out of state vehicle title, obtain a new vehicle registration, and to renew his South Carolina driver's license. Plaintiff paid for these DMV services with a credit card and, in addition to the statutorily prescribed fees for these services, he was charged a payment processing fee for using a credit card. On November 3, 2023, Appellant filed a class action complaint seeking a declaration that payment processing fees, at the time of Appellant's transaction, were statutorily prohibited and not expressly authorized by the South Carolina General Assembly. The Complaint also sought ten times the amount of the illegal payment processing fees charged to Appellant, pursuant to S.C. Code Ann. § 8-21-30.

Respondents Marcia A. Adams, Director of the South Carolina Department of Administration ("DOA"), and Kevin A. Shwedo, Director of the DMV, filed Answers on December 8, 2023 and January 8, 2024, respectively. The Parties filed a Joint Motion for Complex Case Designation and assignment to a single judge on March 22, 2024. On September

6, 2024, Chief Administrative Judge Daniel M. Coble granted the joint motion and assigned this case to the Honorable William McGee, III. As the facts were not disputed by the Parties and this case required the trial court to solely resolve questions of statutory interpretation, the Parties filed cross-motions for summary judgment. On February 21, 2025, the trial court heard arguments on the cross-motions for summary judgment. By Order dated March 26, 2025, Judge McGee denied Plaintiff's motion and granted Defendants' motions for summary judgment. Specifically, the trial court found that the payment processing fees: (1) do not violate S.C. Code Ann. § 12-54-75, which provides that the State Treasurer may negotiate payment processing service provider fees on behalf of state agencies; (2) that such fees are retroactively permitted by the 2023 enactment of § 8-21-15(B)(8), which excepts fees charged for non-cash payments to state agencies from the general prohibition on state agencies charging non-statutory fees as found in § 8-21-15(A); (3) that 2023 Act No. 51's enactment of § 8-21-15(B)(8) does not violate the "one subject rule" of Article III, § 17 of the South Carolina Constitution; and (4) that § 8-21-15(B)(8) was not suspended by Proviso 117.7 of the 2023-24. Appropriations Act.

Judge McGee dismissed all remaining motions then pending before the trial court. The Plaintiff filed a timely Notice of Appeal on April 24, 2025. The appeal seeks reversal of the trial court's holdings on all matters except the trial court's holdings on whether § 8-21-15(B)(8) violates the "one subject rule" and whether that statute was suspended by the 2023-24 budget proviso.

STATEMENT OF FACTS

1. Relevant Statutes Concerning Agency Fees and Credit Card Payments to State Agencies.

An understanding of the factual background relating to this case should begin with a familiarization of the relevant South Carolina statutes and contractual agreements concerning state agencies' authority to charge fees; state agencies' acceptance of credit card payments; and the contractual basis for those agencies to impose payment processing fees. The relevant statutes, raised in this case, are S.C. Code Ann. Sections 8-21-10, 8-21-15, 8-21-30, 12-4-395, 12-54-75, and 14-1-214. These statutes provide context to the General Assembly's intent to regulate whether and when state agencies may impose fees on South Carolinians and others utilizing state agencies' services.

Section 8-21-10 provides that the "several officers" named in Chapter 21, Title 8 of the South Carolina Code of Laws, as well as a specified list of other Code titles, "shall be entitled to receive and recover the fees and costs prescribed by Chapter 21 and the other specified Code titles.¹ Immediately, following § 8-21-10, the legislature's statutory scheme provides that South Carolina agencies are prohibited from charging non-statutory fees. Specifically, § 8-21-15(A) provides as follows: "No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation"

¹ The other "officers" referenced in § 8-21-10 include those named in "Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23." Further, S.C. Code Ann. § 8-1-10 defines "public officers" to "mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and others persons whose duties are defined by law."

The General Assembly created limited exceptions to § 8-21-15(A) by providing that the statutory prohibition on non-statutory fees shall not apply to “(1) state-supported governmental health care facilities; (2) state-supported schools, colleges, and universities; (3) educational, entertainment, recreational, cultural, and training programs; (4) the State Board of Financial Institutions; (5) sales by state agencies of goods or tangible products produced for or by these agencies; (6) charges by state agencies for room and board provided on state-owned property; (7) application fees for recreational activities sponsored by state agencies and conducted on a draw or lottery basis; (8) charges for vendor fees, convenience fees, transaction fees, or other similar fees that allow a person to pay a state agency or contracted vendor on behalf of a state agency for goods, services, fees, or other items through any payment method other than cash; (9) court fees or fines levied in a judicial or adjudicatory proceeding.” S.C. Code Ann. § 8-21-15(B).² Additionally, § 8-21-15(A) “does not prohibit a state agency, department, board, committee, or commission from charging fees for services provided to other state agencies, departments, boards, committees, commissions, or political subdivisions regardless of whether the fee is set by statute.” S.C. Code Ann. § 8-21-15(C).

The General Assembly provided a remedy to persons who are charged an illegal fee by public officers. “If any officer herein named [in Chapter 21 of Title 8] shall charge any other fee or fees for any services herein mentioned, such officer shall be liable to forfeit ten times the amount so improperly charged, to be recovered by suit in the court of common pleas, by attachment or by sale when the penalty does not exceed twenty dollars.” S.C. Code Ann. §

² Section 8-21-15(B)(8) was enacted by 2023 Act No. 51, a forty section omnibus DMV related legislative bill. Pursuant to Act No. 51, this particular amendment to § 8-21-15(B) became effective on May 18, 2023.

8-21-30. Appellant’s civil action alleges that Respondents are public officers who’s agencies or departments, as well as their services, duties, responsibilities, and functions are named in § 8-21-15(A). Underlying the proper statutory construction of all of the aforementioned statutes is § 8-21-50 which provides that the “rule of the common law that statutes in derogation of that [common] law are to be strictly construed has no application to this chapter”

The General Assembly has also enacted specific statutes applicable to state agencies authority to accept credit card payments for their services. The South Carolina Department of Revenue is authorized to accept credit card payments pursuant to § 12-4-395. “The department may accept, on terms and conditions it establishes, payments to it by credit cards. This authority includes a determination not to accept credit card payments or to accept credit card payments only for certain classes of payments as specified by the department.” *Id.* Further, “[n]otwithstanding another provision of law, the State Treasurer may enter into contracts on behalf of the department by which the department may accept credit card payments. The department may withhold the actual cost of processing credit card payments from deposits of the payments and may treat these withholdings as reimbursements of the associated expenditures.” *Id.*³

The South Carolina legislature also authorized a mechanism for all other state agencies to accept credit card payments. “The State Treasurer may authorize a state agency which collects revenues, either as taxes or license fees or as payment for goods or services, to accept electronic forms of payment including but not limited to, credit cards, debit cards, bank debits or credits or

³ This statute was originally enacted in 2000 and renumbered in 2006. The Department of Revenue deducts credit card processing fees from the monies paid to it and does not charge credit card payers the processing fees. See Appellant’s Complaint ¶[].

electronic purse options. These electronic payments may be accepted in the course of an electronic commerce transaction, in which the business transaction is conducted by means of the internet, interactive voice response, or other fully electronic means.” S.C. Code Ann. § 12-54-75(A) (enacted in 1999). The statute further provides that the Treasurer “may contract on behalf of the agencies with payment service providers for the processing of electronic payments, and may negotiate associated processing fees. The agency collecting revenues electronically may withhold the negotiated processing fees for payment to service providers from the revenues collected.” S.C. Code Ann. § 12-54-75(B).

