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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
APPEAL FROM ORANGEBURG COUNTY
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2024-001481
Appellate Case No. 2025-000207

Richard A. Butts, individually and on behalf of all others similarly
situated, ... Respondent,

v.

Miriam Mace, in her official capacity as Treasurer of Georgetown County,
and Georgetown County, South Carolina, ... Appellants.

AND

Carroll Brown, individually and on behalf of all others similarly situated, ... Respondent,

v.

Harold M. Young, in his official capacity as Orangeburg County
Administrator; Matt Stokes, in his official capacity as Orangeburg County
Treasurer; Orangeburg County; and Orangeburg County Council, ... Appellants.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
Angela Christian, in her official capacity as	)	
Georgetown County Administrator, Miriam	)	
Mace, in her official capacity as Treasurer	)	
of Georgetown County, Georgetown	)	
County Council, and Georgetown County,	)	
South Carolina,	)	
	)	
Defendants.	)	

Defendants Angela Christiaan, Miriam Mace, Georgetown County Council, and Georgetown County filed a Motion to Strike certain allegations from Plaintiff Richard Butts' Class Action Complaint (the "Complaint"). Plaintiff opposes the motion as to Defendants Miriam Mace and Georgetown County.¹ The Parties submitted initial briefs on the issues raised in Defendants' Motion and the Court held oral argument on March 31, 2022. Having fully reviewed the parties' positions, the Court DENIES Defendants' Motion to Strike in its entirety. The Court must highlight that the case is still in its infancy and finds many of the arguments of Defendants to be premature at this juncture.

BACKGROUND

¹ The Parties have stipulated to the dismissal of Defendants Angela Christian and Georgetown County Council pursuant to Rule 41, SCRCP, therefore the Court need not address their motion arguments.

This case arises from Defendants imposition, collection, and retention of allegedly illegal “service or user fees” (hereinafter “road user fees”), which were imposed annually upon citizens of Georgetown County beginning in 2001.² The Georgetown County Treasurer, Miriam Mace, is currently responsible for overseeing the collection of the road user fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road user fees, and he seeks a declaratory judgment that the road user fees Defendants imposed and collected were illegal, along with a refund of the amounts paid by Plaintiff and putative class members, with interest.

Plaintiff alleges that on June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

The owners of every vehicle required to be registered and licensed in Greenville County by the South Carolina Department of Motor Vehicles shall pay annually to the Greenville County tax collector a road maintenance fee of \$25 on each such vehicle.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A). Plaintiff alleges that the ordinances passed by Georgetown County imposing the road user fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*. Defendants deny the

² For purposes of this order, all facts plead in Plaintiff’s Complaint are taken as true pursuant to the applicable standard of review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

application of *Burns* to the instant case automatically makes the Georgetown County road user fees illegal.

In their Motion, Defendants moved to strike various allegations from Plaintiff's Complaint based on six grounds, five of which remain contested. Defendants' arguments raise four main issues: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) whether Plaintiff can maintain his claim for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity to Plaintiff's claims for monetary relief; and (4) whether Plaintiff can seek monetary damages for his due process claims.

For the reasons set forth below, the Court finds that Plaintiff's allegations are sufficient to maintain his claims at this juncture of the litigation and DENIES Defendants' Motion to Strike in its entirety.

STANDARD OF REVIEW

A motion to strike under Rule 12(f), SCRPC, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRPC. *McCormick v. England*, 328 S.C. 627, 632 (Ct. App. 1997). When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *Id.* at 632-33. "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

"The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* at 633. And "important questions of novel impression should not be decided on a

motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. At this stage of the litigation, the Court finds the Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff’s class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff’s class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the “RPA”), S.C. Code § 12-60-10, *et seq.* The Court finds this request to be premature.

In response, Plaintiff contends that the RPA is inapplicable to his claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue (“SCDOR”); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court’s holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to his claims because the RPA’s provisions apply only to disputes with the SCDOR and disputes concerning property taxes

1. At this stage of the litigation, the Court finds the Revenue Procedures Act does not apply to Plaintiff’s underlying claims.

The RPA only applies to “disputes with the Department of Revenue and disputes concerning property taxes.” S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (emphasis supplied).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *Id.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. Based on the allegations in Plaintiff’s Complaint, the Court finds that neither of those circumstances are met and declines to strike Plaintiff’s class allegations at this stage in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

The plain language of the statute, including the repetition of the terms “a dispute” after the term “and,” indicates the General Assembly intended to distinguish “a dispute with the Department of Revenue” from “a dispute concerning property

taxes.” . . . By recognizing that the General Assembly intended to distinguish between “a dispute with the Department of Revenue” and “a dispute concerning property taxes,” **we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality.**

Lightner, 419 S.C. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in the Complaint, the road user fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds denies Defendants’ Motion at this time.

2. The Court declines to dismiss the matter pursuant to Section 12-60-80(C).

Next, the Court will separately address Defendants’ assertion that S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against Georgetown County. Section 12-60-80(C) provides that:

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or Any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

Furthermore, under the RPA:

“Tax” or “taxes” means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department.

S.C. Code Ann. § 12-60-30(27).

In the present action, Plaintiff challenges the road user fees imposed by Defendants, which according to Plaintiff’s allegations were not “imposed by [title 12]” or “subject to collection by

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

the [D]epartment [of Revenue].” Rather, according to Plaintiff’s allegations, which must be accepted as true at this stage, the road user fees being challenged in this case were imposed pursuant to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road user fees at issue in this case are not taxes (or fees) that would be subject to the RPA’s statutory procedures. Therefore, at this stage, the Court declines to bar Plaintiff’s class claims pursuant to § 12-60-80(C).

This Court’s finding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions at this stage of the litigation is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRCF. *See Real Estate Transactions, LLC v. Beaufort Cnty.*, Case No. 2018-CP-07-02252 (certifying a Rule 23 litigation class against Beaufort County over disputed fees collected by its Treasurer); *City of Myrtle Beach v. Horry Cnty.*, Case No. 2019-CP-26-01732 (municipal government class certified in hospitality fee refund case against Horry County); *Snee Farm Lakes Homeowners Ass’n, Inc. v. Comm’rs of Pub. Works for the Town of Mount Pleasant*, Case No. 2018-CP-10-2764 (ratepayer class certified in rate refund case against municipal water utility); *James v City of Denmark*, Case No. 2018-CP-05-00242 (water utility customer class certified against municipality); *Cook v S.C. Pub. Serv. Auth.*, Case No. 2017-CP-25-348 (ratepayer class certified in rate refund case against state-owned electrical utility for nuclear power plant abandonment); *Worley Investments, LLC v. Berkeley Cnty.*, Case No. 2015-CP-08-1153 (property owner class certified in impact fee refund case against Berkeley County); *Watson v. S.C. Pub. Serv. Auth.*, Case No. 2007-CP-26-6025 (ratepayer class certified in rate refund case against state-owned electric utility for coal power plant abandonment); *Hearn v. S.C. Pub. Serv. Auth.*, Case No. 2017-CP-26-05256 (ratepayer class

certified in rate refund case against state-owned electric utility for purchase and abandonment of coal-fired power plant).

Based on the foregoing, the Court declines to dismiss the class allegations pursuant to S.C. Code § 12-60-80(C). Accordingly, Defendants' Motion to Strike Plaintiff's class allegations is DENIED.

B. Sovereign Immunity does not bar Plaintiff's equitable claims.

Defendants next move the Court to strike Plaintiff's prayer for monetary recovery for his unjust enrichment claims pursuant to the doctrine of sovereign immunity. The Court declines to strike Plaintiff's prayer for monetary recovery for his unjust enrichment claims.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity when it declared that "[s]overeign immunity can no longer be tolerated in this State." *McCall v. Batson*, 285 S.C. 243, 246 (1985). The *McCall* opinion also made clear that it "expressly overrule[d] all previous decisions of [the] Court which uphold sovereign immunity." *Id.* at 247. Shortly after *McCall* was decided, the General Assembly promulgated the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the "TCA"), which "granted" the government qualified immunity for tortious conduct prospectively, S.C. Code Ann. § 15-78-20(b), "reinstated" sovereign immunity for uninsured tort claims that accrued before the TCA was enacted, *id.* at § 20(c), and established 40 exceptions to the government's newfound tort liability. *Id.* at § 60. Importantly, the General Assembly has not passed any law after *McCall* that "granted" or "reinstated" sovereign immunity as to equitable claims, including claims for unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g.*,

Anderson Cty. v. Preston, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through his unjust enrichment claim, Plaintiff seeks to be restored the value of the alleged illegal fees he remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants’ Motion to Strike Plaintiff’s prayer for monetary recovery in this case.

C. The Court declines to strike Plaintiff’s request for attorneys’ fees.

Defendants next ask the Court to strike Plaintiff’s request for attorneys’ fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants’ argument lacks any support under South Carolina law, and Plaintiff may present a request for attorneys’ fees in his Complaint.

Section 15-77-300(A) provides that “[i]n any civil action brought by ... any party who is contesting state action ... the court may allow the prevailing party to recover reasonable attorney’s fees” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds

he has sufficiently alleged “state action” in this case and that Defendants acted without “substantial justification.” Accordingly, Defendants’ Motion to Strike Plaintiff’s request for attorneys’ fees is DENIED.

D. Plaintiff has not requested monetary relief for his due process claims.

Next, the Court DENIES Defendants’ Motion to Strike Plaintiff’s due process claim. A quick review of the Complaint shows that Plaintiff has not requested monetary relief for his due process claims, therefore Defendants’ argument has no merit. See Compl. ¶¶ 62-67 & Prayer for Relief.

E. Jury Trial

And finally, Defendants argue that Plaintiff’s demand for a jury trial should be stricken. The Court notes that this case is still in its infancy and finds this issue is more appropriate for resolution once the record has been fully developed and the claims and defenses have been fully briefed. Accordingly, Defendants’ request to strike Plaintiff’s demand for a jury trial is DENIED without prejudice.

CONCLUSION

For the foregoing reasons, Defendants’ Motion to Strike is DENIED in its entirety.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Circuit Court Judge

Dated: _____
Georgetown, South Carolina.



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al

Case Number: 2021CP2200928

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2022-05-23 15:08:09 page 11 of 11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2200928

Richard A Butts
PLAINTIFF(S)

Georgetown County South Carolina et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Motion for Judgment on the Pleadings by Attorney Reed is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al

Case Number: 2021CP2200928

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-06 12:21:24 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2200928

Richard A Butts
PLAINTIFF(S)

Georgetown County South Carolina et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful and deliberate consideration, reviewing the memorandums from both sides and reflecting on the arguments from the hearing, Judge Seals respectfully denies Defendant's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/16/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Supreme Court of South Carolina

Mark Gregory Thompson and Jane
Page Thompson, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Clay Killian, in his official capacity as
Aiken County Administrator; Jason
Goings, in his official capacity as
Treasurer of Aiken County, Aiken
County Council, et al.

Defendants.

Aiken County
2021-CP-02-02323

Jane Calkins, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Hilton Head Island; Hilton
Head Island Town Council; Eric
Greenway, in his official capacity as
Beaufort County Administrator; et al.

Defendants.

Beaufort County
2021-CP-07-01967

Steven Biggs, on behalf of himself and
others similarly situated,

Plaintiffs,

vs.

Florence County, South Carolina;
Florence County Council; K.G. Smith,

Jr. in his official capacity as Florence
County Administrator, et al.

Defendants.

Florence County
2021-CP-21-01560

Richard A. Butts, individually and on
behalf of all others similarly situated,

Plaintiffs

vs.

Angela Christian, in her official
capacity as Georgetown County
Administrator; Miriam Mace, in her
official capacity as Treasurer of
Georgetown County; Georgetown
County Council; et al.

Defendants.

Georgetown County
2021-CP-22-00928

Baylis Griffin Hyman, individually and
on behalf of all others similarly
situated,

Plaintiffs,

vs.

Steve Gosnell, in his official capacity
as Horry County Administrator, Angie
Jones, in her official capacity as
Treasurer of Horry County, Horry
County Council, et al.

Defendants.

Horry County
2021-CP-26-07309

Vontisha Portee, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Victor Carpenter, in his official
capacity as Kershaw County
Administrator; Jill Catoe, in her official
capacity as Kershaw County Treasurer,
Kershaw County, et al.

Defendants.

Kershaw County
2021-CP-28-000873

Carroll Brown, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Harold M. Young, in his official
capacity as Orangeburg County
Administrator; Matt Stokes, in his
official capacity as Orangeburg County
Treasurer; Orangeburg County; et al.

Defendants.

Orangeburg County
2021-CP-38-01268

Martha Mitchell and Philip
Washington Falrey, IV, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

Richland County, South Carolina and
Richland County Council,

Defendants.

Richland County
2021-CP-40-03410

Anne H. Hargrove, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren L. Brady, III, in his official
capacity as Treasurer of Spartanburg
County; Spartanburg County Council;
et al.

Defendants.

Spartanburg County
2021-CP-42-03595

Candice Abrams, individually and on
behalf of all those similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren Brady, in his official capacity as
Spartanburg County Treasurer;
Spartanburg County; et al.

Defendants.

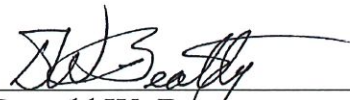
Spartanburg County
2021-CP-42-03736

O R D E R

I find that assigning a single judge to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236 of the 2021-2022 South Carolina Legislative Session (hereinafter "Act No. 236") will promote the effective and expeditious disposition of this litigation by uniform rulings and will

conserve the resources of the parties, their counsel, and the judiciary. Now therefore,

IT IS ORDERED that the Honorable Roger M. Young, Sr. be vested with exclusive jurisdiction to hear and dispose of the above cases, as well as any additional cases, which have been or may be filed in South Carolina relating to Act No. 236. Judge Young shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
May 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts, individually and on behalf of all others similarly situated, (“Plaintiff”) filed a Motion for Partial Summary Judgment seeking a declaratory judgment that the retroactivity language contained in Section 2(E) of Act No. 236, 2022 S.C. Acts (hereinafter “Act 236”) is unconstitutional as applied to this case, which was pending at the time of Act 236’s effective date. Defendant Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Defendant Georgetown County, South Carolina (collectively “Defendants”) opposed the Motion.

On April 16, 2024, the Court held a hearing via WebEx on Plaintiff’s Motion for Partial Summary Judgment. Having fully reviewed the Parties’ briefing on this issue and considered the Parties’ oral arguments, the Court GRANTS Plaintiff’s Motion for Partial Summary Judgment and finds that the retroactivity provision found in Section 2(E) of Act 236 is unconstitutional as applied to this case for the reasons set forth below.

FACTUAL BACKGROUND

Plaintiff filed this lawsuit on November 5, 2021, seeking refunds for himself and all others who paid a uniform “Road User Fee” that Defendants began imposing on all vehicles registered in Georgetown County in 2001. Plaintiff alleges that fee was \$15 per vehicle registered in the County when it was first imposed in 2001, before the County raised the fee to \$30 per vehicle in 2008, then to \$50 per vehicle in 2018, where it remains today.

On June 30, 2021, the South Carolina Supreme Court issued its opinion in *Burns v. Greenville County Council*, 435 S.C. 583 (2021), which held that Greenville County’s road fee was invalid because it did not meet the statutory requirements imposed by Sections 6-1-300(6) and 6-1-330(A) of the South Carolina Code. After the *Burns* decision, Plaintiff alleges that Georgetown County neither repealed its substantially similar Road User Fee ordinance, nor refunded any of the road fees it collected. Thereafter, Plaintiff filed this lawsuit demanding that Georgetown County refund the Road User Fees that Plaintiff and putative Class members paid.

On June 22, 2022, Act 236 was signed into law more than seven months after Plaintiff filed the present lawsuit. In relevant part, Act 236 expanded the law governing service or user fees in South Carolina and included a provision that purports to make the expanded law retroactive to service or user fees imposed after December 31, 1996.

Following Act 236’s enactment, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4.) On January 6, 2023, the Honorable William H. Seals, Jr., denied Defendants’ motion for judgment on the pleadings. (Order Denying Defs.’ Motion for Judgment on the Pleadings.) Judge Seals then denied Defendants’ motion to

reconsider. (Order Denying Defs.’ Motion for Reconsideration.)

On May 17, 2023, the Supreme Court issued an Order assigning this case and all other similar cases pending at the time of Act 236’s effective date to this Court (the “Consolidation Order”). The Consolidation Order explicitly applied to “all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Supreme Court recognized that this consolidation “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *Id.* To this end, this Court is “vested with exclusive jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina relating to Act No. 236” and empowered to “decide all matters pertaining to these cases.” *Id.*

On September 6, 2023, Plaintiff filed an Amended Class Action Complaint, which seeks a declaration that “Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act’s effective date.” (Am. Compl., ¶ 50(d).) On September 21, 2023, Defendants filed an Answer to the Amended Complaint, along with a Motion to Dismiss. On September 21, 2023, Plaintiff filed a Motion for Partial Summary Judgment, seeking a ruling that Act 236 is unconstitutional as applied to this case, which was pending on the effective date of Act 236. This motion is directed at Defendants’ thirteenth affirmative defense asserting that “Plaintiff’s action is barred in whole or in part by 2022 S.C. Acts No. 236.” (Ans. to Am. Compl., ¶ 59.)

STANDARD OF REVIEW

“Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Harris v. Anderson Cty. Sheriff’s Office*, 381 S.C. 357, 360 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is

completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250 (2006). “The mere fact that a case involves a novel issue does not render summary judgment inappropriate.” *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 11 (2005).

ANALYSIS

A. South Carolina’s Separation of Powers Clause.

Article I, section 8 of the South Carolina Constitution states:

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.*”

S.C. Const. art. I, § 8 (emphasis added).

Despite several legislative attempts, the Supreme Court of South Carolina has consistently held that legislative acts that attempt to retroactively overrule the Supreme Court’s prior interpretation of a statute violate Article I, section 8 of the South Carolina Constitution. *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628 (1974) (“Under our State Constitution which provides . . . for the separation of the legislative, executive and judicial powers of the government, the General Assembly does not have authority to [legislatively reverse a decision of the Supreme Court].”); *Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (discussed *infra*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003) (extending the holding in *Steinke*, and discussed *infra*); *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596 (2005) (citing *Lindsay*, 262 S.C. at 629) (holding that “judicial interpretation of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.”).

B. Act 236's Retroactivity Language is Unconstitutional as Applied to this Case.

“Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial [interpretation] of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Steinke*, 336 S.C. at 402, 520 S.E.2d at 157 (citing *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 628-29, 207 S.E.2d 75, 78 (1974)) (alteration in original). “This implicates the doctrine of separation of powers.” *Id.* (citing S.C. Const. art. I, § 8).

In *Steinke*, following the deaths of two bungee jumpers, the plaintiffs brought wrongful death actions against the South Carolina Department of Labor, Licensing, and Regulation (“LLR”). After the jury awarded the beneficiaries \$1 million in actual damages, the LLR appealed. *Id.* at 382. On appeal, the LLR argued, among other things, that the trial judge erred by failing to grant remittitur pursuant to a provision of the 1997 budget act that re-enacted statutory caps to liability formerly found in the South Carolina Tort Claims Act. *Id.* at 401 (citing Act. No. 155, 1997 Acts 1571-72, 1611) (the specific provision stated, “[e]xcept where otherwise provided, this section takes effect [June 14, 1997] and **applies to claims or actions pending on that date or thereafter filed**, except where final judgment has been entered before that date.”) (emphasis added).

To answer that question, the Court looked to its earlier decision in *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994) and the action by the Legislature immediately thereafter. *Id.* at 402. In *Southeastern Freight Lines*, the Court held that limitations on liability within the Tort Claims Act had been impliedly repealed by the Legislature’s subsequent enactment of inconsistent provisions in the Uniform Contribution Among Tort-Feasors Act (Uniform Contribution Act) that called for unlimited, pro rata liability. *Id.* (citing *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994)). In response, the Legislature passed legislation providing that the Tort Claims Act reinstated the statutory caps,

“except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.” *Id.* (citing, Act No. 497, 1994 Acts 5793 (effective July 1, 1994)). “Thus, any case filed before July 1, 1994, is not subject to the \$250,000 cap for individual claims contained in the Tort Claims Act.” *Id.* Importantly, the legislature limited the reach of its legislation to cases that were not yet filed at the time of the Supreme Court’s decision in *Southeastern Freight Lines*.¹

Because the *Steinke* plaintiffs’ complaint was filed on June 29, 1994—two days before the limits were reinstated by Act No. 497, 1994 Acts 5793 (effective July 1, 1994)—the liability limits reimposed by the legislature did not apply. *Id.* However, the legislature’s later amendment in 1997 retroactively imposed liability limits to cases like *Steinke* that were filed prior to the 1994 amendment. *Id.* That is the constitutional issue that the Court addressed, *i.e.*, could the legislature overrule the Court’s decision in *Southeastern Freight Lines*. *Id.* Citing the separation of powers doctrine and *Lindsay*,² the Court held that there were no statutory liability limits on claims at the time of its decision in *Southeastern Freight Lines* and “[t]he Legislature may not retroactively overrule this Court’s interpretation of the statutes in *Southeastern Freight Lines*.” *Id.* at 403.

Four years later in *Simmons*, the Supreme Court reaffirmed its decision in *Steinke* and extended its holding to protect from retroactive legislation not only lawsuits filed prior to the effective date of the new law, *but also those claims that arose or accrued prior to the effective date*. 355 S.C. at 588, 586 S.E.2d at 572. (“The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that **arose or accrued** after the

¹ Later in *Simmons* the Supreme Court would explore whether retroactive legislation could affect claims that had already arisen or accrued, but had not yet been filed.

² In *Lindsay*, the Court held that the Legislature’s attempt to declare by a retroactive amendment that insurance companies were entitled to investment credits—after the Court had previously held that they were *not* entitled to credits—violated the separation of powers doctrine. 262 S.C. at 628-29, 207 S.E.2d at 78 (1974).

effective date of the reenactments.”) (emphasis in original). In *Simmons*, the plaintiffs filed suit against the defendant hospital in May of 1998 for negligence in the care and treatment of their minor child in 1992. *Id.* at 583. After answering the complaint, the parties agreed to settle the plaintiffs’ claims for \$1.5 million. *Id.* Believing its liability was limited to the \$250,000 cap imposed by S.C. Code § 15-78-120(a)(1), the defendant only tendered \$250,000. *Id.* at 583-84. Thereafter, the plaintiffs filed for declaratory judgment to determine the applicability of the cap. *Id.* at 584. The trial court found that the \$250,000 cap applied, and plaintiffs appealed. *Id.*

On appeal, the Supreme Court, based on its prior decision in *Steinke*,³ addressed “whether the liability caps within the 1994 and 1997 Acts are applicable to claims which **arose or accrued** prior to each Act’s effective date, but which were not **filed** until after the effective date.” *Id.* at 587 (emphasis in original). Defendant argued that because *Steinke* emphasized the filing date in its holding, that date of filing was the only significant date for determining retroactivity. *Id.* However, the Court disagreed, holding:

At the time Appellants’ claim arose — when [plaintiffs’ minor child] was infected shortly after his birth in 1992 — there were no statutory caps in place under the rule of *Southeastern*. **Therefore, the Legislature’s attempt to reach back and change the status of such claims that arose prior to the Legislature’s 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 in toto in 1997, is, by definition, retroactive, and violates the doctrine of separation of powers.** *Steinke; Lindsay*. The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.

Id. at 587-88 (emphasis added).

³ Specifically, the Court referenced the statement in *Steinke* that, “[t]he Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in **future cases**.” *Simmons*, 355 S.C. at 587 (quoting *Steinke*, 336 S.C. at 402) (emphasis in original). Because *Steinke* was filed before the effective date of the 1994 Act, the date of accrual was not significant to the Court’s decision.

In light of the Supreme Court of South Carolina’s unanimous decision in *Burns* holding that a similar road fee was invalid because it did not meet the statutory requirements of S.C. Code §§ 6-1-300(6) and 6-1-330(A), Plaintiff’s Complaint seeks a refund of any fees collected under Defendant’s Road User Fee ordinance. In *Burns*, the Supreme Court held:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the [fee] payer in some manner different from the members of the general public.”

...

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

After the filing of this lawsuit, Act 236 was signed into law, thereby amending S.C. Code §§ 6-1-300(6) and 6-1-330(A). Specifically, Act 236 amended section 6-1-300(6) by removing the particularized benefit language—the entire basis for the *Burns* decision—and replaced it with language allowing service or user fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). Act 236 also includes a provision that purports to retroactively authorize the imposition of service or user fees that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

Lindsay and its progeny are clear that legislative provisions like § 2(E) of Act 236, which seek to retroactively authorize conduct that has been deemed illegal by the Supreme Court, violate the separation of powers clause of the South Carolina Constitution. *See Lindsay*, 262 S.C. 621, 207

S.E.2d 75; *Southeastern Freight Lines*, 313 S.C. 466, 443 S.E.2d 395; *Steinke*, 336 S.C. 373, 520 S.E.2d 142; *Simmons*, 355 S.C. 581, 586 S.E.2d 569.

Like in *Lindsay*, the *Burns* Court’s interpretation of S.C. Code § 6-1-300(6), in a case involving a similar service or user fee, is determinative of the statute’s meaning, “and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Lindsay*, 262 S.C. at 629. Like in *Steinke*, Plaintiff’s claims were being litigated prior to the Act’s effective date (June 22, 2022). Indeed, the instant lawsuit was filed more than seven months before Act 236 became effective. Moreover, like in *Simmons*, Plaintiff’s and putative class members’ claims all accrued prior to the Act’s effective date. Therefore, pursuant to the Supreme Court’s decisions in *Lindsay*, *Steinke* and *Simmons*, the Court finds that the retroactivity provision in section 2(E) of Act 236 is unconstitutional because, if applied to this case, it would overturn the Supreme Court’s interpretation of section 6-1-300(6) in *Burns*.

Defendants have pointed to no genuine issues of material fact that would preclude the Court from granting Plaintiff’s Motion for Partial Summary Judgment. Instead, Defendants would have this Court accept a narrow, tortured reading of both *Steinke* and *Burns*. Defendants’ substantive arguments regarding the constitutionality of § 2(E) of Act 236 are a red herring. Initially, Defendants’ argument that Plaintiff misapplies the Supreme Court’s decision in *Steinke* is belied by the text of that decision. Indeed, in *Steinke*, the Supreme Court asked and answered the very question that Plaintiff asks this Court to rule on: “May the Legislature by a retroactive amendment overrule this Court’s prior interpretation of a statute? ***We conclude the Legislature may not.***” *Steinke*, 336 S.C. at 402 (emphasis added).

While ignoring that conclusion in *Steinke*, Defendants argue that the Supreme Court’s Order in *Burns* “solely invalidated a Greenville County road maintenance fee,” and thus, the

decision has no bearing on Defendants' Road User Fee and "there is no 'retroactive overruling issue' created by Act 236." (Def's Memo. in Opp. at 9.) The Court does not dispute that the *Burns* court invalidated Greenville County's road fee ordinance. However, Defendants' argument ignores how the Supreme Court arrived at that decision.

Before determining the validity of Greenville County's ordinances, the Court necessarily interpreted S.C. Code § 6-1-300(6) and explained how that statute applied to the ordinances. *Burns*, 433 S.C. at 589 (holding, "we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that government service or program ... benefits the payer in some manner difference from the members of the general public."). Whether *Burns* invalidated all road user fees, or just Greenville County's, is irrelevant under *Steinke*.

It is the Supreme Court's *interpretation of S.C. Code § 6-1-300(6)*, not the application of that interpretation to a particular ordinance, that Act 236 attempts to unconstitutionally overrule by removing the particularized benefit language and adding that the amendment "applies retroactively to any service or [user] fee imposed after December 31, 1996." Act No. 236, § 2(E). Therefore, Defendants' attempts to distinguish its road fee ordinance from the road fee ordinance at issue in *Burns* fails to create a genuine issue of material fact for the purposes of summary judgment. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (confirming the correct standard of review on summary judgment is whether there is a "genuine issue of material fact" not a "mere scintilla").

Finally, Defendants' argument that "*Burns* simply involved a declaratory judgment on a narrow issue" and that "*Burns* did not create any rights or remedies available to Plaintiff" is equally unavailing. Whether *Burns* created a right or remedy for Plaintiff has no bearing on the present motion. Plaintiff's Amended Complaint, filed September 21, 2023, specifically "request[s] a declaratory judgment from this Court that Section 2(E) of Act No. 236, 2022 S.C. Acts, is

unconstitutional as applied to this case...” (Am. Compl. ¶ 52.) Because that is exactly what Plaintiff’s motion requests, each of Defendants’ arguments on the merits are unavailing. Accordingly, Defendants have failed to establish any genuine issue of material fact that § 2(E) of Act 236 is unconstitutional as applied to this case.

C. Defendants’ procedural defenses are unavailing.

Defendants claim a ruling on Plaintiff’s Motion for Partial Summary Judgment is premature because there are other potentially dispositive legal issues in this case and other road fee cases—one of which is currently before the Court of Appeals. *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

The Court finds a ruling on the as-applied constitutionality of Act 236 is prudentially proper, under the facts and circumstances of this case, due to the Consolidation Order. The purpose of the Consolidation Order was “to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Court finds a ruling on the Motion for Partial Summary Judgment “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” A final, appealable ruling on Act 236 will allow this threshold legal issue, along with the legal issues in *Thompson v. Killian*, to be addressed by our appellate courts at the same time.⁴

The Court further finds that a ruling is procedurally proper notwithstanding Defendants’ pending Motion to Dismiss the Amended Complaint. Defendants have answered the Amended Complaint and raised Act 236 as an affirmative defense. Therefore, the pleadings are closed and a summary judgment ruling is proper. Rule 56(a), SCRCP (“[a] party seeking to ... obtain a

⁴ Plaintiff has consented to an immediate appeal of this Order so that the constitutionality of Act 236’s retroactivity provision can be addressed by the appellate courts concurrently with the other dispositive legal issues currently on appeal in *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.”).

Finally, the Court finds the Governor, the President of the Senate, and the Speaker of the House are not necessary parties to this case. Plaintiff does not challenge the facial constitutionality of Act 236, nor does he challenge the prospective application of the law. Plaintiff merely seeks a determination that the retroactivity provision of Act 236 is unconstitutional as applied to this case. *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 9, 558 S.E.2d 511, 515 (2002) (“We recognize the principle that a statute may be constitutionally valid in part while unconstitutionally invalid in part.”). Rule 4(d)(4)(B), SCRCP requires only that the Attorney General be served with a copy of the pleadings, which the record reflects has occurred.

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Partial Summary Judgment on Act 236 is GRANTED.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING DEFENDANTS'
	)	MOTION TO ALTER AND AMEND
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

On June 25, 2024, this Court issued an Order granting Plaintiff's motion for partial summary judgment. The Order concluded that Act No. 236, 2022 S.C. Acts ("Act 236") is unconstitutional retroactive legislation as applied to this case, which was filed several months prior to the effective date of Act 236. On July 3, 2024, Defendants Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Georgetown County, South Carolina ("Defendants") filed a motion to alter or amend judgment pursuant to Rule 59(e), SCRCP.

Having reviewed Defendants' Rule 59 motion and considered the arguments, the Court denies the motion for the reasons set forth below.

STANDARD OF REVIEW

"In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991)). This is especially true where the state rule mirrors the federal rule. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South

Carolina and federal rules of civil procedure is practically identical.”). The “Note” to Rule 59, SCRCPC confirms “[t]his Rule 59 is substantially the Federal Rule.”

Motions for reconsideration under Rule 59(e) will not be granted absent “highly unusual circumstances.” *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief). Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” *Dash v. Mayweather*, Civ. A. No. 3:10-1036 JFA, 2010 WL 3606829, at *1 (D.S.C. Sept. 13, 2010) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” *Charleston SC Property Holdings, LLC v. Rittenberg OP LLC*, Civ. Action No. 2023-CP-10-01512 (S.C. Cir. Ct. Sep. 8, 2023) (quoting *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F. Supp. 3d 685, 691 (D.S.C. 2017)).

CONCLUSION

In their motion, Defendants do not contend there has been a change in controlling law, nor do they offer any new factual evidence. Instead, Defendants merely attempt to reargue the very same arguments they previously raised in opposition to Plaintiff’s motion for partial summary

judgment. Based on the principles set forth above, the Court rejects these arguments and DENIES Defendants' Rule 59 motion. The Court's findings are amply supported by controlling law and each of Defendants' arguments merely reflect their disagreement with the Court's ruling.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al

Case Number: 2021CP2200928

Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2024-08-08 13:17:01 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CLASS ACTION COMPLAINT
	)	
Angela Christian, in her official capacity as	)	
Georgetown County Administrator; Miriam	)	
Mace, in her official capacity as Treasurer	)	
of Georgetown County; Georgetown	)	
County Council; and Georgetown County,	)	
South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts (“Plaintiff”), individually and on behalf of all others similarly situated, files this Class Action Complaint against Angela Christian, in her official capacity as Georgetown County Administrator (“Administrator Christian”), Miriam Mace, in her official capacity as Treasurer of Georgetown County (“Treasurer Mace”), Georgetown County Council, and Georgetown County, (collectively “Defendants”) and respectfully alleges the following:

INTRODUCTION

1. This is a class action brought to recover monetary damages that occurred as a result of Defendants’ collection and retention of illegal fees, specifically a “Road User Fee.”
2. Georgetown County Council originally enacted its Road User Fee in 2001 via Ordinance No. 2001-16.
3. In 2008, Georgetown County Council enacted Ordinance No. 2008-81, which raised its Road User Fee to \$30.

4. In 2018, Georgetown County Council enacted Ordinance No. 2018-18, which raised its Road User Fee to \$50.

5. On June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*, 433 S.C. 583 (2021), declaring similar ordinances invalid taxes passed in contravention of South Carolina law.

6. Since the Supreme Court's issuance of the *Burns* decision declaring similar fees invalid, Georgetown County Council has not repealed Ordinance No. 2018-18, nor refunded any of the illegal fees it has collected.

7. Plaintiff seeks an order from the Court (1) declaring Georgetown County's Road User Fee unconstitutional, unlawful, and void *ab initio* and (2) mandating Georgetown County refund Plaintiff and the putative Class the illegal fees they paid.

8. Additionally, pursuant to S.C. Code Ann. § 8-21-30, Plaintiff seeks an order awarding Plaintiff and putative Class members ten times the illegally collected fees.

THE PARTIES

9. Plaintiff Richard A. Butts is a resident of Georgetown County, South Carolina.

10. Defendant Angela Christian is the County Administrator for Georgetown County, South Carolina, and upon information and belief, a resident of Georgetown County.

11. Defendant Miriam Mace is the Treasurer for Georgetown County, and on information and belief, a resident of Georgetown County, South Carolina.

12. Defendant Georgetown County is a political subdivision of the state of South Carolina and the governing authority for the geographic region of Georgetown County, South Carolina.

13. Defendant Georgetown County Council is a body politic, incorporate, and governing body of Georgetown County, South Carolina.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the parties because Plaintiff is a resident of South Carolina and Defendants are residents, legislative bodies, or political subdivisions of South Carolina. Additionally, S.C. Code Ann. § 8-21-30 provides for suit to be brought in the Court of Common Pleas.

15. Venue in this Court is proper because a substantial part of the events giving rise to these claims occurred in Georgetown County, South Carolina.

FACTUAL ALLEGATIONS

A. The Illegal Fees

16. Georgetown County Council originally enacted its Road User Fee in 2001 via Ordinance No. 2001-16, which required the owner of every vehicle registered in Georgetown County to pay a Road User Fee to the Treasurer of Georgetown County.

17. Georgetown County Council enacted Ordinance No. 2008-81 in 2008, which raised the Road User Fee to \$30 per registered vehicle.

18. Georgetown County Council enacted Ordinance No. 2018-18 in 2018, which raised the Road User Fee to \$50 per registered vehicle.

19. Treasurer Mace is responsible for overseeing the collection of all taxes and fees in Georgetown County, including the invalid Road User Fees.

20. Treasurer Mace reports to Administrator Christian, who is responsible for carrying out the policies, directives, and legislative actions of Georgetown County Council.

21. Since 2007, Georgetown County has collected an estimated \$26 million in illegal Road User Fees from Georgetown County residents.

22. In light of the *Burns* decision, Ordinance No. 2008-81 and Ordinance No. 2018-18 were passed in contravention of state law and as such are invalid, *ultra vires*, and void.

B. The *Burns* Decision

23. On June 30, 2021, the South Carolina Supreme Court issued its opinion in a lawsuit challenging the validity of two Greenville County Ordinances, 4906 and 4907, which were substantially similar to Georgetown County Ordinance Nos. 2008-81 and 2018-18.

24. The Supreme Court unanimously found Greenville County Ordinances 4906 and 4907 invalid, with the majority stating:

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

25. Pursuant to the Supreme Court’s opinion in *Burns*, Defendants’ collection of the Road User Fees in this case are illegal, and retention of those fees is an ongoing deprivation of the rights of the citizens of Georgetown County.

C. Factual Allegations Specific to the Named Plaintiff

26. Plaintiff Richard A. Butts is a resident of Georgetown County, South Carolina.

27. Plaintiff owns real property in Georgetown County and owns multiple vehicles registered in Georgetown County, South Carolina.

28. Plaintiff paid the same Road User Fees that was levied against other citizens of Georgetown County, South Carolina.

29. Plaintiff has not received a refund of any of the illegal Road User Fees he paid.

CLASS ALLEGATIONS

30. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

31. Plaintiff brings this action on behalf of himself and other similarly situated persons who paid the illegal Road User Fees pursuant to Ordinance Nos. 2008-81 and 2018-18.

32. All members of the putative class paid these invalid Road User Fees pursuant to the ordinances passed by Georgetown County Council.

33. As to all members of this putative class, Administrator Christian and Treasurer Mace were responsible for the collection and retention of these illegal fees.

34. As a result, Georgetown County has received and retained approximately \$26 million since 2007, which was unlawful based on the South Carolina Supreme Court's decision in *Burns*.

35. Specifically, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiff brings this action on behalf of himself, and all others similarly situated, as a representative of the following putative class (the "Class"):

Any individual who paid a Road User Fee pursuant to Georgetown County Ordinance No. 2008-81 and/or Ordinance No. 2018-18.

36. Excluded from the Class are Defendants, Defendants' immediate family members, Georgetown County Council members, legal counsel for Defendants, the judges, and all other court personnel to whom this case is assigned and their immediate family members.

37. The passage of Georgetown County Ordinance Nos. 2008-81 and 2018-18, and the illegal collection and retention of these illegal fees by Defendants, directly and proximately resulted in damages to Plaintiff and Class members.

**THE CLASS MEETS THE REQUIREMENTS OF RULE 23 OF THE SOUTH
CAROLINA RULES OF CIVIL PROCEDURE**

38. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

39. The Class is properly brought and should be maintained as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure because it satisfies the prerequisites of numerosity, commonality, typicality, and adequacy.

40. *Numerosity:* The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. However, the estimates of total fees paid since 2007 is approximately \$26 million, which was paid in increments of \$30 or \$50, therefore the number of members satisfies the numerosity requirement.

41. *Commonality:* The claims of Plaintiff and the members of the Class involve common questions of law and fact, which predominate over questions affecting only individual members of the Class and which can be answered with common proof, including, *inter alia*, the following: (1) whether collection of the invalid fees violates S.C. Code Ann. § 8-21-30; (2) whether Defendants should be ordered to return the illegally collected fees and pay statutory penalties plus interest in accordance with South Carolina law; and (3) whether Plaintiff and the Class members are entitled to damages as a result of Defendants' collection and retention of these invalid fees.

42. *Typicality:* Plaintiff's claim is typical of those members of the Class because his claim has the same essential characteristics as the claims of the Class members, and their claims arise from the same course of conduct by Defendants. Plaintiff and all of the Class members paid either or both of the invalid fees. As to Plaintiff and all Class members, Ordinance Nos. 2008-81 and 2018-18 applied in the exact same manner. As to Plaintiff and all Class members, Defendants violated South Carolina law, specifically S.C. Code Ann. § 8-21-30.

43. *Adequacy*: Plaintiff will fairly and adequately represent the interests of all Class members. Plaintiff's claims are common to all Class members and Plaintiff has strong interests in vindicating their rights. Plaintiff is represented by counsel experienced in complex, class action litigation. Neither Plaintiff nor Plaintiff's counsel has any interests adverse to, or in conflict with, any absent Class member.

44. The amount in controversy for all Class members exceeds one hundred dollars.

45. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- a. The interests of the Plaintiff and Class members in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- b. The expense of prosecuting Plaintiff's and Class members' claims individually would significantly exceed any economic benefit Plaintiff or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties, making individual litigation of liability and damages economically impractical and infeasible;
- c. It is desirable that litigation of the claims occur for the Class members in this forum to preserve the resources of both the courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and
- d. Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Class members.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment Under S.C. Code Ann. § 15-53-10, *et seq.*)

46. Plaintiff realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

47. Plaintiff and the Class members are interested persons whose rights, status, or other legal relations are affected by a statute and local ordinance, and thus they have standing to assert

this cause of action for a declaratory judgment. Plaintiff and the Class members paid a substantially similar fee declared unlawful by the Supreme Court of South Carolina in *Burns*.

48. This case presents an actual case or controversy, namely whether:

- a. Georgetown County's Road User Fee is an unconstitutional and unlawful fee for the reasons enunciated in *Burns*.
- b. Georgetown County's Road User Fee is void *ab initio*.
- c. Georgetown County owes Plaintiff and the Class members a refund for the unconstitutional, unlawful, and void *ab initio* Road User Fees paid.

49. Plaintiff and the Class hereby request a declaratory judgment from this Court that Georgetown County's Road User Fee is unlawful, for the reasons articulated in *Burns*, and the County owes Plaintiff and Class members refunds with interest.

FOR A SECOND CAUSE OF ACTION
Unjust Enrichment

50. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

51. Plaintiff and Class members were required by Ordinance Nos. 2008-81 and/or 2018-18 to pay illegal Road User Fees to Georgetown County.

52. Defendants have not reimbursed these fees despite them being collected unlawfully.

53. Upon information and belief, Defendants continue to collect and retain these unlawful fees.

54. As a result, Defendants obtained monies (realized a benefit), which rightfully belong to Plaintiff and Class members, to the detriment of Plaintiff and Class members.

55. Defendants' retention of these funds under the circumstances would be unjust.

56. As such, Defendants should return the full value of the illegally collected fees, plus interest.

FOR A THIRD CAUSE OF ACTION
Violation of S.C. Code Ann. § 8-21-30
(As to Administrator Christian and Treasurer Mace)

57. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

58. Administrator Christian and Treasurer Mace are officers of Georgetown County, a political subdivision of the State of South Carolina.

59. As the Treasurer and Administrator for Georgetown County, Administrator Christian and Treasurer Mace oversaw and directed the charge, collection, and retention of the Road User Fees pursuant to Ordinance Nos. 2008-81 and 2018-18. Pursuant to *Burns* and South Carolina law, these fees were illegally charged.

60. Pursuant to S.C. Code Ann. § 8-21-30, the officers responsible for charging these fees, Administrator Christian and Treasurer Mace, are liable to forfeit ten times the amount so improperly charged.

61. Pursuant to S.C. Code Ann. § 8-21-30, these damages may be recovered in suit in the Court of Common Pleas. Therefore, all illegally collected fees should be returned and a ten time multiplier penalty should be paid to Plaintiff and each Class Member.

FOR A FOURTH CAUSE OF ACTION
Violation of Due Process - S.C. Constitution
(As to All Defendants)

62. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

63. No person shall be deprived of life, liberty, or property without due process of law. S.C. Const. art. I, §3.

64. Plaintiff and Class members paid the illegal Road User Fee pursuant to Ordinance Nos. 2008-81 and/or 2018-18.

65. Plaintiff and Class members have cognizable property interests in their monies that they were forced to give to Defendants pursuant to Ordinance Nos. 2008-81 and 2018-18.

66. Defendants violated Plaintiff's and Class members' due process rights by charging, collecting, and retaining unlawfully, collected fees pursuant to these illegal and invalid ordinances.

67. The violations of Plaintiff's and Class members' due process rights have damaged Plaintiff and Class members.

JURY TRIAL DEMANDED AND PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a jury trial and prays for judgment against the Defendants and:

- a. that summons and process issue to the Defendants as required by law;
- b. that Plaintiff, individually, recover compensatory damages for the invalid and illegal retention of the Road User Fee by Defendants;
- c. that the Court certify the Class requested herein, and find that the Plaintiff is an appropriate representative of the Class;
- d. that the Court find that the undersigned counsel fairly and adequately represents and protects the interests of the Class, and certify the undersigned counsel to act as counsel for the Class;
- e. that judgment be entered against Defendants finding that they deprived Plaintiff and the Class of rights secured by the laws of South Carolina;
- f. that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiff and the other Class members;
- g. that the Court issue an order awarding damages of ten times the amount of illegal fees collected;
- h. that Plaintiff and the Class be awarded the just and proper equitable relief requested;
- i. that the Court award Plaintiff and Class members their costs;
- j. that the Court award attorneys' fees as provided for under South Carolina law;
- k. that Plaintiff have a trial by jury with respect to his legal claims; and

- l. that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

MCCULLOUGH ▪ KHAN ▪ APPEL

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COUNSEL FOR PLAINTIFFS

November 5, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) C/A NO.: 2021-CP-22-00928

Richard A. Butts, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

Angela Christian, in her official capacity as
Georgetown County Administrator; Miriam
Mace, in her official capacity as Treasurer of
Georgetown County; Georgetown County
Council; and Georgetown County, South
Carolina,

Defendants.

**ANSWER TO COMPLAINT
BY DEFENDANTS' ANGELA
CHRISTIAN, IN HER OFFICIAL
CAPACITY AS GEORGETOWN
COUNTY ADMINISTRATOR; MIRIAM
MACE, IN HER OFFICIAL CAPACITY
AS TREASURER OF GEORGETOWN
COUNTY; AND GEORGETOWN
COUNTY COUNCIL¹**

Defendants Angela Christian, in her official capacity as Georgetown County Administrator; Miriam Mace, in her official capacity as Treasurer of Georgetown County; and Georgetown County, South Carolina (hereinafter "Defendants") hereby answer Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation in the Complaint not hereinafter admitted, modified, or qualified is denied.

2. Defendants deny all of the allegations of Paragraph 1 of Plaintiff's Complaint, expressly denying both the ability to bring a class action lawsuit against Defendants and the assertion of illegality of fees, and demand strict proof thereof.

3. Paragraphs 2 through 4 are admitted.

4. Paragraph 5 calls for legal conclusion and does not require a response. To the extent

¹ Defendant Georgetown County Council filed a Motion to Dismiss contemporaneously with this Answer.

further response is required, Defendants admit that on June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*. All other allegations in Paragraph 5 are denied, and Defendants demand strict proof thereof.

5. Paragraphs 6 through 8 are denied in their entirety and Defendants demand strict proof thereof.

6. Paragraphs 9 through 13 are admitted upon information and belief. To the extent further response is required, Defendants crave reference to the State Constitution and the statutory provisions enacted by the General Assembly, including but not limited to, Section 4-1-10 of the South Carolina Code of Laws and section 4-3-460 of the South Carolina Code of Laws. Defendants deny any allegations in Paragraphs 10 through 13 or in other paragraphs of the Complaint to the extent the allegations are inconsistent with the law.

7. Paragraphs 14 and 15 call for legal conclusions to which no response is required. Without waiving the foregoing, Defendants, upon information and belief, believe jurisdiction and venue are proper at this time, but Defendants retain the right to challenge these issues at a later time if necessary and proper. Defendants expressly reserve all rights they have pursuant to the South Carolina Code of Laws, South Carolina Rules of Civil Procedure, and South Carolina Rules of Appellate Procedure, including, but not limited to, Rule 245, SCACR.

8. Paragraphs 16 through 18 are admitted.

9. Paragraphs 19 through 22 are denied in their entirety and Defendants demand strict proof thereof.

10. Defendants crave reference to the South Carolina Supreme Court opinion cited in Paragraphs 23 and 24 and state the opinions speak for themselves. As for the remaining allegations, Defendants deny the same and demand strict proof thereof.

11. Defendants deny the allegations in Paragraph 25 and demand strict proof thereof.

12. Defendants admit the allegations of Paragraph 26 upon information and belief.

13. Defendants lack sufficient information as to the allegations in Paragraphs 27 through 29, and therefore deny the same in their entirety and demand strict proof thereof.

14. Paragraph 30 speaks for itself and does not require a response. To the extent, Paragraph 30 requires a response, Defendants deny the same and demand strict proof thereof.

15. Defendants deny the allegations in Paragraphs 31 through 37, including all subparts, in their entirety, and demand strict proof thereof. Defendants expressly assert a class action cannot be brought against Defendants pursuant to South Carolina Code Ann. § 12-60-80(C).

16. Paragraph 38 speaks for itself and does not require a response. To the extent, Paragraph 38 requires a response, Defendants deny the same and demand strict proof thereof.

17. Defendants deny the allegations in Paragraphs 39 through 45, including all subparts, in their entirety, and demand strict proof thereof.

18. Paragraph 46 speaks for itself and does not require a response. To the extent, Paragraph 46 requires a response, Defendants deny the same.

19. Defendants deny the allegations in Paragraphs 47 through 49, including all subparts, in their entirety, and demand strict proof thereof.

20. Paragraph 50 speaks for itself and does not require a response. To the extent, Paragraph 50 requires a response, Defendants deny the same.

21. Defendants deny the allegations in Paragraphs 51 through 56, including all subparts, in their entirety, and demand strict proof thereof.

22. Paragraph 57 speaks for itself and does not require a response. To the extent, Paragraph 57 requires a response, Defendants deny the same.

23. Defendants deny the allegations in Paragraphs 58 through 61, including all subparts, in their entirety, and demand strict proof thereof.

24. Paragraph 62 speaks for itself and does not require a response. To the extent, Paragraph 62 requires a response, Defendants deny the same.

25. Defendants admit the plain language of the South Carolina Constitution, Article I, § 3 as contained in Paragraph 63. Any allegations deemed unaddressed by the foregoing are denied in their entirety and Defendants demand strict proof thereof.

26. Defendants deny the allegations in Paragraphs 64 through 67, including all subparts, in their entirety, and demand strict proof thereof.

27. Plaintiff's Prayer for Relief, including all subparts, is denied in its entirety, and Defendants demand strict proof thereof.

FOR A SECOND DEFENSE

28. Defendants move to dismiss and to strike certain allegations in the Complaint as set forth herein and in the separately filed motions seeking to dismiss and strike. Such motions were filed pursuant to Rule 12(b)(6) and Rule 12(f) of the South Carolina Rules of Civil Procedure. The contents of these motions are incorporated herein by reference.

FOR A THIRD DEFENSE

29. Defendants assert the statute of limitations and the doctrine of laches as affirmative defenses.

FOR A FOURTH DEFENSE

30. Defendants assert that Plaintiff is barred from pursuing a class action pursuant to section 12-60-80(C) of the South Carolina Code of Laws, and Defendants move to strike/dismiss this class action allegations from the Complaint.

FOR A FIFTH DEFENSE

31. Defendants assert that Plaintiff is barred from monetary recovery from Defendants pursuant to the voluntary payment rule.

FOR A SIXTH DEFENSE

32. Defendants assert that Plaintiff is barred from monetary recovery from Defendants because of a lack of statutory authority allowing such recovery.

FOR A SEVENTH DEFENSE

33. Defendants assert that Plaintiff is barred from recovering attorney's fees. Specifically, Plaintiff is not entitled to recover attorney's fees under the state action statute, S.C. Code Ann. § 15-77-300, and Defendants move to strike/dismiss the Complaint inasmuch as it seeks to recover attorney's fees.

FOR AN EIGHTH DEFENSE

34. Defendants assert that Plaintiff is not entitled to have his claims heard by a jury, and Defendants move to strike/dismiss the Complaint inasmuch as it seeks to have this case heard by a jury.

FOR A NINTH DEFENSE

35. Defendants assert the defense of sovereign immunity to Plaintiff's claims. Defendants remain absolutely immune from equitable claims under the doctrine of sovereign immunity. Defendants move to dismiss the Complaint inasmuch as it asserts a cause of action for unjust enrichment (which sounds in equity) against Defendants. Further, the doctrine of sovereign immunity, as embodied in Article X, Section 7 of the State Constitution, absolutely precluded Plaintiff from any monetary recovery in this lawsuit. Defendants move to strike/dismiss the allegations from the Complaint seeking monetary recovery. Additionally, Defendants plead the

sovereign immunities found in common law and in section 15-78-10, *et. seq.* of the South Carolina Code of Laws as affirmative defenses. Without limiting the foregoing, Defendants are absolutely immune from assessment or collection of the road use fee. *See* S.C. Code § 15-78-60(11). Further, Defendants are absolutely immune from legislative action or inaction, administrative action or inaction, and discretionary acts. *See* S.C. Code § 15-78-60(1), (2), and (5).

FOR A TENTH DEFENSE

36. Plaintiff asserts a cause of action under the due process clause of the State Constitution. In this cause of action, Plaintiff seeks monetary recovery. South Carolina does not recognize a cause of action for monetary damages for constitutional violations, and therefore, Defendants move to dismiss/strike Plaintiff's constitutional claims insomuch as Plaintiff seeks monetary recovery in this cause of action.

FOR AN ELEVENTH DEFENSE

37. Plaintiff's claims are barred by the doctrines of waiver, acquiescence, estoppel, and unclean hands.

FOR A TWELFTH DEFENSE

38. Plaintiff's claims are barred due to his failure to mitigate his damages.

FOR A THIRTEENTH DEFENSE

39. Plaintiff's class action allegations are barred due to his failure to satisfy the prerequisites set forth in Rule 23 of the South Carolina Rules of Civil Procedure.

FOR A FOURTEENH DEFENSE

40. Plaintiff's claims are barred due to his failure to exhaust his administrative remedies prior to commencing this suit.

FOR A FIFTEENTH DEFENSE

41. Defendants specifically plead immunity and qualified immunity, as applicable, as a complete bar to the allegations of the Complaint and, therefore, the Complaint must be dismissed as a matter of law.

FOR A SIXTEENTH DEFENSE

42. That at all times relevant hereto, employees of Defendants were acting as employees, officers, and officials of the State of South Carolina, engaged in the performance of their official duties, and are, therefore, immune from liability and cannot be sued without an express waiver of sovereign immunity, which has not been granted.

FOR A SEVENTEENTH DEFENSE

43. That Defendants expressly deny that any acts or failures to act, as described in the Complaint, were committed or omitted maliciously, in bad faith, or in a grossly negligent manner, and, therefore, Defendants are immune from suit.

FOR AN EIGHTEENTH DEFENSE

44. That at all times relevant hereto, employees of Defendants were acting as officers and officials of the State of South Carolina, engaged in the performance of their official duties and acting as the alter egos of the State of South Carolina, and therefore this action is barred by the Eleventh Amendment of the Constitution of the United States as against these Defendants.

FOR A NINETEENTH DEFENSE

45. That at all times relevant hereto, employees of Defendants were engaged in the performance of their official duties, and at no time violated any clearly established constitutional rights which were known or should have been known to them; and therefore, they are entitled to immunity as a matter of law.

FOR A TWENTIETH DEFENSE

46. Defendants plead qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A TWENTY-FIRST DEFENSE

47. Employees of Defendants are entitled to absolute immunity under *Long v. Seabrook*, 260 SC 562, 197 S.E.2d 659 (1973).

FOR A TWENTY-SECOND DEFENSE

48. Plaintiffs' claims are not cognizable pursuant to the United States Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994).

FOR A TWENTY-THIRD DEFENSE

49. Defendants expressly deny the allegations contained in Plaintiff's Complaint denominated as Class Allegations, Paragraphs 30 through 45, inasmuch as Plaintiff's class allegations are barred statutorily as well as their failure to satisfy the prerequisites set forth in Rule 23 of the South Carolina Rules of Civil Procedure.

FOR A TWENTY-FOURTH DEFENSE

50. Defendant Georgetown County Council asserts legislative immunity as a complete defense to Plaintiffs' Complaint such that this lawsuit must be dismissed as a matter of law.

FOR A TWENTY-FIFTH DEFENSE

51. Defendants' investigation into the facts of this case has not been completed and, therefore, Defendants reserve any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants having fully answered the Complaint, pray for the following relief:

- a. The certain portions of the Complaint be stricken/dismissed as set forth in this

Answer and in the accompanying Motions to Dismiss and Strike;

- b. That the Complaint be dismiss in its entirety; and
- c. For such other and further relief as this Court may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

By: *s/H. Thomas Morgan Jr.*

H. Thomas Morgan, Jr., SC Bar #73585

Alyssa R. Iglesias, SC Bar 104167

ATTORNEYS FOR DEFENDANTS

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Camden, South Carolina 29020

(803) 432-1992

December 8, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH CIRCUIT
) CASE NO.: 2021-CP-22-0928
)

Richard A. Butts, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

Angela Christian, in her official capacity as
Georgetown County Administrator, Miriam
Mace, in her official capacity as Treasurer
of Georgetown County, Georgetown
County Council, and Georgetown County,
South Carolina,

Defendants.

**STIPULATION OF DISMISSAL AS TO
CERTAIN DEFENDANTS ONLY**

Pursuant to Rule 41(a)(1)(B), SCRCPP, Plaintiff and Defendants, by and through their undersigned counsel, hereby stipulate that Defendant Angela Christian, in her official capacity as Georgetown County Administrator (the “Administrator”), and Defendant Georgetown County Council (“County Council”) shall be dismissed from this case with all parties bearing their own attorneys’ fees and costs.

WE SO STIPULATE:

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Counsel for Plaintiff

April 27, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR JUDGMENT
	)	ON THE PLEADINGS
	)	
Angela Christian, in her official capacity as	)	
Georgetown County Administrator; Miriam	)	
Mace, in her official capacity as Treasurer of	)	
Georgetown County; Georgetown County	)	
Council; and Georgetown County, South	)	
Carolina,	)	
	)	
Defendants.	)	
	)	

TO: CLAYTON B. McCULLOUGH; ROSS A. APPEL; T. CHRISTOPHER TUCK; ROBERT S. WOOD; AND D. CHARLES DUKES, COUNSEL FOR PLAINTIFF; AND PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, Defendants Miriam Mace, in her official capacity as Georgetown County Treasurer, and Georgetown County (collectively, "Defendants"),¹ by and through the undersigned counsel, will move before the Court for judgment on the pleadings as to the Class Action Complaint filed by Plaintiff Richard Butts, individually and on behalf of all others similarly situated ("Plaintiff").