Finally, in 2002, the General Assembly specifically granted clerks of court, registers of deeds, magistrates, and municipal court judges to accept payment by credit/debit cards of fines, fees, assessments, court costs, or other court surcharges. S.C. Code Ann. § 14-1-214(A)(1). These court entities are also authorized to “impose a fee for processing payment by credit card.” Section 14-1-214(A)(2). Different than the provisions in §§ 12-4-395 and 12-54-75, the legislature declared that “[n]otwithstanding fees imposed by other provisions of law, [these court officials], must impose a separate fee on the person making a payment by credit card that wholly offsets the amount of administrative fees charged to the court.” Section 14-1-214(A)(2). Against this backdrop of statutes governing state agency fees and acceptance of credit cards for payment, the Respondents executed contracts with a payment processing service provider and contractually agreed to pass those processing fees through to customers.

2. The Contractual Basis for Creation of the Challenged Payment Processing Fees.

In 2004, the South Carolina Budget & Control Board, now the DOA, entered into a contract (also referred to as the “Master Agreement”) with South Carolina Interactive, LLC,

(“SCI”) a digital technology and payment processing service company.⁴ Pursuant to the Master Agreement, SCI provides merchant card processing and digital government services, including the design and maintenance of a state government web portal called sc.gov. According to sc.gov, SCI’s services are provided to the State of South Carolina under a “self-funded model and is not supported by [legislatively] appropriated funds.” In fact, the state’s web portal touts that SCI’s services are provided “at no cost to governmental entities.”

The Master Agreement allows state agencies to enter into individual sub-agreements with SCI. In order to achieve its lauded “self-funding” goal, the Master Agreement provides that SCI may be compensated through agency sub-agreements in one of two ways: (1) a state agency may absorb the payment processing fees or (2) pass the processing fee on to the customers of an agency’s services. Under either option, the Master Agreement sets SCI’s compensation rate at 1.7%, plus \$1.00, for each credit card transaction dollar total. Pursuant to the terms of the Master Agreement and its sub-agreement with SCI, the DMV is passing along the payment processing fees to the agency’s customers.

3. Appellant’s Credit Card Transaction at the DMV.

This case arises from Appellant’s challenge to credit card processing fees charged by the DMV, pursuant to the Master Agreement and sub-agreement with SCI. On July 26, 2022, Appellant went to Blythewood, South Carolina DMV office to transfer his out of state vehicle title, obtain a new vehicle registration, and to renew his South Carolina Driver’s license. The South Carolina Code of Laws establishes a specific fee that the DMV can charge for each of

⁴ Originally, SCI was a subsidiary of NIC, Inc., which was acquired by Tyler Technologies, Inc. in 2021. Tyler signed the extension of the Master Agreement with DOA in 2021, which was in effect during the relevant time period of this case.

these services and agency issued documents. Section 56-19-420 provides that the DMV shall charge fifteen dollars (\$15.00) for issuing a certificate of title. Section 56-3-620 sets a fee of forty dollars (\$40.00) for a vehicle registration and § 56-1-40 provides that a driver's license must be issued by the DMV upon payment of twenty-five dollars (\$25.00). Appellant was charged each of these statutory fees in addition to the two hundred fifty dollar (\$250.00) "infrastructure maintenance fee" required by § 56-3-627, when titling a motor vehicle.

The total amount of the DMV's statutory fees legally incurred by Appellant was three hundred thirty dollars (\$330.00). However, because Appellant paid for those DMV services with a credit card, he was additionally charged a payment processing fee of six and 61/100 dollars (\$6.61). At the time of Appellant's DMV transaction, no South Carolina statute specifically authorized the DMV, or other state agencies, to charge and collect payment processing fees.⁵

In granting summary judgment against Appellant, Judge McGee relied, in part, on a judicial ruling in a separate circuit court case also challenging these DMV payment processing fees. *Lloyd v Shwedo*, C/A No. 2021-CP-28-00734, raised nearly identical claims as brought by Appellant. *Lloyd v. Shwedo* was decided by the Honorable R. Lawton McIntosh, who granted summary judgment against the plaintiffs on substantially the same grounds as Judge McGee. See McIntosh Order filed June 12, 2024 and Order denying motion to reconsider filed August 16, 2024. One notable exception between Judge McGee's ruling and Judge McIntosh's ruling is that Judge McIntosh held that the DMV can charge customers payment processing fees because the

⁵ In contrast and as stated earlier, § 14-1-214(A)(1) does require clerks of court, registers of deeds, magistrates, and municipal court judges to impose, upon a credit card payer, a separate fee that offsets the amount of administrative fees charged to the court for payment processing.

issuance of driver's licenses constitutes the "sale of goods or tangible products" pursuant to S.C. Code Ann. § 8-21-15(B)(5).⁶ Those plaintiffs did not appeal Judge McIntosh's ruling.

STANDARD OF REVIEW

When the appellate court reviews the grant of a summary judgment motion, it applies the same standard that governs the trial court under Rule 56(c), SCRPC. *Meier v. Burnsed*, 438 S.C. 362, 882 S.E.2d 863, 867 (Ct. App. 2023). "When the parties file cross-motions for summary judgment, the issue becomes a question of law for the [c]ourt to decide de novo." *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836, 837 (2021); *Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 823 S.E.2d 697, 700 (Ct. App. 2019), citing *Wigeon v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432, 434 (2011) (when there are cross motions for summary judgment filed, the parties concede the issues before the appellate court should be decided as a matter of law). Moreover, "[q]uestions of law may be decided [by the appellate court] with no particular deference to the trial court." *Quicken Loans, Id.* (quoting *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008)).

"[T]he interpretation of a statute is a question of law for the [c]ourt to review de novo." *Meier*, 882 S.E.2d at 866 (quoting *Calhoun Cnty. Council*, 854 S.E.2d at 837). As our Supreme Court has stated, "[d]etermining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo." *Id.* at 866-67 (citations omitted). Thus, the Court of Appeals should decide these questions of law with no deference to the trial court's rulings. *Id.*

⁶ Respondents raised the same argument in this case even though in neither case were the DMV customers charged a sales tax on the alleged "sale of goods or tangible products." Despite Respondent's characterization of licenses and other documents issued by the DMV, the Appellant, in this case, also had the payment processing fee applied to his charge for the "infrastructure maintenance fee," which is inarguably not a "good or tangible product."

at 867 (when a case raises a novel question of law regarding statutory interpretation, the appellate court may decide that question with no particular deference to the lower court). This court is free to decide the question of statutory construction based on its own assessment of which interpretation and reasoning would best comport with the law and public policies of this state and its sense of law, justice, and right. *Id.* (citing *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 417 S.C. 562, 566, 790 S.E.2d 783, 785 (Ct. App. 2016)).

ARGUMENT

I. S.C. CODE ANN. § 8-21-15(B)(8), WHICH BECAME EFFECTIVE MAY 18, 2023, SHOULD NOT BE APPLIED RETROACTIVELY TO APPELLANT’S JULY 26, 2022 CREDIT CARD TRANSACTION BECAUSE THE STATUTE IS NOT REMEDIAL AND THE GENERAL ASSEMBLY DID NOT EXPRESS ANY INTENT THAT THE AMENDMENT SHOULD BE APPLIED RETROACTIVELY.

A. Because S.C. Code Ann. § 8-21-15(B)(8) Made a Substantive Amendment to the Section 8-21-15(B), Rather than a Remedial or Clarifying Change, It Cannot Overcome the Presumption Against Retroactive Application to Credit Card Transactions Made Prior to Its 2023 Effective Date.

1. S.C. Code Ann. § 8-21-15(B)(8) is not a Remedial Statute.

The trial court disregards long-standing precedent from this Court and the South Carolina Supreme Court by concluding that S.C. Code Ann. § 8-21-15(B)(8) is a remedial statute that should be applied retroactively to the payment transaction between Appellant and the DMV. The proper interpretation of § 8-21-15(B)(8) begins with the well-established principle that “[i]n the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary.” *Smith v. South Carolina Retirement System*, 336 S.C. 505, 515, 520 S.E.2d 339 (Ct. App. 1999) (citing *Hyder v. Jones*, 271 S.C. 85, 245 S.E.2d 123, 125

(1978)); *see also Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund*, 277 S.C. 604, 291 S.E.2d 667, 669 (1982) (there exists a presumption that statutory enactments are applied prospectively). There are two exceptions to the general rule of presuming prospective application of statutory enactments. Those exceptions exist only when the statute is procedural or remedial nature. *Southeastern Site Prep LLC v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650, 655 (Ct. App. 2011) (*citing Bartley v. Bartley Logging Co.*, 293 S.C. 88, 359 S.E.2d 55, 56 (1987)).