Defendants' Motion for Judgment on the Pleadings is based on the following grounds:

1. Plaintiff's lawsuit is an attempt to recover monetary damages that allegedly occurred due to Defendants' collection and retention of a "Road User Fee." Plaintiff seeks a

¹ By stipulation of the parties, Defendants Angela Christian and Georgetown County Council were dismissed from this case on April 27, 2022.

declaration from this Court that the Road User Fee is unlawful, and Plaintiff asserts several causes of action alleging his entitlement to monetary damages. In support of his argument that the Road User Fee is unlawful, Plaintiff relies exclusively on *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).

2. In *Burns*, the South Carolina Supreme Court invalidated a Greenville County road maintenance fee. The Court held the fee was an unlawful tax because it failed to meet the requirements of section 6-1-300(6) of the South Carolina Code. Section 6-1-300(6), as it existed at the time *Burns* was decided, provided a fee was valid if it “benefits the payer in some manner different from the members of the general public not paying the fee.” *Burns*, 433 S.C. at 587, 861 S.E.2d at 33. The Court held Greenville County’s road maintenance fee did not meet that standard because it did not create a unique benefit to Greenville County residents. Again, Plaintiff contends the Road User Fee at issue in this case is invalid because it is “substantially similar” to the fee found invalid in *Burns*. Compl. at ¶ 23.

3. Less than a year after *Burns* was decided, the Governor signed into law Act 236 of 2022, which substantially amended section 6-1-300(6). Act. No. 236, 2022 S.C. Acts ----, ----. In Act 236, the General Assembly eliminated the “some manner different from” language from section 6-1-300(6). Under the current version of section 6-1-300(6), a service or user fee is valid if it is “used to the benefit of the payers, **even if the general public also benefits.**” (emphasis added). Furthermore, Act 236 unequivocally states that it “**applies retroactively** to any service or fee imposed after December 31, 1996.” (emphasis added).

4. Each of Plaintiff’s causes of action hinges on the alleged invalidity of the Road User Fee. In light of Act 236, this Court should declare the Road User Fee is valid under South

Carolina law. Because Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants' collection of the Road User Fee in the past.

Accordingly, based on the pleadings and the contents of this Motion, Defendants respectfully request the Court grant Defendants' Motion for Judgment on the Pleadings. Furthermore, Defendants pray for such other and further relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

s/ Austin T. Reed

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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

November 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED CLASS ACTION
	)	COMPLAINT
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts (“Plaintiff”), individually and on behalf of all others similarly situated, files this Amended Class Action Complaint against Miriam Mace, in her official capacity as Treasurer of Georgetown County (“Treasurer Mace”), and Georgetown County, South Carolina (collectively “Defendants”) and respectfully alleges the following:

INTRODUCTION

1. This is a class action brought to recover monetary damages that occurred as a result of Defendants’ collection and retention of illegal fees, specifically a “Road User Fee.”
2. Georgetown County Council originally enacted its Road User Fee in 2001 via Ordinance No. 2001-16.
3. In 2008, Georgetown County Council enacted Ordinance No. 2008-81, which raised its Road User Fee to \$30.
4. In 2018, Georgetown County Council enacted Ordinance No. 2018-18, which raised its Road User Fee to \$50.

5. On June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*, 433 S.C. 583 (2021), declaring similar ordinances invalid taxes passed in contravention of South Carolina law.

6. Since the Supreme Court's issuance of the *Burns* decision declaring similar fees invalid, Georgetown County Council has not repealed Ordinance No. 2018-18, nor refunded any of the illegal fees it has collected.

7. Plaintiff seeks an order from the Court (1) declaring Georgetown County's Road User Fee unconstitutional, unlawful, and void *ab initio* and (2) mandating Georgetown County refund Plaintiff and the putative Class the illegal fees they paid.

8. Additionally, pursuant to S.C. Code Ann. § 8-21-30, Plaintiff seeks an order awarding Plaintiff and putative Class members ten times the illegally collected fees.

THE PARTIES

9. Plaintiff Richard A. Butts is a resident of Georgetown County, South Carolina.

10. Defendant Miriam Mace is the Treasurer for Georgetown County, and on information and belief, a resident of Georgetown County, South Carolina.

11. Defendant Georgetown County is a political subdivision of the state of South Carolina and the governing authority for the geographic region of Georgetown County, South Carolina.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the parties because Plaintiff is a resident of South Carolina and Defendants are residents, legislative bodies, or political subdivisions of South Carolina. Additionally, S.C. Code Ann. § 8-21-30 provides for suit to be brought in the Court of Common Pleas.

13. Venue in this Court is proper because a substantial part of the events giving rise to these claims occurred in Georgetown County, South Carolina.

FACTUAL ALLEGATIONS

A. The Illegal Fees

14. Georgetown County Council originally enacted its Road User Fee in 2001 via Ordinance No. 2001-16, which required the owner of every vehicle registered in Georgetown County to pay a Road User Fee to the Treasurer of Georgetown County.

15. Georgetown County Council enacted Ordinance No. 2008-81 in 2008, which raised the Road User Fee to \$30 per registered vehicle.

16. Georgetown County Council enacted Ordinance No. 2018-18 in 2018, which raised the Road User Fee to \$50 per registered vehicle.

17. Treasurer Mace is responsible for overseeing the collection of all taxes and fees in Georgetown County, including the invalid Road User Fees.

18. Treasurer Mace reports to Administrator Christian, who is responsible for carrying out the policies, directives, and legislative actions of Georgetown County Council.

19. Since 2007, Georgetown County has collected an estimated \$26 million in illegal Road User Fees from Georgetown County residents.

20. In light of the *Burns* decision, Ordinance No. 2008-81 and Ordinance No. 2018-18 were passed in contravention of state law and as such are invalid, *ultra vires*, and void.

B. The *Burns* Decision

21. On June 30, 2021, the South Carolina Supreme Court issued its opinion in a lawsuit challenging the validity of two Greenville County Ordinances, 4906 and 4907, which were substantially similar to Georgetown County Ordinance Nos. 2008-81 and 2018-18.

22. The Supreme Court unanimously found Greenville County Ordinances 4906 and 4907 invalid, with the majority stating:

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

23. Pursuant to the Supreme Court’s opinion in *Burns*, Defendants’ collection of the Road User Fees in this case are illegal, and retention of those fees is an ongoing deprivation of the rights of the citizens of Georgetown County.

C. Act 236

24. On June 22, 2022, Governor Henry McMaster signed Act No. 236, 2022 S.C. Acts (effective June 22, 2022) (the “Act”) into law.

25. The Act amends section 6-1-300(6) by removing the particularized benefit language—the legal requirement upon which *Burns* was decided—and adding new language to the statute that allows fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A).

26. The Act purports to apply retroactively to any service or user fee imposed since 1996. 2022 S.C. Acts No. 236 § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

27. Upon information and belief, Defendants will assert the Act’s retroactivity language to try and bar Plaintiff’s and the putative class’s claims as a matter of law.

D. Factual Allegations Specific to the Named Plaintiff

28. Plaintiff Richard A. Butts is a resident of Georgetown County, South Carolina.

29. Plaintiff owns real property in Georgetown County and owns multiple vehicles registered in Georgetown County, South Carolina.

30. Plaintiff paid the same Road User Fees that was levied against other citizens of Georgetown County, South Carolina.

31. Plaintiff has not received a refund of any of the illegal Road User Fees he paid.

CLASS ALLEGATIONS

32. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

33. Plaintiff brings this action on behalf of himself and other similarly situated persons who paid the illegal Road User Fees pursuant to Ordinance Nos. 2008-81 and 2018-18.

34. All members of the putative class paid these invalid Road User Fees pursuant to the ordinances passed by Georgetown County Council.

35. As to all members of this putative class, Administrator Christian and Treasurer Mace were responsible for the collection and retention of these illegal fees.

36. As a result, Georgetown County has received and retained approximately \$26 million since 2007, which was unlawful based on the South Carolina Supreme Court's decision in *Burns*.

37. Specifically, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiff brings this action on behalf of himself, and all others similarly situated, as a representative of the following putative class (the "Class"):

Any individual who paid a Road User Fee pursuant to Georgetown County Ordinance No. 2008-81 and/or Ordinance No. 2018-18.

38. Excluded from the Class are Defendants, Defendants' immediate family members, Georgetown County Council members, legal counsel for Defendants, the judges, and all other court personnel to whom this case is assigned and their immediate family members.

39. The passage of Georgetown County Ordinance Nos. 2008-81 and 2018-18, and the illegal collection and retention of these illegal fees by Defendants, directly and proximately resulted in damages to Plaintiff and Class members.

**THE CLASS MEETS THE REQUIREMENTS OF RULE 23 OF THE SOUTH
CAROLINA RULES OF CIVIL PROCEDURE**

40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

41. The Class is properly brought and should be maintained as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure because it satisfies the prerequisites of numerosity, commonality, typicality, and adequacy.

42. *Numerosity*: The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. However, the estimates of total fees paid since 2007 is approximately \$26 million, which was paid in increments of \$30 or \$50, therefore the number of members satisfies the numerosity requirement.

43. *Commonality*: The claims of Plaintiff and the members of the Class involve common questions of law and fact, which predominate over questions affecting only individual members of the Class and which can be answered with common proof, including, *inter alia*, the following: (1) whether collection of the invalid fees violates S.C. Code Ann. § 8-21-30; (2) whether Defendants should be ordered to return the illegally collected fees and pay statutory penalties plus interest in accordance with South Carolina law; and (3) whether Plaintiff and the Class members are entitled to damages as a result of Defendants' collection and retention of these invalid fees.

44. *Typicality*: Plaintiff's claim is typical of those members of the Class because his claim has the same essential characteristics as the claims of the Class members, and their claims arise from the same course of conduct by Defendants. Plaintiff and all of the Class members paid either or both of the invalid fees. As to Plaintiff and all Class members, Ordinance Nos. 2008-81 and 2018-18 applied in the exact same manner. As to Plaintiff and all Class members, Defendants violated South Carolina law, specifically S.C. Code Ann. § 8-21-30.

45. *Adequacy*: Plaintiff will fairly and adequately represent the interests of all Class members. Plaintiff's claims are common to all Class members and Plaintiff has strong interests in vindicating their rights. Plaintiff is represented by counsel experienced in complex, class action litigation. Neither Plaintiff nor Plaintiff's counsel has any interests adverse to, or in conflict with, any absent Class member.

46. The amount in controversy for all Class members exceeds one hundred dollars.

47. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- a. The interests of the Plaintiff and Class members in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- b. The expense of prosecuting Plaintiff's and Class members' claims individually would significantly exceed any economic benefit Plaintiff or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties, making individual litigation of liability and damages economically impractical and infeasible;
- c. It is desirable that litigation of the claims occur for the Class members in this forum to preserve the resources of both the courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and

- d. Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Class members.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Under S.C. Code Ann. § 15-53-10, *et seq.*)

48. Plaintiff realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

49. Plaintiff and the Class members are interested persons whose rights, status, or other legal relations are affected by a statute and local ordinance, and thus they have standing to assert this cause of action for a declaratory judgment. Plaintiff and the Class members paid a substantially similar fee declared unlawful by the Supreme Court of South Carolina in *Burns*.

50. This case presents an actual case or controversy, namely whether:

- a. Georgetown County's Road User Fee is an unconstitutional and unlawful fee for the reasons enunciated in *Burns*.
- b. Georgetown County's Road User Fee is void *ab initio*.
- c. Georgetown County owes Plaintiff and the Class members a refund for the unconstitutional, unlawful, and void *ab initio* Road User Fees paid.
- d. Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act's effective date.

51. Plaintiff and the Class hereby request a declaratory judgment from this Court that Georgetown County's Road User Fee is unlawful, for the reasons articulated in *Burns*, and the County owes Plaintiff and Class members refunds with interest.

52. Plaintiff and the Class further request a declaratory judgment from this Court that Section 2(E) of Act No. 236, 2022 S.C. Acts, is unconstitutional and unlawful as applied to this case, which was filed and pending at the time of the Act's effective date.

FOR A SECOND CAUSE OF ACTION
Unjust Enrichment

53. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
54. Plaintiff and Class members were required by Ordinance Nos. 2008-81 and/or 2018-18 to pay illegal Road User Fees to Georgetown County.
55. Defendants have not reimbursed these fees despite them being collected unlawfully.
56. Upon information and belief, Defendants continue to collect and retain these unlawful fees.
57. As a result, Defendants obtained monies (realized a benefit), which rightfully belong to Plaintiff and Class members, to the detriment of Plaintiff and Class members.
58. Defendants' retention of these funds under the circumstances would be unjust.
59. As such, Defendants should return the full value of the illegally collected fees, plus interest.

FOR A THIRD CAUSE OF ACTION
Violation of S.C. Code Ann. § 8-21-30
(As to Treasurer Mace)

60. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
61. Treasurer Mace is an officer of Georgetown County, a political subdivision of the State of South Carolina.
62. As the Treasurer for Georgetown County, Treasurer Mace oversaw and directed the charge, collection, and retention of the Road User Fees pursuant to Ordinance Nos. 2008-81 and 2018-18. Pursuant to *Burns* and South Carolina law, these fees were illegally charged.
63. Pursuant to S.C. Code Ann. § 8-21-30, the officer responsible for charging these fees, Treasurer Mace, is liable to forfeit ten times the amount so improperly charged.

64. Pursuant to S.C. Code Ann. § 8-21-30, these damages may be recovered in suit in the Court of Common Pleas. Therefore, all illegally collected fees should be returned and a ten time multiplier penalty should be paid to Plaintiff and each Class Member.

FOR A FOURTH CAUSE OF ACTION
Violation of Due Process - S.C. Constitution
(As to All Defendants)

65. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

66. No person shall be deprived of life, liberty, or property without due process of law. S.C. Const. art. I, §3.

67. Plaintiff and Class members paid the illegal Road User Fee pursuant to Ordinance Nos. 2008-81 and/or 2018-18.

68. Plaintiff and Class members have cognizable property interests in their monies that they were forced to give to Defendants pursuant to Ordinance Nos. 2008-81 and 2018-18.

69. Defendants violated Plaintiff's and Class members' due process rights by charging, collecting, and retaining unlawfully, collected fees pursuant to these illegal and invalid ordinances.

70. The violations of Plaintiff's and Class members' due process rights have damaged Plaintiff and Class members.

JURY TRIAL DEMAND AND PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a jury trial and prays for judgment against Defendants and:

- a. that summons and process issue to Defendants as required by law;
- b. that Plaintiff, individually, recover compensatory damages for the invalid and illegal retention of the Road User Fee by Defendants;
- c. that the Court certify the Class requested herein, and find that Plaintiff is an appropriate representative of the Class;

- d. that the Court find that the undersigned counsel fairly and adequately represents and protects the interests of the Class, and certify the undersigned counsel to act as counsel for the Class;
- e. that judgment be entered against Defendants finding that they deprived Plaintiff and the Class of rights secured by the laws of South Carolina;
- f. that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiff and the other Class members;
- g. that the Court issue an order awarding damages of ten times the amount of illegal fees collected;
- h. that the Court issue a declaratory judgment on the legal issues identified herein;
- i. that Plaintiff and the Class be awarded the just and proper equitable relief requested;
- j. that the Court award Plaintiff and Class members their costs;
- k. that the Court award attorneys' fees as provided for under South Carolina law;
- l. that Plaintiff have a trial by jury with respect to his legal claims; and
- m. that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

MCCULLOUGH ▪ KHAN ▪ APPEL

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Counsel for Plaintiff

September 6, 2023
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2023, I caused the foregoing document to be electronically filed with the Clerk of Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

s/Clayton B. McCullough
Clayton B. McCullough

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	DEFENDANTS' ANSWER
	)	TO AMENDED COMPLAINT
vs.	)	
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	
	)	

Defendants Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Georgetown County, South Carolina (hereinafter, "Defendants") hereby answer Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants have also contemporaneously filed a Motion to Dismiss Plaintiff's Complaint. All arguments raised in Defendants' Motion are incorporated herein by reference. By filing this Answer, Defendants do not waive any arguments made in the Motion. Should the Court choose to deny Defendants' Motion, this Answer addresses all claims raised in Plaintiff's Complaint.

FOR A SECOND DEFENSE

2. Each and every allegation in the Complaint not hereinafter admitted, modified, or qualified is denied.

3. Defendants deny all the allegations of Paragraph 1 of Plaintiff's Complaint, expressly denying both Plaintiff's ability to bring a class action lawsuit against Defendants and Plaintiff's assertion that the fees are illegal. Defendants demand strict proof thereof.

4. Paragraphs 2 through 4 are admitted.

5. Paragraph 5 calls for legal conclusion and therefore does not require a response. To the extent further response is required, Defendants admit only that on June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*. All other allegations in Paragraph 5 are denied, and Defendants demand strict proof thereof.

6. Paragraphs 6 through 8 are denied in their entirety and Defendants demand strict proof thereof.

7. Paragraphs 9 through 11 are admitted upon information and belief. To the extent further response is required, Defendants crave reference to the State Constitution and the statutory provisions enacted by the General Assembly, including but not limited to, Section 4-1-10 of the South Carolina Code of Laws and section 4-3-270 of the South Carolina Code of Laws.

8. Paragraphs 12 and 13 call for legal conclusions to which no response is required. Without waiving the foregoing, Defendants deny that section 8-21-30 has any application to this case or the jurisdiction of this Court. Further responding, Defendants reserve the right to challenge jurisdiction and venue.

9. Paragraphs 14 through 16 are admitted.

10. Paragraphs 17 through 20 are denied in their entirety and Defendants demand strict proof thereof.

11. Defendants crave reference to the South Carolina Supreme Court opinion cited in Paragraphs 21 and 22 and state the opinion speaks for itself. As for the remaining allegations, Defendants deny the same and demand strict proof thereof.

12. Defendants deny the allegations in Paragraph 23 and demand strict proof thereof.

13. Paragraph 24 is admitted.

14. Paragraphs 25 and 26 call for legal conclusions to which no response is required. Further responding, Defendants crave reference to Act 236, which speaks for itself.

15. Paragraph 27 does not require a response. To the extent a response is required, Defendants reserve the right to argue any and all applicable defenses to Plaintiff's claims.

16. Defendants admit the allegations of Paragraph 28 upon information and belief.

17. Defendants lack sufficient information as to the allegations in Paragraphs 29 through 31, and therefore deny the same in their entirety and demand strict proof thereof.

18. Paragraph 32 speaks for itself and does not require a response. To the extent Paragraph 32 requires a response, Defendants deny the same and demand strict proof thereof.

19. Defendants deny the allegations in Paragraphs 33 through 39, including all subparts, in their entirety, and demand strict proof thereof. Defendants expressly assert a class action cannot be brought against Defendants pursuant to South Carolina Code Ann. § 12-60-80(C).

20. Paragraph 40 speaks for itself and does not require a response. To the extent Paragraph 40 requires a response, Defendants deny the same and demand strict proof thereof.

21. Defendants deny the allegations in Paragraphs 41 through 47, including all subparts, in their entirety, and demand strict proof thereof.

22. Paragraph 48 speaks for itself and does not require a response. To the extent Paragraph 48 requires a response, Defendants deny the same.

23. Defendants deny the allegations in Paragraphs 49 through 52, including all subparts, in their entirety, and demand strict proof thereof.

24. Paragraph 53 speaks for itself and does not require a response. To the extent Paragraph 53 requires a response, Defendants deny the same.

25. Defendants deny the allegations in Paragraphs 54 through 59, including all subparts, in their entirety, and demand strict proof thereof.

26. Paragraph 60 speaks for itself and does not require a response. To the extent Paragraph 60 requires a response, Defendants deny the same.

27. Defendants deny the allegations in Paragraphs 61 through 64, including all subparts, in their entirety, and demand strict proof thereof.

28. Paragraph 65 speaks for itself and does not require a response. To the extent Paragraph 65 requires a response, Defendants deny the same.

29. Defendants admit the plain language of the South Carolina Constitution, Article I, § 3 as contained in Paragraph 66. Any allegations deemed unaddressed by the foregoing are denied in their entirety and Defendants demand strict proof thereof.

30. Defendants deny the allegations in Paragraphs 67 through 70, including all subparts, in their entirety, and demand strict proof thereof.

31. Plaintiff's Prayer for Relief, including all subparts, is denied in its entirety, and Defendants demand strict proof thereof.

FOR A THIRD DEFENSE

32. Defendants assert the statute of limitations and the doctrine of laches as affirmative defenses.

FOR A FOURTH DEFENSE

33. Defendants assert that Plaintiff is barred from pursuing a class action pursuant to section 12-60-80(C) of the South Carolina Code of Laws, as set forth in Defendants' motion to dismiss.

FOR A FIFTH DEFENSE

34. Defendants assert that Plaintiff is barred from monetary recovery from Defendants pursuant to the voluntary payment rule.

FOR A SIXTH DEFENSE

35. Defendants assert that Plaintiff is barred from monetary recovery from Defendants because of a lack of statutory authority allowing such recovery.

FOR A SEVENTH DEFENSE

36. Defendants assert that Plaintiff is barred from recovering attorney's fees. Specifically, Plaintiff is not entitled to recover attorney's fees under the state action statute, S.C. Code Ann. § 15-77-300, as set forth in Defendants' motion to dismiss.

FOR AN EIGHTH DEFENSE

37. Defendants assert that Plaintiff is not entitled to have his claims heard by a jury, and Defendants move to dismiss the Complaint inasmuch as it seeks to have this case heard by a jury.

FOR A NINTH DEFENSE

38. Defendants assert the defense of sovereign immunity to Plaintiff's claims. Defendants remain absolutely immune from equitable claims under the doctrine of sovereign

immunity. Defendants move to dismiss the Complaint inasmuch as it asserts a cause of action for unjust enrichment (which sounds in equity) against Defendants. Further, the doctrine of sovereign immunity, as embodied in Article X, Section 7 of the State Constitution, absolutely precluded Plaintiff from any monetary recovery in this lawsuit. Defendants move to strike/dismiss the allegations from the Complaint seeking monetary recovery. Additionally, Defendants plead the sovereign immunities found in common law and in section 15-78-10, *et seq.* of the South Carolina Code of Laws as affirmative defenses. Without limiting the foregoing, Defendants are absolutely immune from assessment or collection of the road use fee. *See* S.C. Code § 15-78-60(11). Further, Defendants are absolutely immune from liability asserted in connection with legislative action or inaction, administrative action or inaction, and discretionary acts. *See* S.C. Code § 15-78-60(1), (2), and (5).

FOR A TENTH DEFENSE

39. Plaintiff asserts a cause of action under the due process clause of the State Constitution. In this cause of action, Plaintiff seeks monetary recovery. South Carolina does not recognize a cause of action for monetary damages for constitutional violations, and therefore, Defendants move to dismiss Plaintiff's constitutional claims inasmuch as Plaintiff seeks monetary recovery in this cause of action.

FOR AN ELEVENTH DEFENSE

40. Plaintiff's claims are barred by the doctrines of waiver, acquiescence, estoppel, and unclean hands.

FOR A TWELFTH DEFENSE

41. Plaintiff's claims are barred due to his failure to mitigate his damages.

FOR A THIRTEENTH DEFENSE

42. Plaintiff's class action allegations are barred due to his failure to satisfy the prerequisites set forth in Rule 23 of the South Carolina Rules of Civil Procedure.

FOR A FOURTEENTH DEFENSE

43. Plaintiff's claims are barred due to his failure to exhaust his administrative remedies prior to commencing this suit.

FOR A FIFTEENTH DEFENSE

44. Defendants specifically plead immunity and qualified immunity, as applicable, as a complete bar to the allegations of the Complaint and, therefore, the Complaint must be dismissed as a matter of law.

FOR A SIXTEENTH DEFENSE

45. That at all times relevant hereto, employees of Defendants were acting as employees, officers, and officials of the State of South Carolina, engaged in the performance of their official duties, and are, therefore, immune from liability and cannot be sued without an express waiver of sovereign immunity, which has not been granted.

FOR A SEVENTEENTH DEFENSE

46. That Defendants expressly deny that any acts or failures to act, as described in the Complaint, were committed or omitted maliciously, in bad faith, or in a grossly negligent manner, and, therefore, Defendants are immune from suit.

FOR AN EIGHTEENTH DEFENSE

47. That at all times relevant hereto, employees of Defendants were acting as officers and officials of the State of South Carolina, engaged in the performance of their official duties and acting as the alter egos of the State of South Carolina, and therefore this action is barred by the Eleventh Amendment of the Constitution of the United States as against these Defendants.

FOR A NINETEENTH DEFENSE

48. That at all times relevant hereto, employees of Defendants were engaged in the performance of their official duties, and at no time violated any clearly established constitutional rights which were known or should have been known to them; and therefore, they are entitled to immunity as a matter of law.

FOR A TWENTIETH DEFENSE

49. Defendants plead qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

FOR A TWENTY-FIRST DEFENSE

50. Employees of Defendants are entitled to absolute immunity under *Long v. Seabrook*, 260 SC 562, 197 S.E.2d 659 (1973).

FOR A TWENTY-SECOND DEFENSE

51. Plaintiffs' claims are not cognizable pursuant to the United States Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994).

FOR A TWENTY-THIRD DEFENSE

52. Plaintiff's claims relating to S.C. Code Ann. § 8-21-30 are preempted by S.C. Code Ann. § 12-60-80(A).

FOR A TWENTY-FOURTH DEFENSE

53. Plaintiff's claims relating to S.C. Code Ann. § 8-21-30 are barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

FOR A TWENTY-FIFTH DEFENSE

54. Plaintiff's claims relating to S.C. Code Ann. § 8-21-30 violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South

Carolina Constitution and is contrary to the public policy of the State of South Carolina.

FOR A TWENTY-SIXTH DEFENSE

55. Plaintiff's claims relating to S.C. Code Ann. § 8-21-30 violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution

FOR A TWENTY-SEVENTH DEFENSE

56. Plaintiff's claims are subject to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on the recovery of attorneys' fees, pre-judgment interest, and punitive damages.

FOR A TWENTY-EIGHTH DEFENSE

57. The legislative actions taken by Defendants are fairly debatable and are therefore presumptively valid, legal, and constitutional.

FOR A TWENTY-NINTH DEFENSE

58. "All statutes are presumed constitutional and will, if possible, be construed so as to render them valid." *Davis v. Cnty. of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996)

FOR A THIRTIETH DEFENSE

59. Plaintiff's action is barred in whole or in part by 2022 S.C. Acts No. 236.

FOR A THIRTY-FIRST DEFENSE

60. Defendants' investigation into the facts of this case has not been completed and, therefore, Defendants reserve any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants having fully answered the Complaint, pray for the following relief:

- a. The certain portions of the Complaint be dismissed as set forth in this Answer and in the accompanying Motion to Dismiss;
- b. That the Complaint be dismissed in its entirety; and
- c. For such other and further relief as this Court may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

By: s/H. Thomas Morgan Jr.

H. Thomas Morgan, Jr., SC Bar #73585

Austin T. Reed, SC Bar #102808

Frederick N. Hanna, Jr., SC Bar #104659

ATTORNEYS FOR DEFENDANTS

935 Broad Street

Post Office Drawer 39

Camden, South Carolina 29020

(803) 432-1992

September 21, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO
	)	DISMISS PLAINTIFF'S AMENDED
vs.	)	COMPLAINT
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	
	)	

TO: COUNSEL FOR PLAINTIFF AND PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, Defendants Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Georgetown County, South Carolina (hereinafter, "Defendants"), by and through the undersigned counsel, hereby move for an Order dismissing Plaintiff's Amended Complaint.¹ Defendants' Motion is based upon the following grounds and any other grounds that may be raised by supporting memoranda filed prior to a hearing on this Motion:

1. South Carolina law prohibits class action lawsuits from being brought against political subdivisions or their instrumentalities. S.C. Code Ann. § 12-60-80(C) ("[The South Carolina Department of Revenue], political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State."); *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 420, 839 S.E.2d 96, 99 (2020) ("We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class

¹ Should the Court find that any arguments made in this Motion are more appropriately analyzed under Rule 12(f), SCRCF, Defendants respectfully request the Court treat all or part of this Motion as a Motion to Strike.

action’ in the catchall clause of subsection (C) to the specific subject of ‘taxes’ set forth in the first portion of subsection (C).”). Accordingly, Plaintiff’s putative class action lawsuit against Defendants fails as a matter of law.

2. Under the plain language of S.C. Code Ann. § 15-77-300, Plaintiff cannot recover attorneys’ fees from Defendants.

3. Because Plaintiff’s lawsuit raises pure questions of law and there are no issues of fact, Plaintiff is not entitled to a jury trial.

4. The doctrine of sovereign immunity precludes Plaintiff from monetary recovery in this lawsuit.

5. South Carolina does not recognize a cause of action for monetary damages for constitutional violations. *See Palmer v. State*, 427 S.C. 38, 829 S.E.2d 36 (Ct. App. 2019), *cert. denied* May 28, 2021.

6. Plaintiff’s claim for relief under S.C. Code Ann. § 8-21-30 fails as a matter of law because that statute was implicitly overruled by the South Carolina Tort Claims Act and does not apply to the facts alleged in the Amended Complaint.

7. The Court lacks subject matter jurisdiction in this case because Plaintiff’s claims are governed by the South Carolina Revenue Procedures Act. S.C. Code Ann. § 12-60-3390 requires dismissal of Plaintiff’s Amended Complaint for failure to exhaust administrative remedies.

8. Plaintiff’s Amended Complaint requests a declaratory judgment that Section 2(E) of 2022 S.C. Acts No. 236 is unconstitutional. Upon information and belief, Plaintiff has not provided the Attorney General a copy of the Amended Complaint. Accordingly, Defendants

request the Court to dismiss the Amended Complaint pursuant to Rules 4(d)(4) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

9. Plaintiff, along with others, previously filed a Petition for Original Jurisdiction with the South Carolina Supreme Court asking the Supreme Court to declare Section 2(E) of 2022 S.C. Acts No. 236 unconstitutional. In that Petition, Plaintiff named the President of the South Carolina Senate, the Speaker of the South Carolina House of Representatives, and the Governor of South Carolina as Respondents. Defendants contend each of the Respondents in the Supreme Court action are necessary parties in the instant lawsuit.

Accordingly, based on the pleadings, the contents of this Motion, and any accompanying materials that may be submitted to the Court prior to or during the hearing on this Motion to Dismiss, Defendants respectfully request the Court dismiss Plaintiff's Amended Complaint. Further, Defendants pray for such other and further relief as this Court may deem just and proper under the circumstances.

[Signature page to follow]

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

By: s/H. Thomas Morgan Jr.

H. Thomas Morgan, Jr., SC Bar #73585

Austin T. Reed, SC Bar #102808

Frederick N. Hanna, Jr., SC Bar #104659

ATTORNEYS FOR DEFENDANTS

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(803) 432-1992

September 21, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that Plaintiff Richard A. Butts, individually and on behalf of all others similarly situated, by and through his undersigned counsel, hereby moves this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order from this Court seeking a declaratory judgment that the retroactivity language contained in Section 2(E) of Act No. 236, 2022 S.C. Acts (hereinafter "Act 236") is unconstitutional and unlawful as applied to this case, which was filed and pending at the time of Act 236's effective date.

In support of this motion, Plaintiff submits as follows:

1. Act 236 amended section 6-1-300(6) by removing the particularized benefit language, upon which the Supreme Court's holding in *Burns v. Greenville Cnty. Council*, 433 S.C. 583 (2021) was based. The amended language allows user fees to "be used to the benefit of the payers, even if the general public also benefits." Act No. 236, § 2(A).

2. Section 2(E) of Act 236 provides as follows: "This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996." This retroactivity language overturns the Supreme Court's decision in *Burns*.

3. Defendants in this case have previously taken the position that “[i]n light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4).

4. On January 6, 2023, the Honorable William H. Seals, Jr. denied Defendants’ motion for judgment on the pleadings based on Act 236’s retroactivity language. On February 16, 2023, the Honorable William H. Seals, Jr. denied Defendants’ motion to reconsider.

5. Upon information and belief, Defendants intend to invoke Act 236’s retroactivity language at summary judgment and trial.

6. On September 6, 2023, Plaintiff filed an Amended Class Action Complaint, which added the following claim for declaratory relief: “Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act’s effective date.” (Am. Compl., ¶ 50(d)).

7. Plaintiff acknowledges there is a presumption that statutes are constitutional. *See Main v. Thomason*, 342 S.C. 79, 535 S.E.2d 918 (2000); *State v. Brown*, 317 S.C. 55, 451 S.E.2d 888 (1994). However, this presumption can be overcome where a statute’s “invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution.” *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

8. Act 236’s retroactivity language is blatantly unconstitutional as applied to filed claims—like Plaintiff’s—that were actively being litigated at the time of Act 236’s adoption. *Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 402, 520 S.E.2d 142, 157 (1999) (“Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial [interpretation] of a statute is determinative of its meaning and effect, and any

subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.”). “This implicates the doctrine of separation of powers.” *Id.* (citing S.C. Const. art. I, § 8) (“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no . . . departments shall assume or discharge the duties of any other.”).

9. This action was filed on November 5, 2021.

10. Governor Henry McMaster did not sign Act 236 into law until June 22, 2022.

11. In *Simmons v. Greenville Hospital System*, 355 S.C. 581, 586 S.E.2d 569 (2003), the Court reaffirmed its decision in *Steinke* and extended its holding to shield from retroactive legislation not only lawsuits filed prior to the effective date of the new law, but also those claims that arose or accrued prior to the effective date. 355 S.C. at 588, 586 S.E.2d at 572 (“The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.”) (emphasis in original).

12. Plaintiff’s claim and the class claims accrued and were the subject of litigation prior to the effective date Act 236. Indeed, the instant lawsuit was filed seven months and seventeen days prior to the effective date.

13. Therefore, it is clear under *Steinke* that the retroactivity clause in section 2(E) of Act 236 is unconstitutional as applied to the instant lawsuit because, if applied, it would overturn the Supreme Court’s interpretation of section 6-1-300(6) in *Burns*.¹ And under *Simmons*, section 2(E) of the Act is unconstitutional as applied to any other fee payer’s accrued, but unfiled, claims.

¹ Section 6-1-300(6), as interpreted by the Supreme Court in *Burns*, provided the governing law on “service or user fees” from July 1, 1997, through June 22, 2022, when Act No. 236 was ratified. 2022 S.C. Acts No. 236.

This motion may further be supported by a memorandum that Plaintiff will submit to the Court in connection with the hearing of this motion and such other and further matters as may be properly presented to the Court.

Respectfully submitted,

MCCULLOUGH ▪ KHAN ▪ APPEL

s/Ross A. Appel

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Counsel for Plaintiff

September 21, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Richard A. Butts, individually and on	)	CASE NO.: 2021-CP-2200928
behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	PLAINTIFF’S MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts (“Plaintiff”), on behalf of himself and all others similarly situated, and by and through his undersigned counsel, submits this memorandum in support of his Motion for Partial Summary Judgment pursuant to Rule 56, SCRCP.¹

I. INTRODUCTION

Plaintiff filed this lawsuit seeking refunds for himself and all others who paid a uniform “Road User Fee” that Defendants began imposing on all vehicles registered in Georgetown County (the “County”) in 2001. That fee was \$15 per vehicle registered in the County when it was first imposed in 2001. The County then raised that fee to \$30 per vehicle in 2008, and to \$50 per vehicle in 2018, where it remains today.

On June 30, 2021, the South Carolina Supreme Court issued its opinion in *Burns v. Greenville County Council*, 435 S.C. 583 (2021), which held that a substantially similar road fee was invalid because it did not meet the statutory requirements imposed by Sections 6-1-300(6) and 6-1-330(A) of the South Carolina Code. After the *Burns* decision, Georgetown County neither

¹ Prior to filing the present memorandum in support, undersigned counsel conferred with plaintiffs’ counsel in all other similarly filed cases, and counsel consented to and supported this memorandum in all respects.

repealed its existing Road User Fee ordinance, nor refunded any of the illegal fees it collected. As a result, Plaintiff brought this suit individually and on behalf of those similarly situated to demand that Georgetown County refund the illegal Road User Fees that Plaintiff and putative Class members were forced to pay.

Since Plaintiff filed the present lawsuit on November 5, 2021, Act No. 236, 2022 S.C. Acts (effective June 22, 2022) (“Act 236”) was signed into law. In relevant part, Act 236 expanded the law governing service or user fees in South Carolina, thereby overturning *Burns*. While Plaintiff does not challenge the legality of Georgetown County’s Road User Fee after Act 236’s effective date, for the reasons set forth below, Plaintiff now moves this Court for an Order declaring that the retroactivity provision contained in Section 2(E) of Act 236 is unconstitutional and unlawful as applied to this case.

II. FACTUAL ALLEGATIONS

A. Georgetown County’s Road User Fee

Georgetown County’s Road User Fee was originally passed by Georgetown County Council (“County Council”) in 2001 via Ordinance No. 2001-16, which required the owner of every motor vehicle registered in Georgetown County to pay an annual \$15 fee to the Treasurer of Georgetown County. (Pl.’s Am. Compl. at ¶ 14.) County Council later passed Ordinance No. 2008-81 in 2008, which raised the fee to \$30 per registered vehicle. (*Id.* at ¶ 15.) A decade later, County Council enacted Ordinance No. 2018-18, which raised the fee to \$50 per registered vehicle. (*Id.* at ¶ 16.) Georgetown County’s \$50 fee remains in effect today. (*Id.* at ¶ 6.)

Defendant Miriam Mace, as Treasurer of Georgetown County, is responsible for overseeing the collection of all taxes and fees in Georgetown County, including the Road User Fee at issue in this case. (*Id.* at ¶ 17.) Since 2007, Treasurer Mace and her predecessors have

collected an estimated \$26 million in Road User Fees from owners of motor vehicles registered in Georgetown County. (*Id.* at ¶ 19.)

B. The *Burns* Decision

On June 30, 2021, the South Carolina Supreme Court issued its opinion in a lawsuit that challenged the validity of two Greenville County Ordinances, Nos. 4906 and 4907, which imposed user fees that were substantially similar to the fees imposed by Georgetown County Ordinance Nos. 2008-81 and 2018-18. (*See id.* at ¶¶ 5, 21-23 (citing *Burns v. Greenville Cnty. Council*, 433 S.C. 583 (2021)).) In that opinion, the Supreme Court unanimously found that the Greenville County ordinances were invalid:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the [fee] payer in some manner different from the members of the general public.”

...

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

C. Act 236

On June 22, 2022, Governor Henry McMaster signed Act 236 into law. Act 236 amended, *inter alia*, section 6-1-300(6) by removing the particularized benefit language—the requirement upon which *Burns* was decided—and added new statutory language allowing fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). This change effectively eliminated any distinction between a service or user fee and a tax and allows local governments to charge their constituents service or user fees regardless of whether

the payor derives any unique benefit. In addition, Act 236 includes language that purports to reach back to 1997 and retroactively sanction conduct that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

Following the enactment of Act 236, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4.) On January 6, 2023, the Honorable William H. Seals, Jr. denied Defendants’ motion for judgment on the pleadings based on Act 236’s retroactivity language. (Order Denying Defs.’ Motion for Judgment on the Pleadings.) Judge Seals later reaffirmed that ruling on February 16, 2023, when he denied Defendants’ motion to reconsider. (Order Denying Defs.’ Motion for Reconsideration.)

On September 6, 2023, Plaintiff filed an Amended Class Action Complaint, which added the following claim for declaratory relief: “Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act’s effective date.” (Am. Compl., ¶ 50(d).)² Because Plaintiff originally filed suit on November 5, 2021, his claim, and putative class claims, accrued and were the subject of litigation prior to the effective date of Act 236. (*See generally*, Pl.’s Compl., filed Nov. 5, 2021.)

III. LEGAL STANDARD

² On September 22, 2023, counsel for Plaintiff served a copy of the Amended Class Action Complaint and Plaintiff’s Motion for Partial Summary Judgment on the Attorney General of South Carolina pursuant to Rule 4(d)(4)(B), SCRCPP. The Attorney General has neither appeared nor made any filings in this case.

“Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Harris v. Anderson Cty. Sheriff’s Office*, 381 S.C. 357, 360 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250 (2006). “The mere fact that a case involves a novel issue does not render summary judgment inappropriate.” *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 11 (2005).

IV. ARGUMENT

In 1868, the South Carolina Constitution and appended Ordinances were adopted by a majority vote of the Constitutional Convention of the State. S.C. Const. In its adoption, the South Carolina Constitution largely followed the Constitution of the United States by delegating powers to the Legislative, Executive, and Judicial branches of government. However, it goes a step further with the inclusion of a separation of powers clause not found within the U.S. Constitution. *Id.* at art. I, § 8. Specifically, Article I, section 8 of the South Carolina Constitution states:

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.*”

S.C. Const. art. I, § 8 (emphasis added). Of the myriad ways that the doctrine of separation of powers may be infringed upon, legislative acts that purport to amend a statute with retroactive effect are among the more pervasive examples. And despite several legislative attempts, the Supreme Court of South Carolina has consistently held that legislative acts that attempt to retroactively overrule the Supreme Court’s prior interpretation of a statute are invalid. *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628 (1974) (“Under our State Constitution which provides

. . .for the separation of the legislative, executive and judicial powers of the government, the General Assembly does not have authority to [legislatively reverse a decision of the Supreme Court].”); *Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (discussed *infra*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003) (extending the holding in *Steinke*, and discussed *infra*); *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596 (2005) (citing *Lindsay*, 262 S.C. at 629) (holding that “judicial interpretation of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.”).

A. Act 236’s Retroactivity Language is Unconstitutional – As Applied to this Case.

“Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial [interpretation] of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Steinke*, 336 S.C. at 402, 520 S.E.2d at 157 (citing *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628-29, 207 S.E.2d 75, 78 (1974)) (alteration in original). “This implicates the doctrine of separation of powers.” *Id.* (citing S.C. Const. art. I, § 8).

In *Steinke*, following the deaths of two bungee jumpers, the plaintiffs brought wrongful death actions against the South Carolina Department of Labor, Licensing, and Regulation (“LLR”). After the jury awarded the beneficiaries \$1 million in actual damages, and the trial judge denied LLR’s motions for directed verdict, judgment notwithstanding the verdict, and a new trial, the LLR appealed. *Id.* at 382. On appeal, the LLR argued, among other things, that the trial judge erred by failing to grant remittitur pursuant to a provision of the 1997 budget act that re-enacted statutory caps to liability formerly found in the South Carolina Tort Claims Act. *Id.* at 401 (citing Act. No. 155, 1997 Acts 1571-72, 1611) (the specific provision stated, “[e]xcept where otherwise provided,

this section takes effect [June 14, 1997] and **applies to claims or actions pending on that date or thereafter filed**, except where final judgment has been entered before that date.”) (emphasis added).

To answer that question, the Court looked to its earlier decision in *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994) and the action by the Legislature immediately thereafter. *Id.* at 402. In *Southeastern Freight Lines*, the Court held that limitations on liability within the Tort Claims Act had been impliedly repealed by the Legislature’s subsequent enactment of inconsistent provisions in the Uniform Contribution Among Tort-Feasors Act (Uniform Contribution Act) that called for unlimited, pro rata liability. *Id.* (citing *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994)). In response, the Legislature passed legislation providing that the Tort Claims Act reinstated the statutory caps, “except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.” *Id.* (citing, Act No. 497, 1994 Acts 5793 (effective July 1, 1994)). “Thus, any case filed before July 1, 1994, is not subject to the \$250,000 cap for individual claims contained in the Tort Claims Act.” *Id.* Importantly, the legislature limited the reach of its legislation to cases that were not yet filed at the time of the Supreme Court’s decision in *Southeastern Freight Lines*.³

Because the *Steinke* plaintiffs’ complaint was filed on June 29, 1994—two days before the limits were reinstated by Act No. 497, 1994 Acts 5793 (effective July 1, 1994)—the liability limits reimposed by the legislature did not apply. *Id.* However, the legislature’s later amendment in 1997 retroactively imposed liability limits to cases like *Steinke* that were filed prior to the 1994 amendment. *Id.* That is the constitutional issue that the Court addressed, *i.e.*, could the legislature

³ Later in *Simmons* the Supreme Court would explore whether retroactive legislation could affect claims that had already arisen or accrued, but had not yet been filed.

overrule the Court’s decision in *Southeastern Freight Lines*. *Id.* Citing the separation of powers doctrine and *Lindsay*,⁴ the Court held that there were no statutory liability limits on claims at the time of its decision in *Southeastern Freight Lines* and “[t]he Legislature may not retroactively overrule this Court’s interpretation of the statutes in *Southeastern Freight Lines*.” *Id.* at 403.

Four years later in *Simmons*, the Court reaffirmed its decision in *Steinke* and extended its holding to shield from retroactive legislation not only lawsuits filed prior to the effective date of the new law, *but also those claims that arose or accrued prior to the effective date*. 355 S.C. at 588, 586 S.E.2d at 572. (“The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.”) (emphasis in original). In *Simmons*, the plaintiffs filed suit against the defendant hospital in May of 1998 for negligence in the care and treatment of their minor child in 1992. *Id.* at 583. After answering the complaint, the parties agreed to settle the plaintiffs’ claims for \$1.5 million. *Id.* Believing its liability was limited to the \$250,000 cap imposed by S.C. Code § 15-78-120(a)(1), the defendant only tendered \$250,000. *Id.* at 583-84. Thereafter, the plaintiffs filed for declaratory judgment to determine the applicability of the cap. *Id.* at 584. The trial court found that the \$250,000 cap applied, and plaintiffs appealed. *Id.*

On appeal, the Supreme Court, based on its prior decision in *Steinke*,⁵ addressed “whether the liability caps within the 1994 and 1997 Acts are applicable to claims which **arose or accrued**

⁴ In *Lindsay*, the Court held that the Legislature’s attempt to declare by a retroactive amendment that insurance companies were entitled to investment credits—after the Court had previously held that they were *not* entitled to credits—violated the separation of powers doctrine. 262 S.C. at 628-29, 207 S.E.2d at 78 (1974).

⁵ Specifically, the Court referenced the statement in *Steinke* that, “[t]he Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in *future cases*.” *Simmons*, 355 S.C. at 587 (quoting *Steinke*, 336 S.C. at 402) (emphasis in

prior to each Act’s effective date, but which were not **filed** until after the effective date.” *Id.* at 587 (emphasis in original). Defendant argued that because *Steinke* emphasized the filing date in its holding, that date of filing was the only significant date for determining retroactivity. *Id.* However, the Court disagreed, holding:

At the time Appellants’ claim arose — when [plaintiffs’ minor child] was infected shortly after his birth in 1992 — there were no statutory caps in place under the rule of *Southeastern*. **Therefore, the Legislature's attempt to reach back and change the status of such claims that arose prior to the Legislature's 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 in toto in 1997, is, by definition, retroactive, and violates the doctrine of separation of powers.** *Steinke; Lindsay*. The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.

Id. at 587-88 (emphasis added).

The present case, filed on November 5, 2021, is a product of Defendants’ failure to repeal its Road User Fee ordinance or refund any fees collected thereunder, despite the Supreme Court of South Carolina’s unanimous decision in *Burns* holding that a substantially similar road fee was invalid because it did not meet the statutory requirements of S.C. Code §§ 6-1-300(6) and 6-1-330(A). In *Burns*, the Supreme Court held:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the [fee] payer in some manner different from the members of the general public.”

...

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

original). Because *Steinke* was filed before the effective date of the 1994 Act, the date of accrual was not significant to the Court’s decision.

Burns, 433 S.C. at 589-90.

After the filing of this lawsuit, and in response to *Burns*, Act 236 (effective June 22, 2022) was signed into law, thereby amending S.C. Code §§ 6-1-300(6) and 6-1-330(A). Specifically, Act 236 amended section 6-1-300(6) by removing the particularized benefit language—the entire basis for the *Burns* decision—and replaced it with language allowing service or user fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). Act 236 also includes a provision that purports to sanction retroactively conduct that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

Lindsay and its progeny are clear that legislative provisions like § 2(E) of Act 236, which seek to sanction retroactively conduct that has been deemed illegal by a Supreme Court decision, violate the separation of powers clause of the South Carolina Constitution. *See Lindsay*, 262 S.C. 621, 207 S.E.2d 75; *Southeastern Freight Lines*, 313 S.C. 466, 443 S.E.2d 395; *Steinke*, 336 S.C. 373, 520 S.E.2d 142; *Simmons*, 355 S.C. 581, 586 S.E.2d 569.

Like in *Lindsay*, here the *Burns* Court’s interpretation of S.C. Code § 6-1-300(6), in a case involving a substantially similar service or user fee ordinance, is determinative of the statute’s meaning, “and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Lindsay*, 262 S.C. at 629. Like in *Steinke*, here Plaintiff’s claims were the subject of litigation prior to the effective date of the disputed act (here, June 22, 2022). Indeed, the instant lawsuit was filed seven months and seventeen days before June 22, 2022. Moreover, like in *Simmons*, here Plaintiff’s and putative class members’ claims all accrued prior to the Act’s effective date. Therefore, pursuant to the

Supreme Court's decisions in *Lindsay*, *Steinke* and *Simmons*, this Court should find that the retroactivity clause in section 2(E) of Act 236 is unconstitutional because, if applied to this case, it would overturn the Supreme Court's interpretation of section 6-1-300(6) in *Burns*.⁶

V. CONCLUSION

For the reasons set forth above, Plaintiff requests the Court grant his motion for partial summary judgment and find that the retroactivity provision contained in Section 2(E) of Act 236 is unconstitutional.

Respectfully submitted,

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March 15, 2024
Charleston, South Carolina

⁶ Section 6-1-300(6), as interpreted by the Supreme Court in *Burns*, provided the governing law on “service or user fees” from July 1, 1997, through June 22, 2022, when Act No. 236 was ratified. 2022 S.C. Acts No. 236.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	DEFENDANTS' MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF'S
vs.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	
	)	

Defendants Georgetown County and Miriam Mace, in her official capacity as Treasurer of Georgetown County (collectively, "the County"), by and through the undersigned counsel, respectfully submit this Memorandum of Law in Opposition to Plaintiff's Motion for Partial Summary Judgment. The Court should deny Plaintiff's request for a ruling that Section 2(E) of Act 236¹ is unconstitutional because (i) it would be procedurally improper to do so at this stage and (ii) Section 2(E)'s retroactivity provision is not unconstitutional under the facts of this case.

BACKGROUND

In this putative class action lawsuit, Plaintiff seeks to recover monetary damages allegedly incurred due to the County's collection and retention of a "Road User Fee." Plaintiff seeks a declaration that the Road User Fee is unlawful, and Plaintiff asserts several causes of action alleging the class's entitlement to monetary damages.

The Georgetown County Council first enacted the Road User Fee in 2001. In 2008, Georgetown County Council enacted Ordinance No. 2008-81, which raised the Road User Fee to

¹ 2022 S.C. Acts 236.

\$30.00. In 2018, Georgetown County Council enacted Ordinance No. 2018-18, which raised the Road User Fee to \$50.00. Ordinance No. 2018-18 provides:

The owners of every vehicle, except duly licensed and registered mobile homes, required to be registered and licensed in Georgetown County by the South Carolina Department of Transportation, shall pay annually to the Georgetown County Treasurer, a road user fee of Fifty and 00/100 (\$50.00) Dollars on each such vehicle.

Exhibit A, Ordinance No. 2018-18 at 3.

In support of his argument that the Road User Fee is unlawful, Plaintiff relies exclusively on *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). In *Burns*, the South Carolina Supreme Court invalidated a Greenville County road maintenance fee. The Court held Greenville County’s road maintenance fee was invalid because it did not “benefit[] the payer in some manner different from the members of the general public not paying the fee.” *Burns*, 433 S.C. at 587, 861 S.E.2d at 33. Plaintiff erroneously contends the Road User Fee at issue in this case is invalid because it is “substantially similar” to the fee examined in *Burns*. Am. Compl. at ¶ 21. To be sure, no Court has found the Road User Fee in Georgetown County invalid.

Less than a year after *Burns* was decided, the Governor signed into law Act 236. Act 236 amended S.C. Code Ann. § 6-1-300(6), the statute the *Burns* Court relied upon in invalidating Greenville County’s road maintenance fee. Specifically, Act 236 eliminated the “some manner different from” language from section 6-1-300(6). Under the current version of section 6-1-300(6), a service or user fee is valid if it is “used to the benefit of the payers, even if the general public also benefits.” Furthermore, Section 2(E) of Act 236 states that it “applies retroactively to any service or fee imposed after December 31, 1996.”

On September 6, 2023, Plaintiff filed an Amended Complaint to include a request for a declaration that Section 2(E) of Act 236 is “unconstitutional and unlawful, as applied to this

case[.]” Am. Compl. at ¶ 52. Shortly thereafter, on September 21, 2023, Plaintiff filed the instant Motion for Partial Summary Judgment challenging the constitutionality of Section 2(E).²

STANDARD OF REVIEW

Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “[S]ummary judgment should not be granted if further inquiry into the facts is desirable to clarify the application of the law.” *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 320 S.C. 143, 153, 463 S.E.2d 618, 624 (Ct. App. 1995), *rev’d on other grounds*, 327 S.C. 238, 489 S.E.2d 470 (1997). “If the statute’s application is not absolutely clear as a matter of law, [the] question should not be decided without fully developing the facts by means of trial.” *Shadwell v. Craigie*, 361 S.C. 492, 501-502, 605 S.E.2d 567, 572 (Ct. App. 2004) (citation omitted).

Further, courts have a “very limited scope of review in cases involving a constitutional challenge to a statute.” *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). “All statutes are presumed constitutional and will, if possible, be construed so as to render them valid.” *Id.* “A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.” *Id.* Indeed, as the South Carolina Supreme Court has recognized, courts should decline to reach constitutional issues where it is unnecessary to do so. *See Morris v. Anderson Cnty.*, 349 S.C. 607, 610-11, 564

² The same day Plaintiff filed the instant Motion, the County filed an Answer and a Motion to Dismiss Plaintiff’s Amended Complaint. The County’s Motion to Dismiss has not been set for a hearing.

S.E.2d 649, 651 (2002) (discussing the Court’s “firm policy of declining to reach constitutional issues unless necessary to the resolution of the appeal before us”).

ARGUMENT

I. Plaintiff’s Motion for Partial Summary Judgment is not Procedurally Proper.

A. At this stage, a ruling that Section 2(E) is unconstitutional would amount to an advisory opinion.

The County has asserted numerous arguments respecting the deficiencies in Plaintiff’s lawsuit. In its recently filed Motion to Dismiss, for example, the County argued *inter alia*:

1. South Carolina law prohibits class action lawsuits from being brought against political subdivisions or their instrumentalities. S.C. Code Ann. § 12-60-80(C) (“[The South Carolina Department of Revenue], political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.”); *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 420, 839 S.E.2d 96, 99 (2020) (“We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words ‘any other class action’ in the catchall clause of subsection (C) to the specific subject of ‘taxes’ set forth in the first portion of subsection (C).”).

2. The doctrine of sovereign immunity precludes Plaintiff from monetary recovery in this lawsuit.

3. South Carolina does not recognize a cause of action for monetary damages for constitutional violations. *See Palmer v. State*, 427 S.C. 38, 829 S.E.2d 36 (Ct. App. 2019), *cert. denied* May 28, 2021.

4. The Court lacks subject matter jurisdiction in this case because Plaintiff’s claims are governed by the South Carolina Revenue Procedures Act. S.C. Code Ann. § 12-60-3390 requires dismissal of Plaintiff’s Amended Complaint for failure to exhaust administrative remedies.

See Sept. 21, 2023 Motion to Dismiss at 1-2. If the Court accepts one or more of these arguments respecting Plaintiff’s inability to pursue a class action or money damages, this case will almost certainly be abandoned. If that occurs, Act 236 would have no impact in this case whatsoever.

Although the Court has not yet ruled on the County’s arguments (*see infra* Section I.B), courts in other road fee cases have agreed with these arguments. For example, in *Thompson v.*

Killian, C/A No. 2021-CP-02-02323, the Aiken County road fee case, the circuit court agreed with each of the foregoing arguments and granted the defendants' motions to dismiss. That ruling is now on appeal.³ If our appellate courts affirm the *Thompson* decision and hold class action road fee cases like Plaintiff's are not viable, there will be no need for any County defendant to raise Act 236 as a defense.

Considering the posture of this case and of road fee litigation more generally, it would be improper for the Court to grant Plaintiff's Motion and declare Section 2(E) unconstitutional. The South Carolina Supreme Court has long recognized the "well settled and very proper practice that the Court will not pass upon the constitutionality of a Statute when it is not necessary to do so to arrive at a correct decision of the case." *Trustees of Wofford Coll. v. City of Spartanburg*, 201 S.C. 315, 23 S.E.2d 9, 14 (1942).

More recently, the Court applied this principle in *Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649 (2002). There, in an interlocutory appeal, the appellants encouraged the Court to consider whether the two-tiered money damages caps in the South Carolina Tort Claims Act were "violative of equal protection and therefore unconstitutional." *Id.* at 610, 564 S.E.2d at 651. The Court refused to do so, noting the "liability cap differential would affect appellants only were a jury to return a verdict in excess of the \$500,000 cap." *Id.* at 611 n.3, 564 S.E.2d at 651 n.3. The Court concluded that a decision on the requested issue would amount to an improper advisory opinion: **"an advisory ruling at this juncture, on a constitutional issue which may never arise, would violate our firm policy of declining to reach constitutional issues unless**

³ The circuit court filings and orders, as well as the appellate briefs are available on C-Track under Appellate Case No. 2023-000442.

necessary to the resolution of the appeal before us.” *Id.* at 610-11, 564 S.E.2d at 651 (emphasis added).

Because there is a very real likelihood that Act 236 will never be “necessary to the resolution” of this case or any other road fee case, the Court should not address Plaintiff’s arguments regarding Section 2(E). The County respectfully submits that doing so at this stage would violate the “firm policy of declining to reach constitutional issues unless necessary to the resolution of the [case].” *Id.*

B. The Court should decide the County’s Motion to Dismiss prior to ruling on Plaintiff’s Motion for Summary Judgment.

It would also be improper for the Court to decide Plaintiff’s Motion at this stage for a more fundamental reason—the Court has not yet ruled on the County’s Motion to Dismiss. As noted above, the County filed a Motion to Dismiss Plaintiff’s Amended Complaint on September 21, 2023, the same date Plaintiff filed his Motion for Summary Judgment. Because the County’s Motion to Dismiss raises questions as to whether Plaintiff has stated valid claims for relief, the Court should resolve that Motion prior to deciding substantial questions of constitutionality. It would be improper to determine the constitutionality of State law without first determining the action is valid to begin with.

The fact that the Court previously denied the County’s Motion to Dismiss Plaintiff’s *initial* Complaint does not change the analysis. By electing to file an Amended Complaint, Plaintiff opened the door for the County to again seek dismissal at the 12(b)(6) stage. *See Rowe v. Advance Am., Cash Advance Ctr.*, No. 2006-UP-047, 2006 WL 7285680, at *1 (S.C. Ct. App. Jan. 20, 2006) (appeal from motion to dismiss amended complaint).

Moreover, the fact that another judge denied the County’s initial Motion to Dismiss does not preclude this Court from considering the County’s arguments. The general principle that one

judge's order cannot be set aside by another's applies "except in cases when the right to do so has been reserved to the succeeding Judge." *Sellers v. Nicholls*, 432 S.C. 101, 114, 851 S.E.2d 54, 60 (Ct. App. 2020) (quoting *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003)). That exception applies here, where *all* rights have been reserved to the succeeding judge, the Honorable Roger M. Young, Sr. *See* May 17, 2023 Order Assigning Case (vesting Judge Young "with exclusive jurisdiction to hear and dispose of" road fee cases).

Because the County's Motion to Dismiss remains pending and the Court has not yet determined the threshold validity of Plaintiff's suit, it would be improper to jump to the summary judgment stage and determine the constitutionality of Section 2(E).

C. Plaintiff has failed to name necessary parties.

Finally, it would be improper for the Court to determine the constitutionality of Section 2(E) in isolation with the County appearing as its sole defender. This is not the first action in which a challenge to Section 2(E) has been raised. In 2022, Plaintiff, joined by other petitioners, filed a Petition for Original Jurisdiction with the South Carolina Supreme Court. *See* Appellate Case No. 2022-001099. The Petitioners in that action requested the Supreme Court to exercise its original jurisdiction and declare Section 2(E) unconstitutional.⁴ In that action, Petitioners named the President of the Senate, the Speaker of the House of Representatives, and the Governor as Respondents.

Under Rule 19, SCRCP, the same parties are "necessary" in this amended action. The President, the Speaker, and the Governor were each involved in enacting Act 236 into law. Accordingly, each has an obvious interest in the focus of Plaintiff's Amended Complaint—the validity of Section 2(E). *See* Rule 19(a)(2), SCRCP. Further, determining the constitutionality of

⁴ The Court denied the Petition and refused to hear the case in its original jurisdiction.

Section 2(E) without these parties would deny them the ability to protect their interest in promoting Counties' ability to collect road user fees. *See* Rule 19(a)(2)(i), SCRCF.

Because necessary parties to this suit have not been named, the County submits it would be improper to decide Plaintiff's Motion at this time. Alternatively, if the Court concludes these parties are not necessary, the County submits the Court should provide interested parties sufficient time to decide whether to intervene under Rule 24, SCRCF.

II. Plaintiff's Arguments Respecting the Constitutionality of Section 2(E) are Without Merit.

A. Under the facts of this case, there is no issue with respect to Act 236 "retroactively overruling" *Burns*.

In support of his argument that Section 2(E) is unconstitutional, Plaintiff relies heavily on *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). *Steinke* involved a wrongful death action that was filed on June 29, 1994. *Id.* at 402, 520 S.E.2d at 157. That date is significant because a few months earlier, in April 1994, the Supreme Court decided *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994), which held the Legislature had impliedly repealed the damages cap provisions of the South Carolina Tort Claims Act. *Id.* Accordingly, on the date the *Steinke* plaintiffs filed suit, the damages caps did not apply based on the Court's ruling in *Southeastern Freight*. *Id.*

In 1997, however, while *Steinke* was pending, the Legislature enacted a new law that applied the damages caps to all cases pending on June 14, 1997. *Id.* The Court held the law was unconstitutional, noting the Legislature could not "by a retroactive amendment overrule this Court's prior interpretation of a statute." *Id.* Accordingly, because the 1997 law impacted the *Steinke* plaintiffs' remedies available under *Southeastern Freight*, the Court held the law was unconstitutional and the damages caps did not apply. *Id.* at 403, 520 S.E.2d at 157-58.

Steinke stands for a straightforward proposition: Where a prior ruling controls a party's rights in an action, a legislative enactment that retroactively impacts those rights is invalid. *See id.* Plaintiff misapplies that rule to the facts of this case. Plaintiff contends that *Burns* established his right to pursue a claim against the County, thereby prohibiting the Legislature from retroactively infringing on that right via Act 236. *See* Pl. Memo at 10-11. This argument suffers from a fatal flaw—nothing in *Burns* established Plaintiff's right to pursue claims against the County for its collection of the Road User Fee. As the County will now show, because the validity of Georgetown's Road User Fee is not controlled by *Burns*, there is no "retroactive overruling" issue created by Act 236.

To reiterate, the Court in *Burns* solely invalidated a Greenville County road maintenance fee. The Court held the fee was an unlawful tax because it failed to meet the requirements of section 6-1-300(6) of the South Carolina Code. Section 6-1-300(6), as it existed at the time *Burns* was decided, provided a fee was valid if it "benefits the payer in some manner different from the members of the general public not paying the fee." *Burns*, 433 S.C. at 587, 861 S.E.2d at 33. The Court held Greenville County's road maintenance fee did not meet that standard because it did not create a unique benefit to Greenville County residents. Contrary to Plaintiff's persistence, *Burns* did not declare all road user fees invalid, it simply held the Greenville fee did not meet the statutory framework.

Here, however, the plain language of the Georgetown County Ordinance at issue, No. 2018-18, makes clear that Georgetown's Road User Fee does not run afoul of the prior version of section 6-1-300(6). Rather, several Findings of Fact included in Ordinance demonstrate that the payers of the fee in Georgetown County received a unique benefit not enjoyed by the members of

the public not paying the fee. Based on “extensive study and consideration,” the Georgetown County Council found as follows:

6. Dirt and gravel roads within Georgetown County total in excess of eighty-two (82%) percent serving primarily residential areas. **The roads are not conditioned or located for interstate or inter-county traffic. As a result, virtually all the motorized vehicular users of the roads within Georgetown County are motorized vehicles licensed in Georgetown County.**

10. Improvements of the road system within Georgetown County bestows a specific benefit on motorized vehicular users not enjoyed by the non-owning members of the general public by reason of the above.

Exhibit A, at 2 (emphasis added). Crucially, findings relating to the local use of the funds at issue were markedly absent from the Greenville County Ordinance the Court invalidated in *Burns*. See Exhibit B, Greenville County Ordinance 4906.

The foregoing language clearly distinguishes Georgetown County’s Road User Fee from the fee invalidated in *Burns*. Because any impact Act 236 has on *Burns* is wholly irrelevant to the validity of the Road User Fee here, Plaintiff’s as applied challenge to the constitutionality of Section 2(E) fails.⁵

B. Because of the limited holding in *Burns*, Section 2(E) is not unconstitutional.

Plaintiff’s retroactivity argument also fails for a related reason—there is no issue of “retroactive overruling” presented by Section 2(E) because of the restricted holding in *Burns*. In the cases Plaintiff cites in his brief, the Court invalidated legislation that retroactively altered a substantial right or remedy available to a party under an existing ruling. Indeed, several of the cited cases involved legislation that affected the damages a litigant could collect under a prior

⁵ Of course, to the extent further inquiry into the differences between the County’s Road User Fee and the road user fee at issue in *Burns* would “clarify the application of the law,” the Court should deny Plaintiff’s Motion at this stage. See *ML-Lee Acquisition Fund*, 320 S.C. at 153, 463 S.E.2d at 624.

ruling. *See Steinke*, 336 S.C. at 402-03, 520 S.E.2d at 157-58 (discussing legislation that applied damages caps to plaintiffs' case when caps did not apply at the time of filing under *Southeastern Freight*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 587-88, 586 S.E.2d 569, 572 (2003) (discussing legislation that applied damages caps to plaintiff's case when caps did not apply at the time claims accrued under *Southeastern Freight*). Similarly, in *JRS Builders, Inc. v. Neunsinger*, the Court refused to retroactively apply legislation that would impair a litigant's entitlement to attorneys' fees under a prior ruling. 364 S.C. 596, 600-601, 614 S.E.2d 629, 631-32. Finally, *Lindsay v. National Old Line Insurance Co.* involved legislation that would have lowered the amount of license fees and taxes owed to the State Insurance Commissioner by foreign corporations under an earlier ruling. 262 S.C. 621, 627-29, 207 S.E.2d 75, 77-78 (1974).

Here, unlike the prior rulings that gave rise to the cited cases, *Burns* created no such rights or remedies. Once again, the Court in *Burns* simply declared Greenville County's road maintenance fee did not satisfy the requirements of section 6-1-300(6). The Court did not declare all road user fees to be illegal. The Court did not suggest money damages would be available to Greenville residents who paid the fee. Additionally, *Burns* was not a class action, and the Court stated nothing to create any right to pursue money damages in a representative capacity on behalf of a class. Unlike the cases Plaintiff cites in his brief, *Burns* simply involved a declaratory judgment on a narrow issue. Because *Burns* did not establish any rights or remedies available to Plaintiff, Plaintiff's challenge to Section 2(E)'s application to this case fails.

C. Considering the applicable standard, the Court must deny Plaintiff's Motion.

The foregoing arguments plainly demonstrate that Section 2(E) of Act 236 is not unconstitutional as applied to this case. Of course, to find in the County's favor, the Court need not agree with its arguments wholeheartedly. Instead, the relevant question is whether any

reasonable doubt exists as to Plaintiff's position that Section 2(E) is unconstitutional; if it does, the Court must deny Plaintiff's Motion. *See Joytime Distributors*, 338 S.C. at 640, 528 S.E.2d at 650 ("A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution."). Because the County's arguments go well beyond creating such reasonable doubt, a ruling that Section 2(E) is unconstitutional would violate established law.

CONCLUSION

For the foregoing reasons, the County respectfully requests the Court to deny Plaintiff's Motion or, alternatively, hold the Motion in abeyance until it may be properly decided.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

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March 29, 2024

*Richard A. Butts, individually and on behalf of all others similarly situated v
Miriam Mace, in her official capacity as Treasurer of Georgetown County, and
Georgetown County, South Carolina
C/A No. 2021-CP-22-00928*

EXHIBIT A

*Defendants' Memorandum in Opposition to
Plaintiff's Motion for Partial Summary Judgment*

STATE OF SOUTH CAROLINA**ORDINANCE #2018-18****COUNTY OF GEORGETOWN****AN ORDINANCE TO AMEND ORDINANCE NO. 2006-100 (AS AMENDED) PREVIOUSLY ADOPTED BY THE GEORGETOWN COUNTY COUNCIL TO ESTABLISH A UNIFORM SERVICE CHARGE FOR MOTORIZED VEHICLE USERS OF THE COUNTY ROADS OF GEORGETOWN COUNTY, SOUTH CAROLINA**

WHEREAS, on June 26, 2001, Georgetown County Council adopted Ordinance 2001-16 to establish a Uniform Service charge for Motorized Vehicle Users in Georgetown County, South Carolina; and

WHEREAS, on April 8, 2003, Georgetown County Council adopted Ordinance 2003-11 amending the same; and

WHEREAS, Georgetown County Council has after extensive study and consideration determined that it is in the best interest of the citizens and taxpayers of Georgetown County, South Carolina, that Ordinances #2001-16 and #2003-11 should be repealed, and replaced by Ordinance #2006-100, as amended, which shall become the Road User Fee Ordinance for Georgetown County, South Carolina;

NOW, THEREFORE, IT IS RESOLVED AND ORDAINED AS FOLLOWS:**FINDINGS OF FACT:**

1. There are currently in excess of two hundred seventy-seven (277) miles of dirt and gravel roads within Georgetown County, South Carolina.
2. The cost of maintaining roads is escalating at an ever accelerating rate and all funds available must be used to maintain the system in its present condition. Funds are extremely limited to implement improvements in the system.
3. The South Carolina Department of Transportation is accepting fewer roads into the State highway system.
4. The annual appropriation of "C" funds from the Department of Transportation is insufficient to impact the number of roads within Georgetown County that require improvement up to State standards.
5. The State of South Carolina has for many years, through the Department of Transportation, charged motorized vehicular users fees for the use of the State highway system through the provisions of Chapter 3 of Title 56 of the South Carolina Code of Laws.

6. Dirt and gravel roads within Georgetown County total in excess of eighty-two (82%) percent serving primarily residential areas. The roads are not conditioned or located for interstate or inter-county traffic. As a result, virtually all the motorized vehicular users of the roads within Georgetown County are motorized vehicles licensed in Georgetown County.
7. Roads within Georgetown County are used by pedestrians, bicyclists, equestrians and other non-motorized vehicular users. However, motorized vehicular traffic constitutes the overwhelming majority of the use of the road system. Furthermore, motorized vehicular traffic causes practically 100% of all the wear and tear on the County road system.
8. The road system within Georgetown County must be maintained and improved to a much better condition to accommodate motorized vehicular traffic, and rapidly increasing volumes of traffic throughout Georgetown County, especially on major roads and thoroughfares.
9. Georgetown County Council has authorized the development of a Transportation Master Study for Georgetown County in order to identify potential corrective action to address specific needs including, but not limited to congestion on major road thoroughfares, such as US Highway 17, as well as drainage and right-of-way issues.
10. Improvements of the road system within Georgetown County bestows a specific benefit on motorized vehicular users not enjoyed by the non-owning members of the general public by reason of the above.
11. The use of general tax revenues to construct and maintain roads within Georgetown County has resulted in placing on property owners, including non-residents, non-users, and non-owners, the entire cost of maintaining roads through ad valorem property taxes on all taxable property in the County.
12. Counties are specifically mandated "to assess...uniform service charges...and make appropriations for...roads..."by '4-9-30(5) of the South Carolina Code of Laws, 1976, as amended ("The Home Rule Act").
13. The health, order, general welfare, and convenience of the County will be served by the enactment of this ordinance.
14. Certain classes of automobile owners should be exempted from the provisions of this ordinance. County Council determines that the exemptions from ad valorem taxes provided for by 12-37-220S.C. Code Ann. (1990 Com. Supp.) should apply to the road user fee required to be paid by this ordinance.

In order to implement the legislative intent of Georgetown County Council based on the above findings of fact, it is ordained as follows:

- a. The owners of every vehicle, except duly licensed and registered mobile homes, required to be registered and licensed in Georgetown County by the South Carolina Department of Transportation, shall pay annually to the Georgetown County Treasurer, a road user fee of Fifty and 00/100 (\$50.00) Dollars on each such vehicle.
- b. The Georgetown County Treasurer shall collect the road user fee in such manner and method as the Treasurer deems most efficient and fair.
- c. The proceeds from the collection of such fees shall be deposited in a fund to be administered by the Georgetown County Administrator, who shall maintain a separate accounting of funds collected. The proceeds of such fund, together with any investment income earned thereon, must be used solely and exclusively for the construction and improvement of roads, sidewalks or bike paths within Georgetown County, related drainage, parking lots including other related needs required for the general public's access to publicly owned facilities, or the regional transportation association servicing Georgetown County as provided by S.C. Code of Laws (as amended) 58-25-20, et seq. Funds not used in any fiscal year shall be carried forward and used in subsequent years in the same manner as outlined above. Nothing shall preclude funds being used for multiple projects simultaneously so long as the subject project falls under an allowable use listed herein.
- d. Funds derived from the road user fee shall be used exclusively for improving roads and streets, which are not a part of the State or Federal road system, except as may be coordinated in conjunction with the use of other State or Federal funds, upon specific approval of County Council.
- e. Penalties for nonpayment:
 1. In the event an individual does not pay the fifty (\$50.00) dollar road improvement and maintenance fee at the time designated by the County Treasurer, a penalty of ten (\$10.00) dollars each day the road maintenance fee is unpaid shall be levied against such individual. Each day which a violation occurs shall be deemed a separate and distinct offense.
 2. The penalty shall apply to each vehicle fee that is unpaid.
 3. If the road user fee and penalties are not paid after the expiration of Sixty (60) days from the due date of the user fee, the fees and penalties may be enforced by judgment and attachment or such other means provided for under the laws of the State of South Carolina. Nothing in this section shall be construed as a limit on the time for the bringing of an action to collect such fees and penalties. In addition to the penalties provided herein, the County may recover reasonable attorney's fees and other expenses of litigation or collection.
- f. Criminal Penalties:

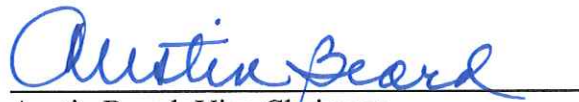
1. In the event an individual does not pay the fifty (\$50.00) dollar road user fee and operates his vehicle on any road within Georgetown County, the individual shall pay a fine of up to Two Hundred (\$200.00) Dollars and/or serve a sentence of Thirty (30) days in jail, which offense shall be tried in Magistrate's Court.
- g. Exemptions:
1. The owner of any vehicle that would be exempt from ad valorem taxes pursuant to §12-37-220 S.C. Code Ann.(1990 Cum. Supp.) shall be exempt from the provisions of this ordinance.

Should a court of competent jurisdiction declare any word, phrase, clause or provision of this ordinance invalid or unconstitutional, such declaration shall not affect this ordinance as a whole or any part hereof except that specific provision declared by such court to be invalid or unconstitutional.

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect.

This ordinance shall take effect upon final approval of this ordinance.

DONE, RATIFIED, AND ADOPTED THIS 24th DAY OF JULY, 2018.

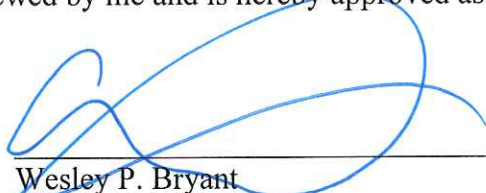

Austin Beard, Vice Chairman
Georgetown County Council

[SEAL]

Attest:


Theresa E. Floyd
Clerk to Council

This Ordinance No. 2018-18, has been reviewed by me and is hereby approved as to form and legality.



Wesley P. Bryant
Georgetown County Attorney

First Reading: June 14, 2018
Second Reading: June 26, 2018
Third Reading: July 24, 2018

*Richard A. Butts, individually and on behalf of all others similarly situated v
Miriam Mace, in her official capacity as Treasurer of Georgetown County, and
Georgetown County, South Carolina
C/A No. 2021-CP-22-00928*

EXHIBIT B

*Defendants' Memorandum in Opposition to
Plaintiff's Motion for Partial Summary Judgment*

No. 4906

AN ORDINANCE**TO AMEND ORDINANCE NO. 2474, AS AMENDED, SO AS TO INCREASE THE COUNTY ROAD MAINTENANCE FEE.**

WHEREAS, for almost 25 years Greenville County and its citizens have benefitted from the use of the road maintenance fee as a dedicated source of funding to support the maintenance and improvement of its public road system across the County; and

WHEREAS, the County has reviewed the road maintenance fee and determined that although the number of registered vehicles in Greenville County has increased, the additional revenue generated is insufficient to overcome increased maintenance costs, and the buying power of \$15.00 in 1993 is estimated to be the equivalent of \$8.88 in 2016; and

WHEREAS, Greenville County strives to maximize the life expectancy and riding surface condition of the County's road infrastructure, however, maintenance demands continue to climb due to growth of our community, increased traffic volume, sustaining pavement conditions against deterioration, along with the addition of 300+ miles of public roads under the County's responsibility; and

WHEREAS, the decreased buying power of the current fee is insufficient to keep up with increased costs of maintenance and County Council finds it necessary to increase the Road Maintenance Fee to \$25.00; and

WHEREAS, with funding for a local match, Greenville County has an opportunity to apply for available South Carolina State Infrastructure Bank funds to accelerate major local GPATS road improvement projects that would alleviate traffic congestion and benefit the citizens of Greenville County; and

WHEREAS, pursuant to Section 4-9-30(5) of the Code of Laws of South Carolina, as amended, the County is authorized and empowered to levy uniform service charges to provide for operations and functions of the county, including, but not limited to public works and roads.

NOW, THEREFORE, BE IT ORDAINED BY GREENVILLE COUNTY COUNCIL:

Section 1. **Authority.** Greenville County Council is authorized by Section 4-9-30 of the Code of Laws of South Carolina, as amended, to levy uniform service charges to provide for public works, including roads, and public safety.

Section 2. **Road Maintenance Fee Amendment.** Section 2 of Ordinance No. 2474, as amended by Ordinance No. 2513, is hereby amended to change the road maintenance fee to Twenty-five and 00/100 Dollars (\$25.00) and the references to the "Department of Revenue and Taxation-Division of Motor Vehicles" is amended to the "South Carolina Department of Motor Vehicles."

Section 3. Severability. Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Repeal. All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with its provisions, are hereby repealed or superseded to the extent necessary to give this Ordinance full force and effect. Ordinance No. 4885 is hereby repealed.

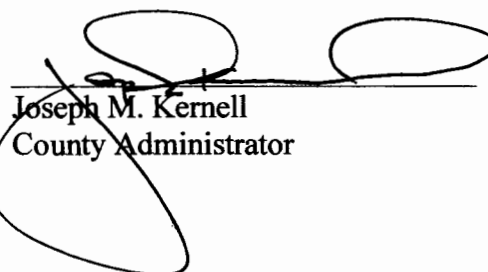
Section 5. Effective Date. This Ordinance shall take effect upon the date of its adoption.

DONE IN REGULAR MEETING THIS 6th DAY OF JUNE, 2017.


Herman G. Kirven, Jr., Chairman
Greenville County Council

ATTEST:


Theresa Kizer
Clerk to Council


Joseph M. Kernell
County Administrator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Richard A. Butts, individually and on	)	CASE NO.: 2021-CP-2200928
behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	REPLY MEMORANDUM IN SUPPORT
v.	)	OF PLAINTIFF’S MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts (“Plaintiff”), on behalf of himself and all others similarly situated, and by and through his undersigned counsel, submits this Reply Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment pursuant to Rule 56, SCRPC.¹

INTRODUCTION

Defendants previously moved to dismiss Plaintiff’s Complaint on the basis of Act 236’s retroactivity provision, and that motion was *denied*. Now, in response to Plaintiff’s motion for partial summary judgment on the unconstitutionality of Act 236’s retroactivity provision, the County abruptly reverses course and argues that a ruling on Act 236 is “procedurally improper,” and that Act 236’s retroactivity provision does not overturn the Supreme Court’s decision in *Burns*. Both arguments miss the mark.

For the reasons set forth below, the Court should reject the County’s procedural delay tactics and rule on the merits of this purely legal issue. Doing so honors both the letter and the spirit of the Supreme Court’s May 17, 2023 Order consolidating these road fee cases and assigning

¹ Prior to filing the present reply memorandum, undersigned counsel conferred with plaintiffs’ counsel in all other similarly filed cases and counsel consents to and supports the arguments herein.

them to Your Honor for the “effective and expeditious disposition of this litigation.”² **Exhibit A.** An appealable order at this juncture is the most effective and expeditious approach so that the appellate courts can consider the constitutionality of Act 236.³

PROCEDURAL HISTORY

Act 236 was signed into law on June 22, 2022—seven months and seventeen days after the initial Complaint was filed in this case. For obvious reasons, Act 236’s retroactivity provision looms large over all road fee cases filed in the wake of *Burns v. Greenville Cnty. Council*, 433 S.C. 583 (2021). *See* Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

On August 10, 2022, Plaintiff and other road fee plaintiffs filed a joint Petition for Original Jurisdiction with the South Carolina Supreme Court seeking a declaratory judgment that Act 236’s retroactivity provision was unconstitutional. On February 8, 2023, the Supreme Court denied the Petition, noting the issue was “currently pending before various circuit courts throughout the state.” **Exhibit B.**

While the Petition for Original Jurisdiction was pending, on November 4, 2022, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies

² Importantly, the Supreme Court’s order specifically references Act 236’s retroactivity provision as the impetus for consolidation.

³ If the Court grants Plaintiff’s Motion for Partial Summary Judgment, Plaintiff will consent to an immediate appeal by Defendants so that the constitutionality of Act 236’s retroactivity provision can be addressed by the appellate courts concurrently with the other dispositive legal issues currently on appeal in *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants' collection of the Road User Fee in the past." (Defs.' Motion for Judgment on the Pleadings, ¶ 4.) On January 6, 2023, the Honorable William H. Seals, Jr. denied Defendants' motion for judgment on the pleadings based on Act 236's retroactivity provision. (Order Denying Defs.' Motion for Judgment on the Pleadings.) Judge Seals later reaffirmed that ruling on February 16, 2023, when he denied Defendants' motion to reconsider. (Order Denying Defs.' Motion for Reconsideration.)

On May 17, 2023, the Supreme Court issued an Order assigning this case and all other similar cases pending at the time of Act 236's effective date to Your Honor (the "Consolidation Order"). The purpose of the Consolidation Order was "to dispose of all cases **that may arise out of the retroactivity provision in section 2(E) of Act No. 236.**" Ex. A (emphasis added). The Supreme Court recognized that this consolidation "will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary." *Id.* To this end, this Court is "vested with exclusive jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina **relating to Act No. 236**" and empowered to "decide all matters pertaining to these cases." *Id.* (emphasis added).

Responding to the Consolidation Order's focus on the retroactivity provision in Section 2(E) of Act 236, on August 16, 2023, Plaintiff filed a motion to amend his Complaint to add an additional ground for declaratory relief that Act 236's retroactivity provision is unconstitutional, as applied to this action. Your Honor granted this motion without a hearing. On September 9, 2023, the Court entered an Order Granting Plaintiff's Motion to Amend and Plaintiff filed his Amended Complaint. (Am. Compl.) On September 21, 2023, Defendants filed an Answer to the

Amended Complaint along with a Motion to Dismiss. On September 21, 2023, Plaintiff filed the instant Motion for Partial Summary Judgment on the constitutionality of § 2(E) of Act 236.

ARGUMENT

I. Plaintiff’s Motion for Partial Summary Judgment is procedurally proper and the Court should rule that Act 236’s retroactivity provision is unconstitutional, as applied to this case.

Defendants would have this Court ignore the Consolidation Order and refrain from ruling on Act 236 because *other* unrelated legal issues have been raised by Defendants for a third time in their latest motion to dismiss Plaintiff’s Amended Complaint.⁴ These issues include the alleged class action bar found in Section 12-60-80(C) of the Revenue Procedures Act, sovereign immunity, and failure to exhaust administrative remedies. (Defs.’ Mem. in Opp., p. 4).

A. The County’s latest Motion to Dismiss does not preclude a ruling on Plaintiff’s Motion for Partial Summary Judgment.

The Court has not ruled on Defendants’ latest Motion to Dismiss filed on September 21, 2023, because Defendants have neglected to seek a hearing on their motion over the seven months since it was filed.⁵ Moreover, it is disingenuous and misleading to suggest, as Defendants do, that “the Court has not yet ruled on the County’s arguments.” (Defs.’ Mem. in Opp., p. 4). The Court most certainly has ruled on the same arguments *in this very case* and *in Plaintiff’s favor*.

⁴ Notably, Defendants’ latest Motion to Dismiss does not seek dismissal on the basis of Act 236’s retroactivity provision. It merely argues the procedural points raised in Defendants’ Memorandum in Opposition, namely, Plaintiff’s alleged failures to name necessary parties and serve the Attorney General, both of which are meritless.

⁵ Defendants consented to the briefing schedule the Court suggested for Plaintiff’s Motion for Partial Summary Judgment without requesting a hearing on their latest Motion to Dismiss or raising any objection to the Court ruling on Plaintiff’s motion before the Court decided their motion. For Defendants to save this objection until briefing Plaintiff’s motion is nothing more than a dilatory tactic designed to frustrate and delay the resolution of whether § 2(E) of Act 236 is unconstitutional.

On May 23, 2022, the Honorable J. Cordell Maddox issued a ten-page order denying Defendants' motion to strike, which raised the same substantive arguments Defendants have regurgitated in their latest Motion to Dismiss. **Exhibit C.** Judge Maddox ruled, *inter alia*, that the Revenue Procedures Act does not apply to this case, the class action bar found in Section 12-60-80(C) is inapplicable, and that sovereign immunity does not bar Plaintiff's equitable claims.⁶ None of these arguments are new and nothing has changed in this case that would merit their reconsideration for a second time.

While the judge in *Thompson v. Killian* ruled differently on these issues, which are now before the Court of Appeals, Defendants neglect to mention that these very same arguments have failed, not only in this very case, but also in the majority of other road fee cases.⁷ The decision in *Thompson v. Killian* represents the minority view of the numerous circuit court judges who have analyzed and decided these issues.

Notwithstanding the pending appeal in *Thompson v. Killian*, a ruling on Act 236's retroactivity provision is needed to ensure that all threshold legal issues can be reviewed and decided by the South Carolina appellate courts in a streamlined and efficient manner. The appeal in *Thompson v. Killian* does not involve Act 236; therefore, a ruling is needed from this Court to take the issue up for appellate review. While Judge Seals previously denied Defendants' motion

⁶ Less than one month later, on June 7, 2022, Judge Maddox then denied Defendants' Motion to Reconsider the May 23, 2022 Order.

⁷ Motions to dismiss and/or motions to strike on similar grounds have been filed in eight of ten cases (there are duplicate actions filed against Spartanburg County) currently pending before this Court pursuant to the Consolidation Order. Of those motions, four have been denied (*i.e.*, Georgetown, Beaufort, Kershaw, and Spartanburg cases); three have been granted (*i.e.*, Aiken, Horry, and Orangeburg cases), but with Motions to Reconsider still pending in the Horry and Orangeburg cases; one has been briefed and argued, but an order has not been issued (*i.e.*, Richland County case); and no dispositive motions have been filed in the Florence County case.

for judgment on the pleadings based on Act 236, no judge in any of the road fee cases has thus far issued an appealable decision on this issue.

The Consolidation Order calls for Your Honor “to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” (Consolidation Order.) Notably, the Consolidation Order did not stay all road fee cases until the issues on appeal in *Thompson v. Killian* are resolved. Rather, the Supreme Court specifically identified Act 236 in the Consolidation Order and directed the Court to “decide all matters pertaining to these cases” in a manner that will “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” (Consolidation Order.)

Once all the threshold legal issues, including Act 236, are on appeal, the appellate court can then decide whether it is necessary to reach the constitutionality of Act 236. If the decision in *Thompson v. Killian* is affirmed in its application of the Revenue Procedures Act, a decision on Act 236 would be unnecessary. If, however, that decision is reversed, the parties would find themselves returning to this Court for a ruling on Act 236, while months (if not years) would have needlessly passed. The Consolidation Order was drafted to avoid this sort of inefficiency.

B. Having previously sought an affirmative ruling on Act 236 prior to the final disposition of other threshold legal issues, Defendants have waived any objection to this Court now ruling on Act 236.

After Judge Maddox soundly rejected Defendants’ arguments on the Revenue Procedures Act, sovereign immunity, and various other legal issues, Defendants sought dismissal of this case on the basis of Act 236.⁸ This too was rejected. On January 6, 2023, the Honorable William H.

⁸ On November 4, 2022, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4.)

Seals, Jr., denied Defendants' motion for judgment on the pleadings based on Act 236. (Order Denying Defs.' Motion for Judgment on the Pleadings.) Judge Seals later reaffirmed that ruling on February 16, 2023, when he denied Defendants' motion to reconsider. (Order Denying Defs.' Motion for Reconsideration.)

Having failed in their quest to wield Act 236 as a sword, Defendants now claim that a ruling on the constitutionality of Section 2(E) of Act 236 is unnecessary and premature. The Court should see through this blatantly dilatory tactic. Because Defendants previously sought to dismiss Plaintiff's claim based on Act 236 prior to the final disposition of the other threshold legal issues that Defendants now argue must be decided first, Defendants have waived any objection to this Court now ruling on Act 236.

C. A ruling on Plaintiff's Motion for Partial Summary Judgment is proper because the pleadings are closed.

Rule 56(a), SCRCP provides that "[a] party seeking to ... obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof." The Amended Complaint was filed over seven months ago; therefore, the thirty-day requirement of Rule 56(a), SCRCP is satisfied. Nothing in Rule 56, SCRCP prevents the Court from ruling on a motion for summary judgment due to an outstanding motion to dismiss. This is especially true where, as here, a prior motion was filed on the same issues and denied.

Finally, Defendants' procedural argument is further undermined by their own Answer to the Amended Complaint, which cites to Act 236 as a ground for dismissal. It specifically states, "Plaintiff's action is barred in whole or in part by 2022 S.C. Acts No. 236." (Defs' Answer to Am.

Compl., ¶59.) Because the pleadings are now closed, a ruling on Plaintiff's motion for partial summary judgment is procedurally proper.

D. Plaintiff has not failed to name any necessary parties and the Attorney General's Office has been served.

Without citing to any case law, Defendants claim the Governor, the President of the Senate and the Speaker of the House are necessary parties to this action pursuant to Rule 19, SCRCP. The mere fact that these elected officials were named as respondents in the Petition for Original Jurisdiction filed with the Supreme Court does not make them necessary parties in this case.

The law does not require the Governor, the President of the Senate, and the Speaker of the House to be named as defendants in every lawsuit challenging the as-applied constitutionality of a statute. To be clear, Plaintiff does not seek an order declaring Act 236, as a whole, is facially unconstitutional. *See Doe v. State*, 421 S.C. 490, 808 S.E.2d 807 (2017) (distinguishing facial from as-applied constitutional challenges and the different standards for each). Plaintiff does not challenge the prospective changes to the user fee statutes effected by this law. Plaintiff merely seeks a determination that the retroactivity provision of Act 236 is unconstitutional as applied to this case. *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 9, 558 S.E.2d 511, 515 (2002) ("We recognize the principle that a statute may be constitutionally valid in part while unconstitutionally invalid in part.").

The law does, however, provide special service of process rules when a party asserts the unconstitutionality of a statute. Rule 4(d)(4)(B), SCRCP ("In any action attacking the Constitutionality of a State statute when the State, officer or agency is not made a party, a copy of the summons and complaint shall be sent by registered or certified mail to the Attorney General."). On September 22, 2023, Plaintiff complied with this rule by serving a copy of the Amended Complaint and Plaintiff's Motion for Partial Summary Judgment on the Attorney General.

Defendants' counsel was copied on this correspondence. **Exhibit D.** In the more than seven months since, the Attorney General has neither made an appearance nor taken any other action with respect to this case.

Finally, the plain text of Rule 4(d)(4)(B), SCRCP demonstrates the absurdity of Defendant's argument that Plaintiff failed to name necessary parties. The rule clearly recognizes the possibility of an "action attacking the Constitutionality of a State statute when the State, officer or agency **is not made a party.**" *Id.* (emphasis added). If the Governor, President of the Senate, and Speaker of the House were indeed necessary parties in all actions where the as-applied constitutionality of a statute is challenged, there would be no need for Rule 4(d)(4)(B), SCRCP at all, since these individuals would be necessary parties and served as ordinary defendants.

II. Defendants' substantive defense of § 2(E) of Act 236 misses the mark.

Defendants' arguments regarding the constitutionality of § 2(E) of Act 236 are a red herring. Initially, Defendants' argument that Plaintiff misapplies the Supreme Court's decision in *Steinke v. S.C. Dep't of Labor, Licensing, & Reg.*, 336 S.C. 373 (1999) is belied by the text of that decision. Indeed, in *Steinke*, the Supreme Court asked and answered the very question that Plaintiff asks this Court to rule on: "May the Legislature by a retroactive amendment overrule this Court's prior interpretation of a statute? ***We conclude the Legislature may not.***" *Steinke*, 336 S.C. at 402 (emphasis added).

While ignoring that conclusion in *Steinke*, Defendants claim the Supreme Court's Order in *Burns v. Greenville Cnty. Council*, 433 S.C. 583 (2021) "solely invalidated a Greenville County road maintenance fee," and thus, the decision has no bearing on Defendants' Road User Fee and "there is no 'retroactive overruling issue created by Act 236.'" (Def's Memo. in Opp. at 9.) Plaintiff

does not dispute that the *Burns* court invalidated Greenville County's road fee ordinance. However, Defendants' argument ignores how the Supreme Court came to that decision.

Before determining the validity of Greenville's Ordinances, the Court necessarily interpreted S.C. Code § 6-1-300(6) and explained how the statute applied to Greenville County's Ordinances. *Burns*, 433 S.C. at 589 (holding, "we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that government service or program ... benefits the payer in some manner difference from the members of the general public."). Whether *Burns* declared all road user fees, or just Greenville County's, invalid is irrelevant under *Steinke*. It is the Supreme Court's *interpretation* of S.C. Code § 6-1-300(6), not the application of that interpretation to a particular ordinance, that Act 236 attempts to unconstitutionally overrule by removing the particularized benefit language and adding that the amendment "applies retroactively to any service or [user] fee imposed after December 31, 1996." Act No. 236, § 2(E).

Finally, Defendant's argument that "*Burns* simply involved a declaratory judgment on a narrow issue" and that "*Burns* did not create any rights or remedies available to Plaintiff" is equally unavailing. Whether *Burns* created a right or remedy for Plaintiff has no bearing on the present motion. Plaintiff's Amended Complaint, filed September 21, 2023, specifically "request[s] a declaratory judgment from this Court that Section 2(E) of Act No. 236, 2022 S.C. Acts, is unconstitutional as applied to this case..." (Am. Compl. ¶ 52.) Because that is exactly what Plaintiff's motion requests, each of Defendants' arguments on the merits are unavailing. Accordingly, Defendants have failed to establish any reasonable doubt that § 2(E) of Act 236 is unconstitutional.

CONCLUSION

For the reasons set forth above, Plaintiff requests the Court grant his Motion for Partial Summary Judgment and find that the retroactivity provision contained in § 2(E) of Act 236 is unconstitutional.

Respectfully submitted,

MCCULLOUGH ▪ KHAN ▪ APPEL

s/ Ross A. Appel

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COUNSEL FOR PLAINTIFFS

April 5, 2024
Mount Pleasant, South Carolina

Exhibit A

The Supreme Court of South Carolina

Mark Gregory Thompson and Jane
Page Thompson, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Clay Killian, in his official capacity as
Aiken County Administrator; Jason
Goings, in his official capacity as
Treasurer of Aiken County, Aiken
County Council, et al.

Defendants.

Aiken County
2021-CP-02-02323

Jane Calkins, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Hilton Head Island; Hilton
Head Island Town Council; Eric
Greenway, in his official capacity as
Beaufort County Administrator; et al.

Defendants.

Beaufort County
2021-CP-07-01967

Steven Biggs, on behalf of himself and
others similarly situated,

Plaintiffs,

vs.

Florence County, South Carolina;
Florence County Council; K.G. Smith,

Jr. in his official capacity as Florence
County Administrator, et al.

Defendants.

Florence County
2021-CP-21-01560

Richard A. Butts, individually and on
behalf of all others similarly situated,

Plaintiffs

vs.

Angela Christian, in her official
capacity as Georgetown County
Administrator; Miriam Mace, in her
official capacity as Treasurer of
Georgetown County; Georgetown
County Council; et al.

Defendants.

Georgetown County
2021-CP-22-00928

Baylis Griffin Hyman, individually and
on behalf of all others similarly
situated,

Plaintiffs,

vs.

Steve Gosnell, in his official capacity
as Horry County Administrator, Angie
Jones, in her official capacity as
Treasurer of Horry County, Horry
County Council, et al.

Defendants.

Horry County
2021-CP-26-07309

Vontisha Portee, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Victor Carpenter, in his official
capacity as Kershaw County
Administrator; Jill Catoe, in her official
capacity as Kershaw County Treasurer,
Kershaw County, et al.

Defendants.

Kershaw County
2021-CP-28-000873

Carroll Brown, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Harold M. Young, in his official
capacity as Orangeburg County
Administrator; Matt Stokes, in his
official capacity as Orangeburg County
Treasurer; Orangeburg County; et al.

Defendants.

Orangeburg County
2021-CP-38-01268

Martha Mitchell and Philip
Washington Falrey, IV, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

Richland County, South Carolina and
Richland County Council,

Defendants.

Richland County
2021-CP-40-03410

Anne H. Hargrove, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren L. Brady, III, in his official
capacity as Treasurer of Spartanburg
County; Spartanburg County Council;
et al.

Defendants.

Spartanburg County
2021-CP-42-03595

Candice Abrams, individually and on
behalf of all those similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren Brady, in his official capacity as
Spartanburg County Treasurer;
Spartanburg County; et al.

Defendants.

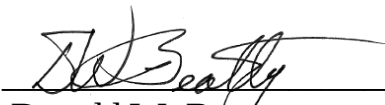
Spartanburg County
2021-CP-42-03736

O R D E R

I find that assigning a single judge to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236 of the 2021-2022 South Carolina Legislative Session (hereinafter “Act No. 236”) will promote the effective and expeditious disposition of this litigation by uniform rulings and will

conserve the resources of the parties, their counsel, and the judiciary. Now therefore,

IT IS ORDERED that the Honorable Roger M. Young, Sr. be vested with exclusive jurisdiction to hear and dispose of the above cases, as well as any additional cases, which have been or may be filed in South Carolina relating to Act No. 236. Judge Young shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
May 17, 2023

Exhibit B

The Supreme Court of South Carolina

Martha Mitchell, Phillip Washington Fairey, IV, Steven Biggs, Anne Hargrove, Mark Gregory Thompson, Jane Page Thompson, Vontisha Portee, Baylis Griffin Hyman, Carroll Brown, and Candice Abrams, Petitioners,

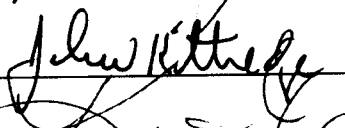
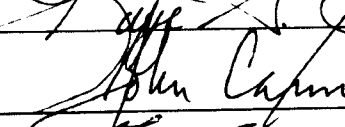
v.

Thomas Alexander in his official capacity as President of the South Carolina Senate, G. Murrell Smith, Jr. in his official capacity as Speaker of the South Carolina House of Representatives, Henry McMaster in his official capacity as Governor of the State of South Carolina, Respondents.

Appellate Case No. 2022-001099

ORDER

Petitioners ask this Court to exercise original jurisdiction and hear their complaint for declaratory relief on an issue currently pending before various circuit courts throughout the state. The petition for original jurisdiction and declaratory relief is denied.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
February 8, 2023

cc:

Dennis Charles Dukes, II, Esquire
Clayton B. McCullough, Esquire
Ross A. Appel, Esquire
Robert S. Wood, Esquire
Thomas Christopher Tuck, Esquire
Theodore Augustus Constantine Hargrove, II, Esquire
Terry E. Richardson, Jr., Esquire
William Camden Lewis, Esquire
Brady Ryan Thomas, Esquire
Samuel Barton Tooker, Esquire
David R. Price, Jr., Esquire
Timothy Ryan Langley, Esquire
Charles J. Hodge, Esquire
Thomas Ashley Limehouse, Jr., Esquire
William Grayson Lambert, Esquire
Erica Wells Shedd, Esquire
Bradley Scott Wright, Esquire
Tracey Colton Green, Esquire
James Keith Gilliam, Esquire
Kenneth M. Moffitt, Esquire
John Potter Hazzard, V, Esquire

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
Angela Christian, in her official capacity as	)	
Georgetown County Administrator, Miriam	)	
Mace, in her official capacity as Treasurer	)	
of Georgetown County, Georgetown	)	
County Council, and Georgetown County,	)	
South Carolina,	)	
	)	
Defendants.	)	

Defendants Angela Christiaan, Miriam Mace, Georgetown County Council, and Georgetown County filed a Motion to Strike certain allegations from Plaintiff Richard Butts’ Class Action Complaint (the “Complaint”). Plaintiff opposes the motion as to Defendants Miriam Mace and Georgetown County.¹ The Parties submitted initial briefs on the issues raised in Defendants’ Motion and the Court held oral argument on March 31, 2022. Having fully reviewed the parties’ positions, the Court DENIES Defendants’ Motion to Strike in its entirety. The Court must highlight that the case is still in its infancy and finds many of the arguments of Defendants to be premature at this juncture.

BACKGROUND

¹ The Parties have stipulated to the dismissal of Defendants Angela Christian and Georgetown County Council pursuant to Rule 41, SCRCP, therefore the Court need not address their motion arguments.

This case arises from Defendants imposition, collection, and retention of allegedly illegal “service or user fees” (hereinafter “road user fees”), which were imposed annually upon citizens of Georgetown County beginning in 2001.² The Georgetown County Treasurer, Miriam Mace, is currently responsible for overseeing the collection of the road user fees at issue in this case. Plaintiff brought this action individually and on behalf of a putative class of citizens who have all paid the allegedly illegal road user fees, and he seeks a declaratory judgment that the road user fees Defendants imposed and collected were illegal, along with a refund of the amounts paid by Plaintiff and putative class members, with interest.

Plaintiff alleges that on June 30, 2021, the South Carolina Supreme Court struck down a Greenville County ordinance that imposed a similar road maintenance fee on each citizen with a registered vehicle in Greenville County. *See Burns v. Greenville County Council*, 433 S.C. 583 (2021). The ordinance at issue in *Burns* reads:

The owners of every vehicle required to be registered and licensed in Greenville County by the South Carolina Department of Motor Vehicles shall pay annually to the Greenville County tax collector a road maintenance fee of \$25 on each such vehicle.

In *Burns*, The South Carolina Supreme Court first held that this ordinance did not impose a value-based property tax, and then went on to find the ordinance did not qualify as a “uniform service charge” under S.C. Code Ann. § 4-9-30(5)(a), nor did the ordinance qualify as a “service or user fee” under S.C. Code Ann. § 6-1-330(A). Plaintiff alleges that the ordinances passed by Georgetown County imposing the road user fees at issue in this case are substantially similar in all material respects to the ordinance the Supreme Court struck down in *Burns*. Defendants deny the

² For purposes of this order, all facts plead in Plaintiff’s Complaint are taken as true pursuant to the applicable standard of review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”).

application of *Burns* to the instant case automatically makes the Georgetown County road user fees illegal.

In their Motion, Defendants moved to strike various allegations from Plaintiff's Complaint based on six grounds, five of which remain contested. Defendants' arguments raise four main issues: (1) the applicability of the Revenue Procedures Act, specifically S.C. Code. § 12-60-80(C); (2) whether Plaintiff can maintain his claim for attorneys' fees under S.C. Code § 15-77-300; (3) the applicability of the doctrine of sovereign immunity to Plaintiff's claims for monetary relief; and (4) whether Plaintiff can seek monetary damages for his due process claims.

For the reasons set forth below, the Court finds that Plaintiff's allegations are sufficient to maintain his claims at this juncture of the litigation and DENIES Defendants' Motion to Strike in its entirety.

STANDARD OF REVIEW

A motion to strike under Rule 12(f), SCRPC, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRPC. *McCormick v. England*, 328 S.C. 627, 632 (Ct. App. 1997). When ruling on a motion to dismiss, the Court must base its decision solely on the allegations set forth on the face of the complaint. *Id.* at 632-33. "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 633 (citing *Dye v. Gainey*, 320 S.C. 65 (Ct. App. 1995)).

"The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* at 633. And "important questions of novel impression should not be decided on a

motion to dismiss.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 165 (2001).

ANALYSIS

A. At this stage of the litigation, the Court finds the Revenue Procedures Act is inapplicable and S.C. Code § 12-60-80(C) does not bar Plaintiff’s class claims.

In their Motion, Defendants first argue that the Court should strike Plaintiff’s class allegations based upon a statutory provision found in the South Carolina Revenue Procedures Act (the “RPA”), S.C. Code § 12-60-10, *et seq.* The Court finds this request to be premature.

In response, Plaintiff contends that the RPA is inapplicable to his claims. First, Plaintiff contends that the RPA is inapplicable because it applies only to: 1) disputes with South Carolina Department of Revenue (“SCDOR”); and 2) disputes concerning property taxes. For support, Plaintiff cites specifically to the legislative intent set forth in S.C. Code § 12-60-20 and the Supreme Court’s holding in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Moreover, Plaintiff contends that the class action prohibition found in S.C. Code § 12-60-80(C) is inapplicable to his claims because the RPA’s provisions apply only to disputes with the SCDOR and disputes concerning property taxes

1. At this stage of the litigation, the Court finds the Revenue Procedures Act does not apply to Plaintiff’s underlying claims.

The RPA only applies to “disputes with the Department of Revenue and disputes concerning property taxes.” S.C. Code Ann. § 12-60-20. When promulgating the RPA, the General Assembly expressly stated its intent for the statutory scheme in § 12-60-20:

It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (emphasis supplied).

In South Carolina, the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *Id.*

Here, it is clear that the General Assembly intended the RPA to apply in two circumstances: 1) to disputes with SCDOR; and 2) to disputes over property taxes. Based on the allegations in Plaintiff’s Complaint, the Court finds that neither of those circumstances are met and declines to strike Plaintiff’s class allegations at this stage in this case. The former is apparent from the caption in this case, which does not list SCDOR as a party. As to the latter, our Supreme Court has found that the RPA applies only to disputes involving challenges to property tax assessments, property tax millage rates, and the assessments of admissions and sales taxes. *See e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017); *B & A Dev., Inc. v. Georgetown Cty.*, 372 S.C. 261, 264, 641 S.E.2d 888, 890 (2007); *Buist v. Huggins*, 367 S.C. 268, 274-75, 625 S.E.2d 636, 639 (2006); *Brackenbrook North Charleston v. Cty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

In *Lightner*, members of a nonprofit brought a class action against a private club and SCDOR alleging that the defendants wrongfully collected and retained admissions taxes on membership dues. 419 S.C. at 359, 798 S.E.2d at 556. In its ruling, the Supreme Court clarified the legislative intent of the General Assembly in promulgating the RPA when it held:

The plain language of the statute, including the repetition of the terms “a dispute” after the term “and,” indicates the General Assembly intended to distinguish “a dispute with the Department of Revenue” from “a dispute concerning property

taxes.” . . . By recognizing that the General Assembly intended to distinguish between “a dispute with the Department of Revenue” and “a dispute concerning property taxes,” **we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality.**

Lightner, 419 S.C. at 365, 798 S.E.2d at 558-59 (emphasis added).

Unlike the plaintiffs in *Lightner*, here Plaintiff has not sued the SCDOR in any capacity, and based solely upon the allegations in the Complaint, the road user fees at issue in this case do not fit the RPA’s definition of property taxes.³ As such, the Court finds denies Defendants’ Motion at this time.

2. The Court declines to dismiss the matter pursuant to Section 12-60-80(C).

Next, the Court will separately address Defendants’ assertion that S.C. Code § 12-60-80(C) still bars Plaintiff from pursuing any class action against Georgetown County. Section 12-60-80(C) provides that:

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or Any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

Furthermore, under the RPA:

“Tax” or “taxes” means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department.

S.C. Code Ann. § 12-60-30(27).

In the present action, Plaintiff challenges the road user fees imposed by Defendants, which according to Plaintiff’s allegations were not “imposed by [title 12]” or “subject to collection by

³ Under the RPA, “Property Tax” is defined as “ad valorem taxes on real and personal property.” S.C. Code Ann. § 12-60-30(18). Here, Plaintiff has alleged that Defendants have imposed annual, uniform service or user fees that are not value-based.

the [D]epartment [of Revenue].” Rather, according to Plaintiff’s allegations, which must be accepted as true at this stage, the road user fees being challenged in this case were imposed pursuant to Title 6 and were not subject to assessment or collection by the SCDOR. As a result, the road user fees at issue in this case are not taxes (or fees) that would be subject to the RPA’s statutory procedures. Therefore, at this stage, the Court declines to bar Plaintiff’s class claims pursuant to § 12-60-80(C).

This Court’s finding that § 12-60-80(C) is not an absolute bar to class actions against political subdivisions at this stage of the litigation is reinforced by the litany of recent class actions that have been litigated and resolved against political subdivisions under Rule 23, SCRCF. *See Real Estate Transactions, LLC v. Beaufort Cnty.*, Case No. 2018-CP-07-02252 (certifying a Rule 23 litigation class against Beaufort County over disputed fees collected by its Treasurer); *City of Myrtle Beach v. Horry Cnty.*, Case No. 2019-CP-26-01732 (municipal government class certified in hospitality fee refund case against Horry County); *Snee Farm Lakes Homeowners Ass’n, Inc. v. Comm’rs of Pub. Works for the Town of Mount Pleasant*, Case No. 2018-CP-10-2764 (ratepayer class certified in rate refund case against municipal water utility); *James v City of Denmark*, Case No. 2018-CP-05-00242 (water utility customer class certified against municipality); *Cook v S.C. Pub. Serv. Auth.*, Case No. 2017-CP-25-348 (ratepayer class certified in rate refund case against state-owned electrical utility for nuclear power plant abandonment); *Worley Investments, LLC v. Berkeley Cnty.*, Case No. 2015-CP-08-1153 (property owner class certified in impact fee refund case against Berkeley County); *Watson v. S.C. Pub. Serv. Auth.*, Case No. 2007-CP-26-6025 (ratepayer class certified in rate refund case against state-owned electric utility for coal power plant abandonment); *Hearn v. S.C. Pub. Serv. Auth.*, Case No. 2017-CP-26-05256 (ratepayer class

certified in rate refund case against state-owned electric utility for purchase and abandonment of coal-fired power plant).

Based on the foregoing, the Court declines to dismiss the class allegations pursuant to S.C. Code § 12-60-80(C). Accordingly, Defendants' Motion to Strike Plaintiff's class allegations is DENIED.

B. Sovereign Immunity does not bar Plaintiff's equitable claims.

Defendants next move the Court to strike Plaintiff's prayer for monetary recovery for his unjust enrichment claims pursuant to the doctrine of sovereign immunity. The Court declines to strike Plaintiff's prayer for monetary recovery for his unjust enrichment claims.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity when it declared that "[s]overeign immunity can no longer be tolerated in this State." *McCall v. Batson*, 285 S.C. 243, 246 (1985). The *McCall* opinion also made clear that it "expressly overrule[d] all previous decisions of [the] Court which uphold sovereign immunity." *Id.* at 247. Shortly after *McCall* was decided, the General Assembly promulgated the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the "TCA"), which "granted" the government qualified immunity for tortious conduct prospectively, S.C. Code Ann. § 15-78-20(b), "reinstated" sovereign immunity for uninsured tort claims that accrued before the TCA was enacted, *id.* at § 20(c), and established 40 exceptions to the government's newfound tort liability. *Id.* at § 60. Importantly, the General Assembly has not passed any law after *McCall* that "granted" or "reinstated" sovereign immunity as to equitable claims, including claims for unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution. *Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). And historically, South Carolina Courts have permitted claims for unjust enrichment to proceed against the State and its political subdivisions. *See e.g.*,

Anderson Cty. v. Preston, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep't*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Through his unjust enrichment claim, Plaintiff seeks to be restored the value of the alleged illegal fees he remitted to Defendants, plus interest. And after *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. To the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation.

For these reasons, the Court DENIES Defendants’ Motion to Strike Plaintiff’s prayer for monetary recovery in this case.

C. The Court declines to strike Plaintiff’s request for attorneys’ fees.

Defendants next ask the Court to strike Plaintiff’s request for attorneys’ fees under S.C. Code § 15-77-300. Again, the Court finds that Defendants’ argument lacks any support under South Carolina law, and Plaintiff may present a request for attorneys’ fees in his Complaint.

Section 15-77-300(A) provides that “[i]n any civil action brought by ... any party who is contesting state action ... the court may allow the prevailing party to recover reasonable attorney’s fees” Further, to be awarded fees under § 15-77-300, Plaintiff must be declared the “prevailing party” and the Court must find that: (1) Defendants “acted without substantial justification,” and (2) “there are no special circumstances that would make the award of attorney’s fees unjust.” S.C. Code Ann. § 15-77-300(A)(1)-(2). Viewed in the light most favorable to Plaintiff, the Court finds

he has sufficiently alleged “state action” in this case and that Defendants acted without “substantial justification.” Accordingly, Defendants’ Motion to Strike Plaintiff’s request for attorneys’ fees is DENIED.

D. Plaintiff has not requested monetary relief for his due process claims.

Next, the Court DENIES Defendants’ Motion to Strike Plaintiff’s due process claim. A quick review of the Complaint shows that Plaintiff has not requested monetary relief for his due process claims, therefore Defendants’ argument has no merit. See Compl. ¶¶ 62-67 & Prayer for Relief.

E. Jury Trial

And finally, Defendants argue that Plaintiff’s demand for a jury trial should be stricken. The Court notes that this case is still in its infancy and finds this issue is more appropriate for resolution once the record has been fully developed and the claims and defenses have been fully briefed. Accordingly, Defendants’ request to strike Plaintiff’s demand for a jury trial is DENIED without prejudice.

CONCLUSION

For the foregoing reasons, Defendants’ Motion to Strike is DENIED in its entirety.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Circuit Court Judge

Dated: _____
Georgetown, South Carolina.



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2022-05-23 15:08:09 page 11 of 11

Exhibit D



Alicia M. Terwilliger, Ph.D.
Phone: (843) 937-0400
Fax: (843) 937-0706
alicia@mklawsc.com

September 22, 2023

VIA U.S. MAIL

The Honorable Alan Wilson
P.O. Box 11549
Columbia, SC 29211

Re: *Richard A. Butts v. Georgetown County, South Carolina, et al.*
Case No.: 2021-CP-22-00928

Dear Attorney General Wilson:

I hope this finds you well. Pursuant to Rule 4(d)(4)(B) of the South Carolina Rules of Civil Procedure, enclosed please find the following documents filed in the above-referenced matter:

- Amended Class Action Complaint
- Plaintiff's Motion for Partial Summary Judgment

As asserted in the above-referenced pleadings, the retroactivity clause in Act No. 236, 2022 S.C. Acts is unconstitutional and unlawful, as applied to Plaintiff's claims in this case, which were actively being litigated at the time of the Act's effective date.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely yours,

Alicia M. Terwilliger
Paralegal to Ross A. Appel

Enclosures (as stated)

cc: H. Thomas Morgan, Jr., Esq. (*via e-mail only*)
Austin T. Reed, Esq. (*via e-mail only*)
Frederick N. Hanna, Jr., Esq. (*via e-mail only*)

Alicia Terwilliger Ph.D.

From: Alicia Terwilliger Ph.D.
Sent: Friday, September 22, 2023 10:16 AM
To: Alicia Terwilliger Ph.D.; austin.reed@smithrobinsonlaw.com; Barbara Carter; bwood@rpwb.com; cdukes@rpwb.com; Clayton B. McCullough, Esquire; ctuck@rpwb.com; Ross Appel; sherry.roth@smithrobinsonlaw.com; thargrove@rpwb.com; tommy@smithrobinsonlaw.com
Subject: Butts v. Georgetown County, South Carolina, et al. - Case No.: 2021-CP-22-00928
Attachments: 20230922 Ltr to SC AG re amended complaint.pdf

Good morning,

I hope this finds you well. Attached please find correspondence sent to Attorney General Alan Wilson this morning in the above-referenced matter.