S.C. Code Ann. § 8-21-15(B)(8) is neither a procedural nor remedial statutory enactment. “[A] ‘procedural’ law sets out a mode of procedure for a court to follow, or ‘prescribes a method of enforcing rights.’” *Edwards v. State Law Enforcement Division*, 395 S.C. 571, 720 S.E.2d 462, 466 (2011). No party in this case asserts that § 8-21-15(B)(8) is a procedural statute. However, the trial court erroneously construes the statute as a remedial enactment. “A statute is remedial and applies retroactively when it creates new remedies for existing rights or enlarges rights of persons under disability.” *Wiesart v. Stewart*, 379 S.C. 300, 665 S.E.2d 187, 188 (Ct. App. 2008). “Statutes are remedial and [retroactive], in the absence of directions to the contrary, when they create new remedies for existing rights ... enlarge the rights of persons under disability, and the like, unless [they] . . . violate some contract obligation” *Smith v. Eagle Constr. Co., Inc.*, 282 S.C. 140, 318 S.E.2d 8, 9 (1984); *see also Hooks v. Southern Bell Tel. & Tel. Co.*, 291 S.C. 41, 351 S.E.2d 900, 902 (Ct. App. 1986) (statue is remedial when it creates new remedies for existing rights or enlarges the rights of persons under disability, unless it violates a contractual obligation, creates a new right, or divests a vested right); *Doe v. Crooks*,

364 S.C. 349, 613 S.E.2d 536, 536 (2005) (statutes of limitations are remedial and generally applied retroactively) (*citing Goff v. Mills*, 279 S.C. 382, 308 S.E.2d 778, 780 (1983)).

In this case, the lower court’s conclusion that § 8-21-15(B)(8) is a remedial statute is seriously flawed. First, the statute at hand does not remotely meet the definition of a “remedy.” *See Austin v. Stokes-Craven*, 387 S.C. 22, 57, 691 S.E.2d 135 (2010) (finding that attorney’s fees under the Dealer’s Act “epitomizes the definition of a remedy”) (*citing Black’s Law Dictionary* 1163 (5th ed. 1979) (defining “remedy” as [t]he means by which a right is enforced or the violation of a right is prevented, redressed, or compensated”). Section 8-21-15(B)(8) is a 2023 enacted exception to the general prohibition on state agencies charging fees that have not been approved by statute and regulation. *See* S.C. Code Ann. § 8-21-15(A) and (B). The statutory amendment does not provide a means by which Appellant can enforce his right not to pay an illegal fee, nor is it a means for Appellant to prevent, redress, or receive compensation for a violation of his right codified in § 8-21-15(A). In fact, the remedy for a violation of § 8-21-15(A) is found in the right to sue set forth in § 8-21-30. Instead, § 8-21-15(B)(8) creates a new and substantive exception to the limited circumstances when a state agency can escape the duty to only charge statutorily authorized fees. Without a retroactive application of the statute in question, Appellant enjoyed a statutory right not to pay credit card processing fees when paying for DMV services.

Section 8-21-15(B)(8) grants the DMV the substantive right to charge non-statutorily established fees when customers make non-cash payments. Consequently, the statute authorizes DMV to impose a new obligation on its customers to pay processing fees when using a credit card. Statutes dealing with substantive rights, liabilities, or obligations are routinely held to

apply prospectively. *See Edwards*, 720 S.E.2d at 466 (citing *Kneisley v. Lattimore-Stevens Co.*, 40 Ohio St.3d 354, 533 N.E.2d 743, 745 (1988) (explaining that a statute is “substantive,” rather than “remedial,” when it “imposed new or additional burdens, duties, obligations, or liabilities as to past transaction”))⁷; *see also Bartley v. Bartley Logging Co.*, 293 S.C. 88, 359 S.E.2d 55, 56-57 (substantive statutes are presumed to apply prospectively); *Southeastern Site Prep., LLC v. Atlantic Coast Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650, 655 (Ct. App. 2011) (Act will apply prospectively because it creates substantive rights and imposes new obligations).

2. Section 8-21-15(B)(8) is also not a Clarifying Amendment and can not be Applied to Appellate’s Pre-enactment Transaction.

The trial court also makes the ungrounded conclusion that § 8-21-15(B)(8) is merely clarifying legislation and can, therefore, be applied retroactively to Appellant’s 2022 payment transaction. (McGee Order p. 14 ([“§ 8-21-15(B)(8) clarifies the remedy already available to the DMV and other state agencies for charging processing fees contracted for under the twenty-year old Master Contract.”]). The trial court fundamentally misconstrues the difference between “clarifying” legislation and legislation substantively changing the law. “Although retroactive application of statutes ‘is not favored,’ a statute will be construed ‘to have retroactive effect’ where its ‘language requires this result.’” *United States v. Kmart Corp.*, 824 F.3d 632, 642 (7th Cir. 2016) (quoting *Republic of Austria v. Altmann*, 541 U.S. 677, 692, 124 S.Ct. 2240, 159

⁷ The *Kneisley* opinion, cited with approval by our Supreme Court in *Edwards*, listed examples of substantive statutes or amendments as being ones that: impair or takes away vested rights; affects an accrued substantive right; imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction; creates a new right out of an act which gave no right and imposed no obligation when it occurred; creates a new right; or gives rise to or takes away the right to sue or defend actions at law. *Id.*

L.Ed.2d 1 (2004) (citations omitted). To determine whether a statutory amendment is a clarifying one, rather than a substantive change, a court should consider: “[1] whether the enacting body declared that it was clarifying a prior enactment; [2] whether a conflict or ambiguity existed prior to the amendment; and [3] whether the amendment is consistent with a reasonable interpretation of the prior enactment and its legislative history.” *Kmart Corp., Id.* (quoting *Middleton v. City of Chicago* , 578 F.3d 655, 663–64 (7th Cir. 2009)). “The Supreme Court has emphasized the importance of the first and second factors.” *Id.* (citing *Cherokee Nation of Oklahoma v. Leavitt* , 543 U.S. 631, 646–47, 125 S.Ct. 1172, 161 L.Ed.2d 66 (2005) (statute is not clarifying where earlier “statutes ... were not ambiguous” despite legislative history evincing intent to clarify); *Rivers v. Roadway Exp., Inc.* , 511 U.S. 298, 307, 114 S.Ct. 1510, 128 L.Ed.2d 274 (1994) (requiring “clear expression of congressional intent” for retroactive effect despite evidence that Congress intended to disapprove a judicial interpretation); *Cf. Toise v. Rowe*, 243 Conn. 623, 707 A.2d 25, 27 (1998) (statutes passed by the legislature to resolve a controversy engendered by statutory ambiguity often are deemed to have a clarifying effect)).

The 2023 enactment of § 8-21-15(B)(8) fails any reasonable test to be characterized as clarifying legislation. Section 8-21-15 was first enacted in 1987 Act No. 178 and amended in 2023 Act No. 51. The 2023 Act contains no language declaring that the South Carolina General Assembly was clarifying its 1987 enactment. The trial court’s Order fails to describe any prior conflict or ambiguity in the interpretation of § 8-21-15(A) and (B). Instead, the statute clearly and unambiguously sets forth very specific exceptions to the statutory mandate that agencies may not “set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set

by regulation” S.C. Code Ann. § 8-21-15(A). Prior to 2023 Act No. 51, no exception existed for the DMV to impose fees for the “duty, responsibility, or function” of issuing Appellant’s documents or accepting payment for those services performed pursuant to Title 56 of the South Carolina Code. *See e.g. Edwards v. State Law Enforcement Division*, 720 S.E.2d at 466 (finding that because the statute creating the sex offender registry did not speak to the issue of pardons, there was no statutory language for the subsequent amendments to “clarify”).