Please let me know if you have any questions or concerns. Thank you.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO ALTER
	)	OR AMEND JUDGMENT PURSUANT
vs.	)	TO RULE 59(e), SCRCP
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	
	)	

Defendants Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Georgetown County, South Carolina (collectively, “the County”) submit this Motion to Alter or Amend Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Most respectfully, the Court—by issuing its June 25, 2024 Order—erred in granting Plaintiff’s Motion for Partial Summary Judgment. The Court erred in several respects:

- (1) The Court’s decision to find Act 236 unconstitutional was premature based on controlling precedent, the facts of this case, and the posture of other road fee cases throughout the State. It is well-established that a court should only address an issue of constitutionality when doing so is necessary to resolution of the issues in the case. *See Morris v. Anderson County*, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002) (“Among other things, an advisory ruling at this juncture, on a constitutional issue which may never arise, would violate our firm policy of declining to reach constitutional issues unless necessary to the resolution of the appeal before us.”). The Order issued by the Court constitutes an advisory opinion on an issue that may never

need to be decided. Importantly, the Court should have first considered the County's colorable arguments set forth in its Motion to Dismiss Plaintiff's Amended Complaint.¹ Several of the arguments presented in the Motion to Dismiss would be plainly dispositive of the litigation and would not necessitate the Court deciding the constitutionality of Act 236. Other courts in other road fee cases throughout the State have agreed with the County's same arguments and have granted motions to dismiss pursuant to those grounds. Moreover, the very same dispositive issues (that do not address the constitutionality of Act 236) are currently pending at the Court of Appeals, and Oral Argument has been tentatively scheduled in the upcoming months. In short, the Court erred by prematurely ruling on a constitutional issue despite several colorable, dispositive arguments pending and by issuing an unnecessary advisory opinion. *See Trustees of Wofford Coll. v. City of Spartanburg*, 201 S.C. 315, 23 S.E.2d 9, 14 (1942) (explaining the "proper practice that the Court will not pass upon the constitutionality of a Statute when it is not necessary to do so to arrive at a correct decision of the case").

- (2) The Court erred in determining the Supreme Court's Consolidation Order allowed the Court to address the constitutionality of Act 236 at this stage. The Consolidation Order does not override established caselaw precluding courts from addressing issues of constitutionality before it is necessary to do so. Additionally, the Court erred in concluding its ruling would "conserve the resources of the parties, their counsel, and the judiciary." Instead, refraining from ruling upon the constitutionality of Act 236 at

¹ The Court failed to address the County's argument that it is improper to decide an issue of constitutionality prior to ruling upon a pending motion to dismiss. Instead, the Court simply concluded Plaintiff's Motion was timely under Rule 56(a), SCRCp.

this stage would better conserve such resources.

- (3) Even if the Court’s ruling on the constitutionality of Act 236 was timely and procedurally proper, the Court erred by granting Plaintiff partial summary judgment because (i) a genuine issue of material fact exists in applying Act 236 to the County’s Ordinance and (ii) Plaintiff failed to meet the heavy burden of proving the unconstitutionality of Act 236 beyond a reasonable doubt. *See Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (“All statutes are presumed constitutional and will, if possible, be construed so as to render them valid.”); *id.* (“A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.”). The Court failed to mention, much less apply, this stringent standard in its Order. Despite Plaintiff’s insistence that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), controls this case, it does not. In this case, Plaintiff’s arguments concerning retroactivity hinge on whether Georgetown County’s Road User Fee is invalid under the *Burns* Court’s analysis which reviewed Greenville County’s Road User Fee. However, nothing in *Burns* established Plaintiff’s right to pursue claims for money damages against the County for its collection of the Road User Fee. The validity of Georgetown’s Road User Fee is not controlled by *Burns*, and there is no “retroactive overruling” issue created by Act 236.
- (4) Finally, the Court erred by not considering the language of the Georgetown County Ordinance at issue, No. 2018-18, when determining whether a genuine issue of material fact precluded a summary judgment decision on this as applied challenge to Act 236. Several Findings of Fact included in the Ordinance demonstrate that the payers of the

fee in Georgetown County received a unique benefit not enjoyed by the members of the public not paying the fee—taking this case outside of the alleged guidance of *Burns*. At this stage, the foregoing language creates genuine issues of material fact concerning whether Georgetown County’s Road User Fee was invalid under *Burns*, and consequently, whether there is any retroactive overruling created by Act 236 as applied to this case.

Based on the foregoing, the Court should grant the County’s Motion to reconsider the June 25, 2024 Order. The Court’s ruling—at this early juncture—was procedurally improper. The County’s Motion to Dismiss should have been considered first and the Court should not have delved into non-dispositive issues of constitutionality. Furthermore, the Court’s ruling was error because (i) a genuine issue of material fact exists in applying Act 236 to the County’s Ordinance and (ii) Plaintiff failed to meet the heavy burden of proving the unconstitutionality of Act 236 beyond a reasonable doubt.

Respectfully submitted,

SMITH | ROBINSON
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July 3, 2024
Camden, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
Miriam Mace, in her official capacity as	)	MOTION TO ALTER OR AMEND
Treasurer of Georgetown County; and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts ("Plaintiff"), individually and on behalf of all others similarly situated, submits this Memorandum in Opposition to Defendants' Rule 59 Motion to Alter or Amend the Honorable Roger M. Young, Sr.'s June 25, 2024 Order granting Plaintiff's Motion for Partial Summary Judgment. Defendants' Motion is a nothing more than a copy and paste regurgitation of arguments that were previously briefed, argued, and rejected by this Court. For this reason, the Court should deny Defendants' Motion.

"In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991)). This is especially true where the state rule mirrors the federal rule. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical."). The "Note" to Rule 59, SCRCF confirms "[t]his Rule 59 is substantially the Federal Rule."

Motions for reconsideration under Rule 59(e) will not be granted absent "highly unusual circumstances." *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir.

2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief). Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” *Dash v. Mayweather*, Civ. A. No. 3:10-1036 JFA, 2010 WL 3606829, at *1 (D.S.C. Sept. 13, 2010) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” *Charleston SC Property Holdings, LLC v. Rittenberg OP LLC*, Civ. Action No. 2023-CP-10-01512 (S.C. Cir. Ct. Sep. 8, 2023) (quoting *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F. Supp. 3d 685, 691 (D.S.C. 2017)) (attached as Ex. A).

Here, Defendants do not contend there has been a change in controlling law, nor do they offer any new factual evidence. Instead, Defendants attempt to reargue the very same unpersuasive arguments that were previously made in opposition to Plaintiff’s motion for partial summary judgment. The Court should summarily reject these arguments and deny Defendants’ Rule 59 motion because the Court’s findings are amply supported by controlling law and each argument merely reflects Defendants’ disagreement with the Court’s ruling.

First, Defendants argue that the Court erred by prematurely ruling on a constitutional issue despite several other dispositive issues pending and also erred by issuing an unnecessary advisory opinion. However, based on the procedural history of this case, the Court rightfully found that under Rule 56(a), SCRCP, a summary judgement ruling was proper because Defendants raised Act 236 as an affirmative defense in their Answer, which closed the pleadings. Plus, Defendants' other arguments were already rejected when the Court denied Defendants' motion to strike. Thus, Defendants have failed to establish a "clear error of law" under Rule 59(e).

Defendants next argue the Court erred "in determining the Supreme Court's Consolidation Order allowed the Court to address the constitutionality of Act 236 at this stage." But the Court rightfully found that a ruling on the as-applied constitutionality of Act 236 was prudentially proper because the purpose of the Consolidation Order was "to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236," and that a final, appealable ruling on Act 236 would allow this threshold legal issue to be addressed concurrently by our appellate courts. Importantly, Defendants' argument merely asks the Court to change its mind on an issue that has already been thoroughly briefed by the parties and ruled upon by the Court.

Next, Defendants argue, once again, that Plaintiff failed to meet the burden of proving unconstitutionality beyond a reasonable doubt because Georgetown's Road User Fee is not controlled by *Burns*. However, the Court expressly held that it is the Supreme Court's *interpretation* of S.C. Code Section 6-1-300(6), not the application of that statute to a particular ordinance, that Act 236 attempts to unconstitutionally overrule. This holding was correct and Defendants' recycled argument is improper because it ignores how the Supreme Court arrived at the *Burns* decision and merely presses an argument the Court has already considered.

Finally, Defendants attempt to reargue that a genuine issue of material fact exists in applying Act 236 to the County's Ordinance and that the Court erred by not considering the language of the Georgetown Ordinance. However, contrary to Defendants' assertion, the Court concluded that whether Georgetown County's Road User Fee is invalid under *Burns* was irrelevant at this stage of the proceedings, and thus did not create a genuine issue of material fact for purposes of the partial summary judgment.

In sum, each of these regurgitated arguments are merely attempts to re-litigate issues that were previously raised by Defendants and ruled upon by the Court. None of those arguments is appropriate on a Rule 59(e) motion.

CONCLUSION

For these reasons, Plaintiff respectfully requests that this Court deny Defendants' Motion to Alter or Amend.

Respectfully submitted,

s/ Ross Appel

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July 12, 2024
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
COUNTY OF GEORGETOWN CASE NO.:2021-CP-22-00928

**** WEBEX TRANSCRIPTION ****

April 16, 2024

BEFORE: The Honorable Roger Young

RICHARD A. BUTTS, individually and on behalf of
All others similarly situated,
Plaintiffs,

vs.

GEORGETOWN COUNTY, SOUTH CAROLINA,
Defendants.

APPEARANCES:

Ross A. Appel, Esq.
Appearing for the Plaintiffs.

Frederick Hanna, Esq.
H. Thomas Morgan, Esq.
Appearing for the Defendants.

Also present: William Lewis, Esq., and an
individual only identified as "Chuck."

Recorded by: WebEx Video Courtroom
Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

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(None)

EXHIBITS

(None)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: Do I have everyone here? Are we ready to go?

MR. LEWIS: Yeah, your Honor. Briefly, I'm Will Lewis. I've got four of the counties. I'm not involved in this. I will just be observing, and certainly not a Michigan fan, so no issue there.

THE COURT: There you go.

Let me ask this: The case that kicked all of this off out of Greenville, has it been resolved? Is it over?

MR. LEWIS: No, Your Honor. I have the Greenville case, and I think when we're done with the issues you have -- I was just going to give you an update of the appellate situation of what is going on with Aiken and how that is impacting Greenville and potentially this ruling. So I can do it now and kind of give you an update, or I can just wait until after you all are done. I just wanted to make sure --

THE COURT: No, I'm interested in it. So tell me what the status on that case is.

MR. LEWIS: Yeah. So -- so what happened in Greenville, there was a motion to dismiss filed

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1 similar to all of the other ones that was denied by
2 Judge McIntosh. It's pursued in discovery. I've
3 actually taken depositions in that case. It
4 probably -- as that went along, we had the Aiken
5 ruling, which granted a motion to dismiss, which is
6 on appeal currently and is fully briefed in front
7 of the court of appeals. In light of that, it had
8 kind of stayed the discovery actions for the ones
9 that are going, including Greenville, which I do
10 think from the retroactivity position you talking
11 about today is different, but we can talk about
12 that at another time.

13 And then we are talking right now with
14 defense counsel in the Aiken case, and I know
15 everyone who I've talked to in this case agrees,
16 hopefully, and with the help of Your Honor, if
17 there is a way, we can get that transferred
18 directly to the supreme court. Because what we are
19 trying to do -- and I think, Ross, you can jump in
20 if you disagree -- is just get guidance on these
21 inconsistent rulings from our appellate courts to
22 get all of these cases moving in the quickest way
23 possible.

24 I mean, Ross, would you agree from your side,
25 on the plaintiffs at least?

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1 MR. ROSS: Absolutely. I mean, we are in
2 support of doing everything we can to expedite the
3 rulings at the appellate level in the Aiken case,
4 and also develop the Act 236 issue, which we're
5 here for today, Your Honor, because that is an
6 issue that was not addressed at all in the Aiken
7 case.

8 So in order for all of the dispositive legal
9 issues to be in front of the appellate court
10 simultaneously, and to honor the language in the
11 consolidation order that the supreme court signed
12 assigning these cases to Your Honor, we think a
13 ruling on our motion for partial summary judgment
14 on Act 236 is necessary to get that issue up on
15 appeal, alongside all of the issues in the Aiken
16 case like the Revenue Procedures Act, sovereign
17 immunity, all of the other issues. That way, the
18 court of appeals and the supreme court can look at
19 all of these issues that involve all of these cases
20 at the same time and decide how they want to decide
21 them.

22 THE COURT: Well, that's helpful. Because
23 I'll be honest with you, I understand you all have
24 a limited motion for summary judgment before me
25 today scheduled on the retroactivity issue, and

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1 over the weekend and last night I'm reading through
2 these briefs and re-reading them and trying to get
3 my head around these. And I'll tell you what, you
4 know, I struggle with some other issues, other than
5 the retroactivity issue, you know, primarily, the
6 issue of class action and sovereign immunity. I
7 don't think those are -- very often do I find a
8 sovereign immunity issue out there that is
9 interesting or has much merit. But given the
10 history of sovereign immunity in this state, and
11 that you have a cause of action for unjust
12 enrichment, which is, you know, a claim that is
13 based in equity, not in contract, not in tort, you
14 know, I'm not aware of any cases that the supreme
15 court -- or South Carolina has consented to be
16 allowed to be sued for unjust enrichment.

17 And it was -- so you had to have had that
18 right before sovereign immunity was abrogated, and
19 then when it was reinstituted by the legislature,
20 the legislature said, well, all of the old
21 sovereign immunity issues are still out there, but
22 we consent to allow to be sued under these causes
23 of action normally -- namely tort ones -- with
24 certain limitations and immunities involved in
25 that.

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1 So, you know, I'm just saying as I look at
2 this issue today on retroactivity, I'm not so sure
3 that I can rule on that in isolation. Because I
4 think it goes -- you know, I question, at least in
5 my mind at this point, whether or not you would be
6 successful on going forward based on sovereign
7 immunity, at least without briefing and preferably
8 some argument, on sovereign immunity and class
9 action lawsuits against the state on tax matters,
10 which seems to be statutorily prohibited.

11 So I guess I'm throwing that out there
12 because I realized I wasn't sure whether the
13 Greenville class resolved, and if they paid out
14 money, under what theory that they did. But I've
15 got some real concerns about that and would like to
16 -- I know you all -- at least the plaintiff would
17 like me to rule on retroactivity and not the rest
18 of them, but I'm not sure that you get there if you
19 don't get -- unless -- I can understand the vehicle
20 under which you are making your claim for the
21 money.

22 What is your ultimate goal for getting
23 relief, Mr. Appel?

24 MR. ROSS: Yes, Your Honor. And certainly
25 unjust enrichment is one of our causes of action in

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1 this case, and many of the other road maintenance
2 fee cases before Your Honor. And this issue of
3 sovereign immunity has been briefed extensively in
4 all of the motions to be dismissed that have been
5 heard by judges all over the state. More judges
6 have rejected the counties' arguments on these
7 issues than have agreed with them.

8 The Aiken case is an outlier. So, for
9 example, in the case that we're here today about,
10 the Georgetown County case, the Butts case, the
11 county moved to dismiss on all of these issues:
12 Revenue Procedures Act, sovereign immunity, et
13 cetera. Those issues were rejected by the court.
14 And so there's -- there is both sides to these
15 arguments, and those issues have been developed in
16 all of the cases, and they are fully briefed right
17 now in the Aiken case that is going up. The court
18 of appeals and the supreme court will have to make
19 some decisions on that issue.

20 I would also point out that in addition to
21 the unjust enrichment claim, we also have a
22 declaratory judgment claim. Under the DJ statute,
23 courts are allowed to fashion relief in connection
24 with declaratory judgment actions and rulings. So
25 to the extent we're successful in our declaratory

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1 judgment cause of action that seeks a ruling that
2 these fees were unlawful for the very same reason
3 articulated by the supreme court in Burns, we've
4 asked the Court to fashion a remedy to allow the
5 refund of these fees. We also have a substantive
6 due process claim in the case as well.

7 So there's a variety of different avenues
8 that we have to get at the issue of an actual
9 refund. And there is a whole lot we can talk about
10 about Revenue Procedures Act, whether it applies or
11 not, sovereign immunity, things of that nature.

12 What I would suggest to Your Honor is --
13 those issues are fully briefed. They've been fully
14 litigated. They are up on appeal right now. We
15 are simply here today asking for a ruling on the
16 remaining dispositive core legal issue so that that
17 issue can accompany Revenue Procedures Act,
18 sovereign immunity, et cetera, so that the
19 appellate courts can look at all of this and decide
20 how these cases are going to go.

21 MR. LEWIS: And, Your Honor, just to jump in
22 for Greenville, since you asked about it, certainly
23 the RPA was raised on a motion to dismiss and
24 rejected by Judge McIntosh. So if I'm looking at
25 this from a procedural way to move all of these

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1 cases as quick as possible, the case you have in
2 front of you now, Your Honor, I'm not a party to,
3 but the issues you have concern with -- as Ross
4 just said -- have already been ruled on. So you
5 now have a case with this one issue remaining that
6 will allow us to have rulings on all of the issues
7 that could impact this case.

8 To the extent you have any concern over
9 either untrust enrichment -- which I will tell you
10 has been a vehicle for what would be like,
11 essentially, overtaxation cases over fee cases in
12 many states -- but putting that aside, in the
13 Revenues Procedures Act, in a different case and
14 Aiken, those are already up in the appellate case.
15 So now we have this wonderful case right here where
16 your concern issues have already been ruled on, and
17 we're looking for guidance on the retroactivity.

18 So I'll just take you back to the other case,
19 it makes sense from us that it's certainly an
20 expeditious way to move the case along.

21 MR. ROSS: And, Your Honor, if I may just
22 jump in briefly to add on that? You know, when the
23 Chief Justice signed the consolidation order
24 assigning all of these road fee cases to Your
25 Honor, the order could have stayed all of these

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1 cases pending resolution of the Aiken issues; but,
2 instead, the way that the language of this order
3 reads is it calls upon -- it specifically points
4 out the retroactivity language in Section 2(e) of
5 Act 236 and asks -- you know, essentially, directs
6 rulings on that issue to promote the effective and
7 expeditious disposition of this litigation. So Act
8 236 retroactivity really forms the core rationale
9 behind the consolidation order that we're here, you
10 know -- that brings us altogether.

11 THE COURT: I guess I would like to hear from
12 Mr. Hanna on this, because Mr. Hanna -- he's the
13 reason why I'm aware of these issues is he's
14 briefed on these issues.

15 MR. HANNA: And I was just about to say that
16 I, on the other hand, completely agree that it
17 doesn't make sense to create appealable issues
18 before we've confirmed that the cases have actually
19 been properly initiated, that there is a proper
20 claim for relief. We don't know whether Act 236 is
21 even going to be an issue in road fee cases more
22 generally, much less whether it is actually going
23 to be an issue in this case where we still have a
24 pending motion to dismiss after the plaintiff filed
25 his amended complaint.

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1 And, Your Honor, that motion raises these
2 issues of sovereign immunity, of class actions
3 against counties that, we submit, we would need a
4 ruling on before we leap to other issues, and
5 particularly when the issue deals with the
6 constitutionality of state law. And, Your Honor,
7 there's case law from the supreme court that
8 explicitly states you only reach those questions
9 when it is necessary to do so.

10 THE COURT: Mr. Hanna, do me a favor, those
11 two lights you have on behind you, if you can flick
12 them off. Just have a light on the other side of
13 the camera. It is just a little bit distracting.

14 MR. HANNA: No problem.

15 (A brief pause in the proceedings.)

16 MR. HANNA: Is that better?

17 THE COURT: That's much better. Thank you.

18 Okay. So your position today, as far as
19 limiting this to retroactivity, is what, in a
20 nutshell?

21 MR. HANNA: You're asking me, Your Honor?

22 THE COURT: Yes, Mr. Hanna, I'm sorry.

23 MR. HANNA: Your Honor, our position is that
24 you should not reach retroactivity. And I
25 understand that Mr. Appel and the other plaintiffs

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1 attorneys have tried to twist the consolidation
2 order to say that's what Your Honor was instructed
3 to do, but I completely disagree.

4 If you look at the language in that order,
5 and I'm happy to point it out to you, the court has
6 said we're consolidating these cases and assigning
7 them to Your Honor to do things like conserve the
8 resources of the parties and promote uniform
9 rulings, and that's happened since Your Honor was
10 -- has been assigned to these cases. We don't have
11 these circuit splits that we saw. And just on that
12 point, I'll note that the plaintiffs have mentioned
13 the Aiken case. There have been cases in other
14 counties that have agreed with the defendants'
15 position on these issues.

16 But, Your Honor, to conserve these resources
17 and act in accordance with the supreme court's
18 guidance that you only address constitutional
19 issues when it is necessary to do so, the
20 defendants' position is that there is no need to
21 take this issue up at this time, particularly on
22 summary judgment. We've got arguments that summary
23 judgment would be premature at this stage, you
24 know, looking at the merits of the retroactivity
25 provision. And I'm happy to get into all of that

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1 before Your Honor, but the short answer is that
2 Your Honor should deny the motion and not create an
3 appealable issue solely for the sake of creating an
4 appealable issue.

5 THE COURT: well, it's not appealable if I
6 deny it.

7 MR. HANNA: Correct.

8 THE COURT: You know, I guess I'm kind of
9 stuck on the thing that if I granted it on -- if
10 the Court were inclined to grant your motion to
11 dismiss on some other issue, then retroactivity
12 doesn't get raised, and it's an appealable issue, I
13 mean, if I were to grant it.

14 You know, I'm kind of in a position of saying
15 -- so rule on this issue even though you might not
16 otherwise think you'll ever get to it if you
17 granted a motion to dismiss. I'm not saying I
18 would grant a motion to dismiss, but there's enough
19 out there that I would really like to hear some
20 more on it, other than very cursory mentions of it,
21 of those issues, in the briefs today because,
22 granted, that's what you all agreed to schedule for
23 a hearing today.

24 MR. HANNA: Your Honor, I apologize for that.
25 That was our misunderstanding. We do have a

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1 pending motion to dismiss. We weren't sure whether
2 Your Honor wanted to move forward on those specific
3 issues, because I do agree with the plaintiff's
4 counsel that those issues are up on appeal. We
5 didn't know whether Your Honor was inclined to hear
6 all of that right at the onset, but I agree with
7 Your Honor that it is important to resolve those
8 before we move along to an issue like summary
9 judgment on the constitutionality of state law.

10 THE COURT: Well, I mean, I guess it would be
11 partially my fault. I haven't paid a lot of
12 attention to this case before, you know, the last
13 several days. You guys live with it. I'm living
14 with a whole other docket, so I deal with this when
15 I have to deal with it, which was coming up and
16 getting ready for this morning. So when I got the
17 briefs in and started over the weekend reading them
18 towards the end of last week, I was like, you know,
19 it takes a little while to get your head around
20 this.

21 Finally, I reached that moment of clarity in
22 which I said, well, I don't know exactly how I
23 feel, but I would like to hear more about it. But
24 today, from being a complete waste of time, why
25 don't I go ahead and hear your arguments on

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1 retroactivity today, and then depending how I feel
2 about it in the arguments, we might need to
3 schedule hearings on your motion to dismiss. Let's
4 do that.

5 All right. So, Mr. Ross, your motion to --
6 summary judgment on the issue of retroactivity,
7 that's what we'll go forward on today, the motion.

8 You have the floor.

9 MR. ROSS: Thank you, Your Honor. And I
10 appreciate the opportunity to argue this motion
11 this morning. Since it's been awhile, as you
12 mentioned, if you will indulge me, I would like to
13 give a little background as to how this case came
14 about.

15 In the summer of 2021, the South Carolina
16 Supreme Court issued its decision in the Burns v.
17 *Greenville County* case. That case interpreted
18 South Carolina's user fee statute, specifically
19 6-1-306, and found that Greenville County's road
20 maintenance fee was unlawful. And the reason that
21 the court issued that decision was that the court
22 found that the fee was functioning like a tax.
23 Even though it was adopted as a fee, it was
24 nominally a fee, it functioned as a fee, the Court
25 felt like it violated the user fee statute because

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1 the things that the fee was being spent on --
2 namely, resurfacing roads and things of that
3 nature -- could be used by the general public, not
4 just the folks paying the fee, and that's what
5 differentiates a fee from a tax. You know, when we
6 pay our federal and state taxes, it can go to fund
7 a F-35, it can go to fund a national park
8 somewhere. We have no, sort of, connection between
9 what we pay and what we get. But fees have to have
10 a more tighter nexus, and that is what the user fee
11 statutes requires, 6-1-300, as the Burns court
12 confirmed, and that's what the Court found
13 Greenville's road maintenance fee violated.

14 Now, Georgetown County has a road maintenance
15 fee that is identical to Greenville County's fee.
16 They are flat fees that are placed on vehicle
17 property taxes in the county. You can have a
18 Maserati, you can have a Ford Pinto, but you are
19 getting the same flat fee on our vehicle as part of
20 Georgetown County's program.

21 I think most currently Georgetown County's
22 fee is a flat \$50-a-year fee. So it -- it doesn't
23 function like a vehicle property tax. It's
24 advalorem that's relative to the value of the
25 property. It is a fixed fee.

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1 This lawsuit was filed in the wake of the
2 Burns decision, as several other road maintenance
3 fee cases were around the state. And, now, Act
4 236, which we're here to talk about today, became
5 law seven months and 17 days after this case was
6 filed.

7 What Act 236 does is it overrules Burns by
8 liberalizing the benefit requirement under the user
9 fee statutes. So Act 236 amended 6-1-306 to allow
10 incidental benefits to the general public
11 associated with fee revenue use, as opposed to
12 requiring that very strict nexus as it existed at
13 the time Burns was decided, and the fees at issue
14 in this case were collected.

15 Act 236 purports to apply these new rules not
16 just prospectively, which we do not challenge at
17 all. The legislature, if they want to liberalize
18 fee rules and blur the line between fees and taxes,
19 that is their prerogative. But Act 236, in Section
20 2(e), purports to retroactively apply this new fee
21 standard overturning Burns to all fees imposed
22 since December 31, 1996, when I was in middle
23 school. So that is the issue that we're here
24 today.

25 And it's not just some sort of academic

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1 concern that we have as plaintiffs in this case,
2 that that retroactivity language is going to be a
3 problem for this case. That was pending at the
4 time of the Act 236 adoption, as well as many
5 others. Georgetown County itself, in this very
6 case, the Butts case, moved for judgment on the
7 pleadings on Act 236 as a retroactivity provision.
8 They filed that motion, and they lost. We've
9 already litigated these issues in front of Judge
10 Culbertson, I believe, but it's in our brief, the
11 order. So Georgetown County has used Act 236
12 retroactivity as a sword in this case before, and
13 lost.

14 Also, the County talks about this pending
15 motion to dismiss they filed in response to our
16 amended complaint. That motion to dismiss does not
17 seek a substantive dismissal on the basis of Act
18 236 retroactivity. They raised some procedural
19 issues that we'll talk about today, but they don't
20 take that issue head on.

21 But what the County neglected to mention is
22 that in their answer -- they filed a motion to
23 dismiss our amended complaint and an answer. In
24 their answer to our amended complaint, they seek --
25 one of their affirmative defenses is Act 236

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1 retroactivity. They claim that our case should be
2 thrown out on the basis of Act 236 retroactivity.
3 So this whole idea that this issue was premature
4 and we need to wait for all of these issues,
5 Georgetown County has been swinging Act 236
6 retroactivity like a sword in this case. We're
7 simply trying to take that issue head on to get
8 some resolution.

9 We talked a lot about this in the beginning,
10 and we just want to reiterate that a decision on
11 this issue, a final ruling in our favor, will help
12 get this issue up on appeal so that the court of
13 appeals and the supreme court can look at all of
14 the threshold legal issues in this case together.
15 The appellate courts can then decide the order and
16 manner in which these decisions have to be -- have
17 to be ruled upon.

18 So turning to the substance of our argument,
19 this actually, we would submit, is the easiest part
20 of this whole discussion today. You know, you
21 would notice that in the County's response to our
22 brief, they don't spend a whole lot of time up
23 front trying to defend Act 236's retroactivity on
24 the merits, and that's because, we would suggest,
25 this law is blatantly and obviously

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1 unconstitutional as it applies to this specific
2 case, which was pending and had been filed seven
3 months prior to Act 236 coming into effect.

4 In support of our motion for summary
5 judgment, Your Honor, we would point to the *Steinke*
6 *v. SC Department of Labor* case. It is a 1999
7 supreme court decision. In that case, the supreme
8 court was asked the very same question that is
9 presented in this case; namely, may the legislature
10 by retroactive amendment overrule the supreme
11 court's prior interpretation of a statute, and the
12 supreme court concluded that the legislature could
13 not. This finds its root in the South Carolina
14 Constitution, which actually has a very strong
15 separation of powers provision, Article 1, Section
16 8.

17 I'll read a quote briefly from the *Steinke*
18 case. Quote, "Subject to constitutional
19 limitations, the legislature has plenary power to
20 amend a statute. However, a judicial
21 interpretation of a statute is determinative of its
22 meaning, and any subsequent legislative amendment
23 to the contrary will only be effective from the
24 date of its enactment, and cannot be applied
25 retroactively."

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1 Now, Steinke dealt with a case that was
2 pending and filed at the time of the retroactive
3 legislation that was being addressed. That mirrors
4 this case. But the supreme court went a step
5 further years later in the *Simmons v. Greenville*
6 *County* -- I mean *Hospital* case to say that this
7 prohibition on retroactive legislation doesn't just
8 apply to claims filed at the time of the
9 retroactive legislation, it applies to any claims
10 that arose or accrued prior to the effective date
11 of the subsequent retroactive legislation.

12 And so, Your Honor, really what this all
13 boils down to is in ruling that Act 236 does not
14 apply to this case, we're simply saying that our
15 claims are governed under the user fee that existed
16 at the time Burns was decided and the
17 interpretation of that statute at the time.

18 Again, the legislature is free to change the
19 rules moving forward. We are not seeking any
20 refunds with respect to fees collected after the
21 Act 236 enactment, but all fees prior to Act 236
22 are subject to Burns, subject to the 6-1-300 user
23 fee statute that applied at the time our clients
24 paid the fees that are being challenged in this
25 case, and to find otherwise in this case would,

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1 essentially, allow the legislature to just wipe
2 clean all of these cases that were pending at the
3 time, thereby, overruling Burns.

4 Now, the County, to the extent they make a
5 substantive defense of Act 236, they try to read
6 Burns very narrowly to say all Burns did was
7 overturn Greenville County's road fee. In other
8 words, the Greenville case is sort of in a
9 different posture than all of these others. To
10 that, we would say that what Burns really did at
11 its core is interpret 6-1-300, the user fee
12 statutes, to explain the nexus requirement in the
13 context of road fees generally. It is an
14 interpretation of a statute. The supreme court's
15 declaration of the current state of the law on user
16 fees, that's what can't be retroactively overturned
17 by legislative amendment.

18 And I'll close my argument on the merits of
19 Act 236 on constitutionality with some language
20 from the Burns decision, and this is in the
21 concurring opinion from Justice Kittredge and
22 Justice Beatty where they really hold not only
23 Greenville County to the floor, but they invited
24 the very same lawsuits that we filed and other
25 plaintiffs' groups have filed around the state.

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1 Quote, "This court in recent years has
2 received an increasing number of challenges to
3 purported service or user fees. Local governments,
4 for obvious reasons, want to avoid calling a tax, a
5 tax. I'm hopeful that today's decision will deter
6 the politically expedient penchant for imposing
7 taxes disguised as service or user fees. I believe
8 today's decision sends a clear message that the
9 courts will not uphold taxes masquerading as
10 service or user fees. Going forward, courts will
11 carefully scrutinize so-called service or user fees
12 to ensure compliance with Section 6-1-306," end
13 quote.

14 So when you take that, in addition to the
15 consolidation order of assigning all of these cases
16 to Your Honor that mentions retroactivity and Act
17 236 in the first sentence, you put all of that
18 together, you come out with a clear message and
19 clear support for Your Honor taking up and ruling
20 on this issue today. If local governments in South
21 Carolina are allowed to charge illegal fees for
22 years, get called to the mat on it by the supreme
23 court of South Carolina, then have lawsuits filed
24 in response to that in order to claw back millions
25 of dollars in wrongfully collected fees by local

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1 governments, for all of that to just go away
2 magically, because the legislature passes a
3 (inaudible), creates an unbelievably and unworkable
4 moral hazard in this state, which essentially
5 allows local governments to do anything they want
6 on fiscal matters and have no consequences so long
7 as there is a political solution to it. We don't
8 think under the Steinke case, the South Carolina
9 Separation of Powers Doctrine that that is
10 ultimately a result that can stand.

11 So we talked a lot about the procedural
12 issues and whether this motion ought to be heard
13 earlier, and I've got some arguments on that issue.
14 But if Your Honor would like, maybe we can pause on
15 the substantive issue, and we can pick up that
16 issue. I'm happy to proceed, I just wanted to get
17 some thoughts from you on that.

18 THE COURT: Well, I guess, you know, the
19 legislature did what they did for a reason, and
20 your argument that, you know, we shouldn't let the
21 local governments get away with it has a lot of
22 appeal to it. But at the same time, you are
23 talking about bringing an action to recover fees
24 that were placed many years ago and collected and
25 spent could very well bankrupt some counties, and

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1 that's why they would put that language in there.

2 So, I mean, the legislature has a very strong
3 message that they want to send, and that is, one,
4 they made it legal that there is an avenue for
5 doing what they wanted to do, but they also said,
6 you know, we don't want to bankrupt local
7 governments.

8 What would you say to that argument?

9 MR. ROSS: Your Honor, there's no question
10 that Act 236 retroactivity is a legislative bailout
11 of county governments in South Carolina. We
12 followed that legislation very closely when it was
13 winding its way through the legislature. There is
14 no question that that is the intent of what they
15 are trying to do.

16 But I would submit two things in response to
17 that. First off -- I wish these cases had a
18 monetary claim that could bankrupt county
19 governments in South Carolina, but they don't.
20 These are not enormous claims. The amount of fee
21 revenue generated, it is not the sort of magnitude
22 that would bankrupt county governments. These are
23 not fees that are being collected by small towns
24 and -- you know, South Carolina. You know, the
25 county governments in this case have enormous

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1 general funds, reserves, things of that nature.
2 This is not bankrupting the large counties in this
3 state that have been -- that have been sued.

4 And then, number two, I would say that, you
5 know, the Separation of Powers Doctrine, the
6 Steinke case, all of these decisions, all of the
7 retroactive legislation that has been struck down
8 by the supreme court in all of those cases had a
9 policy rationale to it, had a reason why the
10 legislature was trying to do things. In those
11 cases, it was trying to make sure that caps were in
12 place in tort cases against local governments and,
13 you know, the insurance reserve fund.

14 So there was reasons and rationale for
15 everything that they were doing from a policy and
16 political perspective, but from a legal
17 perspective, the supreme court said sometimes local
18 governments have to shoulder the consequences of
19 their unlawful activity.

20 I go back to this concurring opinion in the
21 Burns case. I mean, this was not some hard,
22 complicated legal riddle that the supreme court in
23 Burns had to decide. The supreme court called out
24 Greenville County for disguising fees -- disguising
25 taxes as fees and playing games with fiscal

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1 matters.

2 And so in order to allow the legislature to
3 wipe this whole thing away because it's going to
4 cause the counties to have to write a check, which
5 is sanctioned bad behavior and create a moral
6 hazard, it really would create a permission
7 structure that would allow local governments to do
8 whatever they want on fiscal matters so long as
9 their lobby works it in Columbia on sine die to
10 bobtail Act 236 to some other legislation and jam
11 it through. I just don't think that is a result
12 that will stand, especially when the folks that
13 wrote Burns and issued this concurring opinion
14 looked at all of this. So that is how we would
15 respond to the policy argument.

16 THE COURT: How far back would you envision
17 that your folks would be able to collect? I mean,
18 this retroactivity goes back to, say, '96.

19 MR. ROSS: Right.

20 THE COURT: There's got to be some sort of
21 statute of limitations or laches argument.

22 MR. ROSS: Your Honor, I would like to think
23 that we could reach back all the way to 1996, and I
24 won't say that we won't try --

25 THE COURT: Well, Georgetown, as I recall,

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1 didn't have a bill -- an ordinance in '96. Theirs
2 was sometime after '96, but....

3 MR. ROSS: That's right. Georgetown --

4 THE COURT: From the day it adopted its first
5 ordinance.

6 MR. ROSS: Correct, Your Honor. But, you
7 know, at the end of the day, it's very likely that
8 a court, if they were to award us fees, would give
9 us a three-year look-back from when the fees --
10 when our lawsuit was filed.

11 And if that were the case, this is -- this is
12 -- it completely neutralizes this sort of
13 existential threat argument to the counties. I
14 think most likely that's how this would be
15 structured if it all comes down to it. Not to say
16 that we wouldn't try, but, you know, when it all
17 shakes out, a three-year look-back is probably what
18 we're talking about.

19 THE COURT: Well, I guess that leads to the
20 question of this being -- at least in part -- a
21 declaratory judgment act, and you said, Well, the
22 courts could fashion some kind of relief. What
23 would be the relief that you are asking for?

24 I mean, is it -- see, this is where I go back
25 to this problem of a class action lawsuit being the

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1 proper vehicle. Or would it be better to say,
2 okay, the act is illegal, and anybody that wants a
3 refund can go down and apply for a refund, as
4 opposed to going through a class action lawsuit?
5 Because -- well, I mean, how do you get around the
6 fact that there is a statute out there that says
7 you can't bring a class action lawsuit in any court
8 of law in the state to collect taxes? How does the
9 Court fashion a remedy?

10 MR. ROSS: Absolutely. So let me briefly
11 touch on this Revenue Procedures Act issue. This
12 is the argument that has been raised by all of the
13 county defendants in all of these cases.

14 There is a class action bar that is found in
15 Title 12, the taxation statute, that governs the
16 South Carolina Department of Revenue. In order
17 to --

18 THE COURT: (inaudible) Part C.

19 MR. ROSS: Correct. In order to avail
20 yourself of that statute, there has to be two
21 things: The case has to be about taxes that are
22 imposed pursuant to that title, Title 12, and the
23 claim has to involve the Department of Revenue.
24 This case involves neither. The Department of
25 Revenue is not a defendant in any of these cases.

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1 None of the road fees in these cases were enacted
2 pursuant to any authority in Title 12. They were
3 enacted pursuant to Title 6, the user fee statutes.

4 The reason that the county governments
5 enacted these fees as fees pursuant to 6-1-600, it
6 goes back to the concurring opinion in Burns. The
7 counties didn't want to take the political hit of
8 raising taxes, so they squirreled these things away
9 as fees, because local governments don't have the
10 authority to impose taxes that are not specifically
11 enumerated in the code. There is no improvisation
12 for local governments on tax matters, but there is
13 some flexibility on fees. So that's what we've
14 argued in Georgetown County, Beaufort County,
15 Spartanburg, all of these cases where the
16 defendants raise Revenue Procedures Act and lost.

17 I mean, Georgetown County raised this very
18 same Revenue Procedures Act class action bar issue
19 in this case, and lost on a motion to dismiss. So
20 we feel very comfortable that local governments are
21 subject to class action liability for fee matters.
22 And, you know, we cited to our briefs in, you know,
23 this case and others. I mean, our firm has been
24 involved in numerous class action cases against
25 local governments that involve wrongfully collected

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1 fees.

2 We had a case against Berkeley County many
3 years ago where they were illegally obtaining
4 impact fees, and Judge Dennis certified a class,
5 and we got a class action settlement in that case.

6 But if you really accept the county
7 defendants arguments in this case, and in the Aiken
8 case, they are trying to read 12 -- that statute in
9 the Revenue Procedures Act to, essentially,
10 immunize local governments and government entities
11 from any class action exposure, ever.

12 I mean, our firm participated in --

13 THE COURT: No. Just for a class action that
14 was brought as a claim or action for the refund of
15 taxes. That is what it says.

16 Subsection C says, "Notwithstanding A or B, a
17 claim or action for the refund of taxes can't be
18 brought as a class action in the administrative law
19 court or any court of law in this state, and the
20 department political subdivision -- to be the
21 county government -- or their instrumentalities may
22 not be named or made a defendant in any other class
23 action brought in this state."

24 It's not limited to a claim that is brought
25 under the Revenue Procedures Act.

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1 MR. ROSS: Well, Your Honor, we would just go
2 back to the fact that these are not taxes. These
3 are fees that are imposed by the local governments
4 pursuant to the user fee statutes, not any --

5 THE COURT: That was before -- that was
6 before the court ruled that they aren't fees, they
7 are taxes.

8 MR. ROSS: So this is where this gets -- so
9 our position is -- what Burns did is Burns struck
10 down Greenville County's fees as an unlawful fee
11 because they were functioning as taxes, but that
12 order doesn't make them taxes.

13 In other words, it can't be a fee when the
14 local government wants to adopt it, but then they
15 get to defend it as a tax when it helps them get a
16 class action bar. These are -- these were adopted
17 as fees, they were called "fees," the legal
18 authority for them were the user fee statutes.

19 The Burns decision simply said that the
20 county's road fee violated the user fee statutes,
21 but that does not magically make them legal taxes,
22 because local governments don't have the authority
23 to impose --

24 THE COURT: Illegal taxes.

25 MR. ROSS: Illegal fees, we would submit,

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1 respectfully.

2 THE COURT: Well, they were illegal fees, but
3 they were really -- because they said while they
4 are called fees, they really are taxes, and you
5 don't have the right to bring that kind of tax.

6 MR. ROSS: We would just --

7 THE COURT: Otherwise -- otherwise, why would
8 you have a claim to refund them?

9 MR. ROSS: We would just point to a
10 distinction between an unlawful fee that is
11 functioning like a tax versus a valid tax that was
12 imposed that is subject to that class action bar.

13 In terms of the relief and getting back to
14 the declaratory judgment claim, Section 15-53-120
15 of the Declaratory Judgment Act states, quote,
16 "Further relief based on a declaratory judgment or
17 decree may be granted whenever necessary or
18 proper," end quote.

19 And so if the class action vehicle is not
20 allowed here, and a refund is not allowed as part
21 of these cases, it, again, essentially allows these
22 local governments to have successfully collected
23 unlawful fees with no -- no remedy, because the
24 fees are so small, relatively speaking. You know,
25 you are talking about \$50-a-year fees for a person

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1 that owns a single vehicle. That is a \$150 claim
2 on a three-year look-back.

3 THE COURT: I think that is what the counties
4 would be hoping for, is that people just decide
5 it's not worth it to make that claim. But that
6 would be the procedure. If you cannot bring a
7 class action, it would be the procedure to get your
8 money back, is to go and make a claim at the county
9 for a refund of your taxes.

10 MR. ROSS: Right.

11 And to that, Your Honor, we would simply
12 point to the fact that that is why a class action
13 mechanism exists, it is to create an efficient
14 vehicle to prevent hundreds, if not thousands, of
15 separate claims and lawsuits from being filed. It
16 allows for all of these issues to be ruled on
17 efficiently, and that works both ways. There is
18 benefits to the plaintiffs, obviously, but it
19 benefits also for the counties in that it provides
20 for, you know, global resolution of all of these
21 issues given how the class structure is set up.

22 THE COURT: It's an efficient way to handle
23 it. If the Court were to rule in your favor on
24 retroactivity and say, You can't bar those things
25 retroactively, but you are barred from bringing

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1 them on a class action, you would have a Court that
2 has ruled that it was -- in essence, they have to
3 give the money back if someone shows up and makes a
4 claim for their money. If then they were to
5 refuse, well, then, they would -- the counties
6 would open themselves up to a whole host of
7 litigation. I think that any county that had
8 competent counsel would say, look, folks, just pay
9 these \$150 back as people make a claim, because if
10 you don't, and you have a judge that has ruled that
11 they were invalidly collected, and you are not
12 barred by retroactivity to have to pay them back,
13 you have to pay them. And if you want to take your
14 chances of denying claims as people come up one at
15 a time, well, then, the county should be foolish
16 enough to be sued.

17 I only bring this up because, again, your
18 argument is, well, in a DJ action we have to think
19 about the remedy, all right. That's why I felt
20 like this class action bar perhaps had some merit
21 that needed to be fleshed out some more.

22 And, two, we haven't even talked about
23 sovereign immunity yet, and that is a whole host of
24 other problems.

25 But, anyway, I know you were winding up on

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1 retroactivity and -- I'm just trying to give you
2 some food for thought. At least it's some real
3 concerns I have.

4 MR. ROSS: And, Your Honor, I will allay
5 those concerns by pointing to the fact that the
6 Revenue Procedures Act issues, the sovereign
7 immunity issues, everything you just mentioned is
8 currently fully briefed and will be decided by the
9 South Carolina Supreme Court -- Court of Appeals,
10 and likely the South Carolina Supreme Court.

11 So -- so you have been relieved of the burden
12 of having to deal with those issues, because by the
13 time that Your Honor was assigned these cases,
14 those issues were already on their way up on
15 appeal. That's why there hasn't been the need to
16 do a whole of lot of things since May of last year
17 when you were assigned. The only issue that wasn't
18 resolved or addressed that is going up on appeal is
19 this Act 236 issue.

20 But, Your Honor, if this gets up to the
21 supreme court one day, and the supreme court
22 decides that the Revenue Procedures Act class
23 action bar applies, then the supreme court will not
24 need to reach Act 236. I agree with that. We're
25 out, if that happens. I don't think it will

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1 happen, because I think we have the better side of
2 the argument. We'll -- we've made those arguments,
3 and we will make those arguments.

4 But, really, what it comes down to is if Your
5 Honor doesn't rule on Act 236 today, the Aiken
6 appeal will make its way to the court of appeals
7 and the supreme court. I hope it's fast, but it
8 can be years down the road. If the supreme court,
9 the same court that invited these lawsuits in their
10 concurring opinion, which I've read, sides with the
11 courts in Georgetown, Beaufort, Spartanburg, and
12 elsewhere that have rejected these Revenue
13 Procedures Act claims, then we'll be back to Your
14 Honor years from now, because the counties are
15 going to be waiving around Act 236.

16 THE COURT: That's exactly what I would -- I
17 was thinking. If -- if -- if I don't rule on those
18 other issues, they would come back. It's not the
19 most efficient way of doing it, but I see your
20 point.

21 MR. ROSS: Correct.

22 And this will be the last thing I say, Your
23 Honor. You just hit the nail on the head with the
24 word "efficient." The supreme court of South
25 Carolina, in the consolidation order, requests Your

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1 Honor to rule on the retroactivity provision --
2 it's mentioned in the first sentence -- to, quote,
3 "Promote the effective and expeditious disposition
4 of this litigation."

5 We would submit that a ruling on that issue
6 today -- noting that there are other issues going
7 up on appeal, no question about it, that are
8 important, but a ruling on this issue today drives
9 that effectiveness, drives that expeditiousness,
10 and follows through with the directive from the
11 supreme court.

12 I completely agree that, generally, courts
13 are not supposed to lunge to reach constitutional
14 issues. I get that. That's right. This is not
15 the normal case, given the consolidation order from
16 the supreme court and the directive to rule on Act
17 236 retroactivity, to drive efficiency. That way,
18 all of the issues gets up to the appellate courts
19 simultaneously. Although we like seeing you, Your
20 Honor, of course; we won't be seeing you for many
21 years if you rule on this issue, and it will all be
22 in the hands of the appellate courts.

23 Thank you so much.

24 THE COURT: All right. Mr. Hanna.

25 MR. HANNA: Yes. Fred Hanna from the Smith

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1 Robinson Law Firm. It is a pleasure to be in front
2 of you today. I won't tell you based on the
3 football discussion that we started with what team
4 I route for in the State, but don't hold it against
5 me.

6 Your Honor, before I get into the weeds on
7 Section 2(e) and retroactivity, I want to just make
8 a few general points. The first one is a phrase
9 I'll use, that Georgetown County is not a "guinea
10 pig." That is a phrase that I probably won't ever
11 use again in a courtroom or in a virtual courtroom
12 like this. What I mean by that is when I -- when I
13 read the plaintiff's brief and hear the argument
14 that Mr. Appel just made at the very end, it begins
15 to sound like that he's just asking Your Honor to
16 grant summary judgment to provide an appealable
17 order so that some of these issues can be tested on
18 appeal. Your Honor, that sort of outcome-driven
19 approach is not fair to Georgetown County, but more
20 importantly, it is wholly improper when you
21 consider the nature of the plaintiff's motion.

22 Your Honor, this is a motion to declare that
23 legislation is unconstitutional. So the motion
24 raises issues that under the applicable case law,
25 which we've cited in our brief, can only be decided

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1 at the proper juncture, and they can only be
2 decided when it's necessary to do so.

3 Your Honor, I mentioned earlier, and
4 Mr. Appel just mentioned it, I'll talk a little bit
5 about the order consolidating these cases to you.
6 The short answer -- for purposes of this point I'm
7 trying to make -- is that an order of consolidation
8 does not change established law about when it is
9 proper for the courts to decide constitutionality
10 of state law. Your Honor, that's part of the
11 procedural issue that is presented by the
12 plaintiff's motion at this stage.

13 But the real reason we're here, and the main
14 argument that I want to explain to Your Honor this
15 morning, deals with the merits. Again, we've laid
16 this out in a brief that, hopefully, explains it
17 well enough for you to understand. But, Your
18 Honor, I do want to spend some time talking about
19 why the plaintiffs -- and it is an as-applied
20 challenge -- why the plaintiff's constitutional
21 challenge to Section 2(3) fails.

22 Your Honor, it fails because Georgetown's
23 road user fee has always satisfied the statutory
24 requirements for a -- for a uniform service charge.
25 I'm going to talk about the language in

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1 Georgetown's ordinance, and that language makes it
2 abundantly clear that the payers of the fee -- the
3 registered vehicle owners in the county -- received
4 a particular benefit that the members of the
5 general public did not. So that means under the
6 Burns decision, Georgetown's fee was never invalid.
7 Then, when the legislature passes Act 236, that
8 doesn't retroactively overrule or change anything
9 about the validity of Georgetown's ordinance.

10 Your Honor, I'll just, again, hit on the
11 background and the posture of this case very
12 briefly. I know that you're familiar with these
13 cases. They were filed after the supreme court's
14 decision in Burns. Just a two-sentence summary of
15 Burns that I would make for our purposes today is
16 that the Court said a road user fee has to meet the
17 requirements for uniform service charges in Section
18 6-1-300, and that statute included a requirement
19 that the fee benefit the payer in a manner
20 different than the general public not paying the
21 fee.

22 The Court said Greenville County's road user
23 fee didn't satisfy that requirement because the
24 fees benefitted all of the drivers on the road in
25 Greenville, not just the county residents. We'll

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1 talk about this in a little bit, but the Burns
2 court simply issued a declaratory judgment. It did
3 not invalidate any other road fees, other than
4 Greenville County. But the plaintiffs in these
5 road fee cases that have been assigned to Your
6 Honor, they are asking for a lot more than a
7 declaratory judgment, Your Honor. They are
8 asserting causes of action for money damages. And
9 in one of those causes of action, they are even
10 asking that a ten-times multiplier be applied to
11 all of the fees that the counties have collected.

12 In response to these lawsuits, as Your Honor
13 mentioned, the legislature passed Act 236, which
14 amended Section 6-1-300, to say that a fee is valid
15 if it is used to the benefit of the payers; that
16 is, even if the general public also benefits.

17 Your Honor, of course Section 2(e) of Act 236
18 provided that the Act applies retroactively. That
19 is the question before the Court today on the
20 merits, is whether Section 2(e)'s retroactivity
21 provision is unconstitutional as applied to this
22 case.

23 Your Honor, you've heard Mr. Appel say that
24 it is unconstitutional in his view because the
25 Burns case -- again, this is according to the

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1 plaintiff's counsel -- the Burns case declared all
2 road fees invalid, and then Section 2(e), the
3 legislature came back and changed the analysis
4 under the uniform service charge statute.

5 Your Honor, we have two primary arguments in
6 response. Really, the first argument on the merits
7 hinges on the fact that this is an as-applied
8 challenge to the application of Section 2(e) in
9 Georgetown County. The supreme court has explained
10 that an as-applied challenge means the plaintiff
11 has to show that the application of the statute in
12 the particular context would be unconstitutional.

13 So that means Your Honor has to decide just
14 one thing: Was Georgetown County's road user fee
15 invalid under the Burns decision such that Section
16 2(e) of Act 236 retroactively changed its validity?
17 And the answer is, no, Your Honor. Georgetown's
18 road user fee has always been valid, both under the
19 Burns analysis and under the Act 236 analysis. And
20 it's always been valid because the fee has always
21 created a unique benefit to Georgetown County
22 residents that the general public didn't receive.

23 Your Honor, the text of the road user fee --
24 this is Exhibit A to our memo in opposition -- it's
25 Georgetown County Ordinance 2018-18, which is the

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1 road user fee, makes it abundantly clear that there
2 was a unique benefit to the payer of the fee.

3 I'll read a few key findings of fact that
4 were included in the ordinance. Your Honor, No. 6
5 on Page 2 of the ordinance states: "Dirt and
6 gravel roads within Georgetown County total in
7 excess of 82 percent serving primarily residential
8 areas. The roads are not conditioned or located
9 for interstate or inner-county traffic. As a
10 result, virtually all motorized vehicular users of
11 the roads in Georgetown County are motorized
12 vehicles licensed in Georgetown County."

13 That is finding No. 6, Your Honor.

14 In finding No. 10, the county council found,
15 "For improvements of the road system within
16 Georgetown County bestows a specific benefit on
17 motorized vehicular users not enjoyed by the
18 non-owning owners of the general public by reason
19 of the above."

20 So, Your Honor, based on this language in the
21 Georgetown County ordinance, this is a completely
22 different situation than the road user fee from
23 Greenville County that was at issue, and the Burns
24 decision. We've attached the Greenville County
25 ordinance that was invalidated in Burns as Exhibit

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1 B to our motion. And if you review that ordinance
2 and compare it with Georgetown County's road user
3 fee, you'll see there is a big difference in that
4 the Greenville County fee didn't contain any
5 factual findings or anything to suggest that the
6 fee was designed to create a unique benefit for the
7 county residents.

8 Your Honor, I think at this point it's
9 important to note the legal standard that we're
10 here on with a motion for summary judgment. Your
11 Honor, I submit that the factual findings in the
12 County's ordinance conclusively established that
13 there is no retroactive overruling issue in this
14 case. But to the extent Your Honor has any
15 questions about those findings, the standard
16 becomes very important. And to the extent there
17 would be any factual issues about the benefits
18 created by the Georgetown ordinance, or any further
19 factual findings that need to help Your Honor
20 understand the issues at play here, then it would
21 be improper to grant the plaintiff's summary
22 judgment motion at this time.

23 Your Honor, again, two arguments on
24 retroactivity. The second deals with the limited
25 nature of the holding in Burns. Your Honor, in

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1 each of the cases the plaintiff cites in his brief,
2 the Court invalidated legislation that
3 retroactively altered a substantial right that was
4 available to a party under a prior ruling of the
5 court.

6 So, for example, in Steinke and Simmons, the
7 prior ruling was a case called Southeastern Freight
8 that said the damages caps that the legislature
9 enacted do not apply. They have been impliedly
10 overruled. So at the time when the plaintiff filed
11 suit, there is no caps applicable to the claim.
12 And then the legislature comes back in, and through
13 retroactive legislation, changes that substantial
14 right to the party. Your Honor, the Burns decision
15 just didn't create any rights or remedies of that
16 nature.

17 Again, the only thing that the court did in
18 Burns was issue a declaratory judgment about the
19 Greenville road user fees. The court did not
20 declare all road user fees invalid. And, again, if
21 you look at the language showing the differences
22 between Georgetown's fees and Greenville's fees,
23 you'll see why it would be completely improper for
24 the Court, you know, notwithstanding the issues in
25 the record, but just to make a blanket decision

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1 about whether a road fee is invalid, it's just not
2 appropriate as these things -- you know, they are
3 based on factual findings, the infrastructure of
4 the county, and things of that nature.

5 The Burns court did not suggest money damages
6 would be available to residents who paid the fee.
7 The court did not create any rights to pursue class
8 actions against the county for collection -- or,
9 excuse me, for refund of collected fees. I think
10 that's something that Your Honor noted in your
11 questions of plaintiff's counsel, that class action
12 might not be the proper vehicle, and we contend it
13 is not the proper vehicle to pursue a claim like
14 this.

15 So, Your Honor, for those reasons, and the
16 limited holding in Burns, we contend the Burns
17 court simply did not create the sort of substantial
18 rights that can give rise to a problem of
19 unconstitutional retroactivity.

20 Your Honor, I just make one final point on
21 retroactivity. It's the plaintiff's burden to
22 prove that a statute is unconstitutional beyond a
23 reasonable doubt. Your Honor, we cited the Joy
24 Time decision in our brief which says -- it says
25 that a legislative enactment will be declared

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1 unconstitutional only when its invalidity appears
2 so clearly as to leave no room for reasonable doubt
3 that it violates a provision of the Constitution.

4 I think when you, again, look at the factual
5 findings in Georgetown, and you compare it to the
6 Burns decision, we've conclusively shown that Act
7 236 isn't unconstitutional as applied in Georgetown
8 County. But the point I'm trying to make is that
9 Your Honor doesn't have to agree with us
10 wholeheartedly under the applicable standard. If
11 there is any reasonable doubt, Your Honor must deny
12 the motion.

13 We've also talked about some other reasons
14 that we would encourage Your Honor not to decide
15 the plaintiff's motion at this procedural posture.
16 The first argument you addressed already, that
17 there's a case on appeal, the Aiken County road fee
18 case, that involves a lot of dispositive issues
19 that are going to -- at least have the potential of
20 resolving these cases completely.

21 Your Honor, the court of appeals --
22 apparently, the parties are seeking a transfer
23 directly to the supreme court to try to speed up
24 the process a little bit, but I think pretty soon
25 we're going to have a ruling on some of these main

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1 issues that you've addressed such as whether you
2 can -- can you bring a class action lawsuit against
3 counties, are the plaintiff's causes of action for
4 money damages valid, and whether the circuit courts
5 even has jurisdiction over these cases.

6 THE COURT: Do they have oral arguments
7 scheduled?

8 MR. HANNA: I don't believe so, Your Honor.
9 I should have checked the....

10 MR. LEWIS: Your Honor, I'm counsel on that,
11 and I can tell you they are not scheduled at this
12 time.

13 THE COURT: Might be a little optimistic then
14 to think that we'll have an answer soon.

15 MR. HANNA: But, Your Honor, that's -- the
16 point I'm getting at is that if the court of
17 appeals or the supreme court, whichever appellate
18 court hears the case and issues an order, if they
19 affirm Judge Keesley's rulings in Aiken, then Act
20 236 is never going to be an issue.

21 Your Honor, I mentioned earlier that the
22 supreme court has identified -- and I quote -- "a
23 firm policy of declining to reach constitutional
24 issues unless necessary to the resolution of the
25 appeal before us."

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1 Your Honor, that is the Morris case at 349
2 S.C. 607.

3 THE COURT: Remind me about how Judge Keesley
4 ruled? I read the order, but I read all of the
5 other ones, too, and I can't keep track of who
6 ruled what way. He ruled out of Aiken, right?

7 MR. HANNA: Out of Aiken, yes, Your Honor.

8 THE COURT: And what did he rule?

9 MR. HANNA: My understanding -- again, not
10 being involved in that case -- is that he accepted
11 the county defendants arguments in large, and I
12 think that would apply to the argument about class
13 actions against counties, the sovereign immunity
14 argument, unjust enrichment, the argument we have
15 about the ten-times multiplier in these cases under
16 Title 8. I believe that was all encompassed, but
17 Mr. Lewis can probably tell you about it.

18 MR. LEWIS: Your Honor, I can tell you across
19 the briefs and the amicus briefs, the only issue
20 across every case -- if we have every issue and
21 every case -- that is not up with Aiken, is just
22 Act 236. So everything else is before the
23 appellate courts, Your Honor.

24 THE COURT: All right. But in order for it
25 to be up there, you have to have, in essence, a

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1 court that has dismissed it.

2 MR. LEWIS: That's right. Aiken dismissed
3 the case.

4 THE COURT: Everybody else that didn't
5 dismiss it -- well, that's not appeal.

6 MR. LEWIS: The only one on appeal for the
7 dismissal is Judge Keesley's order in Aiken, is my
8 understanding.

9 I think I'm right about that, Ross. I
10 checked everybody else's --

11 MR. ROSS: Yeah. We never lost one of these,
12 and we never appealed in any of the cases we were
13 involved in, especially Georgetown. All of the
14 issues that Georgetown County raised on the Revenue
15 Procedures Act, sovereign immunity, have all been
16 rejected in this case.

17 THE COURT: Mr. Hanna, let me ask you this.
18 I gather your main thrust on retroactivity is you
19 don't have to rule on it because our statute isn't
20 unconstitutional. But for the sake of argument,
21 let's assume that your -- the Court disagrees and
22 says your ordinance is unconstitutional, what's
23 your position on retroactivity then under that
24 scenario?

25 MR. HANNA: I'm sorry, Your Honor. If Your

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1 Honor found the statute was unconstitutional as
2 applied to Georgetown County, what would be our
3 position?

4 THE COURT: As to retroactivity.

5 MR. HANNA: Your Honor, our position on
6 retroactivity is that Act 236, as applied to
7 Georgetown, did not change anything; therefore,
8 there is no issue.

9 I apologize if that is not --

10 THE COURT: I think that your basis of your
11 position right now is retroactivity doesn't apply
12 to Georgetown because our statute is different,
13 it's not unconstitutional, so you don't have to
14 talk about retroactivity. But I'm saying let's
15 just assume that I disagree with you, that the
16 statute is unconstitutional. What is your position
17 as to the applicability of retroactivity? Is it
18 allowed? Not allowed? Fair? Not fair? We think
19 it is a good idea if you are going to rule against
20 us?

21 MR. HANNA: Your Honor, I think the
22 difficulty I'm having in answering is that the only
23 argument that the statute is unconstitutional is
24 retroactivity. So I -- to the extent that Your
25 Honor disagrees with us and says it is retroactive

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1 and it is unconstitutional, then we would be out of
2 luck on the merits. Now, we still would have
3 arguments as to whether it would be proper to hear
4 the -- to hear or grant the plaintiff's motion at
5 this time.

6 Unless I'm missing something, I think
7 retroactivity is the only reason that's been
8 offered for the statute being unconstitutional.

9 THE COURT: No. I'm saying right now your
10 argument is -- as I understand it -- Georgetown's
11 ordinance is different than Greenville's, and no
12 court has ruled that your -- that Georgetown's
13 ordinance is unconstitutional, right?

14 MR. HANNA: Correct.

15 THE COURT: So your position, logically,
16 would be, well, we don't really care how you rule
17 on retroactivity because we haven't done anything
18 wrong. But what I'm saying is, well, let's just
19 assume, for the sake of argument, that I disagree
20 with you, and that I think your statute is enough
21 like Greenville's that I would agree -- that I
22 would rule you blew it, you passed an invalid
23 statute, and you've been acting just like the folks
24 in Greenville, so you lose. So you would need the
25 protection of 236 retroactivity --

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1 MR. HANNA: I understand. I understand.

2 THE COURT: So what is your argument under
3 that scenario, which I understand -- and I'm not
4 saying you have to concede, but I'm just saying for
5 the sake of argument, assume that, what is your
6 position as to retroactivity then?

7 MR. HANNA: Correct, Your Honor. And I'm
8 sorry it took me a while to get on the same page of
9 you there.

10 I think that's when you have to look to the
11 second argument that I made to Your Honor, which is
12 that if you look at the Burns decision, what did it
13 do? All it did was issue a declaratory judgment
14 that Greenville County's fee is invalid. It didn't
15 create these rights to pursue class actions, to sue
16 the county for money damages. It just isn't the
17 type of ruling that can give rise to a retro -- to
18 an unconstitutional retroactivity analysis.

19 THE COURT: Okay. All right.

20 MR. HANNA: Your Honor, I just have a few
21 more of these procedural-type of arguments, and
22 then I'll be happy to answer any questions Your
23 Honor has.

24 I do want to respond to the plaintiff's
25 counsel's arguments that we did previously file a

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1 motion for judgment on the pleadings regarding Act
2 236.

3 Your Honor, the plaintiff even claimed in his
4 brief that by making that motion we somehow waived
5 any right to argue against Your Honor hearing the
6 plaintiff's motion at this stage. Your Honor,
7 again, I don't hide from the fact that we filed a
8 motion and Judge Seals denied it, but that doesn't
9 mean that we waived any of the arguments we're
10 making today.

11 The key reason is that in ruling on your
12 motion, Judge Seals did not have to decide whether
13 Section 2(e) was unconstitutional. Judge Seals
14 simply issued a Form 4 order denying our motion.
15 And as Mr. Appel said, we've gotten a few of those
16 on the motion to dismiss and also on the judgment
17 -- motion for judgment on the pleadings, unlike
18 some of the other counties. In fact, even -- even
19 Horry County, in the same circuit as us, was able
20 to get their motion to dismiss granted.

21 But, Your Honor, because Judge Seals didn't
22 have to rule on the constitutionality of state law
23 in deciding our motion at that stage, the fact that
24 we previously filed that certainly doesn't prevent
25 us from making any arguments to Your Honor today.

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1 Mr. Appel also raised the fact that we
2 asserted Act 236 as a defense in our answer as
3 somehow suggesting that we're waiving the argument
4 around. Your Honor, that's -- the simple
5 explanation for that is we don't want to waive any
6 affirmative defenses. You have to be very careful
7 about making sure you include all affirmative
8 defenses in your answer. So by doing that, you
9 know, we're not just making a placeholder for
10 later, to the extent it becomes necessary, if the
11 court of appeals or supreme court reverses on the
12 other issues that are at play in this case.

13 Your Honor, we've also raised an argument
14 about the parties in this case. The only other
15 time that anyone has challenged the
16 constitutionality of Act 236 -- the president of
17 the senate, the speaker of the house, and the
18 governor were all parties to that action, and that
19 is when the road fee plaintiffs filed a petition
20 for original jurisdiction asking the supreme court
21 to hold Section 2(e) as unconstitutional.

22 In this case, we're dealing with the same
23 request for relief, but we've just got Georgetown
24 County here to defend the constitutionality of
25 state law. So not only are we missing the

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1 legislative representatives who passed Act 236, but
2 we also don't have the other counties who are going
3 to be affected by a ruling if the Court grants the
4 plaintiff's motion.

5 Frankly, Your Honor, Georgetown County is not
6 pleased with the fact that it's going to be the
7 scapegoat if Act 236 is invalidated, and it doesn't
8 like the idea of having to pay us to defend this
9 case and potentially take up an appeal if the
10 motion is granted.

11 And, Your Honor, the last point I'll make
12 deals with the plaintiff's arguments about the
13 order of consolidation assigning Your Honor to
14 handle these cases. Mr. Appel included that as
15 Exhibit A to his reply brief, and he hones in on
16 the language -- forgive me. You have to flip
17 through three pages of case captions to get to a
18 page of order, but he hones in on the language
19 saying that all cases that may arise out of the
20 retroactivity provision in Section 2(e) are
21 assigned to Your Honor, and I disagree that that
22 language should be interpreted as encouraging Your
23 Honor to rule on the validity of Section 2(e).

24 Your Honor, I won't presume to know why Chief
25 Justice Beatty used particular language in an order

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1 or an opinion like this, but I do think a logical
2 explanation is the fact that the supreme court was
3 just faced with a petition for original
4 jurisdiction dealing specifically with Section 2(e)
5 just a few months before issuing this order.

6 So I think Justice Beatty's reference to
7 Section 2(e) is just the Court's way of saying that
8 all road fee cases are assigned to Judge Young.

9 Your Honor, I mentioned it before, but I also
10 would like to point out the language in the order
11 that says assigning the cases to you would promote
12 uniform rulings. I mean, we've gotten that since
13 Your Honor has been presiding over the cases, but
14 importantly, it also says that "it will conserve
15 the resources of the parties, their counsel, and
16 the judiciary." And, Your Honor, for us taking up
17 an unnecessary issue on the constitutionality that
18 may never actually be outcome determinative in the
19 case is not the way you conserve these resources
20 that the Court and Chief Justice Beatty are
21 referring to.

22 Again, Your Honor, we respectfully would ask
23 that you deny the plaintiff's motion for the
24 substantive and the procedural reasons that I've
25 discussed, and I'll be happy to answer any

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1 questions you may have.

2 THE COURT: What are the counties where the
3 motion to dismiss was granted? Aiken, and any
4 other?

5 MR. HANNA: Horry County, Orangeburg, I
6 believe.

7 MR. LEWIS: Motions to reconsider are pending
8 in Orangeburg and Horry. The only one that is
9 final, Your Honor, is Aiken.

10 THE COURT: So those three?

11 MR. LEWIS: That's it, Your Honor, that I'm
12 aware of.

13 THE COURT: What counties have a motion to
14 dismiss been dismissed or denied?

15 MR. ROSS: Your Honor, I can speak to that.
16 First and foremost, Georgetown County, which is the
17 case we're here to talk about today. We got orders
18 denying the county's motion to dismiss in Beaufort.
19 We got one in Spartanburg.

20 Chuck, I know I'm missing one. We got four.

21 "CHUCK": I think we filed in Florence or
22 Richland -- or Richland is still pending.

23 MR. ROSS: Richland is still pending. Judge
24 Manning heard it and then retired without ruling on
25 it, so I don't know how that works, but it would

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1 have been Florence then, Your Honor.

2 MR. LEWIS: Your Honor, it is also denied in
3 Greenville, and I believe -- I think counsel for
4 Kershaw -- I don't know if it was briefed, but it
5 was denied in Kershaw County as well.

6 MR. HANNA: That was also our firm, so you
7 can say that our track record isn't as good as the
8 counties who have better lawyers than us.

9 THE COURT: How about if you guys send me
10 copies of the various orders. I know I've read
11 Judge Keesley's, and I'm pretty sure I read Judge
12 Maddox', and I think I read one other, but I can't
13 remember what it is. Whatever you attached as
14 exhibits, I've read. But I would like to see the
15 other ones, even if they are just Form 4 denials.

16 MR. ROSS: We would be happy to do that.

17 THE COURT: All right. Anything else?

18 MR. ROSS: Your Honor, just very briefly.
19 Just on the point of Act 236 not being relevant to
20 the Georgetown County case, because the Georgetown
21 County ordinance is somehow different than the
22 Greenville County ordinance, that argument is
23 belied by the county's own actions in this case.
24 They tried to dismiss the case on Act 236. They
25 lost. They have asserted an affirmative defense in

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1 their answer on the basis of Act 236. So, clearly,
2 that issue is in play in this case.

3 I would also mention that this whole argument
4 about, you know, what we were spending on the roads
5 is different than Greenville -- all of those issues
6 were raised by Greenville County in the Burns case
7 and rejected.

8 The bottom line is roads are public. Anyone
9 can use public roads that are funded through these
10 fees, and that is what violates the nexus standard
11 under the user fee statute as it existed when Burns
12 applied. So the County is trying to smuggle in an
13 argument on the merits of this case. We'll get to
14 all of that down the road, if all of these
15 threshold legal issues are resolved in our favor.

16 Finally, Your Honor, this is something that
17 is important for us in this case. The County is
18 trying to really narrow the holding in Burns to
19 simply invalidating Greenville County's road
20 maintenance fee ordinance. It certainly did that,
21 but the big thing that Burns did is it interpreted
22 the user fee statutes. It explained what that
23 benefit nexus requires in the context of road
24 maintenance fees. That is simply what we're trying
25 to achieve here. We want our cases to be litigated

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1 on the basis of the law in Burns as the user fees
2 existed before they were amended by Act 236. We
3 don't need Burns to provide us a mechanism for a
4 class action case. We don't need Burns to support
5 our entitlement to a refund. We've ground those
6 arguments elsewhere.

7 The only thing we're hanging our hat on in
8 Burns in this case is the supreme court's
9 interpretation of the user fee statute in the
10 context of road maintenance fees, and we're
11 responding to the supreme court's concurring
12 opinion where they invited future challenges to
13 future fees -- taxes masquerading as fees.

14 And, Your Honor, the last thing I would
15 say -- and we're happy to provide you with these
16 orders involving the Revenue Procedures Act and the
17 class action bar -- I would just state that Section
18 12-60-80(c), which is the class action bar,
19 pertains to refunds involving taxes. Taxes is a
20 term of art under Title 12. Taxes are defined to
21 mean -- among other things -- it has to be, quote,
22 "imposed by this title," end quote; and, quote,
23 "subject to assessment or collection by the
24 department," end quote. And those are the two
25 things that we hung our hat on in every county

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1 where these issues were litigated. The class
2 action bar does not apply to taxes in this case
3 because, number one, these road maintenance fees
4 were never imposed pursuant to Title 12. They were
5 imposed to Title 6. And, number two, these road
6 maintenance fees were never subject to collection
7 or assessment by the Department of Revenue. The
8 Department of Revenue had nothing to do with any of
9 the road maintenance fees in any of these cases,
10 including Georgetown. They are not a defendant.
11 They are completely alien to it, and that is why we
12 argued and were successful in every case we argued
13 this, including Georgetown, that the class action
14 bar did not apply.

15 So you'll see this fleshed out more in the
16 orders that we send Your Honor, but I just wanted
17 to leave you with that. If you have any further
18 questions for me, I'm happy to address them. I
19 appreciate the time and your indulgence today.
20 Thank you.

21 THE COURT: All right.

22 Mr. Hanna, did you want to say anything else?

23 MR. HANNA: Your Honor, just one thing I
24 heard in there that I think needs responding to is
25 this -- when we talk about Georgetown County's

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1 factual findings and whether this road user fee
2 truly did create a unique benefit to the payer of
3 the fee -- which, again, under that analysis the
4 fee would be valid under both Burns and under Act
5 236 -- I don't want to take words out of
6 Mr. Appel's mouth, but I think he said that is an
7 issue that we can resolve later down the road.

8 Your Honor, this is a motion for summary judgment.

9 If there are any factual issues that would clarify
10 the application of the law, then it would not be
11 proper to grant the motion at this stage.

12 THE COURT: All right. Here is what I want
13 you all to do. I'm going to take it under
14 advisement today. I want both sides to submit
15 proposed orders to me by the 20th of May. Give
16 me your pathway to what you feel like is your best
17 argument. I would like you to include procedural
18 discussions on where the other cases are on appeal,
19 so that if I decide to not reinvent the wheel and
20 rule on issues that are already on appeal, it will
21 be clear why. I haven't ruled it out, but it would
22 be a good refresher, and I think also whoever is
23 reviewing the case on appeal would probably
24 appreciate the procedural history, because it does
25 get a little mind boggling to try to follow it all.

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1 But I think at the moment I have a grasp on it, but
2 that will leave me as the day goes on.

3 So by 5/20 -- I think that is a Monday, as I
4 looked at it earlier. That will give you plenty of
5 time to do it. I'll be out of the office the first
6 week of May and on vacation the next two weeks, so
7 I won't be back until 5/20. So there is no reason
8 to get them rush and done before then. I'm
9 certainly not going to read them on vacation. I
10 hate to disappoint you.

11 But, anyway, it's been a good use of time
12 today to flesh these out on oral arguments. I'm
13 not always convinced that oral arguments are
14 helpful, but these have been, so thank you.

15 All right. So you have your marching orders.
16 Send me the orders out of the other counties, and
17 submit to me proposed orders on today's hearing by
18 May the 20th, okay?

19 MR. LEWIS: Your Honor, real quick, because
20 it is so hard to get all of the lawyers of all
21 these different cases on. We'll be filing a motion
22 to transfer the Aiken appeal to the supreme court,
23 and I want to know for Kershaw and Georgetown
24 County, do you all consent to that? Do you have
25 any opposition for the Aiken appeal? I would love

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1 to be able to reflect that all parties involved
2 with this one expeditious matter resolution --
3 including the Court assigned to resolving these.
4 Because what I don't want, Your Honor, is you have
5 reflected oral arguments in six months and then a
6 petition. I clerked up there, and I know how long
7 that would take to get it up there. I would love
8 everybody in support to -- at least what we have in
9 Aiken -- in front of the supreme court.

10 Fred, can you comment on that?

11 MR. MORGAN: Do you mind if I comment on
12 that? I don't mean to overstep Mr. Hanna. Let me
13 talk to my folks real briefly. Personal opinion, I
14 don't have any problem doing that. I don't -- and
15 I think there was even discussion among counsel at
16 one point in time -- both plaintiffs and
17 defendants -- about that. And then, obviously, I
18 know there was even the 236 -- the idea of getting,
19 you know, at least original jurisdictions. So I
20 don't anticipate that being an issue, but I don't
21 want to speak completely out of turn. Do you mind
22 if I get back with counsel here reasonably shortly,
23 and that way -- you probably will get that consent,
24 so that way it checks the boxes and -- because I
25 also clerked up there, so I know how it goes.

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1 MR. LEWIS: And I assume Your Honor is in
2 support of that? I'm just making sure that I'm not
3 overstepping. I know you are not up there, but
4 just to get all of these in front of the supreme
5 court?

6 THE COURT: Anything that takes it off of my
7 plate and puts it on someone else's plate.

8 MR. LEWIS: You got it. I won't write that,
9 Your Honor, but I'll reflect it in my motion. I'll
10 say, You all need to do your job -- no. That's
11 what we'll go with.

12 THE COURT: Yeah. That's fine. Okay. Thank
13 you.

14 (Whereupon, the hearing concluded.)
15
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CERTIFICATE OF TRANSCRIBER

Case Name: Richard A. Butts, et. al v. Georgetown
County, South Carolina, et. al

Case No.: 2021-CP-22-00928

Date of Hearing: April 16, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
audio recording.**

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

CERTIFIED FOR USE BY SMITH ROBINSON LAW FIRM ONLY !!

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Carroll Brown, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer;)
Orangeburg County; and Orangeburg)
County Council,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2021-CP-38-01268

**ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND/OR FOR
ENTRY OF DECLARATORY JUDGMENT
AND FOR RULE 54(B) CERTIFICATION**

This matter comes before the Court on Defendants' Motion for Summary Judgment and/or for Entry of Declaratory Judgment and for Rule 54(b) Certification and Defendants' Motion to Vacate Orders entered in *Butts v. Mace*, 2021-CP-22-00928 (Georgetown County), a similar road maintenance fee case.¹ The parties have submitted briefs, and the Court heard oral argument via WebEx on January 3, 2025.

On November 2, 2021, the Plaintiff commenced this lawsuit as a class action against the Defendants (hereafter referred to collectively as "Orangeburg Defendants") to challenge the alleged wrongful collection of Orangeburg County's Road Maintenance Fee. Relying on the decision of the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), the Plaintiff alleges that the Orangeburg County Road Maintenance

¹ The Orangeburg Defendants previously filed a Motion to Vacate Orders entered in *Butts v. Mace*, 2021-CP-22-00928 (Georgetown County) which was also heard during the January 3, 2025 hearing. The Orangeburg Defendants have agreed to withdraw that motion. Because the Court has granted Rule 54(b), SCRCP certification, the Motion to Vacate Orders shall be deemed withdrawn as moot.

Fee violates the requirements of S.C. Code Ann. § 6-1-630 and is an illegal tax. The Plaintiff seeks a declaratory judgment to that effect. The Plaintiff seeks monetary relief in the form of a refund of the Road Maintenance Fees collected and retained including a ten times multiplier. The Plaintiff asserts three causes of action seeking that monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the Defendant Stokes only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.

On June 30, 2022, Circuit Court Judge Edgar W. Dickson issued an Order Granting in Part Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings. With his Order, Judge Dickson dismissed with prejudice all but Plaintiff's Fourth Cause of Action for declaratory relief. The Plaintiff subsequently filed a Rule 59(e) motion which remains pending.

The South Carolina General Assembly enacted 2022 Act No. 236, and it was signed into law by Governor Henry McMaster on June 22, 2022. Act No. 236 amends S.C. Code Ann. § 6-1-630(A), to provide:

A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. ... A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this article.

2022 Act No. 236, § 2(B).

Additionally, Act 236 amended S.C. Code Ann. § 6-1-300(6) to define "service or user fee" to mean "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." 2022 Act No. 236, § 2(A). Finally, Section 2(E) of Act No. 236 states that Section 2 "applies retroactively to any service or fee imposed after December 31, 1996." 2022 Act No. 236, § 2(E).

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order assigning this case and all other similar cases pending at the time of Act 236's effective date to this Court (the "Order").² The Order explicitly applied to "all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236." The Supreme Court recognized that issuing the Order "will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary." *Id.* To this end, this Court is "vested with exclusive jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina relating to Act No. 236" and empowered to "decide all matters pertaining to these cases." *Id.*

In the Georgetown County case of *Butts v. Mace*, Civil Action Number 2021-CP-22-00928, the plaintiffs in that action filed a Motion for Partial Summary Judgment requesting that this Court, under the authority granted by the Chief Justice in the Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. On June 25, 2024, an Order Granting Plaintiff's Motion for Partial Summary Judgment was issued in the *Butts* case granting partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. That Order and a subsequent Order denying a Rule 59(e) motion in *Butts* have been appealed to the South Carolina Supreme Court.

² The Chief Justice's Order has been referred to as a "consolidation order" but these cases have not been consolidated, and Defendants have not sought consolidation pursuant to Rule 42(a), SCRCP.

The Orangeburg Defendants are not parties to the *Butts* case and admit they have no standing to challenge orders entered into in the *Butts* case. Nonetheless, the Orangeburg Defendants filed their motion seeking an Order declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional and granting summary judgment to the Orangeburg Defendants on their mootness defense. The Orangeburg Defendants argued that defense counsel in the *Butts* case made a number of the pertinent arguments, but did not argue that the authority on which this Court relies on *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), was wrongly decided or is otherwise no longer “good law” and should be overruled.³ Both *Lindsay* and *Steinke* remain the law in South Carolina, and the Court stands by its decision in *Butts* and incorporates that legal analysis herein. See, *Carson v. Southern Railway*, 68 S.C. 55, 46 S.E. 525, 529 (1903) (circuit court is bound by decisions of the Supreme Court). This Court is bound by those decisions. Accordingly, the Court DENIES the Orangeburg Defendants’ motion.

The Orangeburg Defendants also ask this Court to enter and certify final judgment on the constitutional question pursuant to Rule 54(b), SCRCP, so as to allow for an immediate appeal to be joined or consolidated with the currently pending appeal filed in *Butts*. The Plaintiff does not oppose the relief.

Rule 54(b) provides in pertinent part:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim ..., the court may direct the entry of a

³ The Orangeburg Defendants specifically contend that *Lindsay* and *Steinke* should be overruled in light of authority from the United States Supreme Court addressing the application of the separation of powers doctrine under the same circumstances. The Orangeburg Defendants also contend that the *Lindsay* decision was misapplied by the Supreme Court in *Steinke* and in subsequent cases decided since 1999, as was explained by former Justice Costa Pleicones in his dissent in *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 598, 614 S.E.2d 629 (2005). The Plaintiff disputes these arguments.

final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Rule 54(b), SCRCP. *See, Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 S.E.2d 856, 860 (Ct. App. 2010) (“The process of directing entry of judgment on one or more, but less than all, claims under Rule 54(b) is referred to as certification”).

In light of the unique posture of this case, the appeal already pending in the *Butts* case, the intent and spirit of the Chief Justice’s Order, and the finality of this Court’s ruling herein, this Court finds that there is no just reason for delay and that it is appropriate to enter direct entry of judgment and certify this Order and enter a declaratory judgment that the retroactivity provision of Act No. 236 is unconstitutional. That will allow for an immediate appeal to the Appellate Courts.

AND IT IS SO ORDERED.

[S-SIGNATURE FOLLOWS]



Orangeburg Common Pleas

Case Caption: Carroll Brown VS Harold M. Young , defendant, et al

Case Number: 2021CP3801268

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2025-01-30 10:54:42 page 6 of 6

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)

Civil Action No. 2021-CP-38-1268

Plaintiff,)

v.)

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS
AND MOTION FOR JUDGMENT
ON THE PLEADINGS**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)

Defendants.)

This matter came before the Court on February 2, 2022, on Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRPC, seeking the dismissal of the Plaintiff's Second Amended Complaint, as filed November 24, 2021, without prejudice for lack of subject matter jurisdiction or alternatively with prejudice as to the merits.

Present at the hearing were William C. Lewis and Terry E. Richardson, Jr., counsel for the Plaintiff, and Andrew F. Lindemann and Bradley T. Farrar, counsel for the Defendants. After a review of the written submissions of the parties, the record presented, and the oral arguments of counsel, this Court grants in part the Defendants' motions on the bases addressed below.¹

¹ At the hearing, counsel for the Plaintiff advised the Court that the Plaintiff intended to dismiss the Orangeburg County Council and the Defendant Harold M. Young, as the Orangeburg County Administrator, from this action without prejudice. The Defendants consented to the dismissal.

BACKGROUND

The Plaintiff Carroll Brown brings his lawsuit to challenge the alleged wrongful collection of the Orangeburg County Road and Bridge Maintenance Service Charge that was imposed by ordinance in 1987, and has continued uninterrupted for each year since. The Plaintiff relies on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that a "road maintenance fee" as implemented by Greenville County Council is actually a tax that violates S.C. Code Ann. § 6-1-630. The Supreme Court thus "declare[d] the road maintenance taxes ... are invalid under South Carolina law." 861 S.E.2d at 31.

The Plaintiff alleges that Orangeburg County Road and Bridge Maintenance Service Charge is likewise invalid. The Plaintiff seeks a declaratory judgment to that effect. The Plaintiff also seeks monetary relief in the form of a refund of the Road and Bridge Maintenance Service Charges previously paid. The Plaintiff asserts three causes of action seeking that monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the Defendant Stokes only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.

LEGAL ANALYSIS

I. Dismissal of First Cause of Action for Quantum Meruit/Unjust Enrichment

The Defendants contend that the Plaintiff's First Cause of Action for quantum meruit/unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not

explicitly waived sovereign immunity to allow a claim for quantum meruit or unjust enrichment or to be prosecuted against a governmental entity. This Court agrees.

By way of background, sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided the landmark case of *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. This historical background is well summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Supreme Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Citations omitted).

In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*." S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

Thus, in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Tort Claims Act. The Court agrees with the Defendants that the Tort Claims Act does not include a waiver of sovereign immunity for non-tort/equitable causes of action for quantum meruit or unjust enrichment.² Moreover, the General Assembly has never enacted any legislation that explicitly waives sovereign immunity for an quantum meruit or unjust enrichment claim nor any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also, United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The Court finds case law from North Carolina to be instructive. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

² In *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), the Supreme Court explained that "unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." 678 S.E.2d 434.

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where that Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

Similarly, South Carolina law recognizes that "by entering a contract, the State waives its sovereign immunity and consents to be sued for breach thereof." *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263, 268 (2001). However, that is true for an express contract. The Court agrees with the Defendants that sovereign immunity may not be deemed waived for causes of action sounding in equity for quantum meruit or unjust enrichment. As a result, this Court rules that the Plaintiff's cause of action for quantum meruit/unjust enrichment, which are both non-tort/equitable claims, is barred by sovereign immunity. As a matter of law, the Court acknowledges that the General Assembly has never explicitly waived sovereign immunity for such equitable claims, like it has for tort claims.

II. Dismissal of Second Cause of Action for Violation of S.C. Code Ann. § 8-21-30

The Plaintiff's Second Cause of Action alleges that the Defendant Matt Stokes, as the Orangeburg County Treasurer, is liable under S.C. Code Ann. § 8-21-30 for "charging" illegal fees

and that he is liable for ten times the amount of the illegal fees that have been paid by the Plaintiff.³

S.C. Code Ann. § 8-21-30 provides:

If any officer herein named 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. § 8-21-30.

The Defendants contend that there is no cause of action for the recovery of road maintenance fees pursuant to Title 8, Chapter 21 of the South Carolina Code of Laws. The Defendants thus seek the dismissal of the Second Cause of Action on multiple grounds. The Court finds those arguments to be meritorious and dismisses the Second Cause of Action on the bases set forth below.

A. S.C. Code Ann. § 8-21-30 is Not Applicable to Road Maintenance Fees

The parameters of a cause of action under S.C. Code Ann. § 8-21-30 are established by reference to S.C. Code Ann. § 8-21-10, which provides as follows:

The several officers named in **this chapter, 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**, shall be entitled to receive and recover the fees and costs prescribed by this chapter, 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, and none other, for the services herein enumerated.

³ This cause of action was also alleged against the Defendant Harold M. Young, as the County Administrator; however, the Plaintiff agreed at the hearing to the dismissal of the Defendant Young.

S.C. Code Ann. § 8-21-10. (Emphasis added).⁴ Based on that language, a cause of action under S.C. Code Ann. § 8-21-30 may be asserted only against an "officer" identified in the referenced chapters of the Code of Laws where the officer charges fees and costs in different amounts than what is allowed in the referenced chapters for the services described in the referenced chapters.

Therefore, as a starting point, the Court focuses on the referenced chapters. Chapter 21 of Title 8 is entitled "Fees and Costs Generally" and includes a wide range of fees charges by such public officials as the clerk of court, register of deeds, notary public, magistrate, constable, secretary of state, and probate judge. Article 3 of Chapter 11 of Title 14 pertains to fees charged by masters-in-equity. There is no Chapter 19 of Title 14 in the South Carolina Code of Laws. There is no Article 7 of Chapter 23 of Title 14 in the Code. There is no Chapter 19 of Title 19 in the Code. Chapter 7 of Title 22 pertains to magistrates. Article 3 of Chapter 9 of Title 22 consists of one section entitled "Deduction of certain payments to others from constable's salary." Article 1 of Chapter 19 of Title 23 pertains to fees charged by sheriffs.

The Defendant Stokes is the County Treasurer.⁵ Of all the referenced chapters in S.C. Code Ann. § 8-21-10, a county treasurer is mentioned only in a single Code section, that being S.C. Code Ann. § 8-21-310. In that Code section, the county treasurer is named, in addition to the clerk

⁴ For ease of discussion, Chapter 21 of Title 8 (i.e., "this chapter"), 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 of the Code of Laws (as bolded above) are referred hereafter as the "referenced chapters."

⁵ S.C. Code Ann. § 8-21-15 provides generally 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 particular duty, responsibility, or function is authorized by statutory law and set by regulation." The statute then includes a number of exceptions. S.C. Code Ann. § 8-21-15 has no application to the present case. The Defendant Stokes, as the County Treasurer, is not a "state agency, department, board, committee, commission, or authority." Instead, he obviously holds a county elected position.

of court and register of deeds, as being authorized to charge filing or recording fees in expressly stated amounts for a variety of legal documents. That is the extent of the fees cited in all of the referenced chapters that may be charged by a county treasurer, and to reiterate, the enumerated services are limited to the filing and recording of legal documents.

Contrary to the Plaintiff's position, a cause of action under S.C. Code Ann. § 8-21-30 is not applicable to all fees and costs generally charged by public officials or governmental entities. As the Defendants point out, the Code of Laws contains numerous fees and costs that can be charged by the government for a myriad of functions. Instead, S.C. Code Ann. § 8-21-30 is limited to the fees and costs charged by an officer for "services enumerated" in the referenced chapters.

The Court thus finds that S.C. Code Ann. §§ 8-21-10 and 8-21-30 have no application to the road maintenance fees at issue for five primary reasons. First, in S.C. Code Ann. § 8-21-310, the only section referencing a county treasurer, there is no mention of road maintenance fees charged by the county treasurer.⁶ Therefore, the Defendant Stokes cannot be held liable under S.C. Code Ann. § 8-21-30 for charging a fee for a service that is not enumerated in S.C. Code Ann. § 8-21-310. Second, consistent with the *Burns* decision, the road maintenance fees at issue were enacted, rightly or wrongly, under S.C. Code Ann. § 6-1-300(6) as a "service or user fee" and are not included within the scope of the referenced chapters. Third, road maintenance is not one of the "services enumerated" in the referenced chapters. Fourth, because the Plaintiff is relying on the *Burns* decision to declare the Orangeburg County Road and Bridge Maintenance Service Charge invalid, it would logically follow that the Road and Bridge Maintenance Service Charge is a tax rather than a fee. The Court does not read S.C. Code Ann. § 8-21-30 as being applicable to

⁶ Moreover, the "road maintenance fee" at issue is not one of the fees and costs provided for in any of the referenced chapters.

a "tax" or as a mechanism to seek a refund or monetary recovery of a paid "tax."⁷ And fifth, the Court finds that the Road and Bridge Maintenance Service Charge at issue in Orangeburg County is not "charged" by the County Treasurer. The fee was established by ordinance and is "charged" by the County, and the County is not one of the express parties that can be held liable under S.C. Code Ann. §§ 8-21-10 and 8-21-30.⁸

For each of these reasons, the Court rules as a matter of law the no cause of action may be maintained by the Plaintiff against the Defendant Stokes for the recovery of the amounts paid to the County as a road maintenance fee pursuant to S.C. Code Ann. §§ 8-21-10 and 8-21-30. The Second Cause of Action is dismissed with prejudice on that basis.

B. S.C. Code Ann. § 8-21-30 Has Been Implicitly Repealed

S.C. Code Ann. § 8-21-30 is a statute that pre-dates the South Carolina Tort Claims Act and the waiver of sovereign immunity.⁹ The Defendants contend that S.C. Code Ann. § 8-21-30 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. This Court agrees.

⁷ In effect, the Court observes that the Plaintiff cannot have it both ways. He cannot argue that the Road and Bridge Maintenance Service Charge at issue is a "fee" to claim relief under S.C. Code Ann. § 8-21-30 and to avoid the subject matter jurisdiction issues raised by the Defendants, while arguing that the Road and Bridge Maintenance Service Charge is an illegal "tax" to have it declared invalid under the *Burns* decision.

⁸ The Plaintiff clearly recognizes that the County cannot be liable in that the Second Cause of Action is not asserted against the Defendant Orangeburg County.

⁹ The Court observes that S.C. Code Ann. § 8-21-30 was first adopted in 1878. Moreover, as the Court noted above, three of the referenced chapters in S.C. Code Ann. § 8-21-10 do not even exist in the Code of Laws any longer, thereby demonstrating that S.C. Code Ann. §§ 8-21-10 and S.C. Code Ann. § 8-21-30 may be fairly characterized as archaic.

As discussed above, our Supreme Court abrogated sovereign immunity in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In that case, the Supreme Court recognized that "exceptions [to the doctrine of sovereign immunity] that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lack continuity, logic or fairness." 329 S.E.2d at 742. As the Defendants argue, S.C. Code Ann. § 8-21-30 is one example of the statutorily created "scattered patchwork of sovereign liability" referred to in *McCall*.

As discussed above, with the subsequent enactment of the Tort Claims Act in 1986, the General Assembly first reinstated sovereign immunity in full. That had the important effect of eliminating the "scattered patchwork of sovereign liability" that had been created by prior legislation passed to limit or ameliorate the effects of absolute sovereign immunity. The General Assembly then had a "clean slate" from that point forward on which to legislate the waivers and limitations to be placed on sovereign immunity. The legislature then proceeded to set forth specific waivers and limitations on sovereign immunity as reinstated. See, *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995) (as quoted above). In fact, S.C. Code Ann. § 15-78-20(b) of the Tort Claims Act provides that "[t]he General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, **immunity from liability and suit for any tort except as waived by this chapter.**" S.C. Code Ann. § 15-78-20(b). (Emphasis added). In effect, absolute sovereign immunity was no longer the law, but neither was the "scattered patchwork of sovereign liability" including the statute at issue, S.C. Code Ann. § 8-21-30. That "scattered patchwork" had been repealed.

The Supreme Court has explained that "[a] later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject matter." *State v. Hood*, 181 S.C. 488,

188 S.E. 134, 136 (1936). There can be no question that the Tort Claims Act "fully embraces the whole subject matter" of governmental liability. The history set forth in *Murphy* shows that the Tort Claims Act was intended to reinstate sovereign immunity in full thereby eliminating the "scattered patchwork of sovereign liability" that preexisted it, which includes S.C. Code Ann. § 8-21-30. By fully embracing the whole subject matter, statutes such as S.C. Code Ann. § 8-21-30 were impliedly repealed. This is likewise evident from the express language of the Tort Claims Act providing that "[n]otwithstanding any provision of law, this chapter, the South Carolina Tort Claims Act, is the *exclusive and sole remedy* for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200. (Emphasis added).¹⁰ The use of phrase "notwithstanding any provision of law" compels the conclusion that the Tort Claims Act is the exclusive and sole remedy regardless of any other provision of law, which would necessarily include S.C. Code Ann. § 8-21-30.

Although there is no South Carolina appellate decision addressing the implied repeal of S.C. Code Ann. § 8-21-30,¹¹ the federal courts have specifically looked at whether the Tort Claims Act impliedly repealed part of the "scattered patchwork of sovereign liability" referred to in *McCall*. Of particular significance is *Sadek v. Lambert*, 2014 WL 117671 (D.S.C. 2014), in which

¹⁰ Similarly, S.C. Code Ann. § 15-78-20(b) states that the Tort Claims Act is the "exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(b). The exceptions as set forth in S.C. Code Ann. § 15-78-70(b) have no applicability here.

¹¹ See, *Kubric v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595, 598 (2016) ("Although our Court has held that 'important questions of novel impression should not be decided on a motion to dismiss,' this general rule does not apply when the determinative facts are not in dispute. Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression"). (Citation omitted).

United States District Judge Terry Wooten adopted a magistrate judge's report and agreed with the very analysis offered by the City of Georgetown in the present case, except that Judge Wooten was addressing the implied repeal of S.C. Code Ann. § 16-5-60, which is another statute from the 1870s that can be described as archaic.¹² Judge Wooten concluded that "the Tort Claims Act impliedly repealed § 16-5-60." 2014 WL 117671, *3. The federal court determined that S.C. Code Ann. § 16-5-60 is irreconcilable with the Tort Claims Act. The court recognized that "the Tort Claims Act expressly and completely restores sovereign immunity" which is "incapable of reconciliation with § 16-5-60's unlimited waiver of a county's immunity from suit based on wrongful acts of third parties." *Id.* Judge Wooten also explained that "the Tort Claims Act provides for limited liability of a governmental entity for the wrongdoing of its own employees whereas § 16-5-60 contrarily provides for unlimited and strict liability of a county for the acts of others. Such a result is contrary to both the plain language of the Tort Claims Act and the recorded legislative intent of the Act." *Id.* Ultimately, the federal court ruled "that § 16-5-60, enacted to provide strict liability of counties for constitutional torts committed by others, is repugnant to and

¹² S.C. Code Ann. § 16-5-60 made a county strictly liable for a violation of a citizen's political rights that occurred within the county. *See, Brazzill v. Lancaster County*, 132 S.C. 347, 128 S.E. 728 (1925). The statute, as enacted in 1871, provided:

Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof.

S.C. Code Ann. § 16-5-60.

therefore was impliedly repealed by the South Carolina Tort Claims Act's complete restoration of sovereign immunity and limited waiver for certain torts committed by governmental employees. The plaintiff's cause of action against York County under § 16-5-60 therefore fails to state a claim upon which relief can be granted." 2014 WL 117671, *6.¹³

As reflected by Judge Wooten's analysis in *Sadek v. Lambert*, this Court finds that the position taken by the Defendants in the case at bar is a correct one. With the adoption of the Tort Claims Act and its restoration of sovereign immunity in full followed by a limited waiver, the "scattered patchwork of sovereign liability" from pre-Tort Claims Act times was wiped clean. S.C. Code Ann. § 8-21-30, as part of that archaic "scattered patchwork," was impliedly repealed. On this additional basis, the Plaintiff's Second Cause of Action is dismissed with prejudice.

III. Dismissal of Third Cause of Action for Violation of Article I, § 3 of the South Carolina Constitution

In his Third Cause of Action, the Plaintiff alleges a loss of a property interest without due process of law. In his response memorandum, the Plaintiff contends that the Defendant "mischaracterizes" his due process claim because "the claim does not seek monetary relief at all." See, Plaintiff's Mem., p. 18. Yet, the only relief sought in the Third Cause of Action is "monetary damages." See, Second Amended Complaint, ¶ 65.

Reading the Third Cause of Action as one for "money damages," the Court finds that the Plaintiff does not enjoy a private right of action for money damages for a violation of provisions

¹³ Other federal judges have addressed the same issue and agree with Judge Wooten's analysis. See, *Doe v. Charleston County Sheriff's Office*, 2018 WL 4224063 (D.S.C. 2018) (Judge Richard Gergel); *Doe v. McGowan*, 2017 WL 659938 (D.S.C. 2017) (Judge Richard Gergel); *Mial v. Charleston County Sheriff's Department*, 2018 WL 4725288, adopted in 2018 WL 4701366 (D.S.C. 2018) (Judge Joseph F. Anderson, Jr.).

of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021),¹⁴ the South Carolina Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261. Thus, the Court concludes that the Plaintiff is precluded from recovering money damages for the alleged violation of the South Carolina Constitution, and as a result, the Third Cause of Action is dismissed with prejudice.

Because the Court has dismissed each of the Plaintiff's causes of action seeking monetary relief in form of a refund of taxes or fees, it is not necessary for the Court to reach or address the Defendants' subject matter jurisdiction issues. The Plaintiff's remaining Fourth Cause of Action seeks only declaratory relief asking the Court to declare the Orangeburg County Road and Bridge Maintenance Service Charge to be unlawful in accordance with the Supreme Court's decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).¹⁵ The Court finds that it has subject matter jurisdiction to hear a declaratory judgment action on this issue. The Court also finds that the Defendants' exhaustion of administrative remedies defense is rendered moot for this same reason.¹⁶

¹⁴ A petition for writ of certiorari was also denied by the United States Supreme Court on January 10, 2022. *See*, Orders List dated January 10, 2022 for United States Supreme Court.

¹⁵ To the extent that the Plaintiff seeks monetary relief as part of the Fourth Cause of Action in Paragraph 69(C) of the Second Amended Complaint, that relief is denied for the reasons stated with respect to the other causes of action and because monetary relief is not recoverable under the Declaratory Judgment Act. There must be an independent cause of action for the recovery of monetary relief.

¹⁶ The Court also declines to address any issues related to class certification. Those issues and defenses are not ripe until such time as the Plaintiff files a motion for class certification.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings are granted such that the Plaintiff's First Cause of Action, Second Cause of Action, and Third Cause of Action are dismissed with prejudice as a matter of law. The Plaintiff has not sought to amend any of his causes of action, but nonetheless, the Court notes that the First Cause of Action, Second Cause of Action, and Third Cause of Action are each dismissed on purely legal bases and not because of any correctable pleading deficiency. *See, Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

IT IS FURTHER ORDERED that Defendant Orangeburg County Council and the Defendant Harold M. Young, as the Orangeburg County Administrator, are dismissed as party-Defendants without prejudice by the consent of the parties.

IT IS FURTHER ORDERED that the Plaintiff's Fourth Cause of Action for declaratory relief only may proceed forward.

AND IT IS SO ORDERED.

EDGAR W. DICKSON
Presiding Judge,
First Judicial Circuit



Orangeburg Common Pleas

Case Caption: Carroll Brown VS Harold M. Young , defendant, et al

Case Number: 2021CP3801268

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-30 15:47:50 page 16 of 16

The Supreme Court of South Carolina

Mark Gregory Thompson and Jane
Page Thompson, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Clay Killian, in his official capacity as
Aiken County Administrator; Jason
Goings, in his official capacity as
Treasurer of Aiken County, Aiken
County Council, et al.

Defendants.

Aiken County
2021-CP-02-02323

Jane Calkins, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Hilton Head Island; Hilton
Head Island Town Council; Eric
Greenway, in his official capacity as
Beaufort County Administrator; et al.

Defendants.

Beaufort County
2021-CP-07-01967

Steven Biggs, on behalf of himself and
others similarly situated,

Plaintiffs,

vs.

Florence County, South Carolina;
Florence County Council; K.G. Smith,

Jr. in his official capacity as Florence
County Administrator, et al.

Defendants.

Florence County
2021-CP-21-01560

Richard A. Butts, individually and on
behalf of all others similarly situated,

Plaintiffs

vs.

Angela Christian, in her official
capacity as Georgetown County
Administrator; Miriam Mace, in her
official capacity as Treasurer of
Georgetown County; Georgetown
County Council; et al.

Defendants.

Georgetown County
2021-CP-22-00928

Baylis Griffin Hyman, individually and
on behalf of all others similarly
situated,

Plaintiffs,

vs.

Steve Gosnell, in his official capacity
as Horry County Administrator, Angie
Jones, in her official capacity as
Treasurer of Horry County, Horry
County Council, et al.

Defendants.

Horry County
2021-CP-26-07309

Vontisha Portee, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Victor Carpenter, in his official
capacity as Kershaw County
Administrator; Jill Catoe, in her official
capacity as Kershaw County Treasurer,
Kershaw County, et al.

Defendants.

Kershaw County
2021-CP-28-000873

Carroll Brown, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Harold M. Young, in his official
capacity as Orangeburg County
Administrator; Matt Stokes, in his
official capacity as Orangeburg County
Treasurer; Orangeburg County; et al.

Defendants.

Orangeburg County
2021-CP-38-01268

Martha Mitchell and Philip
Washington Falrey, IV, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

Richland County, South Carolina and
Richland County Council,

Defendants.

Richland County
2021-CP-40-03410

Anne H. Hargrove, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren L. Brady, III, in his official
capacity as Treasurer of Spartanburg
County; Spartanburg County Council;
et al.

Defendants.

Spartanburg County
2021-CP-42-03595

Candice Abrams, individually and on
behalf of all those similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity
as Spartanburg County Administrator;
Oren Brady, in his official capacity as
Spartanburg County Treasurer;
Spartanburg County; et al.

Defendants.

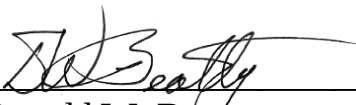
Spartanburg County
2021-CP-42-03736

O R D E R

I find that assigning a single judge to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236 of the 2021-2022 South Carolina Legislative Session (hereinafter “Act No. 236”) will promote the effective and expeditious disposition of this litigation by uniform rulings and will

conserve the resources of the parties, their counsel, and the judiciary. Now therefore,

IT IS ORDERED that the Honorable Roger M. Young, Sr. be vested with exclusive jurisdiction to hear and dispose of the above cases, as well as any additional cases, which have been or may be filed in South Carolina relating to Act No. 236. Judge Young shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
May 17, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
Carroll Brown, individually and on	)	
behalf of all others similarly situated,	)	
	)	
<i>Plaintiff,</i>	)	AMENDED COMPLAINT
	)	[JURY TRIAL DEMANDED]
	)	
vs.	)	
	)	CA No. 2021-CP-38-01268
Harold M. Young, in his official capacity as	)	
Orangeburg County Administrator; Matt	)	
Stokes, in his official capacity as	)	
Orangeburg County Treasurer; Orangeburg	)	
County; and Orangeburg County Council,	)	
	)	
<u><i>Defendants.</i></u>	)	

Plaintiff, Carroll Brown, individually, and on behalf of all others similarly situated, hereby files this Complaint against Harold M. Young, in his official capacity as Orangeburg County Administrator (“Administrator Young”), Matt Stokes, in his official capacity as Orangeburg County Treasurer (“Treasurer Stokes”), Orangeburg County, and Orangeburg County Council (collectively, “Defendants”), respectfully alleging the following:

INTRODUCTION

1. This class action is brought by Plaintiff, individually and on behalf of all residents of Orangeburg County, to obtain monetary damages based upon Defendants’ collection and retention of the illegal Road Maintenance Fee.

2. Section 56-3-110 of the South Carolina Code (2018) requires every motor vehicle in the State to be registered and licensed, and subsection 56-3-195(A) of the South Carolina Code (2018) assigns the registration process to each county for vehicles owned by residents of the county.

3. Upon information and belief, Orangeburg County has enacted an ordinance which

requires the owner of every vehicle registered in Orangeburg County to pay \$40.00 fee each year to Orangeburg County for the purported purpose of road maintenance (“Road Maintenance Fee”).

4. On June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*, 433 S.C. 583 (2021), declaring an almost identical road maintenance fee in Greenville County as illegal and passed in contravention of State law.

5. This is the epitome of bad government; taking money illegally from citizens, and, after the South Carolina Supreme Court informs them of the illegality of fees such as the Road Fees, the government actors still refuse to return the ill-gotten fees.

6. This action is brought for recovery of those fees and ten times the illegally collected fees pursuant to S.C. Code Ann. § 8-21-30.

7. Based on the foregoing, Plaintiff and all others similarly situated are entitled to a refund of any and all Road Maintenance Fees charged by Orangeburg County.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter and venue is proper in this because the claims arise in this County. Additionally, S.C. Code Ann. Section 8-21-30 provides for suit to be brought in the Court of Common Pleas.

9. Venue in this Court is proper because a substantial part of the events giving rise to these claims occurred in Orangeburg County, South Carolina.

PARTIES

10. Class Representative Carroll Brown is a citizen and resident in the County of Orangeburg, State of South Carolina. Plaintiff is sufficiently familiar with the facts of the issues in this litigation to represent the interests of the class fairly and adequately in this litigation.

11. Defendant Administrator Harold M. Young is the County Administrator for the

Orangeburg County, South Carolina, and upon information and belief, a resident of Orangeburg County, South Carolina.

12. Defendant Treasurer Matt Stokes is the Treasurer for Orangeburg County, and upon information and belief, a resident of Orangeburg County.

13. Defendant Orangeburg County Council is a body politic, incorporate, and governing body of Orangeburg County.

14. Defendant Orangeburg County is a political subdivision of the State of South Carolina, and the governing authority for the geographic region of Orangeburg County, State of South Carolina.

FACTUAL ALLEGATIONS

A. The Illegal Fees

15. Orangeburg County Council passed an ordinance in 1987 requiring the owner of every vehicle registered in Orangeburg County to pay a Road Maintenance Fee each year to the Orangeburg County Tax Collector. The ordinance reads in pertinent part:

Required on licensed motor vehicles; amount; waiver. All motorized vehicles required by the state to be licensed, which are carried on the tax records of the county, shall be subject to and pay, in addition to any other licensing fees and taxes, the sum of \$35.00 service charge per vehicle per annum.

16. The fee has been increased over the years and is currently \$50.00.

17. Treasurer Stokes is responsible for overseeing the collection of all fees in Orangeburg County, including the invalid Road Maintenance Fee.

18. Administrator Young is responsible for carrying out the policies and directives and legislative actions of Orangeburg County Council, including the invalid Road Maintenance Fee.

19. Orangeburg County collects approximately \$3 million each year in these fees.

20. In light of the *Burns* decision, the Orangeburg County ordinance was passed in contravention of state law, and as such are invalid, *ultra vires*, and void.

B. The *Burns* Decision

21. On June 30, 2021, the South Carolina Supreme Court issued its opinion to a suit challenging the validity of Ordinances 4906 and 4907.

22. The Supreme Court unanimously found Ordinances 4906 and 4907 invalid.

23. Ordinance 4906 established a fee almost identical to the Road Maintenance Fee at issue in this case. Indeed, Ordinance 4906 reads in relevant part as follows:

Road maintenance fee established. The owners of every vehicle required to be registered and licensed in Greenville County by the South Carolina Department of Motor Vehicles shall pay annually to the Greenville County tax collector a road maintenance fee of \$25 on each such vehicle. . . .

24. The *Burns* Court was unequivocal that fees such as this were invalid under South Carolina law.

25. The Road Maintenance Fees enacted and collected by Defendants are almost identical to the fees found invalid in *Burns*.

26. Orangeburg County continues to collect Road Maintenance Fees, and Orangeburg County has not returned any of the illegally collected Road Maintenance Fees.

C. Factual Allegations Specific to the Named Plaintiff

27. Plaintiff Carroll Brown is a resident of Orangeburg County, South Carolina.

28. Plaintiff owns at least one vehicle licensed in Orangeburg County, South Carolina.

29. Plaintiff has paid at least one Road Maintenance Fee in Orangeburg County, South Carolina.

30. Plaintiff has not received a refund of any of these illegal fees paid.

CLASS ACTION ALLEGATIONS

31. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

32. Plaintiff brings this action on behalf of themselves and other similarly situated persons who paid the illegal Road Maintenance Fee pursuant to the ordinance passed by Orangeburg County Council.

33. All members of this putative class paid the Road Maintenance Fee.

34. As to all members of this putative class, Administrator Young and Treasurer Stokes were responsible for the collection and retention of these fees on behalf of Orangeburg County.

35. As a result, Orangeburg County has received and retained millions in Road Maintenance Fees collected in violation of South Carolina Law.

36. This action is properly maintained as a class action pursuant to South Carolina Rule of Civil Procedure 23.

37. Specifically, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiff brings this action on behalf of themselves, and all others similarly situated, as representatives of the following class (the “Class”):

“Any individual who at any time paid the Road Maintenance Fee.”

38. Excluded from the Class are Defendants, Defendants’ immediate family members, Orangeburg County Council members, legal counsel for Defendants, the judges, and all other court personnel to whom this case is assigned and their immediate family members.

39. The passage of the ordinances enacting the Road Maintenance Fees, and the illegal collection and retention of these invalid fees by Defendants, directly and proximately resulted in damages to Class members.

**THE CLASS MEETS THE REQUIREMENTS OF RULE 23 OF THE SOUTH
CAROLINA RULES OF CIVIL PROCEDURE**

40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

41. The Class is properly brought and should be maintained as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure because it satisfies the prerequisites of numerosity, commonality, typicality, and adequacy.

42. *Numerosity:* The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. However, the estimates of total fees paid is in the millions, and the fees were paid in increments of less than \$50.00. Therefore, the number of members satisfies the numerosity requirement.

43. *Commonality:* The claims of Plaintiff and the members of the Class involve common questions of law and fact, which predominate over questions affecting only individual members of the Class and which can be answered with common proof, including, *inter alia*, the following: (1) whether collection of the invalid fees violates S.C. Code Ann. § 8-21-30; (2) whether Defendants should be ordered to return the illegally collected fees and pay statutory penalties plus interest in accordance with South Carolina Law; and (3) whether Plaintiffs and the Class members are entitled to damages as a result of Defendants' collection and retention of these invalid fees.

44. *Typicality:* Plaintiffs' claims are typical of those members of the Class because their claim has the same essential characteristics as the claims of the Class members, and their claims arise from the same course of conduct by Defendants. Plaintiffs and all of the Class members paid either or both of the invalid fees. As to Plaintiffs and all Class members, the invalid fees were enacted in the exact same manner. As to Plaintiffs and all Class members, Defendants violated South Carolina law, specifically but not limited to S.C. Code Ann. § 8-21-30.

45. *Adequacy*: Plaintiffs will fairly and adequately represent the interests of all Class members. Plaintiffs' claims are common to all Class members and Plaintiffs have strong interests in vindicating their rights. Plaintiffs are represented by counsel experienced in complex, class action litigation. Neither Plaintiffs nor Plaintiffs' counsel has any interests adverse to, or in conflict with, any absent Class member.

46. The amount in controversy for all Class members exceeds one hundred dollars.

47. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- A The interests of the Plaintiffs and Class members in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- B The expense of prosecuting Plaintiffs' and Class members' claims individually would significantly exceed any economic benefit Plaintiffs or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties, making individual litigation of liability and damages economically impractical and infeasible;
- C It is desirable that litigation of the claims occur for the Class members in this forum to preserve the resources of both the courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and
- D Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Class members.

FOR A FIRST CAUSE OF ACTION
QUANTUM MERUIT/UNJUST ENRICHMENT
(As to All Defendants)

48. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

49. Quantum meruit as an equitable doctrine to allow recovery for unjust enrichment such as has taken place in the case at bar.

50. In this action Plaintiff and class members have conferred a benefit upon the Defendants in the form of the Road Maintenance Fee. Defendants have realized that benefit by improperly charging and forcing payment of the Road Maintenance Fee.

51. Defendants, were put on notice of the invalidity of this Road Maintenance Fee.

52. However, Defendants have, to date, failed to refund Plaintiff and the class members the money improperly taken for the Road Maintenance Fee.

53. Defendants' retention of the Road Maintenance Fees is inequitable, and accordingly, Defendants are obligated to pay damages.

FOR A SECOND CAUSE OF ACTION
VIOLATION OF S.C. CODE ANN. SECTION 8-21-30
(As to Administrator Young and Treasurer Stokes)

54. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

55. Administrator Young and Treasurer Stokes are officers of Orangeburg County, a political subdivision of the State of South Carolina.

56. As the Treasurer and Administrator for Orangeburg County, Administrator Young and Treasurer Stokes oversaw and directed the charge, collection, and retention of the fees pursuant to the invalid and illegal ordinances.