Furthermore, § 8-21-15(B)(8) is inconsistent with or unrelated to any other exception set forth in § 8-21-15(B). Importantly, there is a complete lack of any legislative history suggesting that § 8-21-15(B)(8) was meant to clarify any part of § 8-21-15(B), or any other statute. Rather than clarifying existing statutory provisions, enactment of § 8-21-15(B)(8) was a substantive change to the South Carolina law, which prohibited state agencies from imposing non-statutory fees. Failing as both a remedial and clarifying amendment, long-standing appellate precedent requires reversal of the trial court’s retroactive application of § 8-21-15(B)(8) to Appellant’s 2022 credit card payment to the DMV.

B. S.C. Code Ann. § 8-21-15(B)(8) Was Enacted With A Prospective Effective Date And There Is No Language Contained In 2023 Act No. 51 From Which The Trial Court Could Deduce A Legislative Intent To Make § 8-21-15(B)(8) Retroactive To Appellant’s 2022 Credit Card Transaction.

The trial court erred in finding “clear legislative intent” that the South Carolina General Assembly intended that § 8-21-15(B)(8) apply retroactively. (McGee Order p. 11). This finding flouts both the standards set by this Court and the Supreme Court as well as the express language of Act No. 51. The trial court justified its holding on the grounds that the “general purpose” of Act No. 51 was to “overhaul and update the law applicable to the DMV. (McGee Order p. 11).

The lower court also held that “Plaintiff’s counsel conceded in the prior litigation that the General Assembly knew of that lawsuit against the DMV during the first regular session of the 125th South Carolina General Assembly. Its purpose for creating the exception in section 8-21-15(B)(8) was to remedy and resolve litigation over the processing fee.” *Id.* The court went further to explain that “[a]rmed with knowledge of the prior lawsuit against the DMV, as well as the existing individual agency contracts under the Master Contract, the General Assembly included the express exception to the fee prohibition to allow other state entities to *continue* serving customers as they had for years under the Master Contract.” *Id.* (emphasis in original). Last, the trial court held that prospective application of the statutory amendment “would be ‘so clearly contrary to the legislative intent’ to remedy this lawsuit by clarifying that this type of fee is excepted from the fee prohibition.” *Id.* The trial court’s rationale in reaching its findings fail both legally and logically.

The South Carolina Supreme Court has been clear that legislative intent to apply a statute retroactively must be discerned from the language of the enactment itself and not from some guessing exercise engaged in by a court. “A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room from doubt. The statute must contain express words evincing an intent that it be retroactive or words necessarily implying such an intent. *American Nat’l Fire Ins. Co. v. Smith Grading and Paving, Inc.*, 317 S.C. 445, 454 S.E.2d 897, 899 (1995) (citing *S.C. Nat’l Bank v. S.C. Tax Comm’n*, 297 S.C. 279, 376 S.E.2d 512 (1989); see also *Hyder v. Jones*, 271 S.C. 85, 245 S.E.2d 123 (1978). The trial court’s summary judgment order is completely void of any citation to legislative language evincing legislative intent to retroactively apply § 8-21-15(B)(8).

Where amendatory acts by the legislature contain no words giving it a retroactive effect, the statute in force at the time a right of action accrued is the applicable statute. *Rehkopf v. Kuland*, 30 S.C. 234, 9 S.E. 99, 100 (1889); *see also Snavelly v. Perpetual Fed. Sav. Bank*, 306 S.C. 348, 412 S.E.2d 382, 384 (1991) (noting the presumption that statutory enactments apply prospectively unless there is a specific provision of clear legislative intent to the contrary). In this case, the trial court ignored the unequivocal rule of statutory construction requiring courts to look for legislative intent in a specific provision or clear legislative language requiring retroactive application of an enactment. *See e.g. Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund*, 277 S.C. 604, 291 S.E.2d 667, 669 (1982) (statutory enactments are prospective absent clear legislative intent or specific provision to the contrary); *Smith v. South Carolina Retirement System*, 336 S.C. 505, 520 S.E.2d 339 (Ct. App. 1999) (citing *Hyder v. Jones*, 271 S.C. 85, 245 S.E.2d 123 (1978)). There is a complete absence of any specific provision or language in either Act No. 51 or § 8-21-15(B)(8) demonstrating an intent by the General Assembly to apply the amendment retroactively to past transactions..

2023 Act No. 51 contains several different effective dates for its forty individual sections. Those effective dates were as follows: section 1 takes effect twelve months after approval by the governor; section 5 takes effect on the first day of the fiscal year following twelve months after approval by the governor; sections 8, 9, 10, 11, 12, 30, 31, 32, and 33 take effect eight months after approval by the governor, provided that necessary solicitations are awarded in a timely manner in accordance with the State Consolidated Procurement Code; sections 56-3-214(C), 56-3-214(D), 56-3-214(E), 56-3-214(F), and 56-3-214(H) take effect ten months after the effective date of sections 8, 9, 10, 11, and 12; sections 15 through 28 take effect on January 1,

2024; section 29 takes effect on the first day of the fiscal year following twelve months after approval by the governor; all remaining sections (including section 14's amendment of § 8-21-15(B)(8)), as well as sections 56-3-214(A), 56-3-214(B)(1), 56-3-214(B)(2), 56-3-214(B)(3), 56-3-214(G), 56-1-20, 56-23-40, 56-23-60, and 56-23-105 take effect upon approval by the governor.⁸ See Section 40 of Act No. 51 (effective dates). 2023 Act No. 51 was signed by Governor McMaster on May 18, 2023. Thus, the General Assembly very clearly thought about and provided for definite effective dates for differing portions of the Act.

Even though the legislature provided for a retroactive application of portions of the Act's amendatory provisions as to "current license holders," as of January 1, 2024, it expressly made the effective date for § 8-21-15(B)(8) prospective from the date of approval by the governor. "Finding nothing in this enactment beyond a statement of its 'effective date,' we must follow the well-settled rule that a statute may not be applied retroactively in the absence of specific provision or clear legislative intent to the contrary." *Schall v. Sturm, Ruger Co., Inc.*, 278 S.C. 646, 300 S.E.2d 735, 737 (1983) (citations omitted); *see also Meier v. Burnsed*, 438 S.C. 362, 882 S.E.2d 863, 869 (Ct. App. 2022) (although frequently disfavored, statutes may operate retroactively where there is a specific provision or clear legislative intent) (*citing Hercules v. South Carolina Tax Comm'n*, 274 S.C. 137, 262 S.E.2d 45, 48-49 (1980) (based upon statute being remedial and "the language of the statute," it was intent of the legislature to apply statute retroactively)).

⁸ The General Assembly did provide that while sections 15 through 28 take effect on January 1, 2024, "[a]ny dealership applying for or renewing licenses, or operating on a currently issued license on or after January 1, 2024, is subject to the provisions of sections 15 through 28" of the Act. Thus, the legislature expressly provided for retroactive application of some parts of the Act, in certain circumstances, but not retroactive application of § 8-21-15(B)(8).

In reaching its erroneous conclusion regarding legislative intent to retroactively apply § 8-21-15(B)(8) to any pending litigation, the trial court fails to cite to any language in Act No. 51, the amending statute itself, or any legislative history supporting that conclusion. Instead, the lower court found evidence of legislative intent in the form of pure conjecture. *See e.g. Creswick v. University of South Carolina*, 434 S.C. 77, 862 S.E.2d 706, 709 (2021) (courts may not look to opinions of legislators and others, after enactment, to discern legislative intent); *Kennedy v. S.C. Retirement System*, 345 S.C. 339, 549 S.E.2d 243, 250 (2001) (only where the language of an “act gives rise to doubt or uncertainty as to legislative intent,” may the court search for legislative intent “beyond the borders of the act itself”). The trial court assumes that the General Assembly, even if aware of pending litigation concerning DMV’s payment processing fees, intended to circumvent that litigation. The more plausible explanation is that enactment of § 8-21-15(B)(8) was meant to apply to future conduct of state agencies and not as ratification of past wrongful conduct. *Boyd v. Boyd*, 277 S.C. 416, 289 S.E.2d 153, 154 (1982) (unless there is a specific statutory provision or clear legislative intent to the contrary, “[n]o statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt”).

Put bluntly, neither the trial court nor the Respondents point to any legislative language indicating an intent to retroactively apply § 8-21-15(B)(8) to legal claims accruing before its effective date. “To overcome the presumption against retroactivity, a legislature must clearly demonstrate an intent to apply the statute retroactively. This standard is undeniably high, requiring an expression of legislative intent that is obvious from the statute's text.” *Ward v. Dixie Nat’l Life Ins. Co.*, 595 F.3d 164, 174 (4th Cir. 2010) (citing *Landgraf v. USI Film Prods.*, 511

U.S. 244, 280, 114 S.Ct. 1483 (1994). “This standard is undeniably high, requiring an expression of legislative intent that is obvious from the statute's text.” *Ward, Id.* (citing *S.C. Dep’t of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416, 418 (2000)). Courts have generally held that the inclusion of an effective date is inconsistent with legislative intent to apply a statute retroactively. *Ward, Id.* at 175 (citing *Rosemary Coin Machines, supra*; *Pulliam v. Doe*, 246 S.C. 106, 142 S.E.2d 861, 863 (1965)). In an attempt to circumvent the previously described rule that legislative intent must be found in the legislative language or legislative history, the trial court mistakenly relies on *Carolina Power & Light Co. v. Town of Pageland*, 321 S.C. 538, 471 S.E.2d 137 (1996) for the proposition that legislative intent can be gleaned from sources other than the legislative language. The lower court badly misconstrues *Carolina Power & Light*.

In *Carolina Power & Light*, the Supreme Court considered whether to retroactively apply an amendment to a statute providing that rural cooperatives may only provide service in rural areas even after the Town of Pageland annexed into the co-op’s service territory. *Id.* at 139. “Even though the General Assembly did not enact the annexation exception until . . . 14 years after the Co-op began serving the annexed area—the court found ‘retroactive application of the [exception] so clearly compelled as to leave no room for doubt.’” (McGee Order p. 11-12). The trial court’s reliance on *Carolina Power & Light* ignores the fact that the Supreme Court reached its holding based upon the language used in the legislative amendment itself. The statute under consideration provided that “the act of incorporating or annexing into a city or town an area in which the cooperative is serving shall constitute the consent of the governing body of such city or town for the cooperative to **continue** serving all premises then being served and to serve

additional premises within such area until such time as the governing body of the city or town shall direct otherwise. *Carolina Power & Light*, 471 S.E.2d at 139 (emphasis added). Thus, the Supreme Court held that the General Assembly’s “indisputable” intent to “not require ouster of a co-op due solely to a city’s annexation” was rooted in the amendment’s language and not in a clairvoyant perception that the legislature surely must have wanted co-ops to continue serving those annexed areas. *Id.* at 140.

Carolina Power & Light is not parallel to this case, but the Supreme Court’s decision in *S.C. Dept. of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416 (2000) is analogous to the issue of legislative intent regarding the amendment to § 8-21-15(B). On May 31, 1995, Rosemary, pursuant to the then current version of S.C. Code Ann. § 12-21-2720, obtained one two-year license for a multi-player five station blackjack video machine it owned and operated in a convenience store. *Rosemary Coin Machines*, 339 S.C. at 26. Effective July 1, 1995, the General Assembly amended § 12-21-2720 to require owners of multi-player machines to obtain separate licenses for each station. *Id.* On July 5, 1995, the Department of Revenue cited Rosemary for failing to obtain separate licenses for each station. *Id.* at 27.

The Supreme Court reversed the South Carolina Court of Appeals’ holding that the statutory amendment could be applied retroactively to Rosemary. First, the Supreme Court held that that the statutory “amendment [was] not remedial or procedural in nature and therefore [did] not fit into any recognized exception” to the presumption of prospectively applying statutory enactments. *Id.* at 28. The Supreme Court then turned to the task of determining if any statutory language showed a discernible legislative intent that the amendment be applied retroactively. “In ascertaining legislative intent, words must be given their plain and ordinary meaning. Statutes

are not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt.” *Id.* (citations omitted). The Supreme Court found no evidence that the General Assembly intended to apply § 12-21-2720 retroactively.

“Finding nothing in this enactment beyond a statement of its ‘effective date,’ we must follow the well-established rule that a statute may not be applied retroactively in the absence of a specific provision or clear legislative intent to the contrary. *Id.* (citing *Schall*, 300 S.E.2d at 737). Our Supreme Court found that not only did the amendment fail to provide for retroactive application, but there was “nothing in the amendment from which [the Court] could conclude the legislature intended for it to be applied retroactively.” *Id.* As was the circumstances in *Rosemary Coin Machines*, the General Assembly expressly provided that § 8-21-15(B)(8) had an effective date prospective to Appellant’s DMV transaction. Additionally, both the statutory amendment and the entirety of Act. No. 51 are void of even a single word that can be construed to suggest that the legislature intended retroactivity in this case.

Contrary to the lower court’s reasoning, if the General Assembly was aware of pending litigation over §§ 8-21-15 and 30; aware of the State’s Master Contract; and aware of state agencies charging payment processing fees, but nonetheless enacted a prospective “effective date,” then the trial court should have found that the legislature did not intend to retroactively ratify Respondents’ unlawful fees. *Id.* n.2 (“It is not as if the General Assembly could not have made the amendment retroactive if it had wanted to—it is simply a matter of fact that the

General Assembly did not make the amendment retroactive”).⁹ Based upon § 8-21-15(B)(8)’s prospective effective date, and the absence of any word, phrase, or other language suggesting otherwise, the trial court erred in holding that the statutory amendment applies to Appellant’s 2022 payment transaction. *See Lambries v. Saluda Cnty, Council*, 409 S.C. 1, 760 S.E.2d 785, 790 (2014) (“what a legislature says in the text of a statute is considered the best evidence of the legislative intent or will”).

II. THE LOWER COURT ERRED IN HOLDING THAT, PRIOR TO ENACTMENT OF § 8-21-15(B)(8), THESE FEES WERE AUTHORIZED BY EXISTING SOUTH CAROLINA STATUTES.

A. The Trial Court Wrongly Held That S.C. Code Ann. § 8-21-15(B)(5) Authorized These Payment Processing Fees Because The DMV “Sold” Documents To Appellant As “Goods” Or “Tangible Products.”

In the proceedings below, Respondents argued that the even prior to the enactment of § 8-21-15(B)(8), their payment processing fees were authorized by the existing § 8-21-15(B)(5). (Tr. pp. 35-36, 46-47, 51-52). As previously stated herein, § 8-21-15(B)(5) provides an exception to the prohibition on state agencies setting or charging fees unless authorized by statute and regulation when an agency is selling goods or tangible products. *See* S.C. Code Ann. § 8-21-15(A) and (B). Respondents urged the trial court to find that the driver’s license and other documents issued to Appellant constitute a sale by DMV of “goods or tangible products produced for or by” the agency. (Tr. pp. 35-36, 46-47, 51-52). The circuit court erred in adopting Respondents’ argument by holding that § 8-21-15(B)(8) “merely establishes a specific

⁹ Compare the legislative action in this case to the General Assembly’s attempt to address the Supreme Court’s 2021 decision striking down certain local fees as illegal taxes in *Burns v. Greenville County*, 433 S.C. 583, 861 S.E.2d 31 (2021). In 2022, the General Assembly amended the statute at issue in *Burns* but provided that the amendment “takes effect upon approval by the Governor and applies retroactively to any service or fee imposed after December 31, 1996.” S.C. Code Ann. § 6-1-330.

exception for a fee that already fell within a more general exception to the statutory fee prohibition. It thus clarifies the remedy already available to the DMV and other state agencies for charging processing fees” *See* McGee Order p. 14; *see also* McGee Order p. 17 (“a customer who buys these products [titles, registrations, and driver’s licenses] with a credit or debit card pays a statutory fee for the products and a processing fee to process the credit or debit card”). For multiple reasons, the trial court’s holding is unsupported by the facts or well-established caselaw.