57. Pursuant to *Burns* and South Carolina law these fees were illegally charged

58. Pursuant to S.C. Code Ann. Section 8-21-30, the officers responsible for charging these fees, Administrator Young and Treasurer Stokes are liable to forfeit ten times the amount so improperly charged.

59. Pursuant to S.C. Code Ann Section 8-21-30, these damages may be recovered in the Court of Common Pleas. Therefore, any illegally collected fees should be returned and a ten-time multiplier penalty should be paid to Plaintiff and each member of the class.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF DUE PROCESS OF THE S.C. CONSTITUTION
(As to All Defendants)

60. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

61. No person shall be deprived of life, liberty, or property without due process of law. S.C. Const. Art. I, Section 3.

62. Plaintiff and class members paid the Road Maintenance Fee pursuant to illegal and invalid ordinances.

63. Plaintiff and the class members have cognizable property interest in their money that they were forced to give to Defendants pursuant to the illegal ordinances.

64. Defendants violated Plaintiff and class members' due process rights by charging, collecting and retaining unlawfully collected fees pursuant to illegal and invalid ordinances.

65. The violations of the Plaintiff and class members rights have caused monetary damages.

FOR A FOURTH CAUSE OF ACTION
(DECLARATORY JUDGMENT UNDER S.C. CODE ANN. § 15-53-10, et seq.)

66. Plaintiffs and the class members repeat and re-allege all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

67. Plaintiff and the class members are interested persons whose rights, status, or other legal relations are affected by a statute and local ordinance, and thus they have standing to assert his cause of action for a declaratory judgment.

68. Plaintiffs and the class members paid substantially similar fee declared unlawful by the Supreme Court of South Carolina in *Burns*.

69. This case presents an actual case or controversy, namely whether:

- A the County's passage of the Ordinance and resulting Road Maintenance Fee is unlawful for the reasons enunciated in *Burns*;
- B the County acted outside the scope of its authority in passing the Ordinance enacting the Road Maintenance Fee, thereby rendering the Fee *void ab initio* and *ultra vires*;
- C the Defendants owe Plaintiff and the class members a full refund for the invalid and unlawful Road Maintenance Fee.

70. Plaintiff and the class hereby request a declaratory judgment from this Court that the Road Maintenance Fee is unlawful, for the reasons articulated in *Burns*, and the Defendants owe Plaintiff and the class refunds with interest

PRAYER FOR RELIEF

71. WHEREFORE, the Plaintiff and putative class members respectfully request:
- a. that summons and process issue to the Defendants as required by law;

- b. that the Court declare the Road Maintenance Fee in this county invalid and improper;
- c. that Plaintiff, individually, recover compensatory damages for the invalid and illegal retention of the Road Maintenance Fee by Defendants;
- d. that the Court certify the Class requested herein, and find that that Plaintiff is an appropriate representative of the Class;
- e. that the Court find that the undersigned counsel fairly and adequately represents and protects the interests of the Class, and certify the undersigned counsel to act as counsel for the Class;
- f. that judgment be entered against Defendants finding that they deprived Plaintiff and Class of rights secured by the Laws of South Carolina;
- g. that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiff and the other Class members;
- h. that the Court issue an order awarding damages of ten times the amount of illegal fees collected;
- i. that Plaintiff and Class be awarded the just and proper equitable relief requested;
- j. that the Court award Plaintiff and Class members their costs;
- k. that the Court award Attorney's fees as provided for under South Carolina law;
- l. that Plaintiff have a trial by jury with respect to her legal claims; and
- m. that the Court grant such other and further relief as it deems just and proper.

[Signature Page to Follow]

Respectfully submitted,

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

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Attorneys for Plaintiff and the Class

Dated: November 24, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)
Plaintiff,)

Civil Action No. 2021-CP-38-1268

v.)

**NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR MOTION
FOR JUDGMENT ON THE PLEADINGS**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)
Defendants.)

TO: TERRY E. RICHARDSON, JR.; WILLIAM C. LEWIS; BRADY R. THOMAS;
DAVID R. PRICE, JR.; SAMUEL B. TOOKER; CHARLES J. HODGE AND
T. RYAN LANGLEY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council will move before the Presiding Judge of the First Judicial Circuit at the Orangeburg County Courthouse, Orangeburg, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF, dismissing the Plaintiff's Second Amended Complaint, as filed November 24, 2021, without prejudice for lack of subject matter jurisdiction or alternatively with prejudice as to the merits.

The Defendants' motion is based on the following grounds:

1. The exclusive jurisdiction for this action is pursuant to the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.* The Circuit Court lacks subject matter jurisdiction over this declaratory judgment action and the Plaintiff's claims seeking a refund or recovery of any illegal or wrongfully collected taxes as claimed by the Plaintiff. *See, B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The Plaintiff is not challenging the constitutionality of any statute. Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

2. The Plaintiff has failed to exhaust all administrative remedies as provided under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, and therefore, is barred from proceeding with this action in the Circuit Court.

3. The Plaintiff's First Cause of Action for unjust enrichment is barred by sovereign immunity. The South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment to be prosecuted against a governmental entity.

4. The Plaintiff's Second Cause of Action fails to state facts sufficient to constitute a cause of action as a matter of law. There is no cause of action for recovery of alleged illegal collection of a road maintenance fee pursuant to Title 8, Chapter 21 of the South Carolina Code of Laws. The "officers" against whom a cause of action based on S.C. Code Ann. § 8-21-30 may be brought are limited to the following by S.C. Code Ann. § 8-21-10: master-in-equity, magistrate, constable, secretary of state, appraisers of homestead and commissioners in dower or partition, county auditor, clerk of court, register of deeds, deputy surveyor, and probate judge. The Defendant

Harold M. Young, as the County Administrator for Orangeburg County, and Matt Stokes, as the Orangeburg County Treasurer, does not qualify as an "officer" under S.C. Code Ann. § 8-21-10. In addition, the "road maintenance fee" at issue is not one of the fees and costs prescribed by Chapter 21 of Title, 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, or Article 1 of Chapter 19 of Title 23. Moreover, road maintenance is not of the "services enumerated" in Chapter 21 of Title, 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, or Article 1 of Chapter 19 of Title 23. Further, none of the Defendants qualifies as a "state agency, department, board, committee, commission, or authority" under S.C. Code Ann. § 8-21-15. Finally, road maintenance fees are prescribed in a completely different Title of the South Carolina Code of Laws than the one the Plaintiff alleges. No South Carolina county would ever invoke Chapter 21 of Title 8 as its authority for imposing or collecting a road maintenance fee. That portion of State law has nothing to do with road maintenance or any similar governmental service.

5. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

6. The imposition of a penalty under S.C. Code Ann. § 8-21-30 violates the Excessive Fines Clauses of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South Carolina Constitution and is contrary to the public policy of the State of South Carolina.

7. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

8. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

9. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is preempted by S.C. Code Ann. § 12-60-80(A).

10. The Road and Bridge Maintenance Service Charge as implemented by Orangeburg County in 1987 has not been previously adjudged to be invalid or illegal. The Road and Bridge Maintenance Service Charge pre-dates the enactment of S.C. Code Ann. § 6-1-300(6). Nonetheless, even if S.C. Code Ann. § 6-1-300(6) is applicable, the Plaintiff has not alleged nor demonstrated that the Road and Bridge Maintenance Service Charge violates S.C. Code Ann. § 6-1-300(6) or the requirements set forth in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992). The legislative actions taken by the Defendants are fairly debatable and are therefore presumptively legal and valid.

11. The Plaintiff's claims are, in whole or in part, barred as a result of the application of the statute of limitations.

12. The Plaintiff's claims are, in whole or in part, barred based upon the defense of laches.

13. The Plaintiffs do not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28,

2021), the Court of Appeals held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” 829 S.E.2d at 261. Thus, the Plaintiffs are precluded from recovering money damages for the alleged violations of the South Carolina Constitution.

14. The Plaintiff's attempt to bring this action as a class action is expressly barred by S.C. Code Ann. § 12-60-80(C).

15. The Plaintiff's claims are, in whole or in part, barred by common law legislative immunity.

16. The Defendant Orangeburg County Council is not a proper party. Orangeburg County Council is not a body politic separate and apart from Orangeburg County. Instead, Orangeburg County Council is the governing body of Orangeburg County.

17. The Defendants Harold M. Young and Matt Stokes, who are sued in their official capacities, are the alter egos of the Orangeburg County. *See, Kentucky v. Graham*, 473 U.S. 159 (1985) (“[o]fficial capacity suits ... genuinely represent only another way of pleading an action against an entity of which the officer is an agent”). Thus, the suit against the Defendants Young and Stokes in their official capacities should be dismissed as duplicative. *See, Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (affirming the dismissal of a claim against a superintendent in his official capacity because it was essentially a claim against the board of education and was, therefore, duplicative).

This motion is based upon the pleadings filed in this case; a memorandum of law as may be submitted at or prior to the hearing; and such other matters as may be presented to the Court.

s/ Andrew F. Lindemann

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*Counsel for Defendants Harold M. Young, in his
official capacity as Orangeburg County
Administrator, Matt Stokes, in his official capacity
as Orangeburg County Treasurer, Orangeburg
County, and Orangeburg County Council*

December 28, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
 of all others similarly situated,) Civil Action No. 2021-CP-38-1268
)

Plaintiff,)
)

v.)
)

Harold M. Young, in his official capacity)
 as Orangeburg County Administrator;)
 Matt Stokes, in his official capacity as)
 Orangeburg County Treasurer; Orangeburg)
 County; and Orangeburg County Council,)
)
 Defendants.)
)

**ANSWER TO SECOND
 AMENDED COMPLAINT**

The Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council, reserving all rights under their Motion to Dismiss and/or Motion for Judgment on the Pleadings filed contemporaneously herewith, answer the Plaintiff's Second Amended Complaint, as filed November 24, 2021, herein as follows:

FOR A FIRST DEFENSE

1. The Plaintiff's Second Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The Defendants reserve their right to file a motion pursuant to Rule 12(b)(6), SCRCPP and/or Rule 12(c), SCRCPP.

FOR A SECOND DEFENSE

2. The Court lacks subject matter jurisdiction over this action. The Defendants reserve their right to file a motion pursuant to Rule 12(b)(1), SCRCPP. S.C. Code Ann. § 12-60-

3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice."

FOR A THIRD DEFENSE

3. The Defendants deny each and every allegation of the Plaintiff's Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

4. The allegations set forth in Paragraph 1 of the Plaintiff's Second Amended Complaint present a purported characterization or description of the Plaintiff's lawsuit. The Defendants deny the Plaintiff's claims and his claims for declaratory and monetary relief.

5. As to the allegations set forth in Paragraph 2 of the Plaintiff's Second Amended Complaint, the Defendants crave reference to S.C. Code Ann. § 56-3-110 and S.C. Code Ann. § 56-3-195(A) for its language and specific provisions.

6. As to the allegations set forth in Paragraph 3 of the Plaintiff's Second Amended Complaint, the Defendants crave reference to Ordinance Numbers 87-6-15, 87-12-26, and 2002-8-5-11 and also admit that the amount of the Road and Bridge Maintenance Service Charge was increased to \$45 per vehicle per annum in 2019.

7. As to the allegations set forth in Paragraph 4 of the Plaintiff's Second Amended Complaint, the Defendants admit that on June 30, 2021, the South Carolina Supreme Court issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the Defendants crave reference to that opinion for its holding and the relief granted.

8. The allegations set forth in Paragraph 5 of the Plaintiff's Second Amended Complaint are denied.

9. The allegations set forth in Paragraph 6 of the Plaintiff's Second Amended Complaint present a purported characterization or description of the Plaintiff's lawsuit. The Defendants deny the Plaintiff's claims and their claims for declaratory and monetary relief.

10. The allegations set forth in Paragraph 7 of the Plaintiff's Second Amended Complaint are denied.

11. The allegations set forth in Paragraph 8 of the Plaintiff's Second Amended Complaint are denied. Further answering, the Defendants aver that S.C. Code Ann. § 8-21-30 was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

12. The allegations set forth in Paragraph 9 of the Plaintiff's Second Amended Complaint are admitted.

13. As to the allegations set forth in Paragraph 10 of the Plaintiff's Second Amended Complaint, the Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

14. The allegations set forth in Paragraphs 11 and 12 of the Plaintiff's Second Amended Complaint are admitted.

15. As to the allegations set forth in Paragraph 13 of the Plaintiff's Second Amended Complaint, the Defendants admit only that Orangeburg County Council is the governing body of Orangeburg County. Further answering, Orangeburg County Council is not a body politic separate and apart from Orangeburg County and is not subject to suit.

16. As to the allegations set forth in Paragraph 14 of the Plaintiff's Second Amended Complaint, the Defendants admit that Orangeburg County is a political subdivision of the State of South Carolina. The remaining allegations in Paragraph 14 are unclear and are denied.

17. The allegations set forth in Paragraph 15 of the Plaintiff's Second Amended Complaint are denied as stated. Further answering, the Defendants admit that in 1987, the Orangeburg County Council enacted Ordinance Number 87-8-15 to provide for a uniform Road and Bridge Maintenance Service Charge for all motorized licensed vehicles carried on the tax records of Orangeburg County. Further answering, the Defendants crave reference to Ordinance Number 87-8-15 for its language and specific provisions.

18. The allegations set forth in Paragraph 16 of the Plaintiff's Second Amended Complaint are denied as stated. Further answering, the Defendants admit that the Road and Bridge Maintenance Service Charge has increased several times since 1987, and the current Road and Bridge Maintenance Service Charge is \$45 per vehicle per annum.

19. As to the allegations set forth in Paragraph 17 of the Plaintiff's Second Amended Complaint, the Defendants admit that the Treasurer performs such administrative duties as required by state law.

20. As to the allegations set forth in Paragraph 18 of the Plaintiff's Second Amended Complaint, the Defendants admit that the County Administrator performs such administrative duties as required by the Orangeburg County Code and state law.

21. As to the allegations set forth in Paragraph 19 of the Plaintiff's Second Amended Complaint, the Defendants admit that for the Fiscal Year of 2020-2021 Orangeburg County collected approximately \$3.3 million in Road and Bridge Maintenance Service Charges.

22. The allegations set forth in Paragraph 20 of the Plaintiff's Second Amended Complaint are denied.

23. As to the allegations set forth in Paragraphs 21, 22, and 24 of the Plaintiff's Second Amended Complaint, the Defendants admit that on June 30, 2021, the South Carolina

Supreme Court ruled unanimously and issued an opinion in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), and the Defendants crave reference to that opinion for its holding and the relief granted.

24. The allegations set forth in Paragraphs 23 and 25 of the Plaintiff's Second Amended Complaint are denied.

25. As to the allegations set forth in Paragraph 26 of the Plaintiff's Second Amended Complaint, the Defendants admit that Orangeburg County continues to collect the Road and Bridge Maintenance Service Charges. Further answering, the Defendants deny that the Road and Bridge Maintenance Service Charges is illegal.

26. As to the allegations set forth in Paragraphs 27, 28, and 29 of the Plaintiff's Second Amended Complaint, the Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

27. As to the allegations set forth in Paragraph 30 of the Plaintiff's Second Amended Complaint, the Defendants admit that no refund has been paid as a result of the *Burn* decision. Further answering, the Defendants deny that the Road and Bridge Maintenance Service Charges is illegal.

28. As to the allegations set forth in Paragraph 31 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

29. The allegations set forth in Paragraphs 32 and 33 of the Plaintiff's Second Amended Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

30. The allegations as set forth in Paragraph 34 of the Plaintiff's Second Amended Complaint are denied.

31. The allegations set forth in Paragraph 35 of the Plaintiff's Second Amended Complaint are denied.

32. The allegations set forth in Paragraphs 36, 37, and 38 of the Plaintiff's Second Amended Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

33. The allegations set forth in Paragraph 39 of the Plaintiff's Second Amended Complaint pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits. Further answering, the Defendants deny any injury to any purported class members.

34. As to the allegations set forth in Paragraph 40 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

35. The allegations set forth in Paragraphs 41 through 47 of the Plaintiff's Second Amended Complaint, including subparts, pertaining to a purported class action are denied as premature, contrary to State law including S.C. Code Ann. § 12-60-80(C), and on their merits.

36. As to the allegations set forth in Paragraph 48 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

37. The allegations as set forth in Paragraph 49 of the Plaintiff's Second Amended Complaint state a legal conclusion only to which no response is required. Further answering, the

Defendants are entitled to sovereign immunity for any cause of action for quantum meruit or unjust enrichment seeking monetary relief.

38. The allegations as set forth in Paragraphs 50 through 53 of the Plaintiff's Second Amended Complaint are denied.

39. As to the allegations set forth in Paragraph 54 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein. The Defendants object to the jumbling of causes of action.

40. As to the allegations set forth in Paragraph 55 of the Plaintiff's Second Amended Complaint, the Defendants admit that the Defendant Harold M. Young is the Orangeburg County Administrator and that the Defendant Matt Stokes is the Orangeburg County Treasurer. The Defendants further admit that Orangeburg County is a political subdivision of the State of South Carolina.

41. The allegations as set forth in Paragraph 56 of the Plaintiff's Second Amended Complaint are denied.

42. The allegations as set forth in Paragraphs 57, 58, and 59 of the Plaintiff's Second Amended Complaint are denied. Further answering, the Defendants aver that the "officers" against whom a cause of action based on S.C. Code Ann. § 8-21-30 may be brought, if the cause of action is even valid, are limited to the following by S.C. Code Ann. § 8-21-10: master-in-equity, magistrate, constable, secretary of state, appraisers of homestead and commissioners in dower or partition, county auditor, clerk of court, register of deeds, deputy surveyor, and probate judge. The Defendants also aver that the Defendants Young and Stokes do not qualify as an "officer" under S.C. Code Ann. § 8-21-10. In addition, the Defendants aver that the Road and Bridge Maintenance Service Charge at issue is not one of the fees and costs prescribed by Chapter 21 of Title, 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, or Article 1 of Chapter 19 of Title 23. Finally, the Defendants aver that road and bridge maintenance is not of the "services enumerated" in Chapter 21 of Title, 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, or Article 1 of Chapter 19 of Title 23.

43. As to the allegations set forth in Paragraph 60 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein. The Defendants object to the jumbling of causes of action.

44. As to the allegations set forth in Paragraph 61 of the Plaintiff's Second Amended Complaint, the Defendants crave reference to Article I, § 3 of the South Carolina Constitution for the precise language of that constitutional provision and its application.

45. The allegations set forth in Paragraphs 62 through 65 of the Plaintiff's Second Amended Complaint are denied.

46. As to the allegations set forth in Paragraph 66 of the Plaintiff's Second Amended Complaint, the Defendants reiterate and reallege each corresponding paragraph of this Answer set forth herein.

47. The allegations set forth in Paragraphs 67 and 68 of the Plaintiff's Second Amended Complaint are denied. Further answering, the allegations as to the purported class members are also denied as premature and contrary to State law including S.C. Code Ann. § 12-60-80(C).

48. The allegations set forth in Paragraphs 69 and 70 of the Plaintiff's Second Amended Complaint are denied to the extent alleged against and relief is sought from the Defendants.

49. As to the allegations set forth in Paragraph 71 of the Plaintiff's Second Amended Complaint, the Defendants deny all allegations and relief sought in the Prayer for Relief including all subparts.

FOR A FOURTH DEFENSE

50. The Plaintiff's claims are, in whole or in part, barred as a result of the application of the statute of limitations.

FOR A FIFTH DEFENSE

51. The Plaintiff's claims are, in whole or in part, barred based upon the defense of laches.

FOR A SIXTH DEFENSE

52. The Plaintiff's claims are, in whole or in part, barred based upon the failure to exhaust all administrative remedies as provided under the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, *et seq.*, and therefore, is barred from proceeding with this action in the Circuit Court.

FOR A SEVENTH DEFENSE

53. The Plaintiff's claims are, in whole or in part, barred based upon the defense of mootness.

FOR AN EIGHTH DEFENSE

54. The Plaintiff's claims are, in whole or in part, barred by the public duty rule.

FOR A NINTH DEFENSE

55. The Defendants assert the defense of absolute sovereign immunity as to all claims for money damages, including those causes of action that are based upon principles of equity where the form of relief is monetary in nature.

FOR A TENTH DEFENSE

56. To the extent that the Plaintiff have alleged a tort claim, the Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act as well as pursuant to the common law, including but not limited to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on the recovery of attorney's fees, pre-judgment interest, and punitive damages.

FOR AN ELEVENTH DEFENSE

57. To the extent that the Plaintiff have alleged a tort claim, the Defendants are absolutely immune pursuant to S.C. Code Ann. § 15-78-50(b) of the South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE

58. To the extent that the Plaintiff have alleged a tort claim, the Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (11), (13), and (20).

FOR A THIRTEENTH DEFENSE

59. To the extent that the Plaintiff have alleged a tort claim, the Defendants Harold M. Young and Matt Stokes are entitled to absolute employee immunity under S.C. Code Ann. § 15-78-70(a).

FOR A FOURTEENTH DEFENSE

60. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

FOR A FIFTEENTH DEFENSE

61. The imposition of a penalty under S.C. Code Ann. § 8-21-30 violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 1, § 15 of the South Carolina Constitution and is contrary to the public policy of the State of South Carolina.

FOR A SIXTEENTH DEFENSE

62. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR A SEVENTEENTH DEFENSE

63. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the South Carolina Constitution.

FOR AN EIGHTEENTH DEFENSE

64. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is preempted by S.C. Code Ann. § 12-60-80(A).

FOR A NINETEENTH DEFENSE

65. The Plaintiff's attempt to bring this action as a class action is expressly barred by S.C. Code Ann. § 12-60-80(C).

FOR A TWENTIETH DEFENSE

66. The legislative actions taken by the Defendants Orangeburg County and Orangeburg County Council are fairly debatable and are therefore presumptively valid, legal, and constitutional. The decision by the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), to the extent held applicable to this action and the Road and Bridge Maintenance Service Charge enacted by Orangeburg County, would be entitled only to prospective application and effect.

FOR A TWENTY-FIRST DEFENSE

67. The Plaintiff's claims are, in whole or in part, barred by common law legislative immunity.

FOR A TWENTY-SECOND DEFENSE

68. The state law constitutional claims are barred, in whole or in part, based upon the lack of a private right of action for monetary relief as recognized in *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019).

FOR A TWENTY-THIRD DEFENSE

69. The Defendants are entitled to absolute immunity under *Long v. Seabrook* and its progeny.

FOR A TWENTY-FOURTH DEFENSE

70. The Defendant Orangeburg County Council is not a proper party. Orangeburg County Council is not a body politic separate and apart from Orangeburg County. Instead, Orangeburg County Council is the governing body of the Orangeburg County.

FOR A TWENTY-FIFTH DEFENSE

71. The Defendants Harold M. Young and Matt Stokes, who are sued in their official capacities, are the alter egos of the Orangeburg County. Thus, the suit against the Defendants Young and Stokes in their official capacities should be dismissed as duplicative.

FOR A TWENTY-SIXTH DEFENSE

72. The Plaintiff's claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiff's prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina.

FOR A TWENTY-SEVENTH DEFENSE

73. The Defendants object to the filing of the Second Amended Complaint which was filed and served without obtaining compliance with the requirements of Rule 15(a) prior to the filing, specifically either (1) that leave of court was obtained or (2) that the Plaintiff obtained written consent of all adverse parties prior to filing.

FOR A TWENTY-EIGHTH DEFENSE

74. The Defendants reserve their right to oppose the Plaintiff's request for a trial by jury.

WHEREFORE, having fully answered the Plaintiff's Second Amended Complaint, the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council pray that the Second Amended Complaint be dismissed with prejudice; for the denial of all declaratory relief; for the costs of this action; and for such other and further relief as the Court deems just and proper.

s/ Andrew F. Lindemann

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*Counsel for Defendants Harold M. Young, in his
official capacity as Orangeburg County
Administrator, Matt Stokes, in his official capacity
as Orangeburg County Treasurer, Orangeburg
County, and Orangeburg County Council*

December 28, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	Case No. 2021-CP-38-01268
Carroll Brown, individually and on	)	
behalf of all others similarly situated,	)	
	)	
<i>Plaintiff,</i>	)	PLAINTIFF'S RESPONSE
	)	IN OPPOSITION TO
v.	)	DEFENDANTS' MOTION TO DISMISS
	)	
Harold M. Young, in his official capacity	)	
as Orangeburg County Administrator;	)	
Matt Stokes, in his official capacity as	)	
Orangeburg County Treasurer;	)	
Orangeburg County; and Orangeburg	)	
County Council,	)	
	)	
<i>Defendants.</i>	)	
	)	

INTRODUCTION

Under South Carolina law, counties may charge their citizenry only ad valorem property taxes, uniform service charges, and/or service or user fees.¹ The entirety of this action deals with Orangeburg County ignoring an express directive of the South Carolina Supreme Court and continuing to collect and retain monies pursuant to an illegal \$50 “uniform service charge” (referred to herein as a “Road Maintenance Fee”).²

On June 30, 2021, the South Carolina Supreme Court announced to all counties in this state that fees, like the Road Maintenance Fee at issue, are illegal and not authorized under South

¹ See S.C. Code Ann. § 6-1-310; § 4-9-30(5)(a); *see also* S.C. Code Ann. § 6-1-330(A) (2004) (“A local governing body ... is authorized to charge and collect a service or user fee.”); S.C. Code Ann. § 6-1-300(6) (“ ‘Service or user fee’ also includes ‘uniform service charges’.”). A County may only charge additional taxes or fees where specifically authorized by statute. *See Burns v. Greenville County Council*, 433 S.C. 583, 586 (2011).

² Except for value-based property taxes, a county “may not impose a new tax ... unless specifically authorized by the General Assembly.” S.C. Code Ann. § 6-1-310.

Carolina law. See *Burns v. Greenville County Council*, 433 S.C. 583, 590 (2021) (“Going forward, courts will carefully scrutinize so-called ‘service or user fees.’”) (J. Kittredge, concurring). In *Burns*, the Supreme Court invalidated a road maintenance fee imposed by Greenville County. *Id.* at 589. There is no material difference between the Orangeburg Road Maintenance Fee and the Greenville road maintenance fee invalidated in *Burns*. Compare Compl. ¶ 15 with ¶ 23. Despite this fact, post the *Burns* decision, Defendants continue to charge their illegal Road Maintenance Fee and have failed to refund any of the illegal fees they have collected.

As a result, Plaintiff filed this suit seeking an order declaring Defendants’ Road Maintenance Fee ordinance unconstitutional, unlawful, void *ab initio*, and mandating that Defendants refund Plaintiff and putative Class Members the illegal fees they were forced to pay. Additionally, pursuant to S.C. Code Ann. § 8-21-30, Plaintiff seeks an order awarding Plaintiff and putative Class Members ten times the amount of fees illegally charged.³

FACTUAL ALLEGATIONS

A. Defendants’ Road Maintenance Fee

Defendants’ Road Maintenance Fee was originally passed by Orangeburg County Council (“County Council”) in 1987.

The Ordinance reads:

All motorized vehicles required by the state to be licensed, which are carried on the tax records of the county shall be subject to and pay, in addition to any other licensing fees and taxes, the sum of \$35.00 service charge per vehicle per annum.

Compl. ¶ 15.

³ Plaintiff’s Counsel and Defendants’ Counsel have consulted and agree to dismiss without prejudice defendants Harold M. Young, as Orangeburg County Administrator, and Orangeburg County Council. As such, any argument dealing with Harold M. Young or Orangeburg County Council will not be addressed, as they will be mooted.

Orangeburg County later raised the fee to \$50 per registered vehicle. *Id.* ¶ 16. Defendants’ \$50 fee is still in effect today. *Id.* ¶ 26. Defendant Treasurer Matt Stokes, as Treasurer of Orangeburg County, is responsible for overseeing the collection of Road Maintenance Fees at issue in this case. *Id.* ¶ 17.

B. The *Burns* Decision

On June 30, 2021, the South Carolina Supreme Court found Greenville County Ordinance No. 4906,⁴ which imposed a road maintenance fee, illegal under South Carolina law. *See id.* ¶¶ 21-24 (citing *Burns v. Greenville County Council*, 433 S.C. 583 (2021)). Greenville County Ordinance No. 4906 reads as follows:

The owners of every vehicle required to be registered and licensed in Greenville County by the South Carolina Department of Motor Vehicles shall pay annually to the Greenville County tax collector a road maintenance fee of \$25 on each such vehicle.

Addressing this Ordinance, the Court first held that this Ordinance did not impose a value based-property tax. *Burns*, 433 at 586 (“Neither ordinance imposes a value-based property tax.”). The Court’s analysis then turned to whether it qualified as “uniform service charges” under subsection 4-9-30(5)(a), or a “service or user fee” under subsection 6-1-330(A). The Court found neither applied stating:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the payer in some manner different from the members of the general public.”

. . .

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State

⁴ The *Burns* Court also invalidated Ordinance number 4907, which imposed a Telecommunications Fee, based upon the same reasoning. *See Burns*, 433 S.C. at 589-90.

law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

Like Greenville County's illegal fees in *Burns*, Defendants' imposition of an all-but-identical Road Maintenance Fee in this case is unlawful, and Defendants' continued collection and retention of those fees is an ongoing deprivation of the rights of Plaintiff and the putative Class Members. Compl. ¶¶ 63-65.

LEGAL STANDARD

In deciding a motion to dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6), the trial court should consider the allegations set forth on the face of the plaintiff's complaint. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The trial court must deny the motion to dismiss if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007); *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states a valid claim for relief, and further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004).

Under South Carolina Rule of Civil Procedure 12(b)(1), a movant challenges the court's power over the subject matter of an action. Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008). As such, "the question

of subject matter jurisdiction is a question of law for the court.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

ARGUMENT

Defendants raise seventeen grounds in their motion to dismiss. However, they may be grouped into four legal issues:

- Inapplicability of the Revenue Procedures Act. Def. Mot. Dismiss at ¶¶ 1,2, and 14.
- Availability of Unjust Enrichment. *Id.* ¶¶ 3, 13.
- Applicability of S.C. Code Ann. § 8-21-30 to the unlawful fees charged. *Id.* ¶¶ 4,5,6,7, 8, 9.
- Miscellaneous Affirmative Defenses and Inapplicable Constitutional Arguments. *Id.* ¶¶ 10, 11, 12, 15, 16, 17.

Plaintiff will address each issue in turn. In sum, however, Defendants are actively flouting a South Carolina Supreme Court directive by retaining money illegally taken from their citizenry, and nothing raised in Defendants’ motion warrants dismissal of this action.

I. The Revenue Procedures Act is Inapplicable and Does Not Bar Plaintiff’s Class Claims.

A close reading of the Revenue Procedures Act (“RPA”), most critically S.C. Code Ann. § 12-60-20 (titled “Legislative intent”), reveals the RPA applies *only* to disputes involving South Carolina Department of Revenue (“SCDOR”) or property taxes. S.C. Code Ann. § 12-60-20 (limiting RPA to “a dispute with the Department of Revenue and a dispute concerning property taxes.”). This suit does not involve SCDOR nor property taxes. Thus, the RPA does not apply.

Consequently, and contrary to assertions of the Defendants, the RPA does not deprive this Court of jurisdiction; require exhaustion of administrative remedies; or bar class wide relief. *See*

Def. Mot. to Dismiss ¶¶ 1, 2, 14.

1. The Revenue Procedures Act only applies to disputes with the SCDOR and disputes concerning property taxes.

Section 12-60-20 unambiguously sets forth the General Assembly's intent in promulgating the RPA:

It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine **a dispute with the Department of Revenue and a dispute concerning property taxes**. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (emphasis supplied).

It is well-established in South Carolina jurisprudence that the cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the General Assembly. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230 (Ct. App. 2005). Further, “[a]ll rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *Id.* at 230.

In this case, the intent of the legislature is expressly given in § 12-60-20. The statute makes clear that the RPA applies in two scenarios: **(1) disputes with the SCDOR**, and **(2) disputes concerning property taxes**. This case involves neither. *See generally* Compl. Further, a review of case law reveals that our Courts have only applied the RPA to disputes involving either the SCDOR and/or property taxes. *See e.g., B & A Development Inc. v. Georgetown County*, 372 S.C. 261, 268, 641 S.E.2d 888, 892 (2007) (dispute over property taxes); *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017) (SCDOR named Defendant); *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414 (2020) (SCDOR named Defendant).

Indeed, the South Carolina Supreme Court, in *Lightner v. Hampton Hall Club, Inc.*, recently addressed the control of § 12-60-20 on the RPA's scope. There, the Court clarified the scope based upon the language of § 12-60-20 holding:

The plain language of the statute, including the repetition of the terms “a dispute” after the term “and,” indicates the General Assembly intended to distinguish “a dispute with the Department of Revenue” from “a dispute concerning property taxes.” . . . By recognizing that the General Assembly intended to distinguish between “a dispute with the Department of Revenue” and “a dispute concerning property taxes,” **we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality.**

Lightner, 419 S.C. 357, 365 (emphasis supplied).

Plaintiff has not sued the SCDOR in any capacity, nor do Plaintiff's underlying claims concern “property taxes,” as that term is defined by the RPA. *See* S.C. Code Ann. § 12-60-30(18) (“Property tax means ad valorem taxes on real and personal property.”); *see also Burns*, 433 S.C. at 586 (“Neither ordinance imposes a value-based property tax.”). Instead, Plaintiff has sued Orangeburg County and its Treasurer (not the SCDOR) based upon their imposition of an illegal Road Maintenance Fee (not a property tax). *See generally* Compl.⁵

2. Section 12-60-80(C) does not bar Plaintiff's class claims.

As the RPA does not apply to this case, neither does the RPA's provision barring class actions in 12-60-80(C). *See* Def. Mot. to Dismiss ¶ 14.

As stated above, this is not a dispute with SCDOR, nor does it involve property taxes. *See* S.C. Code Ann. § 12-60-30(18); *see also Burns*, 433 S.C. at 586. Therefore, section 12-60-80(C), contained within the RPA, does not have any application to this case.

⁵ Plaintiff will not separately address Defendants' argument regarding exhaustion of administrative remedies. Defendants' argument regarding administrative remedies is expressly tied to the Revenue Procedures Act applying. *See* Def. Mot. to Dismiss ¶ 2. As the RPA does not apply in this case, there is no requirement that these remedies must be exhausted.

Close examination of § 12-60-80(C) further supports this position:

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

The first operative clause in § 12-60-80(C) plainly states that the prohibition against class actions for “*refund[s]*” applies only to claims involving “*taxes.*” The term “taxes” is expressly defined by the RPA:

“Tax” or “taxes” means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, *imposed by this title, or subject to assessment or collection by the department.*

S.C. Code Ann. § 12-60-30(27) (emphasis supplied).

In this case, Defendants imposed their illegal user fee under Title 6 of the South Carolina Code of Laws. See S.C. Code Ann. § 6-1-330. The fee at issue was not passed pursuant to Title 12. The only taxes the County can impose pursuant to Title 12 are *ad valorem* property taxes, of which Orangeburg County’s fee is not, as it was passed as a service or user fee. Thus, the refund sought in this case does not involve a tax, license, permit, fee, or other amount *imposed by Title 12*, nor is the charge *subject to assessment or collection by the SCDOR.* For the same reasons the RPA does not apply, § 12-60-30(C) is equally inapplicable.

Next, to the extent Defendants may argue that the final clause of § 12-60-80(C) imposes a blanket prohibition against any political subdivision being sued in any class action in the State—regardless of whether the RPA even governs the underlying claims—that argument is specious. Such an expansive reading of § 12-60-80(C) would mean that the General Assembly—in a Title of the Code named “Taxes”, and in a Chapter that applies only to disputes with the SCDOR and those concerning property taxes—intended to impose a blanket ban on *any* class action alleging

any claim of *any* nature against *any* political subdivision in the entire State. That interpretation of § 12-60-80(C) is nonsensical, and the Court should reject it summarily.

The only sensible interpretation of the final clause in § 12-60-80(C) is that the General Assembly only intended to prohibit class actions against political subdivisions *in property tax cases* that seek relief outside of a refund, *i.e.*, declaratory or injunctive relief. Nowhere has the General Assembly stated an intention to bury a sweeping prohibition in the tax laws that would bar any class action against any political subdivision regardless of whether the RPA governs the underlying claims. Indeed, the only discernable intent that the General Assembly expressed as to Article 1 in the Act that amended § 12-60-80 to add subsection (C) was:

TO AMEND ARTICLE 1, CHAPTER 60 OF TITLE 12, RELATING TO SOUTH CAROLINA REVENUE PROCEDURES ACT, SO AS TO REVISE THE MANNER IN WHICH AND CONDITIONS UNDER WHICH DISPUTES OR CLAIMS WITH THE DEPARTMENT OF REVENUE ARE DETERMINED AND RESOLVED;

Act No. 69, 2003 S.C. Acts 718, 744 (emphasis supplied).

Notably absent from the Title is any indication that the General Assembly intended to revise the manner or conditions in which counties and municipalities could be sued in cases that do not involve property tax disputes.

Moreover, our Supreme Court has previously construed the language of § 12-60-80 so narrowly that it found taxpayers, who were challenging the imposition of excess interest on the redemption of defaulted property taxes, could not bring an action before the administrative law court pursuant to the RPA, but instead had to pursue their claims in circuit court under the Alternate Procedures Act. *See Buist v. Huggins*, 367 S.C. 268, 274 (2006) (“The circuit court in this case, as well as the Court of Appeals, found that Petitioners’ claims did not involve a challenge to a property tax assessment but, rather, a claim for a refund of interest paid to the Delinquent Tax

Collector, and that the only provisions governing redemption of property sold at a delinquent tax sale were found in ... the Alternate Procedures Act, requiring suit to be brought in the circuit court. We agree.”).

Like the Supreme Court in *Buist*, this Court must construe § 12-60-80 narrowly in accordance with the General Assembly’s expressed intent as defined in § 12-60-20. In doing so, the Court should reject Defendants’ invitation to abdicate Rule 23, SCRCP, and impose a blanket ban on any class action being maintained against any political subdivision regardless of whether the RPA governs the underlying claims.

II. Sovereign Immunity Does Not Bar Plaintiffs Claims for Unjust Enrichment.

Defendants make a blanket assertion that sovereign immunity bars any claim of unjust enrichment in this case. Such an assertion is not supported by South Carolina law.

In 1985, the South Carolina Supreme Court abolished the common law doctrine of sovereign immunity when it declared that “[s]overeign immunity can no longer be tolerated in this State.” *McCall v. Batson*, 285 S.C. 243, 246 (1985). The *McCall* opinion also made clear that it “expressly overrule[d] all previous decisions of [the] Court which uphold sovereign immunity.” *Id.* at 247. Shortly after *McCall* was decided, the General Assembly promulgated the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the “TCA”), which “granted” the government qualified immunity for tortious conduct prospectively, S.C. Code Ann. § 15-78-20(b), “reinstated” sovereign immunity for uninsured tort claims that accrued before the TCA was enacted, *id.* at § 20(c), and established 40 exceptions to the government’s newfound tort liability. *Id.* at § 60. By contrast, the General Assembly has not passed any law after *McCall* that “granted” or “reinstated” sovereign immunity as to equitable claims, such as unjust enrichment.

Unjust enrichment is an equitable claim, the remedy for which is restitution.⁶ *See Inglese v. Beal*, 403 S.C. 290, 297 (Ct. App. 2013). Here, Plaintiff seeks to be restored the value of the illegal fees she remitted to Defendants, plus interest. Compl. ¶ 56. After *McCall*, this claim is not barred because any immunity Defendants might have enjoyed from equitable claims prior to 1985 was expressly abrogated by the Supreme Court. *See McCall*, 285 S.C. at 247. And to the extent sovereign immunity barred equitable claims against governments prior to 1985, such immunity has never been “reinstated” by the General Assembly, be it through the Tort Claims Act or any other duly enacted legislation. S.C. Code Ann. § 15-78-20(c)(i). As a result, the now-abrogated common law doctrine of sovereign immunity does not bar Plaintiff’s claim against Defendants for unjust enrichment.

III. S.C. Code Ann. § 8-21-30 Applies to This Suit.

Section 8-21-30 provides an individual who has been charged an unauthorized fee by public officer a remedy in circuit court for ten times the illegal fee charged. 7 S.C. Jur. Costs § 52 (explaining liability for excessive charges under § 8-21-30). When addressing the application of § 8-21-30, this Court must strictly construe it against the sovereign charging the fee. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324, 326 (1941) (“Fee statutes must be strictly construed.”); The Honorable Glenn G. Reese, 2011 WL 5304079, at *1 (S.C.A.G Oct. 11, 2011) (“Our 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.”).

⁶ South Carolina Courts permit claims for unjust enrichment to proceed against the State, the State’s political subdivisions, and its agencies. *See e.g., Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep’t*, 270 S.C. 413, 242 S.E.2d 656 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014); *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

Under South Carolina law, a fee is illegally charged unless it is authorized by statute. *See* S.C. Code Ann. § 8-21-15(A). Plaintiff has more than adequately alleged the fee at issue was not authorized by law, *e.g.*, Compl. ¶¶ 16-20, 70(B), and the recourse for addressing such an illegal fee is found in section 8-21-30:

Liability for ten times fee illegally charged.

If any officer herein named 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. § 8-21-30.

In this case, an officer, Treasurer Stokes,⁷ charged and collected an illegal fee, the Road Maintenance Fee, and Plaintiff has brought suit in the Court of Common Pleas for ten times the amount illegally charged. This is the exact scenario for which § 8-21-30 applies, and Defendants have provided no supportable argument to the contrary.

1. County Treasurers are Officers for Purposes of S.C. Code Ann. § 8-21-30.

Defendants' first argument contends that a County Treasurer does not qualify as an "officer" under S.C. Code Ann. § 8-21-10, this argument is easily disposed with.

Title 8 of the South Carolina Code applies to Public Officers and Employees, and Chapter 21 of Title 8, deals with Fees and Costs generally.⁸ Section 8-21-20 contained within Article 1 of Chapter 21 articulates as to which officers it applies:

⁷ Plaintiffs have agreed with Defendants to dismiss without prejudice the County Administrator Harold M. Young. Thus, any argument regarding § 8-21-30's applicability as to the Orangeburg County Administrator is moot.

⁸ Title 8 is titled "Public Officers and Employees" and Chapter 21 is titled "Fees and Costs Generally."

The several officers **named in this chapter** . . . shall be entitled to receive and recover the fees and costs prescribed by this chapter . . . and none other, for the services herein enumerated.

S.C. Code Ann. § 8-21-20.

Looking to Chapter 21, County Treasurers are indeed named in the chapter. *See e.g.*, S.C. Code Ann. § 8-21-310(A) – (C) (“Except as otherwise expressly provided, the clerks of court, registers of deeds, or **county treasurers**, shall collect the following uniform filing fees”) (“Except as otherwise expressly provided, the clerks of court, registers of deeds, or **county treasurers**, as may be determined by the governing body of a county, shall collect a uniform filing fee of ten dollars”) (Except as otherwise expressly provided, the clerks of court or **county treasurers**, as may be determined by the governing body of the county, shall [collect various fees listed]) (emphasis supplied); *see also* § 8-21-1040; and *see* § 8-21-760. As County Treasurers are one of “[t]he several officers named in [Chapter 21],” Defendants’ first argument regarding § 8-21-30 fails outright.

2. **Section 8-21-30 Applies to Fees Not Authorized by Law.**

Defendants next assert two similar arguments to contend that § 8-21-30 does not apply. First, they argue that “road maintenance” is not an enumerated service under § 8-21-10, and second, the fee is not one prescribed in Chapter 21 of Title 8. The argument being § 8-21-30 will only apply to fees enumerated in Chapter 21 and for services rendered in Chapter 21. Such a limited construction violates the general rule regarding construction of fee statutes, creates an absurd result, and is inconsistent with prior constructions of § 8-21-30. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941).

Defendants’ argument requires one to read § 8-21-30 as only applying to situations involving over charges for an authorized fee. This is a bizarre construction resulting in a severe

limitation of the statute in favor of the officer, when the rules of construction require the opposite. *See State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324, 326 (1941).

Indeed, Defendants' reading results in an absurd scenario where an official who overcharges an authorized fee by one dollar is subject to liability; yet, the same officer would avoid all liability for charging a \$100 fee wholly unauthorized by law in the first place. Such an unauthorized fee would not be enumerated in Chapter 21. Thus, under Defendants' reading, section 8-21-30 would not apply. Such a reading cannot stand as it creates an absurd result to the benefit of the charging official, violating two tenets of statutory construction. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("goal of statutory construction . . . to prevent an interpretation that would lead to a result that is plainly absurd."); *Wilder supra*.

Moreover, sections in Article 1 of Chapter 21 (the location of § 8-21-30) contemplate prohibitions of any fee "unless authorized by statute" not just those enumerated in Chapter 21.⁹ *See* S.C. Code Ann. § 8-21-15. Additionally, Defendants' arguments ignore the fact that § 8-21-10 and § 8-21-15 make clear that only those fees which are authorized by Chapter 21 or other statute are recoverable. *See* S.C. Code Ann. § 8-21-10 (Title reading "Only fees and costs prescribed are recoverable"; § 8-21-15 ("No state agency, department, board, committee, commission, or authority initially may set a fee for performing any duty. . .unless authorized by statute. . ."). Applying the inverse, fees not expressly prescribed by Chapter 21 or another statutory provision are unauthorized and prohibited, and an officer charging them will be subject to liability under § 8-21-30.

⁹ There are other Titles and Chapters mentioned in this statute, however for the sake of simplicity, wherein this motion references "enumerated in Chapter 21," should be read to include all Titles and Chapters discussed in § 8-21-20.

While there is limited case law applying § 8-21-30,¹⁰ the Attorney General has rendered opinions supporting Plaintiff's construction that § 8-21-30 will apply to fees and services not enumerated in Chapter 21. By way of example, in addressing Senator Reese's inquiry regarding whether a Sheriff may charge for drug sniffing dogs in a school, the Attorney General cited to § 8-21-30 as creating liability for such charges, stating:

[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." *State et al. v. Wilder*, 198 S.C. 390, 394, 18 S.E.2d 324 (1941). In other words, "statutes providing for fees are to be strictly construed against allowing a fee by implication with respect to both the fixing of the fee and the officer entitled thereto." 67 C.J.S. Officers, § 224. Governing the fees and costs of public officers generally, South Carolina Code of Laws Section 8-21-10 states, "The several officers named in ... Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter ... and Article 1 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...."**

The Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011) (emphasis supplied).¹¹

If this statutory scheme applies to restrict the sheriff's office from charging a fee for drug-sniffing dogs, despite there being no mention of drug-sniffing dogs anywhere in Chapter 21 of Title 8, the scheme would equally apply wherein a County Treasurer charges an illegal Road Maintenance Fee. As this opinion shows, it is not the authorization in Chapter 21 that triggers potential liability under § 8-21-30, but the lack of authorization in the first place, something both an illegal "drug sniffing" dog fee and an illegal Road Maintenance fee share.

¹⁰See *Dean v. Todd*, 49 S.C. 461, 27 S.E.2d 471 (1897); and *Tinsley v. Kirby*, 8 S.C. 113 (1877).

¹¹ See also Thomas W. Holland, Sr., Esquire, 2011 WL 1444710 (S.C.A.G 2011); Office of the Attorney General, State of South Carolina, 1985 S.C. Op. Atty Gen No. 85-103, 1985 WL 166073 (Sept. 18, 1985).

3. S.C. Code Ann. § 8-21-30 Has Not Been Implicitly Repealed.

At the outset, repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. *See Butler v. Unisun Ins. Co.*, 323 S.C. 402, 475 S.E.2d 758 (1996). Further, the enactment of a general statute (the TCA) does not repeal an earlier more specific statute (§ 8-21-30). *See City of Rock Hill v. S.C. Dep't of Health & Env't Control*, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990). The TCA did not address situations in which an officer charges an unauthorized fee. Here, we have a general statute (the TCA) which does not address the specific situation at issue in § 8-21-30, nor does it directly conflict with §8-21-30. Therefore, the TCA does not implicitly repeal the § 8-21-30.¹²

Additionally, Plaintiff's cause of action for violations of § 8-21-30 seeks to recover only what is authorized by the plain language of the statute itself—"liability for ten times [the] fee illegally charged." S.C. Code Ann. § 8-21-30. This claim seeks to recover damages which are expressly authorized by a statute ***that specifically contemplates governmental officer liability***. Thus, the doctrine of sovereign immunity clearly, and thereby the TCA, do not bar Plaintiff's statutory claims under § 8-21-30. *See McCall*, 285 S.C. at 246.

Finally, the Attorney General Opinions referenced *supra*, applying § 8-21-30, were issued well after the passage of the TCA and did not reference nor contemplate any repeal. To the contrary, they were cited as a deterrence for a county level officer (Sherriff) from charging an

¹² For these same reasons and the reasons stated above regarding the inapplicability of the RPA, Section 8-21-30 is not "preempted" by the RPA's subsection found at § 12-60-80(A). Def. Mot. to Dismiss at ¶ 9.

illegal fee. Had it been repealed by the enactment of the TCA, the TCA—and not § 8-21-30—presumably would have been cited.

In sum, Defendant cannot make the showing to warrant this Court repealing by implication § 8-21-30.¹³

IV. Excessive Fines, Equal Protection, and Due Process Not Implicated.

Plaintiff is at a loss as to how any of these constitutional doctrines would apply to the case at bar. Plaintiff, a citizen, is bringing suit against a political subdivision of the state and a public officer based upon law passed by the General Assembly. There is simply no basis that these constitutional doctrines, which provide rights to the *citizenry*, would bar suit in this matter. Thus, Defendants' arguments regarding such should be rejected outright. *See* Def. Mot. to Dismiss ¶¶ 6, 7, 8.

V. Plaintiff Sufficiently Alleged the Road Maintenance Fee's Illegality under S.C. Code Ann. § 6-1-300.

In its tenth ground for dismissal, Defendants allege that the Orangeburg Road Maintenance Fee is presumptively valid, and Plaintiff has not alleged that the Road Maintenance Fee violates S.C. Code Ann. § 6-1-300. *See* Def. Mot. Dismiss ¶ 10. Respectfully, this ignores the fact that Plaintiff cites to the language in *Burns* invalidating an almost identical provision for failing to comply with § 6-1-300. *See* Compl. ¶¶ 23-26; *Burns*, 433 S.C. at 587. Thus, Plaintiff has more than met his burden at this pleading stage.¹⁴

¹³ In addition, novel issues of law should not be decided on a motion to dismiss. *See Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

¹⁴ Plaintiff will not address Defendants' Statute of Limitations and Laches Defenses. *See* Def. Mot. to Dismiss ¶¶ 11, 12. Plaintiff has plead claims well within any applicable statute of limitations

VI. Plaintiffs do not Ask for Monetary Relief Based Upon a Violation of Due Process.

Defendants mischaracterize Plaintiff's cause of action for violation of due process, as that claim does not seek monetary relief at all. Rather, Plaintiff's due process claim requests "that judgment be entered against Defendants finding that they deprived Plaintiff and the Class of rights secured by the laws of South Carolina." Compl. ¶ 71(f). For these reasons, the Court should not dismiss Plaintiff's due process claim or her prayer for monetary relief.¹⁵

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests this Court deny Defendants' Motion to dismiss.

and has in no way slept on her rights, as Plaintiff's complaint was filed shortly after the decision in *Burns* invalidating the Road Maintenance Fee at issue.

¹⁵ Plaintiff will not address Defendant's seventeenth alleged ground for dismissal. The argument deals solely with duplicative federal claims brought under 18 U.S.C. § 1983. *See Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004); Def. Mot. Dismiss ¶ 17. This is not a § 1983 suit. To the contrary, this suit brings a cause of action pursuant to § 8-21-30 wherein the General Assembly contemplated specific liability for a public officer who charges an illegal fee. As such, any allegation suggesting a duplicative claim is a non-issue.

Respectfully submitted,

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Dated: January 28, 2022
Columbia, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
Carroll Brown, individually and on behalf	)	
of all others similarly situated,	)	Civil Action No. 2021-CP-38-1268
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS AND MOTION
	)	FOR JUDGMENT ON THE PLEADINGS
Harold M. Young, in his official capacity	)	
as Orangeburg County Administrator;	)	
Matt Stokes, in his official capacity as	)	
Orangeburg County Treasurer; Orangeburg	)	
County; and Orangeburg County Council,	)	
	)	
Defendants.	)	
_____	)	

The Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator; Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council, respectfully submit this Memorandum in Support of their Motion to Dismiss the Complaint and Motion for Judgment on the Pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c) of the South Carolina Rules of Civil Procedure as follows:

BACKGROUND

The Plaintiff brings his lawsuit seeking to certify a class of similarly situated people to challenge the alleged wrongful collection of Orangeburg County's Road and Bridge

Maintenance Service Charge¹ that was imposed by ordinance in 1987 and has continued uninterrupted for each year since.

The Plaintiff alleges that since another local government in South Carolina, Greenville County, recently had its road maintenance fee (along with a fee imposed separately in connection with telecommunication services) invalidated by the South Carolina Supreme Court, Orangeburg County, and presumably every other county and municipality in South Carolina that also imposes a road maintenance fee, also should have their adopting ordinances declared invalid, apparently irrespective of the contents of their ordinances, and, critically, the legislative histories and circumstances in which they were adopted.

In making his argument, the Plaintiff cites the same statute, S.C. Code Ann. § 8-21-30 repeatedly, S.C. Const. art. I, § 3 (which affirms the principle of due process of law), and *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), a fact-specific case in which the South Carolina Supreme Court criticized one county governing body for failing to establish a sufficient record in the lower court regarding the effects of the Greenville ordinances.

LEGAL ANALYSIS

I. Claims for the alleged illegal or wrongful collection of taxes, or the alleged attempted illegal or wrongful collection of taxes, are exclusively heard pursuant to the South Carolina Revenue Procedures Act, which entails no circuit court review.

The Plaintiff contends that since Greenville County's road maintenance fee was determined not to be a uniform service charge based on the record in the case of *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), all road maintenance fees

¹ S.C. Code Ann. § 6-1-300(6) provides that the term, "[s]ervice or user fee" also includes "uniform service charges."

adopted by any other county and municipality in South Carolina also must be invalid, even though *Burns* is limited solely to Greenville County.

In delivering the Court's opinion in *Burns*, Justice Few noted:

The plaintiffs—three members of the South Carolina General Assembly—claim the two charges are taxes² and, therefore, violate Section 6-1-310 of the South Carolina Code (2004). We agree. We declare the road maintenance and telecommunications taxes are invalid under South Carolina law.

The plaintiffs filed this lawsuit to challenge the validity of the ordinances on several grounds, including their claim the ordinances impose a tax and not a permissible fee. (Emphasis supplied herein).

Indeed, the Court's entire focus is on taxes:

South Carolina law permits counties "to . . . levy ad valorem property taxes and uniform service charges." S.C. Code Ann. Section 4-9-30(5)(a) (2021); see also S.C. Code Ann. Section 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. Section 6-1-300(6) (2004) ("Service or user fee' also includes 'uniform service charges'").

Except for value-based property **taxes**, a county "may not impose a new tax . . . unless specifically authorized by the General Assembly." Section 6-1-310. Neither ordinance imposes a value-based property **tax**, and the General Assembly has not authorized Greenville County to impose **any other new taxes**. Therefore, unless the charges in the ordinances are "uniform service charges" under subsection **4-9-30(5)(a)** or a "service or user fee" under subsection **6-1-330(A)**, the charges imposed pursuant to the ordinances are invalid under State law.

The Supreme Court makes no mention of the invalidity of Greenville County's fees under Title 8, Chapter 21,³ but instead discusses their shortcomings *vis-à-vis* S.C. Code Ann. § 4-9-

² At issue in *Burns* were Greenville County's road maintenance fee as well as its telecommunications fee.

³ The Plaintiff bases his case on S.C. Code Ann. § 8-21-30, a portion of Title 8,

30(5)(a) and § 6-1-330(A), and that, specifically, Greenville County's failure to comply with § 6-1-330(A) makes its fees taxes.

The Supreme Court went on in *Burns* to provide:

In 1992, this Court addressed the question of what is a "uniform service charge authorized under [Section] 4-9-30," and in particular, whether a "road maintenance fee" imposed by Horry County was "a service charge or a tax." *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992). We later explained, summarizing our extensive analysis in *Brown*, Under *Brown*, 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. *C.R. Campbell Const. Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68).

The Supreme Court issued its decision in *Brown* in 1992. Orangeburg County adopted its road maintenance fee five years before the Court articulated the *Brown* criteria, and 34 years before *Burns*. Ten years after Orangeburg County adopted its road maintenance fee ordinance, the legislature amended a statute dealing with service or user fees. The *Burns* Court, citing that occurrence, noted:

In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "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." 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). Our analysis of the two ordinances at issue in this case begins and ends with subsection 6-1-300(6). (Emphasis supplied herein).

Chapter 21, "Fees and Costs Generally," which has no applicability to road maintenance fees.

It is impossible to read the Court's last sentence, above, and find any evidence that Title 8, Chapter 21, ever entered its mind regarding a uniform service charge adopted under Home Rule (Title 4) and validated or invalidated pursuant to Title 6. In fact, the Court makes clear that its analysis involves nothing but S.C. Code Ann. § 6-1-300(6):

Greenville County Ordinances 4906 and 4907 purport to impose a "uniform service charge" on those who are required to pay it. **We find the charges are taxes.** (Emphasis supplied herein).

In his concurring opinion, Justice Kittredge, joined by Chief Justice Beatty, wrote that:

“...this Court in recent years has received an increasing number of challenges to purported ‘service or user fees.’ Local governments, for obvious reasons, want to avoid calling a tax a tax. I am hopeful that today's decision will deter the politically expedient penchant for imposing **taxes disguised as ‘service or user fees.’** I believe today's decision sends a clear message that the courts **will not uphold taxes masquerading as ‘service or user fees.’** Going forward, courts will carefully scrutinize so-called ‘service or user fees’ to ensure compliance with Section 6-1-300(6).”

The Plaintiff never categorizes Orangeburg County's Road and Bridge Maintenance Service Charge as a “tax,” even though the Supreme Court's finding that the fees at issue were taxes is the holding in *Burns*. *Burns*, the case Plaintiff contends is dispositive as to Orangeburg County's Road and Bridge Maintenance Service Charge, deals with the wrongful collection and attempt to collect **taxes**. Circuit Courts in South Carolina, however, lack subject matter jurisdiction to hear any claim of wrongful collection of taxes or of the attempted wrongful collection of taxes.

In *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004), the South Carolina Supreme Court held:

In 1995 the General Assembly adopted the South Carolina Revenue Procedures Act (the Act) “to provide the people of this State with a straight forward procedure to determine any disputed revenue liability.” S.C. Code Ann. Section 12-60-20 (2000).