First, the circuit court’s interpretation of § 8-21-15(B)(5) defies the plain and ordinary reading of §§ 8-21-15(A) and (B). Any plain and rational reading of those two statutes compels the conclusion that in the absence of a statute and regulation setting fees for “goods or tangible products,” an agency may set a “fee” for those particular “goods” or “products.” Not only are the documents issued to Appellant not the “sale” of goods or products, the statutes do not authorize an agency to establish a separate fee for performing any other particular duty, responsibility, or function, which in this case is the duty or function of accepting payment for issuing DMV documents. *See* S.C. Code Ann. § 8-21-15(A). Under the trial court’s interpretation of § 8-21-15, the DMV could charge the statutory fees for “selling” vehicle titles, registrations, or licenses and then add a “fee” to construct a new building from which those documents are issued. The lower court’s statutory construction clearly constitutes a tortured reading of § 8-21-15. *See Jennings v. Jennings*, 401 S.C. 15, 736 S.E.2d 242, 243 (2012) (statutes must be applied according to their ordinary meaning).¹⁰ Put simply, a plain and

¹⁰ Further undercutting this fallacious interpretation is the fact that the payment processing fee was not only applied to the tangible documents issued by the DMV, but it was also applied to the infrastructure maintenance fee paid by Appellant. *See* Complaint, Exhibit A (Appellant’s July 26, 2022 receipt of fees paid). The infrastructure maintenance fee cannot possibly be considered a tangible product or good.

ordinary reading of § 8-21-15 requires the statute to mean that once the legislature sets a fee for each of the documents issued to Appellant, then these state agencies have no authority to increase those fees or add a separate fee for merely collecting payment.

Second, there was no factual basis to conclude that the DMV treated the issuance of Appellant's vehicle title, registration, or driver's license as a "sale" of "goods or tangible products." The DMV did not charge a sales tax on Appellant's transaction as would have been required if the agency was, in fact, selling goods or tangible products. *See* Complaint, Exhibit A (Appellant's July 26, 2022 receipt of fees paid); *see also* S.C. Code Ann. Regs. 117-304 (sales of tangible personal property by the State are subject to the sales tax); S.C. Rev. Ruling #92-15 (state agency sales to persons other than another state agency, county, or municipality are retail sales subject to the sales tax and the state agency must be licensed as a retailer). Respondents failed to offer any facts to the trial court showing DMV's exemption from the requirement to charge a sales tax on the purported "sale" of documents to Appellant or from the duty to have a retail license for "selling" titles, registrations, or licenses as goods or tangible products. See generally Op. S.C. Atty. Gen., March 3, 1997 (advising that public officers may be personally liable for the failure to collect and properly remit public monies). If, in fact, Respondents' spurious argument is upheld, then it stands to reason that some public officers owe the State of South Carolina, and her taxpayers, years of uncollected sales tax revenue.

Third, the trial court erred in characterizing the 2023 amendment as a "clarification" of § 8-21-15, and in particular § 8-21-15(B)(5). As stated previously herein, the trial court simply misconstrues the nature of § 8-21-15(B)(8) as a "clarifying" statutory amendment. (See McGee Order pp. 9, 14, and 15). "In construing a statute with reference to an amendment, it is presumed

that the legislature intended either (a) to change the substance of the original act, or (b) to clarify the meaning of it.” *Childers v. Parker’s, Inc.*, 274 N.C. 256, 162 S.E.2d 481, 483 (1968). “A clarifying amendment, unlike an altering amendment, is one that does not change the substance of the law but instead gives further insight into the way in which the legislature intended the law to apply from its original enactment.” *Ray v. N.C. Dept. of Transportation*, 366 N.C. 1, 727 S.E.2d 675, 681 (2012). While a subsequent statutory amendment may be interpreted as clarifying original legislative intent, there is a presumption that the legislature intended to change the existing law. *Hock RH, LLC v. S.C. Dept. of Revenue*, 423 S.C. 208, 813 S.E.2d 540, 544 (Ct. App. 2018). The question of whether an amendment to a statute is clarifying or changes the substantive meaning of the statute is a question of law for the court. *Ray*, 727 S.E.2d at 681.

South Carolina courts generally seek to find specific language in either existing statutes or new legislative enactments to determine whether an amendment qualifies as a clarification of existing law or a presumptive change to existing law. *See e.g. Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 659 S.E.2d 125, 130 (2008) (finding statutory amendment was clarification, rather than a change to the law, because title of Act stated the enactment was a clarification); *Stuckey v. State Budget & Control Bd.*, 339 S.C. 397, 529 S.E.2d 706, 708 (2000) (finding that subsequent amendment adding “ninety day” time period to § 9-1-1140 was a clarification of original law requiring state employee requesting retirement credit for educational leave to have returned “directly” to covered employment). In this case, no legislative history or statutory language evidences a belief that the General Assembly was attempting to clarify § 8-21-15(B).

In *Edwards v. State Law Enforcement Division*, 395 S.C. 571, 720 S.E.2d 462 (2011), the Supreme Court considered whether a 2005 amendment to the 1994 sex offender registry law was

a mere statutory clarification requiring that respondent, who was pardoned in 2004, to register as a sex offender. The Supreme Court held that the amendment was a change to the then-existing law rather than a clarification. The Court explained that at the time of the sex offender registry's creation in 1994, "the statute did not address what effect a pardon may have on a sex offender's registration requirement." *Id.* at 465. The 2005 amendments addressed that subject, but because the original law was silent on the subject of pardons, "there was no language for the subsequent amendments to clarify." *Id.* at 466 ("no evidence can be shown of a previous legislative intent that would require clarification").

As in *Edwards*, there is absolutely no evidence that § 8-21-15(B)(8) clarifies previous state law. The 2003 amendment of § 8-21-15(B) adds a new category of fees that are exempted from the general prohibition on agencies charging fees that are not provided for by statute and regulation. Like the case of *Edwards*, previous to the 2003 amendment, § 8-21-15(B) was silent on the subject of payment processing fees for non-cash payments. Additionally, no language in Act No. 51 indicates that the General Assembly intended or contemplated that § 8-21-15(B)(8) was a "clarification" of any existing statutory language. In reaching its decision that the 2023 amendment was a clarifying enactment, the trial court fails to follow South Carolina precedence or any other recognized judicial tests.

The lower court's holding is deficient of any facts supporting the position that the General Assembly intended for § 8-21-15(B)(8) to clarify rather than change existing state law. *See e.g.* Pat McDonell, *The Doctrine of Clarifications*, 119 Mich. L. Rev. 797 (2021) (discussing federal circuit tests for determining when statutory enactments are clarifications of existing law); *Moore v. Regents of the Univ. of California*, 248 Cal. App.4th 216, 206 Cal. Rptr.3d 841, 866

(2016) (when there is absence of definitive “clarifying” expression by the legislature in the amendments themselves, we should presume substantial or material change is not clarification of the law); *Gressman v. State of Utah*, 745 Utah Adv. Rep. 24, 323 P.3d 998, 1003 (2013) (whether amendment is a mere clarification requires asking whether it alters or explains language already present in the original statute or whether it adds new language that did not exist in any form before the amendment was made); *Anderson Consulting, LLP v. Gene Gavin, Comm. of Revenue Services*, 255 Conn. 498, 525, 767 A.2d 692 (2001) (generally look to statutory language and pertinent legislative history to ascertain whether legislature intended amendment to be clarifying legislation).

B. The Trial Court Wrongly Held That The State Procurement Code And Statutes Authorizing The State Treasurer To Negotiate And Contract For Payment Processing Services And Fees Also Grant Respondents The Authority To Collect Payment Processing Fees.

Because § 8-21-15(B)(8) is not itself clarifying of anything contained in § 8-21-15, the trial court erroneously attempts to find Respondents’ “pre-existing authority” to impose payment processing fees from other statutes in the South Carolina Code. For example, the trial court states that the South Carolina Procurement Code permits the Respondents to charge payment processing fees through its contracts with SCI. (*See* McGee Order pp. 12 and 14).¹¹ The circuit court also finds authority for the Respondents’ payment processing fees in S.C. Code Ann. § 12-54-75, which provides that the State Treasurer may authorize state agencies to accept electronic payments and “may contract on behalf of state agencies with payment service

¹¹ The South Carolina Consolidated Procurement Code is contained in Chapter 35 of Title 11 of the South Carolina Code of Laws. The Procurement Code establishes procedures for the acquisition of goods and services by state agencies. Neither the trial court nor Respondents identify a specific statute within the Procurement Code that authorizes state agencies to charge any type of fees, much less these payment processing fees.

providers for the processing of electronic payments, and may negotiate associated processing fees.” (See McGee Order pp. 18-20). Neither of these statutes expressly authorize these Respondents to charge payment processing fees. Essentially, the trial court’s reasoning boils down to reasoning that because nothing in those statutes expressly prohibit these Respondents from charging fees, they must have the authority to pass through payment processing fees to non-cash payers. In other words, similar to a toddler’s logic, “you didn’t say not to do it, so I’m going to do it.” The court’s reasoning is antithetical to the requirement that the authority to impose fees must be expressly granted by the General Assembly.

South Carolina courts, as well as persuasive Attorney General opinions, have long recognized that government agencies or officers must be able to point to specific statutory authority allowing the imposition of any fees or costs. This principal is rooted in the concept that State agencies are creatures of the South Carolina General Assembly and only have authority expressly granted by the legislature. "An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.” *Bazzle v. Huff*, 319 S.C. 443, 462 S.E.2d 273, 274 (1995), citing *Triska v. Dept. of Health & Environmental Control*, 292 S.C. 190, 355 S.E.2d 531 (1987). See also *Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n*, 310 S.C. 539, 426 S.E.2d 319, 321-22 (1992) (held that administrative agency was created by statute and its authority is limited to that granted by the legislature). Undeniably, this same principal limits the power of the DMV to impose unauthorized payment processing fees. See S.C. Code Ann. § 1-30-10(A)(14) (the General Assembly created the Department of Motor Vehicles within the executive branch of state government).

In *State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941), the South Carolina Supreme Court considered whether the Sumter County Clerk of Court could collect fees to file, abstract, and index in his office copies of tax warrants issued by the now former South Carolina Tax Commission. The Sumter Clerk of Court pointed to a statute which "provided that he shall not file or otherwise enter any document or other records in his office without first being paid the fees therefor [and] that he is without authority to perform the services referred to until the usual fees are paid in advance." *Id.* Finding that the statute cited by the Sumter Clerk did not include the duties related to the Tax Commission, the Supreme Court declared that he lacked the statutory authority to demand any fees or costs. "Costs being purely of statutory origin and creation, it cannot be denied that, whenever an officer claims that he is entitled to a given item of costs, he must point out the statutory provision which confers the right to charge the item in question. *Id.* Further, the Court also stated that "[c]osts are in the nature of penalties, and the statutes granting them have always been strictly construed." *Id.* citing *Lancaster v. Barnwell County*, 40 S.C. 445, 19 S.E. 74, 75 (1894).

While not binding on this Court, the South Carolina Attorney General's Office has repeatedly opined that government agencies may not charge or impose fees or costs that are not expressly provided for by statute. In one instance, the Attorney General's Office issued an opinion stating that the South Carolina Department of Revenue could not collect a "submission/handling fee" for the electronic recording of certain documents. Op. S.C. Atty. Gen., April 5, 2013, p.1. Relying on the Supreme Court's ruling in *Wilder*, the Attorney General's opinion noted that "other authorities have recognized that '[f]ees are collectible only to the extent

authorized by law, and in this connection, statutes providing for fees are strictly construed and will not be extended beyond their letter.” *Id.* (citing 67 C.J.S. Officers § 385; § 8-21-15(A)).

In a separate opinion the South Carolina Attorney General advised that a sheriff’s department could not compete against private businesses for contracts to provide drug-sniffing dog services to local school districts. In part, the Opinion noted as follows:

“[o]ur Supreme Court has consistently recognized that costs and fees ‘are in the nature of penalties and the statutes granting them have always been strictly construed.’ [citation omitted] In other words, ‘statutes providing for fees are to be strictly construed against allowing a fee by implication with respect to both fixing of the fee and the officer entitled thereto.’ [citation omitted] South Carolina Code of Laws Section 8-21-10 states, ‘The several officers named in . . . Article I of Chapter 19 of Title 23 shall be entitled to receive and recover the fees and costs prescribed by this chapter . . . and Article I of Chapter 19 of Title 23, and none other, for the services herein enumerated.’ Moreover, §8-21-30 of the Code requires that if a Sheriff ‘improperly’ charges a fee, he may be liable for ‘ten times the amount so improperly charged. . . .’”

Op. S.C. Atty. Gen., Oct. 11, 2011, p.1. *See also* Op. S.C. Atty. Gen., Mar. 16, 2011, p.6-7

(“given the rule that fee statutes are strictly construed against charging fees not expressly authorized, the specific prohibition in §8-21-10 against the charging of fees not enumerated in the statutes, and the absence of express authority to charge” a specific fee, sheriff could not charge fee for the cost of processing evidence). This Opinion is consistent with Supreme Court cases that prohibited government agencies from even recouping costs, as fees or reimbursements, in the absence of specific statutory authority. *See e.g. Oliver v. S.C. Dept. of Highways and Public Transportation*, 309 S.C. 313, 422 S.E.2d 128, 131 (1992) (costs and expenses of actions and proceedings are allowed to be taxed against a losing party only by statute); *S.C. Pub. Serv. Auth. v. Spearwant Liquidating Co.*, 201 S.C. 207, 22 S.E.2d 252, 253 (1942) (party who claims

the right to tax costs against another must be able to point to a specific statute that allows him to do so).

Thus, § 8-21-15(A) explicitly prohibits states agencies, including Respondents, from charging fees unless those fees are provided for by statute and regulation. The limited exceptions to that statutory prohibition did not include payment processing fees until the 2023 material change to the law. *See* S.C. Code Ann. § 8-21-15(B). Until 2023, no statute expressly authorized either Respondent to assess payment processing fees. Further, *Cf.* S.C. Code Ann. § 14-1-214(A)(1) and (2) (granting clerks of court, registers of deeds, magistrates, and municipal court judges to accept credit/debit cards for the payment of fines, fees, or court costs and providing that “[n]otwithstanding fees imposed by other provisions of law [they] must impose a separate fee on the person making payment by credit card that wholly offsets the amount of administrative fees charged to the court”). Section 14-1-214 was enacted in 2002. Assuming the General Assembly was aware of Respondents’ contracts with SCI to impose payment processing fees on credit card users, the legislature clearly declined to extend the same authority or requirement to recoup payment processing service fees upon state agencies. There is simply no statute that either the trial court or Respondents can point to that expressly authorized these state agencies to charge payment processing fees prior to 2023’s enactment of § 8-21-15(B)(8).

III. THE PENALTY PROVISION CONTAINED IN S.C. CODE ANN. § 8-21-30 APPLIES EQUALLY TO STATE AGENCIES AS WELL AS CERTAIN LOCAL OFFICERS WHEN EITHER CHARGE NON-STATUTORILY AUTHORIZED FEES.