Section 12-60-80 (Supp. 2003) of the Act provides:

Section 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) **Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.**

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons. (Emphasis supplied herein).

602 S.E.2d at 42. (Emphasis added). The Plaintiff has not challenged the constitutionality of any South Carolina statute.

The cardinal rule of statutory interpretation is to determine and effectuate the legislature's intent. *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Env'tl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). Ascertaining the legislature's intent begins by determining whether the statute's meaning is clear on its face. *Eagle Container Co., L.L.C. v. County of Newberry*, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct. App. 2005). Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

In *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136, 141 (Ct. App. 2009), the Court of Appeals opined:

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution and the laws of the state. *Duckett v. Goforth*, 374 S.C. 446, 456, 649 S.E.2d 72, 77 (Ct. App. 2007). Issues involving subject matter jurisdiction may be raised at any time, including on

appeal. *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2 (2007).

The Supreme Court in *Dema* held:

South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, Page 121 § 11. In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. *See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001) (examining the language of the statute to determine the legislative intent regarding exclusive jurisdiction). *Id.* at 120.

S.C. Code Ann. § 12-60-80 is a clear and unambiguous law that requires no statutory construction and should be applied by the court according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). Since the Plaintiff has not challenged the constitutionality of any statute, there is no remedy available to him for the alleged wrongful or attempted wrongful collection of taxes, as *Burns* involved, other than that prescribed in Title 12, Chapter 60 of the South Carolina Code of Laws. Those remedies do not include circuit court relief.

Rather, the Legislature has devised a jurisdictional scheme for review that is exclusive to those entities set forth in the Revenue Procedures Act. *See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001). Judicial review of a final decision of an administrative law judge is available pursuant to S.C. Code Ann. § 1-23-610, with the notice of appeal served and filed with the court of appeals. There is no circuit court role in the judicial review process of a tax challenge under South Carolina law for cases that do not involve the constitutionality of a statute. This case does not involve the constitutionality of any statute. Therefore, this Court does not have jurisdiction

to hear the Plaintiff's claims. S.C. Code Ann. § 12-60-80.

The appellate courts have consistently affirmed the exclusivity of the remedies prescribed in the RPA. In *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct. App. 2004), the Court of Appeals held:

Taxpayers first argue the RPA (Revenue Procedures Act) does not apply to their cause of action for illegal taxation against the County. We disagree.

The RPA prescribes the procedures for resolving claims for the wrongful collection of taxes in our state. The language of its operative provisions signals the Act's broad and comprehensive application. Specifically, Section 12-60-80 of the RPA provides "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. Section 12-60-80(A) (Supp. 2003) (emphasis added). The only exception to this mandate is for "action[s] for a declaratory judgment where the sole issue is whether a statute is constitutional." Section 12-60-80(B); see also *Evans v. State*, 344 S.C. 60, 543 S.E.2d 547, 550 (2001) ("Recognizing the separation of powers doctrine prohibits an agency and ALJ from ruling on the constitutionality of a statute, [the court] concluded Section 12-60-3390 was inapplicable `where the sole issue [was] whether a statute or other legislative action is constitutional.'" (quoting *Ward v. State*, 343 S.C. 14, 20, 538 S.E.2d 245, 248 (2000)). *Id.* at 456. (Emphasis in original).

The Court in *B & A Development* further held:

The (Revenue Procedures) Act provides that a taxpayer may contest real property taxes assessed by the county assessor by filing a claim for refund with the assessor and provides a right of appeal to the Administrative Law Judge Division. S.C. Code Ann. Section 12-60-2560 (2000). The same basic procedures for taxpayers contesting a county's personal property tax assessment are also provided for under the RPA. See S.C. Code Ann. Section 12-60-2940 (2000).

Our supreme court further clarified the scope of the administrative remedies available to taxpayers under the RPA in *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004). In that case, the plaintiff taxpayers brought an action in circuit court alleging Charleston County levied an

excessive millage rate on real property. The circuit court allowed the taxpayers' judicial action, finding the taxpayers had no administrative remedies under the RPA because the Act did not cover taxpayer challenges to the county's millage rate determination. The circuit court concluded the RPA's mandated administrative remedies only applied to taxpayer challenges to a county's "property tax assessment" (PTA). Because the taxpayers in Brackenbrook did not dispute any component of their PTA, the circuit court held the taxpayers had an immediate right of judicial action. The supreme court reversed, holding that:

While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests. Section 12-60-2530(A) specifically provides the board of assessment appeals may rule on any PTA dispute "and also other relevant claims of a legal or factual nature except claims relating to property tax exemptions."

Looking first to the Act, as we must, we hold that Taxpayers' remedy is not this direct circuit court refund suit, but rather an administrative refund pursuant to Section 12-60-2560. *Id.* at 398, 399, 602 S.E.2d at 44 (footnote omitted). As interpreted by our supreme court, therefore, the RPA's administrative procedures and remedies are not limited to a narrow class of taxpayer suits. Rather, the Act's provisions are sufficiently expansive to include any "relevant claims of a legal or factual nature." The RPA therefore vests county administrative bodies with jurisdiction to hear and decide in the first instance a broad range of taxpayer suits.

Accordingly, Section 12-43-285 does not supplant the remedial scheme of the RPA. Had the Legislature intended to allow for direct action in circuit court -- in contravention of the broadly defined scope of the RPA -- it could have expressly provided for such immediate judicial review. *Id.* at 459. (Emphasis supplied herein).

II. There is no cause of action for recovery of an alleged illegal collection of a road maintenance fee pursuant to Title 8, Chapter 21 of the South Carolina Code of Laws.

In relying exclusively on S.C. Code Ann. § 8-21-30, the Plaintiff skips entirely past the substance of the Chapter in which that section appears and moves straight to the penalties

provision without ever explaining how it is triggered.

S.C. Code Ann. § 8-21-30 provides:

If any officer herein named 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.

Nowhere in his Complaint does the Plaintiff mention any other section in Title 8, Chapter 21 except for its penalties provision. Indeed, from the outset of the Chapter, S.C. Code Ann. § 8-21-10 provides:

The several officers named in this chapter, 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, shall be entitled to receive and recover the fees and costs prescribed by this chapter, 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, **and none other**, for the services herein enumerated. (Emphasis supplied herein).

The “officers named” in Title 8, Chapter 21 as providing services do not include county council members or counties, and there is no mention of county administrators anywhere in the statute.

Article 3 of Chapter 11 of Title 14 deals with Masters-in-Equity, so that portion of State law also is irrelevant to all of the Orangeburg County Defendants. There is no “Chapter 19 of Title 14” in the South Carolina Code of Laws. There is no “Article 7 of Chapter 23 of Title 14” in the Code. There is no “Chapter 19 of Title 19” in the Code. Chapter 7 of Title 22 pertains to magistrates. Article 3 of Chapter 9 of Title 22 consists of one section, entitled, “Deduction of certain payments to others from constable’s salary.” But clearly no Defendant is a master-in-equity, or a magistrate, or a constable.

Therefore, based on the prescriptions of § 8-21-10 alone, the Plaintiff’s Complaint should

be dismissed as to Defendant Young, in his official capacity as a county administrator because county administrators are nowhere named in Title 8, Chapter 21. The same analysis applies to justify dismissal of the Orangeburg County Council and Orangeburg County which are nowhere listed in the statute.

S.C. Code Ann. § 8-21-10 contains this further critical limitation:

The several officers named in this chapter, 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, shall be entitled to receive and recover the fees and costs prescribed by this chapter, 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, and none other, **for the services herein enumerated**. (Emphasis supplied herein).

Road maintenance fees are not among the “services enumerated” in Title 8, Chapter 21. The “services enumerated,” aptly named, “Fees and Costs *Generally*,” pertain to a finite set of specific fees that may be charged by clerks of court, magistrates, the Secretary of State, appraisers of homestead and commissioners in dower or partition, county auditors, notaries public, deputy surveyors, registers of deeds, clerks of common pleas and family courts, magistrates, and mileage recouped by constables.

None of the Defendants has been sued in his, her, or its capacity, as a clerk of court, a magistrate, the Secretary of State, an appraiser of homestead or a commissioner in dower or partition, a county auditor, a notary public, a deputy surveyor, a register of deeds, a clerk of common pleas or family court, or a constable. County treasurers are mentioned in Title 8, Chapter 21, but only in connection with their authorized collection of uniform fees pursuant to S.C. Code Ann. § 8-21-310(A) (emphasis supplied herein) of:

- (1) fifteen dollars for a deed to real estate; and

- (2) twenty-five dollars for the following documents:
- (a) a mortgage;
 - (b) a land sale installment contract;
 - (c) a real estate sales contract;
 - (d) any document required to be recorded pursuant to the Uniform Commercial Code;
 - (e) a plat or survey not part of or attached to another document to be recorded;
 - (f) a lease for real estate;
 - (g) an order for partition of real estate;
 - (h) an easement agreement or other document affecting title or possession of real property not otherwise provided for in this Section;
 - (i) a power of attorney;
 - (j) a notice of a mechanic's lien; or
 - (k) any other document affecting a title or the possession of real estate that is required by law to be recorded or filed, except judicial records, including restrictive covenants, bylaws, and amendments to restrictive covenants and bylaws; and
- (B) Except as otherwise expressly provided, the clerks of court, registers of deeds, or county treasurers, as may be determined by the governing body of a county, shall collect a uniform filing fee of ten dollars, unless otherwise stated, for the following documents or actions:
- (1) a revocation of power of attorney . . .
 - (2) an assignment of leases and rents or the cancellation or release of an assignment of leases and rents;
 - (3) separate probates, acknowledgements, affidavits, or certificates that are not part of or attached to another document to be recorded;
 - (4) a mortgage satisfaction or release, including a partial release or entry in a

public record;

- (5) the recording of an instrument that assigns, transfers, or affects a single real estate mortgage or other instrument affecting a title to real property or a lien for the payment of money, . . .
 - (6) taking and filing bond or security costs;
 - (7) filing a trustee qualification, memorandum of trust, or certification of trust;
 - (8) filing a notice of meter conservation charge;
 - (9) the filing, enrolling, satisfaction, or expungement of state or federal liens...
 - (10) the filing or recording of any commission of a notary public or other public office or any license or permit to practice a profession or trade required to be filed in the county where the individual permanently resides;
 - (11) the filing of the charter of any public or private corporation or association;
 - (12) the filing or recording of the dissolution of any partnership or corporate document;
 - (13) the filing and enrolling of a judgment by confession;
 - (14) the taking and filing of an order for bail with or without bond;
 - (15) the filing of a notice of discharge in bankruptcy;
 - (16) the filing, recording, and indexing of a lis pendens;
 - (17) the recording of a release or discharge of a mechanic's lien, or notice of pendency of an action of suit to enforce a mechanic's lien; or
 - (18) the filing of a document relating to a title of an interest in a vacation time sharing plan organized under Chapter 32, Title 27...; and
- (C) Except as otherwise expressly provided, the clerks of court or county treasurers, as may be determined by the governing body of the county, shall:
- (1) in addition to the fee imposed by Section 14-1-204(B)(1), collect one hundred dollars for filing a first complaint or petition, including an application for a remedial and prerogative writ and bond in a civil action

or proceeding...

- (2) collect one hundred dollars for filing, indexing, enrolling, and entering a foreign judgment and an affidavit;
- (3) collect an amount set by the Chief Justice of the South Carolina Supreme Court for filing court documents by electronic means from an integrated electronic filing or e-filing system owned and operated by the South Carolina Judicial Department...;
- (4) collect thirty-five dollars for filing and processing an order for the Destruction of Arrest Records...;
- (5) collect thirty-five dollars for receiving and enrolling transcripts of judgment from magistrate courts and federal district courts;
- (6) collect ten dollars for taking and filing an order for bail;
- (7) collect ten dollars for taking and filing bond or security costs;
- (8) collect ten dollars for issuing an official certificate under the seal of the court not otherwise specified in this Section; or
- (9) collect fifteen dollars as set forth in Section 29-5-23 for a Notice of Project Commencement.

Importantly, none of the “enumerated services” in Title 8, Chapter 21 involves road maintenance. In fact, that portion of the South Carolina Code of Laws makes no mention of “roads” or “maintenance” or “road maintenance” or anything having to do with that activity. As road maintenance is not a service governed by S.C. Code Ann. § 8-21-10, or by any section in Title 8, Chapter 21, that portion of State law is irrelevant to road maintenance fees. The Plaintiff’s Complaint should be dismissed as based on a statute that does not regulate the activity they complain of, and that has no bearing on Orangeburg County’s road maintenance fee.

Additionally, S.C. Code Ann. § 8-21-15 provides in relevant part:

- (A) 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 except as provided in this §.
(Emphasis supplied herein).

No Orangeburg County Defendant, however, is a “state agency, department, board, committee, commission, or authority.” The Defendant Young is a county administrator. He is not a state officer but is instead a county officer whose office, duties, and responsibilities are set forth in Title 4, Chapter 9, Article 7, “Council-Administrator Form of County Government.” The Defendant Stokes also is not a state officer but is an elected county officer and is so designated throughout State law, including, *inter alia*, in S.C. Code Ann. § 8-15-65, which provides:

- (A) The General Assembly shall appropriate annually salary supplements for **the following county officers**:
- (1) clerks of court;
 - (2) probate judges;
 - (3) sheriffs;
 - (4) registers of deeds;
 - (5) auditors;
 - (6) **treasurers**. (Emphasis supplied herein)

S.C. Code Ann. § 4-9-60 provides:

Under the council, council-supervisor and council-administrator forms of government provided for in this chapter the county treasurer and the county auditor shall be elected. (Emphasis supplied herein).

S.C. Code Ann. § 4-11-10 further provides:

The time for the commencement of the terms of office **of the various county officers** is the first Tuesday in January next after their election, except that the terms of the county auditors and **county treasurers** shall commence the first day of July next following their election. Nothing in this section applies to those officers who are appointed by the Governor...” (Emphasis supplied herein).

Moreover, no Orangeburg County Defendant is appointed by the Governor. Orangeburg County operates under the “council-administrator” form (“Form No. 3”) of government pursuant

to S.C. Code Ann. § 4-9-10(b). S.C. Code Ann. § 4-9-610 provides:

The council in those counties adopting the council-administrator form of government provided for in this article shall consist of not less than three nor more than twelve members who are qualified electors of the county. Council members shall be elected in the general election for terms of two or four years commencing on the first of January next following their election...

The Defendant Orangeburg County Council is comprised of local officials whose elections are prescribed in S.C. Code Ann. § 4-9-90:

Council members must be elected from defined single-member election districts unless otherwise determined under the provisions of subsection (a), (b), or (c) of Section 4-9-10 or under the provisions of any plan ordered by a court of competent jurisdiction prior to May 1, 1986...

The County council members are subject to the dual office holding prohibition set forth in, *inter alia*, S.C. Code Ann. § 4-9-100:

No member of council, including supervisors, shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term...

Therefore, a county council member may not simultaneously be a “county” and a “state” officer.

“Public officers” for purposes of Title 8, are defined in S.C. Code Ann. § 8-1-10, which provides:

The term "public officers" shall be construed 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.

Title 8 distinguishes within this universe of “public officers” between “State” and “county” officers, in such statutes as S.C. Code Ann. § 8-15-30, which provides:

Each State and county officer entitled to receive a set of the Code, Code Supplement, Acts, Journals or other such publication shall file with the director of the Legislative Council a receipt

acknowledging receipt of it before such publication shall be delivered to him. Each officer receiving such publications shall keep them in his office where they may be used by the public, but this provision shall in nowise affect any of the duties now imposed by law on any officer... (Emphasis supplied herein).

In sum, pursuant to S.C. Code Ann. § 8-21-15, the Plaintiff's Complaint should be dismissed as none of the Orangeburg County Defendants is a "state agency, department, board, committee, commission, or authority."

Furthermore, road maintenance fees are prescribed in a completely different Title of the South Carolina Code of Laws than the one Plaintiff alleges. No South Carolina county or municipality would ever invoke Title 8, Chapter 21 as its authority for imposing or collecting a road maintenance fee. That portion of State law has nothing to do with road maintenance or any similar governmental service. Rather, counties in South Carolina, through their governing bodies, have authority to adopt ordinances imposing uniform service charges that run the breadth of government services pursuant to S.C. Code Ann. § 4-9-30, which provides in relevant part:

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers **which shall be exercised by the respective governing bodies** thereof:

...(5)(a) to assess property and levy ad valorem property taxes and **uniform service charges**, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, **including, but not limited to, appropriations for general public works, including roads**, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste

collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. (Emphasis supplied herein).

Pursuant to S.C. Code Ann. § 6-1-300:

(6) "Service or user fee" means 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. **"Service or user fee" also includes "uniform service charges"**. (Emphasis supplied herein).

Municipalities have the same authority as counties pursuant to S.C. Code Ann. § 5-7-30, another statute that has nothing to do with Title 8, Chapter 21:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, **including the exercise of powers in relation to roads, streets,** markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this §, make assessments, **and establish uniform service charges relating to them;**... (Emphasis supplied herein).

The legislature, fully aware that it has placed the broad subject of fees in all but four of the sixty-three Titles in the South Carolina Code, deliberately noted this reality in S.C. Code Ann. § 8-21-15, which provides in relevant part:

(A) 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** except as provided in this §.

The legislature is even more specific, providing in subsection (D): Statutory law for purposes of this Section does not include regulations promulgated pursuant to the State Administrative

Procedures Act.

The Administrative Procedures Act comprises one article (Article 3) in one chapter (Chapter 23) of Title 1. Thus, “statutory law” pursuant to S.C. Code Ann. § 8-21-15(D) means the entirety of the South Carolina Code of Laws except for Article 3 of Chapter 23 of Title 1.

Therefore, in considering the one section in Title 8, Chapter 21 that Plaintiff does mention in his Complaint, we see the same insurmountable qualifier in S.C. Code Ann. § 8-21-30 as we see in S.C. Code Ann. § 8-21-10; namely:

If any officer herein named 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. (Emphasis supplied herein).

Road maintenance is not a “service herein mentioned” anywhere in Title 8, Chapter 21.

S.C. Code Ann. 8-21-30 also deals with the “charging” of fees, not the collecting of them. Neither the Defendant Young nor the Defendant Stokes “charges” the Orangeburg County road maintenance fee.

So, could anyone ever violate Title 8, Chapter 21? Certainly. Here is what *would* be a violation of that chapter: A magistrate in South Carolina is authorized pursuant to § 8-21-1010(A)(11) to charge a fee of ten dollars “for proceeding on estrays, including judgment for possession, sale, or damages...” If a magistrate were to impose a fee, *e.g.*, of twenty-five dollars in addition to, or in lieu of, the ten dollar fee the law allows him to impose for whatever a “proceeding on estray” is, that would be a violation of Title 8, Chapter 21 as duplicative or supplanting of the fee authorized in that statute. A county governing body adopting an ordinance pursuant to § 4-9-30(5)(a) to impose a uniform service charge for the expressly authorized government provision of road maintenance, or a municipality doing the same thing

pursuant to § 5-7-30, is not.

Title 8, Chapter 21 does not contain all of the authorized fees in the South Carolina Code of Laws. It also does not prohibit the imposition or collection of fees for services not mentioned in Title 8, Chapter 21. For example, S.C. Code Ann. § 4-19-10 authorizes, “[t]he governing body of each county”:

- (a) To establish, operate, and maintain a system of fire protection.
- (and)
- ...(j) To place into effect and to revise, whenever it so wishes or may be required, a schedule of rates and **charges** for the furnishing of fire protection services within each service area. (Emphasis supplied herein).

Under the Plaintiff’s logic, the Defendant Orangeburg County Council could not impose the charges S.C. Code Ann. § 4-9-10(j) expressly authorizes it to impose, and the Defendant Stokes could not in his official capacity accept payment of the charges S.C. Code Ann. §4-9-10(j) authorizes, because fire protection services are not mentioned in Title 8, Chapter 21. And not only could he not accept payment, but the Orangeburg County Council and Mr. Stokes should both be fined pursuant to S.C. Code Ann. § 8-21-30 ten times the amount of the fire protection services fees charged even though fire protection services are not part of the “services herein mentioned” in Title 8, Chapter 21.

The Plaintiff seems to believe that Title 8, Chapter 21 is the only place in State law where fees are addressed. In fact, the South Carolina Code of Laws is set forth in 63 titles. “**Fees**” are prescribed in 59 of them: Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63. Only Titles 10, 18, 21, and 53 contain no

references to fees. The prescriptions and proscriptions relative to fees cover the range of activity one can engage in while within the bounds of South Carolina.

III. The Plaintiff has failed to exhaust his administrative remedies. As the Plaintiff has not raised a constitutional challenge to any statute, any claims he may have of wrongful or attempted wrongful collection of taxes are governed by the RPA, which sets forth a clear administrative path for relief.

While the Legislature has given exclusive jurisdiction in this type of case to another court pursuant to the RPA, even if this Court could intervene, and even if the fee at issue were governed by Title 8, Chapter 21, the Plaintiff's failure to exhaust his statutorily prescribed administrative remedies would deprive the circuit court of jurisdiction to hear his claims.

The Plaintiff has not asserted that he should be excused from the requirement to exhaust administrative remedies under the RPA. Even if the Plaintiff had raised a novel issue in any of his claims, the same also would be subject to dismissal under the exclusivity of the RPA remedies. As the Court of Appeals held in *B & A Development*:

"...[w]here the dispute is not as to the underlying facts but as to interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss for failure to state a claim." *Evans v. State*, 344 S.C. 60 at 68, 543 S.E.2d 547 at 551.

The overarching issue in this case is whether the exclusive remedy provisions of the RPA govern the dispute resolution process in adjudicating Taxpayers' claims. This issue is purely a question of law. Therefore, we find further development of the factual record would not aid in determining the statutory and constitutional questions raised. The circuit court therefore acted appropriately in deciding this issue on a motion to dismiss. *Id.* at 462.

Taxpayers must exhaust their administrative remedies provided under the RPA before their suit for illegal taxation can receive judicial review. *Id.* at 462.

Since the Legislature has chosen to give jurisdiction in this case to another court pursuant

to the RPA, and that jurisdiction is exclusive rather than concurrent with the Circuit Court, the Plaintiff's failure to exhaust his administrative remedies under the RPA is a separate basis to dismiss the Complaint, and one that this Court need not reach given the jurisdictional bar to further review. S.C. Code Ann. § 12-60-80 (Supp.2009); *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001); *B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct. App.); *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004); *Drummond v. State*, 378 S.C. 362, 662 S.E.2d 587 (2008).

Moreover, S.C. Code Ann. § 12-60-60 prohibits a judicial stay of tax collections:

An action of a court or an administrative law judge cannot stay or prevent the department or an officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due. (Emphasis supplied herein).

Subject matter jurisdiction is statutory, and cannot be conferred by the court, or a court rule, or agreement of the parties to a case or controversy. The remedies set forth in the South Carolina Revenue Procedures Act (RPA), Title 12, Chapter 60, South Carolina Code of Laws, do not include circuit court relief. *See B & A Development v. Georgetown County*, 361 S.C. 453, 605 S.E.2d 551 (Ct. App. 2004); *Evans v. State*, 344 S.C. 60, 543 S.E.2d 547, 550 (2001); *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000); *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004).

Critically, S.C. Code Ann. § 12-60-80 provides:

- (C) **Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.** (Emphasis supplied herein).

S.C. Code Ann. § 12-60-80(C) is so off-putting to aspiring plaintiffs that, still hoping to capitalize on *Burns* without having to acknowledge its holding, the more enterprising ones searched the United States Code to try to find a way to bring a class action suit in federal court. Unfortunately, for such parties, 28 U.S.C. § 1341 provides:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

As circuit courts lack subject matter jurisdiction to hear causes of action involving the alleged wrongful collection or attempted wrongful collection of taxes, they are bound by S.C. Code Ann. § 12-60-3390, which categorically provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." This is the result

IV. Orangeburg County's Road and Bridge Maintenance Service Charge has not been adjudged invalid or illegal or unconstitutional.

The Road and Bridge Maintenance Service Charge as implemented by Orangeburg County in 1987 has not been previously adjudged to be invalid or illegal. The Road and Bridge Maintenance Service Charge pre-dates the enactment of S.C. Code Ann. § 6-1-300(6). Nonetheless, even if S.C. Code Ann. § 6-1-300(6) is applicable, the Plaintiff has not alleged nor demonstrated that the Road and Bridge Maintenance Service Charge violates S.C. Code Ann. § 6-1-300(6) or the requirements set forth in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992). The legislative actions taken by the Defendants are fairly debatable and are therefore presumptively legal and valid.

As the South Carolina Supreme Court has consistently held:

A municipal ordinance is a legislative enactment and is presumed to be constitutional. *Southern Bell Telephone and Telegraph Co., v. City of Spartanburg*, 285 S.C. 495, 331 S.E.2d 333 (1985). The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose. *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424, 425 (1991). *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C.550, 397 S.E.2d 662 (1990), *Bob Jones University v. Greenville*, 243 S.C. 351, 133 S.E.2d 843. The South Carolina Supreme Court has held that "the party attacking the ordinance bears the burden of proving its unconstitutionality beyond a reasonable doubt." *City of Beaufort v. Baker*, 315 S.C. 146, 432 S.E.2d 470, 474 (1993).

The Supreme Court has further held that:

The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent on respondent to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. See *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

The *Burns* decision makes no mention of any other road maintenance fee or ordinance in the State of South Carolina or in the world other than that adopted by Greenville County for that County's road maintenance and telecommunications purposes. The Supreme Court in *Burns* did not direct a refund of any road maintenance or other fee paid by anyone. The Court nowhere mentions Title 8, Chapter 21 of the South Carolina Code of Laws. Likewise, the Court makes no mention in *Burns* of quantum meruit or unjust enrichment. Nor does it discuss or make any finding with respect to procedural or substantive due process.

Orangeburg County's Road and Bridge Maintenance Service Charge was adopted pursuant to S.C. Code Ann. § 4-9-120, which provides:

The council **shall take legislative action by ordinance** which may be introduced by any member.

All proceedings in connection with the proposal, consideration, public hearing, and input, and adoption of Orangeburg County's road maintenance fee were lawful and proper pursuant to

South Carolina law. S.C. Code Ann. § 4-9-25 provides:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. **The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.** (Emphasis supplied herein).

Anyone interested in Orangeburg County's road maintenance fee proposal was given opportunity at a public hearing to raise any concerns he, she, it or they may have had. There is no record of any concerns having been expressed, or anyone claiming that there was no due process to express any input anyone may have desired to give.

All the Court did in *Burns* was declare Greenville County's road maintenance and telecommunications fees to be taxes. Relief from alleged wrongful collection of taxes may only be made in South Carolina pursuant to the Revenue Procedures Act, and not under Title 8, Chapter 21...or *Burns* by transference.

Additionally, Orangeburg County's Road and Bridge Maintenance Service Charge predates S.C. Code Ann. § 6-1-300(6). The Road and Bridge Maintenance Service Charge was implemented at a time when the South Carolina Supreme Court evaluated fees and uniform service charges under the precedent it set forth in *Brown*.

In the 1997 case of *C.R. Campbell Construction Co., Inc. v. The City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997), the South Carolina Supreme Court held:

Our recent decision in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), is dispositive on this issue. **In *Brown*, we upheld a \$15 road maintenance fee on all cars registered in the**

county as a valid uniform service charge under S.C. Code Ann. Section 4-9-30(5)(a) (Supp.1995). Similarly, under S.C. Code Ann. Section 5-7-30 (Supp.1995), municipalities are authorized to impose uniform service charges.

Under *Brown*, 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. In this case, it is undisputed the transfer fee is used only for parks and recreational facilities, the payers benefit because their real property values are enhanced, the transfer fee does not generate more revenue than that spent on such facilities, and all payers pay a uniform percentage of the sale price of property conveyed. According to the facts in the record, the transfer fee is a uniform service charge and therefore valid under *Brown*.

The revenue from Orangeburg County's Road and Bridge Maintenance Service Charge is used to the benefit of the payers, even if the general public also benefits. The revenue from the Road and Bridge Maintenance Service Charge is used only for the specific improvements contemplated in its collection. The revenue generated by the Road and Bridge Maintenance Service Charge does not exceed the cost of the improvements made. The Road and Bridge Maintenance Service Charge is uniformly imposed on all of the payers. Thus, Orangeburg County's Road and Bridge Maintenance Service Charge meets the South Carolina Supreme Court's requirements set forth in *Brown*.

In 1997, the General Assembly enacted S.C. Code Ann. § 6-1-300(6), which defines "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." Therefore, the Supreme Court in the *Burns* case held: **"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)." However, Orangeburg County's Road and Bridge Maintenance Service Charge was adopted ten years before 1997.

V. The Plaintiff's Second Cause of Action for a violation of S.C. Code Ann. § 8-21-30 is barred because that Code section was impliedly repealed by the enactment of the South Carolina Tort Claims Act.

The Plaintiff's Second Cause of Action alleges a violation of S.C. Code Ann. § 8-21-30, which is a statute that pre-dates the South Carolina Tort Claims Act and the waiver of sovereign immunity. The Defendants contend that S.C. Code Ann. § 8-21-30 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. In *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the Supreme Court recognized that "exceptions [to the doctrine of sovereign immunity] that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lack continuity, logic or fairness." 329 S.E.2d at 742. S.C. Code Ann. § 8-21-30 is one example of the statutorily created "scattered patchwork of sovereign liability" referred to in *McCall*.

In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. Section 15-78-20(b) of the Tort Claims Act provides that "[t]he General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, **immunity from liability and suit for any tort except as waived by this chapter.**" S.C. Code Ann. § 15-78-20(b). (Emphasis added). The legislature then proceeded to set forth specific waivers and limitations on sovereign immunity as reinstated.

This historical background has been best summarized by the Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Supreme Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Citations omitted). In effect, as the Supreme Court summarizes in *Murphy*, in 1986, absolute sovereign immunity was restored by the General Assembly. That had the important effect of eliminating the "scattered patchwork of sovereign liability" that had been created by prior legislation passed to limit or ameliorate the effects of absolute sovereign immunity. The General Assembly then had a "clean slate" from that point forward on which to legislate the waivers and limitations to be placed on sovereign immunity. As of 1986, absolute sovereign immunity was no longer the law, but neither was the "scattered patchwork of sovereign liability" including the statute at issue, S.C. Code Ann. § 8-21-30. That "scattered patchwork" had been repealed.

The Supreme Court has explained that "[a] later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject matter." *State v. Hood*, 181 S.C. 488, 188 S.E. 134, 136 (1936). There can be no question that the Tort Claims Act "fully embraces the

whole subject matter" of governmental liability. The history set forth in *Murphy* shows that the Tort Claims Act was intended to reinstate sovereign immunity in full thereby eliminating the "scattered patchwork of sovereign liability" that preexisted it, which includes S.C. Code Ann. § 8-21-30. By fully embracing the whole subject matter, statutes such as S.C. Code Ann. § 8-21-30 were impliedly repealed. This is likewise evident from the express language of the Tort Claims Act providing that "[n]otwithstanding any provision of law, this chapter, the South Carolina Tort Claims Act, is the *exclusive and sole remedy* for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200. (Emphasis added).⁴ The use of phrase "notwithstanding any provision of law" compels the conclusion that the Tort Claims Act is the exclusive and sole remedy regardless of any other provision of law, which would necessarily include S.C. Code Ann. § 8-21-30.

Although there is no South Carolina appellate decision addressing the implied repeal of S.C. Code Ann. § 8-21-30,⁵ the federal courts have specifically looked at whether the Tort Claims Act impliedly repealed part of the "scattered patchwork of sovereign liability" referred to in *McCall*. Of particular significance is *Sadek v. Lambert*, 2014 WL 117671 (D.S.C. 2014), in which Judge Terry Wooten adopted a magistrate judge's report and agreed with the very analysis

⁴ Similarly, S.C. Code Ann. § 15-78-20(b) states that the Tort Claims Act is the "exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(b). The exceptions as set forth in S.C. Code Ann. § 15-78-70(b) have no applicability here.

⁵ See, *Kubric v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595, 598 (2016) ("Although our Court has held that 'important questions of novel impression should not be decided on a motion to dismiss,' this general rule does not apply when the determinative facts are not in dispute. Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression"). (Citation omitted).

offered by the City of Georgetown in the present case, except that Judge Wooten was addressing the implied repeal of S.C. Code Ann. § 16-5-60. Judge Wooten concluded that “the Tort Claims Act impliedly repealed § 16-5-60.” 2014 WL 117671, *3. The federal court determined that S.C. Code Ann. § 16-5-60 is irreconcilable with the Tort Claims Act. The court recognized that “the Tort Claims Act expressly and completely restores sovereign immunity” which is “incapable of reconciliation with § 16-5-60’s unlimited waiver of a county’s immunity from suit based on wrongful acts of third parties.” *Id.* Judge Wooten also explained that “the Tort Claims Act provides for limited liability of a governmental entity for the wrongdoing of its own employees whereas § 16-5-60 contrarily provides for unlimited and strict liability of a county for the acts of others. Such a result is contrary to both the plain language of the Tort Claims Act and the recorded legislative intent of the Act.” *Id.* Ultimately, the federal court ruled “that § 16-5-60, enacted to provide strict liability of counties for constitutional torts committed by others, is repugnant to and therefore was impliedly repealed by the South Carolina Tort Claims Act’s complete restoration of sovereign immunity and limited waiver for certain torts committed by governmental employees. The plaintiff’s cause of action against York County under § 16-5-60 therefore fails to state a claim upon which relief can be granted.” 2014 WL 117671, *6.⁶

As reflected by Judge Wooten's analysis in *Sadek v. Lambert*, the position taken by the City in the case at bar is a correct one. With the adoption of the Tort Claims Act and its restoration of sovereign immunity in full followed by a limited waiver, the "scattered patchwork of sovereign liability" from pre-Tort Claims Act times was wiped clean. S.C. Code Ann. § 8-21-

⁶ Other federal judges have addressed the same issue and agree with Judge Wooten’s analysis. See, *Doe v. Charleston County Sheriff’s Office*, 2018 WL 4224063 (D.S.C. 2018) (Judge Richard Gergel); *Doe v. McGowan*, 2017 WL 659938 (D.S.C. 2017) (Judge Richard Gergel); *Mial v. Charleston County Sheriff’s Department*, 2018 WL 4725288, adopted in 2018 WL 4701366 (D.S.C. 2018) (Judge Joseph F. Anderson, Jr.).

30, as part of that archaic "scattered patchwork," was impliedly repealed. As S.C. Code Ann. § 15-78-200 makes clear with its use of phrase "notwithstanding any provision of law," the Tort Claims Act is the exclusive and sole remedy for any tort committed by a governmental entity and S.C. Code Ann. § 8-21-30 cannot co-exist with the Tort Claims Act by providing a different tort claim or remedy against an officer as defined in S.C. Code Ann. § 8-21-10. On this additional basis, the Plaintiff's Sixth Cause of Action should be dismissed.

VI. The Plaintiff's equitable claim for quantum meruit/unjust enrichment is barred by sovereign immunity.

The Defendants contend that the Plaintiff's First Cause of Action for quantum meruit/unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for quantum meruit or unjust enrichment or to be prosecuted against a governmental entity.

As explained above, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for non-tort/equitable causes of action for quantum meruit or unjust enrichment.⁷ Moreover, the General Assembly has not enacted any other legislation that explicitly waives sovereign immunity for a quantum meruit or unjust enrichment claim nor any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic*

⁷ In *Dema v. Tenet Physician Services*, 383 S.C. 115, 678 S.E.2d 430 (2010), the Supreme Court explained that "unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." 678 S.E.2d 434.

Village, Inc., 503 U.S. 30, 33 (1992). See also, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The Defendants' position that a governmental entity is entitled to sovereign immunity for equitable claims such as quantum meruit and unjust enrichment is supported by well-reasoned case law from our sister state of North Carolina. In *Eastway Wrecker Service, Inc. v. City of Charlotte*, 165 N.C. App. 639, 599 S.E.2d 410 (2004), the North Carolina Court of Appeals ruled that a quantum meruit claim against a municipality was barred by sovereign immunity. The Court explained:

[D]ismissal of the *quantum meruit* claim was ... appropriate because such a claim when brought against an arm of the State is barred by sovereign immunity. In North Carolina, the State waives sovereign immunity when it expressly enters into a valid contract. Sovereign immunity bars *quantum meruit* actions against the State, however, because the remedy of *quantum meruit* is based on an implied contract and an implied contract cannot support the inference of an express waiver. Our Supreme Court held ... that "[a] contract implied in law -- as opposed to an express valid contract -- simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

599 S.E.2d at 412. (Citations omitted). The *Eastway* Court relied on the decision of the North Carolina Supreme Court in *Whitfield v. Gilchrist*, 348 N.C. 39, 497 S.E.2d 412 (1998), where the Court ruled that "the State's waiver of sovereign immunity only applies to express contracts and that contracts implied in law, such as a claim in *quantum meruit*, are insufficient to constitute a waiver of the State's sovereign immunity." See, *Moore v. North Carolina Cooperative Extension Service*, 146 N.C. App. 89, 552 S.E.2d 662, 665 (2001), citing *Whitfield*, *supra*. The *Whitfield* Court held that "[o]nly when the State has implicitly waived sovereign immunity by expressly entering into a *valid* contract through an agent of the State expressly authorized by law to enter into such contract may a plaintiff proceed with a claim against the State upon the State's breach." *Whitfield*, 497 S.E.2d at 415. (Emphasis in original).

In sum, the Plaintiff's cause of action for quantum meruit or unjust enrichment, which are both non-tort/equitable claims, is barred by sovereign immunity. As a matter of law, the General Assembly has never explicitly waived sovereign immunity for such equitable claims, like it has for tort claims.

VII. The Plaintiff does not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3.

In his Third Cause of Action, the Plaintiff alleges a loss of a property interest without due process of law for which the Plaintiff seeks "monetary damages." See, Second Amended Complaint, ¶ 65. The Plaintiff does not enjoy a private right of action for money damages for a violation of provisions of the South Carolina Constitution, including Article I, § 3. In *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019) (certiorari denied on May 28, 2021),⁸ the South Carolina Court of Appeals held that "the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute." 829 S.E.2d at 261. Thus, the Plaintiff is precluded from recovering money damages for the alleged violations of the South Carolina Constitution.

VIII. Orangeburg County Council is not a proper party.

The Defendant Orangeburg County Council is not a proper party. Orangeburg County Council is not a body politic separate and apart from Orangeburg County. Instead, Orangeburg

⁸ A petition for writ of certiorari was also denied by the United States Supreme Court on January 10, 2022. See, Orders List dated January 10, 2022 for United States Supreme Court.

County Council is the governing body of Orangeburg County. Orangeburg County Council should be dismissed as a separate, distinct party-defendant.

IX. The individual Defendants sued in their official capacities are alter egos of Orangeburg County and should be dismissed as duplicative.

The Defendants Harold M. Young and Matt Stokes, who are sued in their official capacities, are the alter egos of the Orangeburg County. *See, Kentucky v. Graham*, 473 U.S. 159 (1985) (“[o]fficial capacity suits ... genuinely represent only another way of pleading an action against an entity of which the officer is an agent”). The Fourth Circuit has upheld dismissal of a claim against a defendant in his official capacity as duplicative where the municipal defendant was also sued. *See, Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (“[t]he district court correctly held that the § 1983 claim against Martin in his official capacity as Superintendent is essentially a claim against the Board and thus should be dismissed as duplicative”). Thus, the suit against the Defendants Young and Stokes in their official capacities should be dismissed as duplicative.

CONCLUSION

Based on the foregoing analysis, the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council respectfully request that the Court grant their Motion to Dismiss and/or Motion for Judgment on the Pleadings thereby dismissing the Second Amended Complaint with prejudice.

Respectfully submitted,

s/ Bradley T. Farrar

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Administrator, Matt Stokes, in his official capacity
as Orangeburg County Treasurer, Orangeburg
County, and Orangeburg County Council*

January 28, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Carroll Brown, individually and on behalf	)	Civil Action No.: 2021-CP-38-01268
of all others similarly situated,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	PLAINTIFF’S MOTION FOR
	)	RECONSIDERATION
	)	
Harold M. Young, in his official capacity	)	
as Orangeburg County Administrator;	)	
Matt Stokes, in his official capacity as	)	
Orangeburg County Treasurer;	)	
Orangeburg County; and Orangeburg	)	
County Council,	)	
	)	
<i>Defendants.</i>	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff, Carroll Brown, respectfully requests the Court reconsider its Order dated June 30, 2022, regarding the Motion to Dismiss filed by Defendants, Harold M. Young, in his official capacity as Orangeburg County Administrator; Matt Stokes, in his official capacity as Orangeburg County Treasurer; Orangeburg County; and Orangeburg County Council (collectively “Defendants”).

Under Rule 59(e) of the South Carolina Rules of Civil Procedure, a party may timely move “to alter or amend the judgment.” Rule 59(e), SCRCPP. A motion for reconsideration pursuant to Rule 59(e), SCRCPP, is appropriate to “correct a clear error of law or prevent manifest injustice.” *Collison v. Int’l Chem. Workers Union*, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which Rule 59(e), SCRCPP, is modeled). A party may file a motion for reconsideration “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Motions for

reconsideration are completely within the Court's discretion. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 841 (Ct. App. 2012).

In this case, Plaintiff moves for reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil procedure due to the Court's errors in dismissing Plaintiff's cause of action. In support of this motion,¹ Plaintiff submits the following:

1. On December 28, 2021, Defendant moved to dismiss this matter alleging seventeen separate grounds.
2. On February 2, 2022, this Court held a hearing wherein oral argument was heard.
3. On June 30, 2022, this Court granted Defendant's motion to dismiss on three grounds: 1) Orangeburg County cannot be sued in equity for monetary damages due to sovereign immunity; 2) S.C. Code Ann. § 8-21-30 does not apply to Road Fees; S.C. Code Ann. § 8-21-30 was implicitly repealed by the South Carolina Tort Claims Act; and 3) the Court dismissed Plaintiff's due process claim because South Carolina law does not provide for monetary damages via a due process claim.
4. The Court erred as to each of these holdings.
5. As to the Court's holding that Plaintiff's claim for Unjust Enrichment is barred by Sovereign Immunity, the Court erred in the following manner:
 - a. The South Carolina Torts Claims Act did not reinstate sovereign immunity for equitable claims, as sovereign immunity has never applied to equitable remedies in this State. Indeed, no South Carolina Appellate Court has ever recognized that Sovereign Immunity applies to equitable causes of action.

¹ Plaintiff reserves the right to supplement this motion with a corresponding memorandum at a later date prior to any hearing on this motion.

To extend such immunity here was error, especially in light of the fact that the State and its political subdivisions are routinely sued for monetary damages via equitable causes of action in this State. *See e.g. American Legion Post 15 v. Horry County*, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009) (“[s]uch an action is governed by the equitable principles that underlie an action to avoid unjust enrichment”); *Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981) (applying standard of review of action in equity to action for refund of property taxes); *Sauner v. Public Service Authority of South Carolina*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Gressette v. South Carolina Elec. and Gas. Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006); *Anderson County v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019); *L-J, Inc. v. S.C. State Highway Dep’t*, 270 S.C. 413, 418, 242 S.E.2d 656, 657 (1978); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 583, 762 S.E.2d 696, 703 (2014). Indeed, in *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 63-65, 644 S.E.2d 675, 679-80 (2007), the Supreme Court discussed wherein no adequate remedy at law exists, a suit against a County in equity may lie. *Id.* at 63 (Discussing the suit against the County, “[a] court may grant equitable relief where there is no adequate remedy at law”) (Justice Toal Dissent). This is a suit for restitution, not a tort, and not for any cause of action ever recognized in this state to be subject to Sovereign Immunity or the South Carolina Tort Claims Act.

- b. The Court failed to consider that South Carolina Courts have recognized suits against the State and its political subdivisions for overpayment/over collection of monies whether through fees or taxes. Sovereign Immunity has never applied to situations such as this both prior to and post passage of the South Carolina Tort Claims Act. *See e.g. American Legion Post 15 v. Horry County*, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009) (“[s]uch an action is governed by the equitable principles that underlie an action to avoid unjust enrichment”); *Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981) (applying standard of review of action in equity to action for refund of property taxes); *Meyers v. Charleston County*, No. 2011–UP–179, 2011 WL 11734285 (Ct. App. April 19, 2011) (holding that Plaintiff was equitably entitled to \$24,500 in damages against Charleston County, Plaintiff raised unjust enrichment); *Speights v. Commissioners of Public Works of City Union*, 128 S.C. 59, 59, 122 S.E. 401, 403 (1924) (quantum meruit claim holding that Plaintiff was equitably entitled to \$1,301.84 in damages against City Commissioners).
- c. The Court failed to address that no adequate remedy at law exists in this case. For the reasons stated, the Revenue Procedures Act does not apply to the Fees at issue in this case, as they are not “taxes” nor “property taxes,” as those terms are defined in the RPA. As such, a remedy in equity must lie. Indeed, the South Carolina Supreme Court has discussed how equitable remedies will lie against a County where no adequate remedy at law exists. *See Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 63-65, 644 S.E.2d

- 675, 679-80 (2007) (Justice Toal dissenting when a statute fails to provide *complete* relief to the Plaintiffs, the equitable remedy of restitution allows the Plaintiff to recover the amount in which the County was unjustly enriched).
- d. The Court erred in relying on North Carolina law; North Carolina has a different Tort Claims Act and case law surrounding sovereign immunity.
 - e. To the extent Sovereign Immunity does lie in this case, Defendants have waived it.
 - f. To the extent Sovereign Immunity does lie in this case, an implied contract in fact exists between the Defendants and Plaintiff.
6. As to the Court's holdings regarding S.C Code Ann. § 8-21-30, the Court erred in the following ways:
- a. The Court erred in holding that the fees at issue are a "tax" for purposes of S.C. Code Ann. 8-21-30.
 - b. The Court failed to consider persuasive authority regarding § 8-21-30 as applying beyond explicit fees mentioned in Title 8 Chapter 21.
 - c. The Court erred in finding that § 8-21-30 has been implicitly repealed by the South Carolina Tort Claims Act. This is a statutory cause of action not a "tort." The South Carolina Tort Claims Act does not embrace all governmental liability, just liability sounding in tort.
7. As to the Court's holding regarding Plaintiffs due process claim:
- a. The Court mischaracterizes ¶ 65 of Plaintiff's amended complaint, which only described the damage caused by the Due Process violation, but it did not request or pray for monetary relief. To dismiss the Count in its entirety merely

because it states the fact that Plaintiff was monetarily harmed by the violation is error. Moreover, other remedies may lie for such a violation, for example, an injunction against the County.

8. For these reasons, the Court erred in providing essential immunity to the County for the illegal collection of this Road Maintenance Fee in direct violation of a Supreme Court order.
9. For the above reasons, Plaintiff respectfully requests this Court reconsider its Order dated June 30, 2022, and reinstate Plaintiff's First, Second, and Third causes of action in this matter.

[Signature Page to Follow]

Respectfully submitted,

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Attorneys for Plaintiff and the Class

Dated: July 11, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)
Plaintiff,)

Civil Action No. 2021-CP-38-1268

v.)

**NOTICE OF MOTION AND
MOTION TO VACATE ORDERS
ENTERED IN BUTTS v. MACE**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)
Defendants.)

TO: THE HONORABLE ROGER M. YOUNG, SR.

TERRY E. RICHARDSON, JR.; WILLIAM C. LEWIS; BRADY R. THOMAS;
DAVID R. PRICE, JR.; SAMUEL B. TOOKER; CHARLES J. HODGE AND
T. RYAN LANGLEY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council (collectively referred to as "Orangeburg Defendants") will move before Circuit Court Judge Roger M. Young, Sr., at such time and place as may be set by the Court, for an Order, pursuant to Rule 60(a) and (b), SCRCP, vacating the Order Granting Plaintiff's Motion for Partial Summary Judgment on June 25, 2024, and the Order Denying Defendants' Motion to Alter and Amend entered on August 8, 2024, both entered only in the consolidated case of *Butts v. Mace*, Civil Action

Number 2021-CP-22-00928 (pending in Georgetown County), and allowing the Orangeburg Defendants the opportunity to be heard on the issues adjudicated by those Orders as contemplated by the May 17, 2023 Order issued by the Chief Justice of the South Carolina Supreme Court.

The Orangeburg Defendants' motion is based on the following grounds:

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order consolidating each of the pending lawsuits within South Carolina seeking the recovery of road maintenance fees collected in various jurisdictions. The consolidation was ordered to provide for the adjudication by a single circuit court judge, Judge Roger M. Young, with regard to the retroactivity provision in Section 2(E) of Act No. 236. The Chief Justice issued that Consolidation Order to “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *See*, Consolidation Order entered May 17, 2023.

The Orangeburg Defendants understand that the Plaintiff in only one of these consolidated actions, specifically *Butts v. Mace*, Civil Action Number 2021-CP-22-00928 (pending in Georgetown County), filed a Motion for Partial Summary Judgment requesting that Judge Young, under the authority granted by the Chief Justice in the Consolidation Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. Despite the Consolidation Order having been issued, the Motion for Partial Summary Judgment was filed only in the *Butts* case and that motion was not served on the Orangeburg Defendants in the above-captioned action pending in Orangeburg County, which is consolidated with the *Butts* case.

The Orangeburg Defendants further understand that the Motion for Partial Summary Judgment in *Butts* was scheduled for a hearing on April 16, 2024, before Judge Roger Young.

The Orangeburg Defendants were not provided with notice of that hearing by the Court. Likewise, the Orangeburg Defendants understand that the hearing was held on April 16, 2024, without the attendance or participation of their counsel and that Judge Young issued an Order Granting Plaintiff's Motion for Partial Summary Judgment on June 25, 2024, in which Judge Young granted partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of the issuance of that Order by the Court. Subsequently, Judge Young issued an Order Denying Defendants' Motion to Alter and Amend which was entered on August 8, 2024. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of that Order by the Court.

It is the Orangeburg Defendants' understanding that the Chief Justice's Consolidation Order intended to allow the parties asserting a mootness defense to be heard on the retroactivity issue and for Judge Young to decide the issue in an "effective and expeditious" manner "by uniform rulings." Despite the Court treating the Order from the Chief Justice as a "Consolidation Order," given that reference in the June 25, 2024 Order, the Court through procedural oversight, error, or mistake did not treat the cases as consolidated in that the Orangeburg Defendants were not provided notice of the hearing, did not participate in the hearing, and were not provided written notice of the issuance of the two Orders.

The Orangeburg Defendants therefore respectfully request that the Court vacate the two Orders issued in the *Butts* case alone and allow for the Orangeburg Defendants to be heard on the

retroactivity issue as originally directed and intended by the Chief Justice. The Orangeburg Defendants make this request for two reasons: First, because the retroactivity issues were adjudicated by the Court only in the *Butts* case, the Orangeburg Defendants do not have standing as an aggrieved party to participate as parties in the pending appeal in the Supreme Court and, as a result, are being denied their opportunity to be heard on this issue, thereby implicating fundamental fairness and due process. Second, while defense counsel in the *Butts* case made a number of the pertinent arguments, there was no argument made that the authority on which this Court relies in *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), is no longer “good law” and should be overruled in light of recent authority from the United States Supreme Court addressing the application of the separation of powers doctrine under similar circumstances. Specifically, the United States Supreme Court has ruled that “the legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.” *Patchak v. Zinke*, 138 S.Ct. 897, 905 (2018). “To distinguish between permissible exercises of the legislative power and impermissible infringements of the judicial power, this Court’s precedents establish the following rule: Congress violates Article III when it compels findings or results under old law. But Congress does not violate Article III when it changes the law.” *Id.* (Citations omitted). The Supreme Court further held that “[u]nder this Court’s precedents, Congress has the power to apply newly enacted outcome-altering legislation in pending civil cases.” 138 S.Ct.at 910. The same is true under the separation of powers doctrine as set forth in Article I, § 8 of the South Carolina Constitution.

In the alternative, the Court is respectfully requested to allow for the retroactivity issue to

be heard on an expedited basis in this case by way of a Motion for Partial Summary Judgment so that this case may be consolidated with the *Butts* case on appeal.

This motion is based upon the pleadings filed in this case; a memorandum of law as may be submitted at or prior to the hearing; the Consolidation Order issued by Chief Justice Donald W. Beatty entered May 17, 2023; the referenced Orders issued in the consolidated case of *Butts v. Mace*, Civil Action Number 2021-CP-22-00928; and such other matters as may be presented to the Court.

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 official capacity as Orangeburg County
 Administrator, Matt Stokes, in his official capacity
 as Orangeburg County Treasurer, Orangeburg
 County, and Orangeburg County Council*

October 10, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)
Plaintiff,)

Civil Action No. 2021-CP-38-1268

v.)
Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)
Defendants.)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT
AND/OR FOR ENTRY OF
DECLARATORY JUDGMENT AND
FOR RULE 54(B) CERTIFICATION**

TO: TERRY E. RICHARDSON, JR.; WILLIAM C. LEWIS; BRADY R. THOMAS;
DAVID R. PRICE, JR.; SAMUEL B. TOOKER; CHARLES J. HODGE AND
T. RYAN LANGLEY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council (collectively referred to as "Orangeburg Defendants") will move before Circuit Court Judge Roger M. Young, Sr., at such time and place as may be set by the Court, for an Order, pursuant to Rule 54(b), Rule 56, and Rule 60(a) and (b), SCRCP, declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional and granting summary judgment to the Orangeburg Defendants on their mootness defense. Alternatively, if the Court rules that the retroactivity language is unconstitutional, the Court is asked to enter and certify final judgment on

that constitutional question pursuant to Rule 54(b) so as to allow for an immediate appeal to be joined or consolidated with the currently pending appeal filed in the *Butts v. Mace*, Civil Action Number 2021-CP-22-00928, consistent with the May 17, 2023 Order issued by the Chief Justice of the South Carolina Supreme Court.

The grounds for this motion are as follows:

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order consolidating each of the pending lawsuits within South Carolina seeking the recovery of road maintenance fees collected in various jurisdictions. The consolidation was ordered to provide for the adjudication by a single circuit court judge, Judge Roger M. Young, with regard to the retroactivity provision in Section 2(E) of Act No. 236. The Chief Justice issued that Consolidation Order to “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *See*, Consolidation Order entered May 17, 2023.

The Orangeburg Defendants understand that the Plaintiff in only one of these consolidated actions, specifically *Butts v. Mace*, Civil Action Number 2021-CP-22-00928 (pending in Georgetown County), filed a Motion for Partial Summary Judgment requesting that Judge Young, under the authority granted by the Chief Justice in the Consolidation Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. Despite the Consolidation Order having been issued, the Motion for Partial Summary Judgment was filed only in the *Butts* case and that motion was not served on the Orangeburg Defendants in the above-captioned action pending in Orangeburg County, which is consolidated with the *Butts* case.

The Orangeburg Defendants further understand that the Motion for Partial Summary

Judgment in *Butts* was scheduled for a hearing on April 16, 2024, before Judge Roger Young. The Orangeburg Defendants were not provided with notice of that hearing by the Court. Likewise, the Orangeburg Defendants understand that the hearing was held on April 16, 2024, without the attendance or participation of their counsel and that Judge Young issued an Order Granting Plaintiff's Motion for Partial Summary Judgment on June 25, 2024, in which Judge Young granted partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of the issuance of that Order by the Court. Subsequently, Judge Young issued an Order Denying Defendants' Motion to Alter and Amend which was entered on August 8, 2024. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of that Order by the Court.

It is the Orangeburg Defendants' understanding that the Chief Justice's Consolidation Order intended to allow the parties asserting a mootness defense to be heard on the retroactivity issue and for Judge Young to decide the issue in an "effective and expeditious" manner "by uniform rulings." Despite the Court treating the Order from the Chief Justice as a "Consolidation Order," given that reference in the June 25, 2024 Order, the Court through procedural oversight, error, or mistake did not treat the cases as consolidated in that the Orangeburg Defendants were not provided notice of the hearing, did not participate in the hearing, and were not provided written notice of the issuance of the two Orders.

The Orangeburg Defendants therefore respectfully request that the Court allow for the

Orangeburg Defendants to be heard on the retroactivity issue as originally directed and intended by the Chief Justice. The Orangeburg Defendants make this request for two reasons: First, because the retroactivity issues were adjudicated by the Court only in the *Butts* case, the Orangeburg Defendants do not have standing as an aggrieved party to participate as parties in the pending appeal in the Supreme Court and, as a result, are being denied their opportunity to be heard on this issue, thereby implicating fundamental fairness and due process. Second, while defense counsel in the *Butts* case made a number of the pertinent arguments, there was no argument made that the authority on which this Court relies in *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), is no longer “good law” and should be overruled in light of recent authority from the United States Supreme Court addressing the application of the separation of powers doctrine under similar circumstances. Specifically, the United States Supreme Court has ruled that “the legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.” *Patchak v. Zinke*, 138 S.Ct. 897, 905 (2018). “To distinguish between permissible exercises of the legislative power and impermissible infringements of the judicial power, this Court’s precedents establish the following rule: Congress violates Article III when it compels findings or results under old law. But Congress does not violate Article III when it changes the law.” *Id.* (Citations omitted). The Supreme Court further held that “[u]nder this Court’s precedents, Congress has the power to apply newly enacted outcome-altering legislation in pending civil cases.” 138 S.Ct.at 910. The same is true under the separation of powers doctrine as set forth in Article I, § 8 of the South Carolina Constitution.

Given the foregoing procedural history and the Chief Justice's directions, the Orangeburg Defendants have filed the present motion to attempt to correct the procedural errors made by the adjudication of the retroactivity issue in the *Butts* case alone which may technically be a bar or impediment to the Orangeburg Defendants having standing as an aggrieved party before the Supreme Court and thus impairing its right to be heard on this issue.

The Court is, therefore, requested to address the constitutionality of the retroactivity language contained in Section 2(E) of Act No. 236 and to issue a final order, pursuant to Rule 54(b), on that issue to allow for an immediate appeal to the South Carolina Supreme Court, which appeal may, at its discretion, be joined or consolidated with the currently pending appeal filed in the *Butts v. Mace*, Civil Action Number 2021-CP-22-00928. The Orangeburg Defendants request that the Court enter and certify final judgment on that constitutional question within its power under Rule 54(b), SCRCPP, as contemplated by or within the spirit of the Chief Justice's Order which was intended to "promote the effective and expeditious disposition of this litigation by uniform rulings" so as to "conserve the resources of the parties, their counsel, and the judiciary." *See*, Consolidation Order entered May 17, 2023.