Lastly, S.C. Code Ann. § 8-21-30 applies equally to these state agencies as it does to those public officers listed in § 8-21-10. The trial court held that § 8-21-30 does not apply to

Respondents because they are not “public officers” listed in § 8-21-10. This holding is a patent misreading of the statutory scheme established by the General Assembly in §§ 8-21-10 to 30. In short, Respondents are “public officers” for purposes of the civil penalty provision of § 8-21-30.

Title 8 of the South Carolina Code of Law is entitled “Public Officers and Employees.” Chapter 21 of that Title is labeled “Fees and Costs Generally.” *See Beaufort Co. v. S.C. State Elections Comm’n*, 395 S.C. 366, 718 S.E.2d 432, 436 n. 2 (2011) (a court may consider the title or caption of an act in determining the intent of the legislature); *see also S.C. Energy Users Comm. v. S.C. Elec. & Gas*, 410 S.C. 348, 357, 764 S.E.2d 913, 917 n.5 (2014) (“This Court may, of course, consider the title or caption of an act in determining the intent of the Legislature.”) (citation omitted).¹² The term “public officers” is also statutorily defined “to mean **all officers of the State** that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.” *See* S.C. Code Ann. § 8-1-10 (emphasis added). Respondents are clearly “public officers” and, thus, the only question for this court to determine is whether Respondents are “officers” for purposes of § 8-21-30.

Section 8-21-10 provides that “only fees and costs prescribed are recoverable . . . for the services herein enumerated.” The statute is applicable to the “several **officers named in this chapter**,” as well as officers and employees named in other titles of the Code. *See* S.C. Code Ann. § 8-21-10 (other specific officers and employees identified in the statute, by reference, include appraisers, county auditors, notary publics, magistrates, registers of deeds, and sheriffs,

¹² Article 1 is titled “General Provisions” and apply to Chapter 21 of Title 8.

among others) (emphasis added).¹³ The legislative scheme concerning fees and costs recoverable by public officers does not end solely with local officers. Instead, the General Assembly continued by proscribing state agencies, boards, committees, commissions, and authorities from charging fees unless those fees are authorized by statute and regulation. See § 8-21-15(A).

Specifically, S.C. Code Ann. § 8-21-15(A) states that “[n]o state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particularly duty, responsibility, or function is authorized by statutory law and set by regulation” The General Assembly did create limited exceptions to the non-statutory fees prohibition in § 8-21-15(B). Those exceptions include the following: (1) state-supported governmental health care facilities; (2) state-supported schools, colleges, and universities; (3) educational, entertainment, recreational, cultural, and training programs; (4) the State Board of Financial Institutions; (5) sales by state agencies of goods or tangible products produced for or by these agencies; (6) charges by state agencies for room and board provided on state-owned property; (7) application fees for recreational activities sponsored by state agencies and conducted on a draw or lottery basis; charges for vendor fees, convenience fees, or other similar fees that allow a person to pay a state agency or contracted vendor on behalf of a state agency for goods, services, fees, or other similar items through any payment method other than cash; and (9) court fees or fines in a judicial or adjudicatory proceeding. See § 8-21-15(B).¹⁴

¹³ Although § 8-21-10 references mostly local public officers, the South Carolina Secretary of State is also named in Chapter 21. See § 8-21-110.

¹⁴ As discussed earlier herein, § 8-21-15(B)(8) was added in 2023. The trial court and Respondents contend that the General Assembly added this provision, in 2023, in response to litigation involving these statutes. Interestingly, the legislature did not amend § 8-21-30 to “clarify” that “officers” only means local public officers named in § 8-21-10.

Both §§ 8-21-10 and 15 are part of a single legislative scheme to prohibit both local officers and state public officers from charging fees or costs unless those charges are established by statute or specifically exempted by § 8-21-15(B). In construing § 8-21-30, one must be mindful that the legislature intentionally placed § 8-21-15 between and in direct proximity to §§ 8-21-10 and 8-21-30. See *Beaufort County*, *supra* 718 S.E.2d at 435 (“[I]t is well settled that statutes dealing with the same subject matter are in pari materia and should be construed together, if possible, to produce a single, harmonious result.”). Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799, 801 (1992); *S.C. State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Therefore, courts should not concentrate on isolated phrases in a statute. *Id.* Rather, the statute should be read as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff’d*, 386 S.C. 339, 688 S.E.2d 569 (2010). Moreover, courts must give consideration to the object which the Legislature sought to attain and the evil which is endeavored to remedy. *Woodward v. State Rural Electrification Auth.*, 190 S.C. 465, 3 S.E.2d 539, 542 (1939).

State agencies are specifically mentioned in § 8-21-15 and can only act through their public officers and employees. *Cf. State ex rel. Callison v. Nat. Linen Service Corp.*, 225 S.C. 232, 81 S.E.2d 342, 344 (1954) (corporations can only act through its agents and employees). The clear purpose of Article 1, Chapter 21 of Title 8 is to generally prohibit non-statutory fees by local and state public officers in Chapter 21. Statutes which are part of the same legislative scheme should be construed together. See *Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280, 282

(2009); *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357, 360 (2001); *State v. Johnson*, 396 S.C. 424, 721 S.E.2d 786, 788 (Ct. App. 2012).

Thus, just as § 8-21-30 applies to the Secretary of State, named in § 8-21-110, the statute also applies to these Respondents, who are named in § 8-21-15. The purpose of § 8-21-30 is to provide a civil remedy against the evil of public officials who charge illegal fees and costs. “A statute’s language must be construed in light of the intended purpose of the statute.” *Gay v. Ariail*, 381 S.C. 341, 673 S.E.2d 418, 418 (2009); *State v. Gaines*, 380 S.C. 23, 667 S.E.2d 728, 733 (2008). Additionally, the General Assembly has declared that the statutes in Chapter 21 of Title 8 should be liberally construed. In S.C. Code Ann. § 8-21-50 the legislature stated that “[t]he rule of the common law that statutes in derogation of that common law are to be strictly construed has no application to this chapter” For example, Section 8-21-30 abrogates the common law voluntary payment doctrine.

Our Supreme Court long ago declared that “it is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts.” *Hardaway v. Southern Ry. Co.*, 90 S. C. 475, 73 S. E. 1020, 1025 (1912). “Except where otherwise provided by statute, a party cannot by direct action, or by way of set-off or counterclaim, recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed.”” *Id.* (citation omitted); see also *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948) (money voluntarily paid may not be recovered except where claimant lacked full knowledge of all the facts, or there was fraud, duress, or compulsion). Because § 8-21-30 creates an exception to the common law voluntary

payment doctrine, the statute is also entitled to broad interpretation including both local public officers and state agency officers and employees. *See* § 8-21-50; *16 Jade Street, LLC v. R. Design Const. Co., LLC*, 398 S.C, 338, 728 S.E.2d 448, 450 (2012) (statutes in derogation of common law are to be strictly construed); *see also State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569, 575 (2010) (any ambiguity in a statute must be resolved in favor of a just, equitable, and beneficial operation of the law). The trial court erred in construing § 8-21-30 to exclude the Respondents.

CONCLUSION

In 2022, Appellant was charged an illegal payment processing fee by these Respondents, in violation of South Carolina law and without the express authorization of the General Assembly. The 2023 enactment of Section 8-21-15(B)(8) underscores the fact that no other statute grants these Respondents the right to impose payment processing fees on state agency customers. The trial court erred in denying Appellant's motion for summary judgment by retroactively applying the statutory amendment to the facts of this case and erroneously held that, even prior to enactment of § 8-21-15(B)(8), Respondents were not prohibited by South Carolina law from charging these types of fees. For the foregoing reasons, the decision of the circuit court should be REVERSED and REMANDED, with instructions to enter summary judgment in favor of Appellant.

Respectfully submitted,

/s/ Reginald I. Lloyd

August 7, 2025

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