This motion is based upon the pleadings filed in this case; a memorandum of law as will be submitted by October 25, 2024, as directed by the Court; the Consolidation Order issued by Chief Justice Donald W. Beatty entered May 17, 2023; the referenced Orders issued in the consolidated case of *Butts v. Mace*, Civil Action Number 2021-CP-22-00928; and such other matters as may be presented to the Court.

s/ Andrew F. Lindemann

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Administrator, Matt Stokes, in his official capacity
as Orangeburg County Treasurer, Orangeburg
County, and Orangeburg County Council*

October 18, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)
Plaintiff,)

Civil Action No. 2021-CP-38-1268

v.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AND/OR FOR ENTRY OF
DECLARATORY JUDGMENT AND FOR
RULE 54(B) CERTIFICATION**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)
Defendants.)

The Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator; Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council (collectively referred to as “Orangeburg Defendants”) respectfully submit this Memorandum in Support of their Motion for Summary Judgment and/or for Entry of Declaratory Judgment and for Rule 54(b) Certification. The Orangeburg Defendants seek an Order declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional and granting summary judgment to the Orangeburg Defendants on their mootness defense. Alternatively, if the Court rules that the retroactivity language is unconstitutional, the Court is asked to enter and certify final judgment on that constitutional question pursuant to Rule 54(b), SCRCP, so as to allow for an immediate appeal to be joined or consolidated with the currently pending appeal filed in the *Butts v. Mace*, Civil Action Number

2021-CP-22-00928, consistent with the May 17, 2023 Order issued by the Chief Justice of the South Carolina Supreme Court.

BACKGROUND AND PROCEDURAL HISTORY

On November 2, 2021, the Plaintiff commenced this lawsuit as a class action against the Orangeburg Defendants to challenge the alleged wrongful collection of Orangeburg County's Road and Bridge Maintenance Service Charge¹ which was imposed by ordinance in 1987 and has continued uninterrupted for each year since. The Plaintiff relies on the 2021 decision of the South Carolina Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the Court ruled that a "road maintenance fee" as implemented by Greenville County Council violates the requirements of S.C. Code Ann. § 6-1-630 and is actually an illegal tax. The Supreme Court thus "declare[d] the road maintenance taxes ... are invalid under South Carolina law." 861 S.E.2d at 31.

The Plaintiff alleges that Orangeburg County Road and Bridge Maintenance Service Charge is likewise invalid. The Plaintiff seeks a declaratory judgment to that effect. The Plaintiff also seeks monetary relief in the form of a refund of the Road and Bridge Maintenance Service Charges previously paid. The Plaintiff asserts three causes of action seeking that monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the Defendant Stokes only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.

¹ S.C. Code Ann. § 6-1-300(6) provides that the term, "[s]ervice or user fee" also includes "uniform service charges."

On June 30, 2022, Circuit Court Judge Edgar W. Dickson issued an Order Granting in Part Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings. The Plaintiff subsequently filed a Rule 59(e) motion which remains pending. With his Order, Judge Dickson dismissed with prejudice the Plaintiff's First Cause of Action, Second Cause of Action, and Third Cause of Action as a matter of law, but he has allowed the Plaintiff's Fourth Cause of Action for declaratory relief to proceed forward.

Subsequent to that Order, the South Carolina General Assembly enacted 2022 Act No. 236, and it was signed into law by Governor Henry McMaster on June 22, 2022. Act No. 236 amends S.C. Code Ann. § 6-1-630(A), to provide in pertinent part as follows: "A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. ... A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this article." 2022 Act No. 236, § 2(B). Additionally, S.C. Code Ann. § 6-1-300(6) was amended to define "service or user fee" to mean "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." 2022 Act No. 236, § 2(A). Finally, Section 2(E) of Act No. 236 states that Section 2 "applies retroactively to any service or fee imposed after December 31, 1996." 2022 Act No. 236, § 2(E).

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order consolidating each of the pending lawsuits within South Carolina seeking the recovery of road

maintenance fees collected in various jurisdictions. The consolidation was ordered to provide for the adjudication by a single circuit court judge, Judge Roger M. Young, with regard to the retroactivity provision in Section 2(E) of Act No. 236. The Chief Justice issued that Consolidation Order to “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *See*, Consolidation Order entered May 17, 2023.

The Orangeburg Defendants understand that the Plaintiff in only one of these consolidated actions, specifically *Butts v. Mace*, Civil Action Number 2021-CP-22-00928 (pending in Georgetown County), filed a Motion for Partial Summary Judgment requesting that Judge Young, under the authority granted by the Chief Justice in the Consolidation Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. Despite the Consolidation Order having been issued, the Motion for Partial Summary Judgment was filed only in the *Butts* case and that motion was not served on the Orangeburg Defendants in the above-captioned action pending in Orangeburg County, which is consolidated with the *Butts* case.

The Orangeburg Defendants further understand that the Motion for Partial Summary Judgment in *Butts* was scheduled for a hearing on April 16, 2024, before Judge Roger Young. The Orangeburg Defendants were not provided with notice of that hearing by the Court. Likewise, the Orangeburg Defendants understand that the hearing was held on April 16, 2024, without the attendance or participation of their counsel and that Judge Young issued an Order Granting Plaintiff’s Motion for Partial Summary Judgment on June 25, 2024, in which Judge Young granted partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. A copy of that Order was not entered in the above-captioned

action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of the issuance of that Order by the Court. Subsequently, Judge Young issued an Order Denying Defendants' Motion to Alter and Amend which was entered on August 8, 2024. A copy of that Order likewise was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of that Order by the Court.

It is the Orangeburg Defendants' understanding that the Chief Justice's Consolidation Order intended to allow the parties asserting a mootness defense to be heard on the retroactivity issue and for Judge Young to decide the issue in an "effective and expeditious" manner "by uniform rulings." Despite the Court treating the Order from the Chief Justice as a "Consolidation Order," given that reference in the June 25, 2024 Order, the Court through procedural oversight, error, or mistake did not treat the cases as consolidated in that the Orangeburg Defendants were not provided notice of the hearing, did not participate in the hearing, and were not provided written notice of the issuance of the two Orders.

The Orangeburg Defendants therefore have filed the current motion to request that the Court allow for the Orangeburg Defendants to be heard on the retroactivity issue as originally directed and intended by the Chief Justice. The Orangeburg Defendants make this request for two reasons: First, because the retroactivity issues were adjudicated by the Court only in the *Butts* case, the Orangeburg Defendants do not have standing as an aggrieved party to participate as parties in the pending appeal in the Supreme Court and, as a result, are being denied their opportunity to be heard on this issue, thereby implicating fundamental fairness and due process. Second, while defense counsel in the *Butts* case made a number of the pertinent arguments, there

was no argument made that the authority on which this Court relies in *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), was wrongly decided or is otherwise no longer “good law” and should be overruled in light of authority from the United States Supreme Court addressing the application of the separation of powers doctrine under the same circumstances. The Orangeburg Defendants further contend, as discussed below, that the *Lindsay* decision was misapplied by the Supreme Court in *Steinke* and in subsequent cases decided since 1999, as was explained by former Justice Costa Pleicones in his well-reasoned dissent in *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 598, 614 S.E.2d 629 (2005).

In sum, given the foregoing procedural history and the Chief Justice’s directions, the Orangeburg Defendants filed the present motion to attempt to correct the procedural errors made by the adjudication of the retroactivity issue in the *Butts* case alone which may technically be a bar or impediment to the Orangeburg Defendants having standing as an aggrieved party before the Supreme Court and thus impairing its right to be heard on this issue.

LEGAL ANALYSIS

As indicated above, the Court is respectfully requested to find that the retroactivity provision in Section 2(E) of Act No. 236 is constitutional and to find that the Plaintiff’s claims against the Orangeburg Defendants, including the Fourth Cause of Action for declaratory relief, are barred by the doctrine of mootness.

It is anticipated that the Plaintiff, like the Plaintiffs in the *Butts* case, will argue that the retroactivity provision in Section 2(E) of Act No. 236 is unconstitutional and in violation of the

separation of powers doctrine. The separation of powers doctrine is codified in Article I, § 8 of the South Carolina Constitution, which provides:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

See, S.C. Const., art. I, § 8. In *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), the Supreme Court relied on the 1974 case of *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), to rule that the re-enacted Tort Claims Act monetary caps only applied prospectively to “future cases.” The Supreme Court found that the issue of retroactivity is “controlled by the principles outlined in *Lindsay*” and that “[t]he Legislature may not retroactively overrule this Court’s interpretation of the statutes in *Southeastern Freight Lines*.” 520 S.E.2d at 157-158.²

However, the Supreme Court misread and misapplied the *Lindsay* decision in *Steinke* and also in subsequent cases since then relying on *Steinke*. In *Lindsay, supra*, the Supreme Court agreed with the trial court that a statutory amendment enacted by the General Assembly in 1972 could not be used to reverse the decision by the Supreme Court in the 1972 case of *Lindsay v. Southern Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 188 S.E.2d 374 (1972). The Supreme Court explained that “a judicial interpreting of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary can only be effective from the date of its enactment and cannot be applied retroactively.” *Lindsay*, 207 S.E.2d at 78. The Supreme Court, however, was not addressing whether a legislative amendment could or could not be applied

² For these same reasons, the Supreme Court’s decision in *Simmons v. Greenville Hospital System*, 355 S.C. 581, 586 S.E.2d 569 (2003), was also incorrectly decided based on the reading of *Lindsay* in the *Steinke* decision.

retroactively to cases not already brought to final judgment. Yet, in *Steinke* and later cases relying on *Steinke*, *Lindsay* has been read much broader than it was intended – specifically to bar the retroactive application of any statutory enactment or amendment which conflicts with any appellate decision.

In his dissent in *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 598, 614 S.E.2d 629 (2005), Justice Costa Pleicones recognized that *Lindsay* has been misapplied by the Supreme Court in *Steinke* and later cases. Justice Pleicones wrote:

Over the past several years, *Lindsay* has been construed as a limitation on the General Assembly’s authority to amend a statute, and to have that amendment apply retroactively. While I have joined several of these decisions, I have come to believe that this reading of *Lindsay* which held only that the General Assembly could not legislatively reverse the Court’s decision, is overly broad.

614 S.E.2d at 632. (Pleicones, J., dissenting). He pointed out that “[t]he General Assembly has the authority to amend statutes, and to determine whether the amended statute applies to matters occurring before its effective date.” 614 S.E.2d at 632-33. (Pleicones, J., dissenting). Justice Pleicones further explained:

Through a series of cases citing *Lindsay* we have created two different rules regarding statutory retroactivity: If the Court never interpreted the prior statute, then the general rule recited above applies. If, however, the Court has issued an opinion interpreting a statute, any legislative change to that statute is deemed prospective only, lest the legislature invade the province of the Court. In my opinion, this “*Lindsay* rule,” premised on the separation of powers doctrine, has in fact led to its violation.

The separation of powers doctrine prevents one branch of government from usurping the power and authority of another. It is not the legislature’s amendment of a statute in response to a judicial interpretation which offends the doctrine, but rather our limitation on the General Assembly’s authority to decide whether that statutory change should be given retroactive effect.

614 S.E.2d at 633. (Pleicones, J., dissenting). (Citations omitted). Accordingly, Justice Pleicones encouraged his brethren to “use this opportunity to abandon our *Lindsay* retroactivity jurisprudence and return to the general rules of statutory construction.” *Id.*

Justice Pleicones’ analysis of *Lindsay* and how it has been misread and misapplied in *Steinke* and subsequent cases is correct and deserves a closer examination and acceptance. In fact, that analysis is on point with United States Supreme Court jurisprudence which also supports a re-examination of *Lindsay*, *Steinke*, *JRS Builders Simmons*, and other such cases that hold that the legislature is barred by the separation of powers doctrine from enacting a statutory amendment in response to a judicial decision and from applying it retroactively to all cases that had not reached final judgment when the statute was enacted.

As Justice Pleicones cited, the analysis of the United States Supreme Court case law starts with the decision in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994), where the Court wrote:

Congress, of course, has the power to amend a statute that it believes we have misconstrued. It may even, within broad constitutional bounds, make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product.

511 U.S. at 313. Later, in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), the Supreme Court differentiated between legislation that applies retroactively to a case that reached final judgment vis-à-vis legislation that applies retroactively to cases not yet brought or case which had not reached final judgment. As to the latter, the Supreme Court explained that “[w]hen a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were render before the law was enacted and must alter the outcome

accordingly. 514 U.S. at 226. In contrast, as to the former, the Supreme Court further explained that “[w]hen retroactive legislation requires its own application in a case already finally adjudicated, it does no more and no less than reverse a determination once made in a particular case.” 514 U.S. at 225. In effect, the Supreme Court in *Plaut* held that the Constitution prohibits legislation from operating retroactively to require courts to reopen “final judgments.” Applying the separation of powers doctrine, the Supreme Court found that that the Constitution charged the judicial branch with the duty of declaring the law in a particular case, and once the judiciary speaks, the legislature “may not declare by retroactive legislation that the law applicable to *that very case* was something other than what the courts said it was.” 514 U.S. at 227. (Emphasis in original). Yet, that is limited to that “very case” and does not preclude the retroactive legislation from applying to any other case which has not reached final judgment.

These principles were reinforced in two more recent decisions of the United States Supreme Court – *Bank Markazi v. Peterson*, 578 U.S. 212 (2016), and *Patchak v. Zinke*, 138 S.Ct. 897 (2018). In particular, in *Patchak*, the Supreme Court begins with a discussion of the federal separation of powers doctrine, which is identical to the state doctrine:

The Constitution creates three branches of Government and vests each branch with a different type of power. To the legislative department has been committed the duty of making laws; to the executive the duty of executing them; and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. By vesting each branch with an exclusive form of power, the Framers kept those powers separate. Each branch exercises the powers appropriate to its own department, and no branch can encroach upon the powers confided to the others.

138 S.Ct. at 904-905. (Citations omitted). The Supreme Court further explained that “[t]he separation of powers ... prevents Congress from exercising the judicial power.” 138 S.Ct. at 905. But “[a]t the same time, the legislative power is the power to make law, and Congress can

make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.” *Id.* As the Supreme Court further held, “[t]o distinguish between permissible exercises of the legislative power and impermissible infringements of the judicial power, this Court’s precedents establish the following rule: Congress violates [separation of powers] when it compels findings or results under old law. But Congress does not violate [separation of powers] when it changes the law.” *Id.* (Citations omitted). Most critically, the Supreme Court held that “[u]nder this Court’s precedents, Congress has the power to apply newly enacted outcome-altering legislation in pending civil cases.” 138 S.Ct.at 910.

In sum, these cases from the United States Supreme Court, in applying the very same separation of powers principles as are applicable under state law, fully support Justice Pleicones’ thoughtful dissent in *JRS Builders* and demonstrate the fallacy of what Justice Pleicones called “our *Lindsay* retroactivity jurisprudence.” The rule actually enunciated in *Lindsay* is supported by *Plaut*, *Bank Markazi*, and *Patchak* – namely that retroactive legislation may not reverse or undo a final judicial decision or judgment. However, the judiciary is not beyond reproach, criticism, or even error in how it interprets statutory law. If the legislature believes that the judiciary made an error or that the law requires clarification, it is the legislature’s prerogative under the separation of powers doctrine to amend the law and to apply it retroactively to any cases that have not been brought or that have been brought but have not reached final judgment. The aforementioned United States Supreme Court case law makes that abundantly clear.

In fact, as Justice Pleicones commented in his dissent, the current application of the “*Lindsay* rule” in such cases as *Steinke* and its progeny does not comply with the separation of powers doctrine – but actually *violates* the doctrine. In effect, the judiciary has usurped the authority of the legislature to make or change the law – particularly where the legislature

believes that the judiciary has interpreted the law in such a way that is counter to the legislative intent and counter to the public policy that the legislature sought to foster.

In effect, if the “*Lindsay* rule” is properly applied consistently with the separation of powers doctrine in the case at bar, it is clear that the enactment and retroactive application of Section 2 of Act No. 236 is constitutional. The retroactive application of Act No. 236 to this case and others, which had not reached final judgment when Act No. 236 was enacted, fully complies with the separation of powers doctrine. To the extent that such cases as *Lindsay*, *Steinke*, *JRS Builders*, *Simmons*, and others hold otherwise, they should be overruled to “abandon our *Lindsay* retroactivity jurisprudence,” as Justice Pleicones urged almost twenty years ago. On this basis, the Orangeburg Defendants request that the Court find that the retroactivity provision in Section 2(E) of Act No. 236 is constitutional and that the Plaintiff’s claims are barred by the doctrine of mootness.

CONCLUSION

Based on the foregoing analysis, the Court is requested to address the constitutionality of the retroactivity language contained in Section 2(E) of Act No. 236, to enter a declaratory judgment that the retroaction application of Act No. 236 is constitutional, and to grant judgment to the Orangeburg Defendant finding that the Plaintiff’s claims are barred by the doctrine of mootness.

More specifically, the Court is asked to issue a final order, pursuant to Rule 54(b), SCRCF, on that issue to allow for an immediate appeal to the South Carolina Supreme Court, which appeal may, at its discretion, be joined or consolidated with the currently pending appeal

filed in the *Butts v. Mace*, Civil Action Number 2021-CP-22-00928. Additionally, the Orangeburg Defendants request that the Court enter and certify final judgment on that constitutional question within its power under Rule 54(b), SCRPC, as contemplated by or within the spirit of the Chief Justice's Order which was intended to "promote the effective and expeditious disposition of this litigation by uniform rulings" so as to "conserve the resources of the parties, their counsel, and the judiciary." *See*, Consolidation Order entered May 17, 2023.

Respectfully submitted,

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 Administrator, Matt Stokes, in his official capacity
 as Orangeburg County Treasurer, Orangeburg
 County, and Orangeburg County Council*

October 25, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Carroll Brown, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer;)
Orangeburg County; and Orangeburg)
County Council,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-38-01268

**PLAINTIFF’S RESPONSE IN OPPOSITION
TO DEFENDANTS’ MOTION TO VACATE
AND DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT AND / OR RULE
54(B) CERTIFICATION**

Plaintiff, Carroll Brown, by and through her undersigned counsel, respectfully opposes: (1) Defendants’ Motion for Summary Judgment and / or Motion for Rule 54(B) Certification; and (2) Defendants’ Motion to Vacate two orders entered in *Butts, et al. v. Mace, et al.*, 2021-CP-22-00928 (Georgetown County). Defendants admit they have no standing to challenge orders not entered in this case. See Def. Mem. at p.5.¹ Notwithstanding the obvious procedural deficiencies warranting the denial of these motions, the proper way for Defendants to be heard on this issue is to request leave to file an Amicus Curiae Brief as an “interested party” in the *Butts* appeal.² See Rule 213, SCACR.

¹ “[T]he retroactivity issues were adjudicated by the Court only in the *Butts* case, the Orangeburg Defendants do not have standing as an aggrieved party to participate as parties in the pending appeal in the Supreme Court....” *Id.*

² There is confusion as to the filing of these motions which will create a third pending appeal arising out of these road maintenance fee cases and further delay the briefing deadlines in the *Butts* appeal on this exact retroactivity issue. Indeed, the parties to the *Butts* appeal sought a stay of the

Ultimately, what Defendants seek is a ruling on an issue already taken up by this Court coupled with a request for the Court to overrule over 50 years of well-settled South Carolina precedent. Indeed, the only argument raised by Defendants, which was not ruled on by this Court in the *Butts* case is the authority on which this Court relied, *Lindsay v. National Old Line. Ins. Co.*, 262 S.C. 621 207 S.E.2d 75 (1974) and *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373 (1999). Defendants argue these cases were “wrongly decided.” Def. Mem. at p.6. To be clear, neither *Lindsay* nor *Steinke*, have been overruled by our Supreme Court. As such, this Court is bound by those decisions. Defendants are free to argue against precedent in the Supreme Court, should they reach it, but beyond preservation of the issue, a request for this Court to overrule Supreme Court precedent must be summarily denied. For the foregoing reasons, Defendants’ motions must be denied.

FACTS

A. Orangeburg County’s Road Maintenance Fee.

On November 2, 2021, Plaintiffs filed this class action lawsuit seeking a refund for herself and all others who paid Defendants’ Road Maintenance Fee, passed via Ordinance in 1987. The Road Maintenance Fee was originally \$35.00 when passed, but was raised to \$50.00, where it remains today.

B. The *Burns* Decision

On June 30, 2021, the South Carolina Supreme Court issued its opinion in a lawsuit that challenged the validity of two Greenville County Ordinances, Nos. 4906 and 4907, which imposed

deadlines pending the outcome of Defendants’ motions. Former Chief Justice Beatty assigned these cases to this Court vesting his Honor with exclusive jurisdiction to make “uniform rulings” and to “conserve the resources of the parties, their counsel, and the judiciary.” See South Carolina Supreme Court Order, May 17, 2023. Respectfully, Defendants motions do precisely the opposite.

user fees that were substantially similar to the fees imposed by Georgetown County Ordinance Nos. 2008-81 and 2018-18. In that opinion, the Supreme Court unanimously found that the Greenville County ordinances were invalid. *Burns*, 433 S.C. at 589-90. After the *Burns* decision, Defendants in Orangeburg County neither repealed its Road Maintenance Fee ordinance, nor refunded any of the illegal fees collected.

C. Act 236

On June 22, 2022, Governor Henry McMaster signed Act 236 into law. Act 236 amended, *inter alia*, section 6-1-300(6) by removing the particularized benefit language—the requirement upon which *Burns* was decided—and added new statutory language allowing fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). This change effectively eliminated any distinction between a service or user fee and a tax and allows local governments to charge their constituents service or user fees regardless of whether the payor derives any unique benefit. In addition, Act 236 includes language that purports to reach back to 1997 and retroactively sanction conduct that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”)

D. South Carolina Supreme Court Order and the *Butts* Case

On May 17, 2023, the Supreme Court issued an Order assigning this case and all other similar cases, including the *Butts* case, to the Court. This Order explicitly applied to “all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” See South Carolina Supreme Court Order, May 17, 2023. The Supreme Court did so to “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *Id.* To this end, this Court is “vested with exclusive

jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina relating to Act No. 236” and is empowered to “decide all matters pertaining to these cases.” *Id.*

This Court has already heard the issue raised in Defendants’ motion in *Butts v. Mace et al.*, C/A No. 2021-CP-22-00928 (Georgetown County). This Court entered an order granting the plaintiff’s motion for summary judgement on June 25, 2024, finding the retroactivity provision unconstitutional as applied to the *Butts* case. See **Exhibit A** (Order Granting Plaintiff’s Motion for Summary Judgement in *Butts*, 2021-CP-22-00928). The defendants sought reconsideration of that order, and this Court denied that motion. The defendants then filed a notice of appeal, the second among these Road Maintenance Fee cases. These orders remain pending before the South Carolina Supreme Court.

ARGUMENT

The only new argument raised across Defendants’ two motions that was not ruled on by this Court in the *Butts* case is that the authority on which this Court relied were “wrongly decided.” See Def. Mem. at p.6 (citing *Lindsay v. National Old Line. Ins. Co.*, 262 S.C. 621 207 S.E.2d 75 (1974); *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373 (1999)). Both *Lindsay* and *Steinke* remain the law in South Carolina. This Court is bound by those decisions. Defendants may argue against precedent in the Supreme Court, should they reach it,³ but beyond preservation of the issue, Defendants’ request for this Court to overrule Supreme Court precedent must be summarily denied. For purposes of issue preservation only, should the Court reverse itself, the retroactivity provision in section 2(E) of Act 236 is unconstitutional as it violates

³ The appropriate way to be heard on this issue is through the filing of an Amicus Curiae Brief in the *Butts* appeal.

separation of powers, due process rights, the remedy clause, the right to judicial review, and the takings clause. The Court need not address any additional issues presented in Defendants' motions; however, Plaintiffs will briefly respond to the matters raised.

II. Defendants' motion to vacate must be denied as it is improper.

A. The appeal divests this Court of jurisdiction over the two *Butts* orders.

This Court may not vacate an order that it lacks jurisdiction over. Service of the notice of appeal “divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.” *Wilson v. Walker*, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.”) (citing Rule 205, SCACR). Under South Carolina law, such an appeal operates as an automatic stay of the lower court's jurisdiction over those matters in the orders.

In the *Butts* case, the defendants filed and served a notice of appeal as to the two orders entered by this Court granting the plaintiff's motion for partial summary judgment and finding section 2(E) unconstitutional as applied to that case. The effect of which divested the Court of jurisdiction over those orders. Were Defendants parties to the *Butts* case with standing file a motion to vacate, which to be clear, is improper, this Court would be unable to vacate orders which the Court has no jurisdiction over. Defendants' motion to vacate must be denied in its entirety.

B. Defendants are not parties to the *Butts* case, lack standing to challenge orders in the *Butts* case, and therefore have no procedural right to service and notice.

Defendants argue their due process rights were violated when the parties in *Butts* did not serve their briefs on them, nor did the Court provide notice to them of the hearing. *See* Def. Mem. at pp.4-5. Defendants admit they are not parties to *Butts v. Mace*, and do not have standing to challenge the orders entered in *Butts*. *See supra* n.1. Notwithstanding these arguments, Defendants

assert they are entitled to service and notice because “these cases have been consolidated.” *See* Def. Mem. at pp.4-5.

Defendants are not entitled to service and notice because they are not parties of record. *See* Rule 5(a) (“written motions,” “written notices,” or “other similar papers shall be served upon each of the **parties of record.**”) (emphasis supplied). In addition, while it is true that former Chief Justice Beatty’s Order vested this Court with exclusive jurisdiction over these cases for “uniform rulings” and to “conserve the resources of the parties, their counsel, and the judiciary,” the Order did not consolidate the cases into a single action pursuant to Rule 42(a), SCRPC.⁴ There is no order consolidating this case with *Butts* pursuant to Rule 41, SCRPC. As a result, the Court and the parties in the *Butts* case were under no obligation to serve their briefs on Defendants. The Court has not engaged in any procedural oversight, made any error, or mistake, and Defendants’ arguments to the contrary are misplaced.⁵

CONCLUSION

This Court must apply the law in South Carolina. It cannot overrule precedent. Therefore, Defendants’ motions should be DENIED in their entirety.

Respectfully submitted,

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⁴ Many have called the former Chief Justice’s Order a “consolidation order” but the fact remains that these cases have not been consolidated, and Defendants have not sought consolidation pursuant to Rule 42(a), SCRPC.

⁵ Rule 60, SCRPC contemplates only “a party” filing a motion for relief from a judgment or order. Rule 60 does not extend such relief to non-parties. *See* Rule 60, SCRPC (“(a) Absent party status in *Butts v. Mace*, Defendants lack standing to seek relief under Rule 60, SCRPC.

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Attorneys for Plaintiff and the Class

Dated: December 20, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CASE NO.: 2021-CP-22-00928
	)	
Richard A. Butts, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
	)	
Miriam Mace, in her official capacity as	)	
Treasurer of Georgetown County, and	)	
Georgetown County, South Carolina,	)	
	)	
Defendants.	)	

Plaintiff Richard A. Butts, individually and on behalf of all others similarly situated, (“Plaintiff”) filed a Motion for Partial Summary Judgment seeking a declaratory judgment that the retroactivity language contained in Section 2(E) of Act No. 236, 2022 S.C. Acts (hereinafter “Act 236”) is unconstitutional as applied to this case, which was pending at the time of Act 236’s effective date. Defendant Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Defendant Georgetown County, South Carolina (collectively “Defendants”) opposed the Motion.

On April 16, 2024, the Court held a hearing via WebEx on Plaintiff’s Motion for Partial Summary Judgment. Having fully reviewed the Parties’ briefing on this issue and considered the Parties’ oral arguments, the Court GRANTS Plaintiff’s Motion for Partial Summary Judgment and finds that the retroactivity provision found in Section 2(E) of Act 236 is unconstitutional as applied to this case for the reasons set forth below.

FACTUAL BACKGROUND

Plaintiff filed this lawsuit on November 5, 2021, seeking refunds for himself and all others who paid a uniform “Road User Fee” that Defendants began imposing on all vehicles registered in Georgetown County in 2001. Plaintiff alleges that fee was \$15 per vehicle registered in the County when it was first imposed in 2001, before the County raised the fee to \$30 per vehicle in 2008, then to \$50 per vehicle in 2018, where it remains today.

On June 30, 2021, the South Carolina Supreme Court issued its opinion in *Burns v. Greenville County Council*, 435 S.C. 583 (2021), which held that Greenville County’s road fee was invalid because it did not meet the statutory requirements imposed by Sections 6-1-300(6) and 6-1-330(A) of the South Carolina Code. After the *Burns* decision, Plaintiff alleges that Georgetown County neither repealed its substantially similar Road User Fee ordinance, nor refunded any of the road fees it collected. Thereafter, Plaintiff filed this lawsuit demanding that Georgetown County refund the Road User Fees that Plaintiff and putative Class members paid.

On June 22, 2022, Act 236 was signed into law more than seven months after Plaintiff filed the present lawsuit. In relevant part, Act 236 expanded the law governing service or user fees in South Carolina and included a provision that purports to make the expanded law retroactive to service or user fees imposed after December 31, 1996.

Following Act 236’s enactment, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4.) On January 6, 2023, the Honorable William H. Seals, Jr., denied Defendants’ motion for judgment on the pleadings. (Order Denying Defs.’ Motion for Judgment on the Pleadings.) Judge Seals then denied Defendants’ motion to

reconsider. (Order Denying Defs.’ Motion for Reconsideration.)

On May 17, 2023, the Supreme Court issued an Order assigning this case and all other similar cases pending at the time of Act 236’s effective date to this Court (the “Consolidation Order”). The Consolidation Order explicitly applied to “all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Supreme Court recognized that this consolidation “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *Id.* To this end, this Court is “vested with exclusive jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina relating to Act No. 236” and empowered to “decide all matters pertaining to these cases.” *Id.*

On September 6, 2023, Plaintiff filed an Amended Class Action Complaint, which seeks a declaration that “Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act’s effective date.” (Am. Compl., ¶ 50(d).) On September 21, 2023, Defendants filed an Answer to the Amended Complaint, along with a Motion to Dismiss. On September 21, 2023, Plaintiff filed a Motion for Partial Summary Judgment, seeking a ruling that Act 236 is unconstitutional as applied to this case, which was pending on the effective date of Act 236. This motion is directed at Defendants’ thirteenth affirmative defense asserting that “Plaintiff’s action is barred in whole or in part by 2022 S.C. Acts No. 236.” (Ans. to Am. Compl., ¶ 59.)

STANDARD OF REVIEW

“Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Harris v. Anderson Cty. Sheriff’s Office*, 381 S.C. 357, 360 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is

completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250 (2006). “The mere fact that a case involves a novel issue does not render summary judgment inappropriate.” *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 11 (2005).

ANALYSIS

A. South Carolina’s Separation of Powers Clause.

Article I, section 8 of the South Carolina Constitution states:

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.*”

S.C. Const. art. I, § 8 (emphasis added).

Despite several legislative attempts, the Supreme Court of South Carolina has consistently held that legislative acts that attempt to retroactively overrule the Supreme Court’s prior interpretation of a statute violate Article I, section 8 of the South Carolina Constitution. *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628 (1974) (“Under our State Constitution which provides . . . for the separation of the legislative, executive and judicial powers of the government, the General Assembly does not have authority to [legislatively reverse a decision of the Supreme Court].”); *Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (discussed *infra*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003) (extending the holding in *Steinke*, and discussed *infra*); *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596 (2005) (citing *Lindsay*, 262 S.C. at 629) (holding that “judicial interpretation of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.”).

B. Act 236's Retroactivity Language is Unconstitutional as Applied to this Case.

“Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial [interpretation] of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Steinke*, 336 S.C. at 402, 520 S.E.2d at 157 (citing *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628-29, 207 S.E.2d 75, 78 (1974)) (alteration in original). “This implicates the doctrine of separation of powers.” *Id.* (citing S.C. Const. art. I, § 8).

In *Steinke*, following the deaths of two bungee jumpers, the plaintiffs brought wrongful death actions against the South Carolina Department of Labor, Licensing, and Regulation (“LLR”). After the jury awarded the beneficiaries \$1 million in actual damages, the LLR appealed. *Id.* at 382. On appeal, the LLR argued, among other things, that the trial judge erred by failing to grant remittitur pursuant to a provision of the 1997 budget act that re-enacted statutory caps to liability formerly found in the South Carolina Tort Claims Act. *Id.* at 401 (citing Act. No. 155, 1997 Acts 1571-72, 1611) (the specific provision stated, “[e]xcept where otherwise provided, this section takes effect [June 14, 1997] and **applies to claims or actions pending on that date or thereafter filed**, except where final judgment has been entered before that date.”) (emphasis added).

To answer that question, the Court looked to its earlier decision in *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994) and the action by the Legislature immediately thereafter. *Id.* at 402. In *Southeastern Freight Lines*, the Court held that limitations on liability within the Tort Claims Act had been impliedly repealed by the Legislature’s subsequent enactment of inconsistent provisions in the Uniform Contribution Among Tort-Feasors Act (Uniform Contribution Act) that called for unlimited, pro rata liability. *Id.* (citing *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994)). In response, the Legislature passed legislation providing that the Tort Claims Act reinstated the statutory caps,

“except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.” *Id.* (citing, Act No. 497, 1994 Acts 5793 (effective July 1, 1994)). “Thus, any case filed before July 1, 1994, is not subject to the \$250,000 cap for individual claims contained in the Tort Claims Act.” *Id.* Importantly, the legislature limited the reach of its legislation to cases that were not yet filed at the time of the Supreme Court’s decision in *Southeastern Freight Lines*.¹

Because the *Steinke* plaintiffs’ complaint was filed on June 29, 1994—two days before the limits were reinstated by Act No. 497, 1994 Acts 5793 (effective July 1, 1994)—the liability limits reimposed by the legislature did not apply. *Id.* However, the legislature’s later amendment in 1997 retroactively imposed liability limits to cases like *Steinke* that were filed prior to the 1994 amendment. *Id.* That is the constitutional issue that the Court addressed, *i.e.*, could the legislature overrule the Court’s decision in *Southeastern Freight Lines*. *Id.* Citing the separation of powers doctrine and *Lindsay*,² the Court held that there were no statutory liability limits on claims at the time of its decision in *Southeastern Freight Lines* and “[t]he Legislature may not retroactively overrule this Court’s interpretation of the statutes in *Southeastern Freight Lines*.” *Id.* at 403.

Four years later in *Simmons*, the Supreme Court reaffirmed its decision in *Steinke* and extended its holding to protect from retroactive legislation not only lawsuits filed prior to the effective date of the new law, *but also those claims that arose or accrued prior to the effective date*. 355 S.C. at 588, 586 S.E.2d at 572. (“The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that **arose or accrued** after the

¹ Later in *Simmons* the Supreme Court would explore whether retroactive legislation could affect claims that had already arisen or accrued, but had not yet been filed.

² In *Lindsay*, the Court held that the Legislature’s attempt to declare by a retroactive amendment that insurance companies were entitled to investment credits—after the Court had previously held that they were *not* entitled to credits—violated the separation of powers doctrine. 262 S.C. at 628-29, 207 S.E.2d at 78 (1974).

effective date of the reenactments.”) (emphasis in original). In *Simmons*, the plaintiffs filed suit against the defendant hospital in May of 1998 for negligence in the care and treatment of their minor child in 1992. *Id.* at 583. After answering the complaint, the parties agreed to settle the plaintiffs’ claims for \$1.5 million. *Id.* Believing its liability was limited to the \$250,000 cap imposed by S.C. Code § 15-78-120(a)(1), the defendant only tendered \$250,000. *Id.* at 583-84. Thereafter, the plaintiffs filed for declaratory judgment to determine the applicability of the cap. *Id.* at 584. The trial court found that the \$250,000 cap applied, and plaintiffs appealed. *Id.*

On appeal, the Supreme Court, based on its prior decision in *Steinke*,³ addressed “whether the liability caps within the 1994 and 1997 Acts are applicable to claims which **arose or accrued** prior to each Act’s effective date, but which were not **filed** until after the effective date.” *Id.* at 587 (emphasis in original). Defendant argued that because *Steinke* emphasized the filing date in its holding, that date of filing was the only significant date for determining retroactivity. *Id.* However, the Court disagreed, holding:

At the time Appellants’ claim arose — when [plaintiffs’ minor child] was infected shortly after his birth in 1992 — there were no statutory caps in place under the rule of *Southeastern*. **Therefore, the Legislature’s attempt to reach back and change the status of such claims that arose prior to the Legislature’s 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 in toto in 1997, is, by definition, retroactive, and violates the doctrine of separation of powers.** *Steinke; Lindsay*. The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.

Id. at 587-88 (emphasis added).

³ Specifically, the Court referenced the statement in *Steinke* that, “[t]he Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in **future cases**.” *Simmons*, 355 S.C. at 587 (quoting *Steinke*, 336 S.C. at 402) (emphasis in original). Because *Steinke* was filed before the effective date of the 1994 Act, the date of accrual was not significant to the Court’s decision.

In light of the Supreme Court of South Carolina’s unanimous decision in *Burns* holding that a similar road fee was invalid because it did not meet the statutory requirements of S.C. Code §§ 6-1-300(6) and 6-1-330(A), Plaintiff’s Complaint seeks a refund of any fees collected under Defendant’s Road User Fee ordinance. In *Burns*, the Supreme Court held:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the [fee] payer in some manner different from the members of the general public.”

...

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

After the filing of this lawsuit, Act 236 was signed into law, thereby amending S.C. Code §§ 6-1-300(6) and 6-1-330(A). Specifically, Act 236 amended section 6-1-300(6) by removing the particularized benefit language—the entire basis for the *Burns* decision—and replaced it with language allowing service or user fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). Act 236 also includes a provision that purports to retroactively authorize the imposition of service or user fees that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

Lindsay and its progeny are clear that legislative provisions like § 2(E) of Act 236, which seek to retroactively authorize conduct that has been deemed illegal by the Supreme Court, violate the separation of powers clause of the South Carolina Constitution. See *Lindsay*, 262 S.C. 621, 207

S.E.2d 75; *Southeastern Freight Lines*, 313 S.C. 466, 443 S.E.2d 395; *Steinke*, 336 S.C. 373, 520 S.E.2d 142; *Simmons*, 355 S.C. 581, 586 S.E.2d 569.

Like in *Lindsay*, the *Burns* Court’s interpretation of S.C. Code § 6-1-300(6), in a case involving a similar service or user fee, is determinative of the statute’s meaning, “and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Lindsay*, 262 S.C. at 629. Like in *Steinke*, Plaintiff’s claims were being litigated prior to the Act’s effective date (June 22, 2022). Indeed, the instant lawsuit was filed more than seven months before Act 236 became effective. Moreover, like in *Simmons*, Plaintiff’s and putative class members’ claims all accrued prior to the Act’s effective date. Therefore, pursuant to the Supreme Court’s decisions in *Lindsay*, *Steinke* and *Simmons*, the Court finds that the retroactivity provision in section 2(E) of Act 236 is unconstitutional because, if applied to this case, it would overturn the Supreme Court’s interpretation of section 6-1-300(6) in *Burns*.

Defendants have pointed to no genuine issues of material fact that would preclude the Court from granting Plaintiff’s Motion for Partial Summary Judgment. Instead, Defendants would have this Court accept a narrow, tortured reading of both *Steinke* and *Burns*. Defendants’ substantive arguments regarding the constitutionality of § 2(E) of Act 236 are a red herring. Initially, Defendants’ argument that Plaintiff misapplies the Supreme Court’s decision in *Steinke* is belied by the text of that decision. Indeed, in *Steinke*, the Supreme Court asked and answered the very question that Plaintiff asks this Court to rule on: “May the Legislature by a retroactive amendment overrule this Court’s prior interpretation of a statute? ***We conclude the Legislature may not.***” *Steinke*, 336 S.C. at 402 (emphasis added).

While ignoring that conclusion in *Steinke*, Defendants argue that the Supreme Court’s Order in *Burns* “solely invalidated a Greenville County road maintenance fee,” and thus, the

decision has no bearing on Defendants' Road User Fee and "there is no 'retroactive overruling issue' created by Act 236." (Def's Memo. in Opp. at 9.) The Court does not dispute that the *Burns* court invalidated Greenville County's road fee ordinance. However, Defendants' argument ignores how the Supreme Court arrived at that decision.

Before determining the validity of Greenville County's ordinances, the Court necessarily interpreted S.C. Code § 6-1-300(6) and explained how that statute applied to the ordinances. *Burns*, 433 S.C. at 589 (holding, "we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that government service or program ... benefits the payer in some manner difference from the members of the general public."). Whether *Burns* invalidated all road user fees, or just Greenville County's, is irrelevant under *Steinke*.

It is the Supreme Court's *interpretation of S.C. Code § 6-1-300(6)*, not the application of that interpretation to a particular ordinance, that Act 236 attempts to unconstitutionally overrule by removing the particularized benefit language and adding that the amendment "applies retroactively to any service or [user] fee imposed after December 31, 1996." Act No. 236, § 2(E). Therefore, Defendants' attempts to distinguish its road fee ordinance from the road fee ordinance at issue in *Burns* fails to create a genuine issue of material fact for the purposes of summary judgment. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (confirming the correct standard of review on summary judgment is whether there is a "genuine issue of material fact" not a "mere scintilla").

Finally, Defendants' argument that "*Burns* simply involved a declaratory judgment on a narrow issue" and that "*Burns* did not create any rights or remedies available to Plaintiff" is equally unavailing. Whether *Burns* created a right or remedy for Plaintiff has no bearing on the present motion. Plaintiff's Amended Complaint, filed September 21, 2023, specifically "request[s] a declaratory judgment from this Court that Section 2(E) of Act No. 236, 2022 S.C. Acts, is

unconstitutional as applied to this case...” (Am. Compl. ¶ 52.) Because that is exactly what Plaintiff’s motion requests, each of Defendants’ arguments on the merits are unavailing. Accordingly, Defendants have failed to establish any genuine issue of material fact that § 2(E) of Act 236 is unconstitutional as applied to this case.

C. Defendants’ procedural defenses are unavailing.

Defendants claim a ruling on Plaintiff’s Motion for Partial Summary Judgment is premature because there are other potentially dispositive legal issues in this case and other road fee cases—one of which is currently before the Court of Appeals. *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

The Court finds a ruling on the as-applied constitutionality of Act 236 is prudentially proper, under the facts and circumstances of this case, due to the Consolidation Order. The purpose of the Consolidation Order was “to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Court finds a ruling on the Motion for Partial Summary Judgment “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” A final, appealable ruling on Act 236 will allow this threshold legal issue, along with the legal issues in *Thompson v. Killian*, to be addressed by our appellate courts at the same time.⁴

The Court further finds that a ruling is procedurally proper notwithstanding Defendants’ pending Motion to Dismiss the Amended Complaint. Defendants have answered the Amended Complaint and raised Act 236 as an affirmative defense. Therefore, the pleadings are closed and a summary judgment ruling is proper. Rule 56(a), SCRPC (“[a] party seeking to ... obtain a

⁴ Plaintiff has consented to an immediate appeal of this Order so that the constitutionality of Act 236’s retroactivity provision can be addressed by the appellate courts concurrently with the other dispositive legal issues currently on appeal in *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.”).

Finally, the Court finds the Governor, the President of the Senate, and the Speaker of the House are not necessary parties to this case. Plaintiff does not challenge the facial constitutionality of Act 236, nor does he challenge the prospective application of the law. Plaintiff merely seeks a determination that the retroactivity provision of Act 236 is unconstitutional as applied to this case. *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 9, 558 S.E.2d 511, 515 (2002) (“We recognize the principle that a statute may be constitutionally valid in part while unconstitutionally invalid in part.”). Rule 4(d)(4)(B), SCRCRCP requires only that the Attorney General be served with a copy of the pleadings, which the record reflects has occurred.

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Partial Summary Judgment on Act 236 is GRANTED.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG * TRANSCRIPT OF RECORD
 3 -----X
 4 CARROLL BROWN, individually *
 5 and on behalf of all others *
 6 similarly situated, *
 7 Plaintiffs, *
 8 vs. * Case No. 2021-CP-38-01268
 9 HAROLD M. YOUNG, in his *
 10 official capacity as *
 11 ORANGEBURG COUNTY *
 12 ADMINISTRATOR; et al., *
 13 Defendants. *
 14 -----X

January 30, 2025

B E F O R E:

The Honorable Roger Young, Presiding Judge

A P P E A R A N C E S:

Will Lewis, Esq.

Attorney for the Plaintiffs

Andrew F. Lindemann, Esq.

Bradley Farrar, Esq.

Attorneys for the Orangeburg Defendants

Recorded by: WebEx Recording

Court Transcriber: Bobbi Fisher, RPR

SC Official Court Reporter III

I N D E X

DESCRIPTION

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is not
known due to audio recording quality

P R O C E E D I N G S

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THE COURT: All right. Well, we're on -- this is the Orangeburg case, Brown versus Orangeburg County, 2021-CP-38-1268. And this is Orangeburg's Motion for Summary Judgment; is that correct?

MR. LINDEMANN: That's correct, Your Honor.

THE COURT: These things are so confusing as to where we're at on so many different things. We'll have to have a little rundown here at the end to see what else is left. But I want to make sure we're all on the same page as to what we're here for.

Well, Mr. Lindemann, I believe this is your motion, so if you're ready to go, you may proceed.

MR. LINDEMANN: That's correct. Thank you, Your Honor. May it please the Court. Andrew Lindemann along with Brad Farrar for the three defendants -- the Orangeburg defendants.

And, Your Honor, as you indicated, this motion is -- this is before you on our Motion for Summary Judgment and a request that the Court enter a declaratory judgment or Rule 54(b) certification.

And just backtrack a little bit to our status conference a couple of months ago -- actually, I think it was in October, if I remember correctly -- at that time, the defendants had filed a Motion to Vacate an Order that you issued in the Butts v. Mace case where you found that the applicable

1 provisions of Act No. 236, specifically Section 2(e), was
2 unconstitutional as a violation of separation of powers. And
3 we had taken the position on behalf of the Orangeburg County
4 defendants that we had not had notice of the hearing that was
5 held in the Butts case and, ultimately, did not get notice of
6 any decisions that the Court had made, either the initial
7 Order or the Order on the Rule 59(e) motion.

8 And as indicated in that status conference, Your Honor,
9 the main concern that I have on behalf of my clients is that I
10 understood that the -- what this Court has called a
11 Consolidation Order issued by Chief Justice Beatty back in
12 2023 was intended to deal with all of these road maintenance
13 cases and assign them to one judge with the hopes that there
14 would be uniform rulings, and, obviously, the retroactivity
15 issue dealing with Act 236 also applies to the Orangeburg
16 defendants.

17 So what I was hoping to accomplish with that motion and
18 what I'm hoping to accomplish with the motion before Your
19 Honor today is to, in essence, get a uniform ruling from the
20 Court and to be able to have a single appeal before the South
21 Carolina Supreme Court to decide this retroactivity issue.

22 And, ultimately, what makes that necessary for, at least
23 in my view, to jump through these hoops is I think that there
24 was an issue that was not necessarily asserted to the Court
25 before in the Butts v. Mace case. That's important to be

1 before the Supreme Court when they make a determination. And
2 that's what we briefed to you, the issue as to whether the
3 underlying case law, on which Your Honor relied, and in
4 particular the Lindsay case and this Steinke case, were
5 properly decided by the Supreme Court.

6 And so, obviously, we would like to have that issue be
7 before the Supreme Court when they're deciding this question
8 so that, in essence, there's not a piecemeal determination
9 down the road of these various different issues.

10 THE COURT: Your "in essence," that's a real nice way of
11 saying you want them to overrule their precedent; is that
12 correct?

13 MR. LINDEMANN: That's correct. And, Judge, I recognize
14 that Your Honor is bound by that precedent. There are very
15 limited circumstances I think where a Circuit Court can avoid
16 precedent that's been established unless it's dicta, and I'm
17 not claiming that Lindsay or Steinke or -- have -- in addition
18 the JRS Builders vs. Neunsinger case, I'm not contending that
19 the Supreme Court was relying on dicta there.

20 So, ultimately, I recognize your hands are tied, but, at
21 the same time, we've got rules of appellate procedure that
22 we've got to raise an issue in the lower court in order to
23 preserve it for appeal, and that's why I'm jumping through
24 these hoops and I'm trying to figure out a way for judicial
25 economy to live up to the spirit while the intent -- at least

1 the spirit of the Chief Justice's Consolidation Order -- that
2 we're not doing this in a piecemeal fashion and that the
3 Supreme Court has this what I think to be a very legitimate
4 issue. And if you've had the opportunity to read our brief, I
5 think you can see that there is a legitimate argument that
6 Lindsay, and in particular Steinke, were incorrectly decided
7 by the Supreme Court.

8 There's recent United States (indiscernible) that weighs
9 in on these separation of powers issues that also support our
10 position that a legislative body should be able to legislate
11 retroactively to address a judicial decision that the
12 legislature believes was incorrectly decided or requires
13 clarification, and then to apply it retroactively not to the
14 case that had reached final judgment, which is the facts of
15 Lindsay, but to apply it retroactively to cases that haven't
16 been brought or cases that have been brought and just simply
17 hadn't reached final judgment. The case law that we cited
18 from the U.S. Supreme Court fully supports those principles.

19 And, in addition to that, Your Honor, we're relying on
20 Justice Pleicones's dissent in the JRS Builders vs. Neunsinger
21 case from 2005 in which he, despite indicating that he had
22 subscribed to the previous interpretation of Lindsay in the
23 Steinke case, had come to realize that that was an error and
24 that Lindsay was being misinterpreted and misapplied. And we
25 believe that Justice Pleicones's dissent is correct and

1 certainly merits an additional look by the current Supreme
2 Court, which I would submit to Your Honor, at least from what
3 I (indiscernible) current members of our Supreme Court have
4 ever weighed in on this issue, none of them were on the Court
5 at the time of the Steinke or the JRS Builders case.

6 So I think there's a legitimate issue for the Supreme
7 Court to look at this. My goal is to get it before them and
8 get it before them in a way that the issue is properly before
9 them and properly preserved. And that's the purpose of these
10 motions. And that's why we've moved for summary judgment, and
11 we're asking the Court -- you know, assuming Your Honor rules
12 consistently with the way you did in the Butts case, that Your
13 Honor certifies this -- your Order under Rule 54(b) for an
14 immediate appeal. That will allow us to file an appeal.

15 The Butts case, as I understand it, has not been
16 briefed yet. There is a Motion to Stay that has been filed,
17 and to my knowledge, not ruled on, waiting on this Court to
18 address these motions in this Orangeburg County case.

19 And so then it's -- so it would set up appropriately for
20 the Supreme Court to be able to take the Butts case and this
21 case, consolidate them if they wish or certainly hold oral
22 argument jointly and be able to take up all of these issues,
23 the defenses and arguments that were raised by the defense in
24 Butts, as well as this argument that Lindsay and Steinke and
25 JRS Builders is no longer good law and should be reversed and

1 that the General Assembly should have the power under the
2 Separation of Powers Act -- separation of power principles to
3 be able to retroactively amend statutory law and have it
4 applicable to any type of cases that either have not been
5 brought previously or that are still pending and have not
6 reached final judgment.

7 And, again, we would point out that that is consistent
8 with the U.S. Supreme Court case law, and I can go through in
9 more detail, but I don't know that it's necessary. It's fully
10 briefed.

11 So we would rely on our brief, Your Honor. Again, I
12 recognize that Your Honor is in a position where you can't
13 overturn precedent, but we want to be in a position to be able
14 to argue against that precedent. And as I indicated, I think
15 we have a valid basis for doing so.

16 So we'd ask the Court to issue an order on the
17 retroactivity issue in this case and then, ultimately, to
18 certify, for an immediate appeal, your Order under the
19 authority that's granted in Rule 54(b) so that this issue can
20 be taken up to the Supreme Court and heard in conjunction with
21 the Butts case.

22 Unless the Court has any questions, that basically sums
23 up what we're trying to do in our position and as for the
24 merits as to why we believe the Section 2(e) of Act No. 236 is
25 constitutional as set forth in our brief, and we certainly

1 rely on the brief.

2 THE COURT: All right. I remember Justice Pleicones beat
3 the drum for a long time on taking away these special damages
4 requirement in civil conspiracy, and it probably took over ten
5 years, maybe longer, before they finally -- it was after he
6 left the court -- that they finally did overrule themselves to
7 the extent that they took out the special damages requirement
8 of that.

9 So I always said a Costa Pleicones dissent was sometimes
10 worth more than the majority opinion. I said that to myself;
11 I didn't really say that out loud too often. But, anyway,
12 your point is well made and succinctly made.

13 So does anybody else want to argue this, or do you want
14 to rely on the briefs as well?

15 MR. LEWIS: Your Honor, this is Will Lewis on behalf of
16 the plaintiffs. Just to respond, it seems Mr. Lindemann is
17 conceding the Court's hand is tied by this. And as someone
18 who clerked for Justice Pleicones, I'll agree with you that,
19 at least in his chambers, he thought his dissents were more
20 powerful than the majority, I can promise you that, when he
21 was up there.

22 But I guess if he's conceding he's losing by binding
23 precedent, it's pretty easy to go through this substantive
24 part of this. They lose, and you're bound by that under
25 Lindsay, Steinke, and everything else; you're not allowed to

1 overrule that.

2 I'm a little confused as to procedurally how this is
3 going to work, Your Honor, and that is because we have a
4 pending Motion to Reconsider on a Motion to Dismiss in this
5 matter. So you'd be granting partial summary judgment while a
6 Motion to Dismiss has been granted with a pending Motion to
7 Reconsider. So, procedurally, that gets pretty messy to say
8 the least.

9 On top of that, Your Honor, I'm a little confused -- and
10 I'd defer to Mr. Lindemann on the preservation rules of
11 appellate court -- he does it a lot more than me -- as to why
12 this issue couldn't be handled on an amicus brief in the Butts
13 appeal that hasn't been briefed, as he has a related issue.
14 And there's plenty of time. We have cases where an appeal
15 that we're not involved in is going to substantively impact
16 our related case.

17 He'd also be allowed to proceed this case all the way
18 through completion and then appeal the result. I don't want
19 to create anything that would delay. We've been trying to
20 work together to get everything up there, so I fully
21 appreciate Mr. Lindemann's position.

22 The only thing that really pauses me, too, substantively
23 in this regarding this argument on U.S. Supreme Court is the
24 fact that Article 1, Section 8, Your Honor, the separation of
25 powers delineation of the South Carolina Constitution on which

1 the Lindsay progeny relies, that provision does not exist in
2 the U.S. Constitution. So we're going to be arguing against
3 precedent on U.S. Supreme Court case law that is interpreting
4 a Constitution that doesn't even have our enumerated
5 separation of powers.

6 If you remember, Your Honor, the U.S. Constitution just
7 enumerates; it doesn't even mention the word "separation of
8 powers." That comes from Marbury v. Madison and the Madison
9 Federalist Papers.

10 But in our South Carolina Supreme Court Constitution, we
11 had that explicit provision on which you relied, Your Honor,
12 on -- in the Butts Order.

13 So it seems like we're deferring for (indiscernible) in
14 the U.S. -- would never interpret this provision, they can't.
15 I mean, we're in the sole province of the South Carolina
16 Supreme Court.

17 So, you know, I would fully acknowledge that
18 Mr. Lindemann has conceded, at least in every way, shape, or
19 form, that they're going to lose these motions. I do have
20 pause, Your Honor, in the procedural mechanism and the
21 substantive justification for getting this issue in front of
22 the Supreme Court, especially in light of the U.S. -- and we
23 don't have the separation of powers provision in the U.S.
24 Supreme -- or in the U.S. Constitution, just in the South
25 Carolina.

1 So, you know, I'm a little confused as to why that needs
2 to go up or why it couldn't be handled in a different manner,
3 but I'm going to fully accept Mr. Lindemann's concession that
4 he loses these motions.

5 THE COURT: Have you got any thoughts on that,
6 Mr. Lindemann?

7 MR. LINDEMANN: I do, Your Honor.

8 THE COURT: We were so close to everybody agreeing on
9 everything.

10 MR. LINDEMANN: Your Honor, first of all, on the
11 separation of powers, Mr. Lewis is correct that there is not a
12 specific separation of powers provision in the U.S.
13 Constitution, but it has been interpreted within the
14 Constitution itself.

15 The South Carolina Separation of Powers Doctrine is no
16 different than the way the doctrine has been interpreted by
17 the United States Supreme Court.

18 But, obviously, that's an issue that, ultimately when
19 this case can be heard on the merits or my arguments can be
20 heard on the merits, that can be taken up at that time.

21 And I'm not relying on U.S. Supreme Court case law. I'm
22 relying primarily on Justice Pleicones's dissent as being
23 correct that Lindsay was misinterpreted in Steinke, which it
24 clearly was in my opinion; we can see if the current Supreme
25 Court agrees with that.

1 But, ultimately -- I mean, that doesn't even then touch
2 on the United States Supreme Court case law. We've cited the
3 U.S. Supreme Court case law as further support for the
4 argument that a legislative body can amend a statute even
5 though a Court has interpreted that statute. They can amend
6 that statute and apply it retroactively.

7 And the U.S. Supreme Court case law supports that, and of
8 course that was the conclusion that was reached by Justice
9 Pleicones in his dissent.

10 But let me touch on the procedural aspects of it. I
11 fully appreciate the ability to be able to file an amicus
12 brief, and I certainly -- you know, I'm not waiving the
13 ability to do so.

14 My concern is this: Appellate procedure generally holds
15 -- you know, and there are exceptions because appellate courts
16 -- you know, sometimes they apply preservation rules and
17 sometimes they don't. But we don't know, you know, when
18 they're going to enforce preservation rules and when they're
19 not. And, typically, an amicus cannot raise an issue that has
20 not been raised by the actual litigants in the case.

21 I think this case is a little different because, based on
22 the Chief Justice's Consolidation Order, I think the intent
23 and certainly the spirit of that Order was that all of the
24 parties should be -- should be at least -- the cases should be
25 considered consolidated to the effect that, you know, there

1 should be uniform rulings that are made and ultimately that
2 this isn't decided piecemeal.

3 But I don't believe just allowing the Orangeburg
4 defendants to file an amicus brief in the Butts case takes
5 care of this issue, because my concern is the Supreme Court
6 could look at that and say -- or the plaintiff in Butts can
7 argue you can't consider, you know, Orangeburg County's
8 position on this because it wasn't raised by the defendants in
9 Butts.

10 So, again, I'm trying to get this issue before the
11 Supreme Court in a way that it's properly before them and then
12 none of the parties can argue that it's not properly
13 preserved. And Rule 54(b) provides for certification. It's
14 not something that has been frequently used; I'll admit that.
15 It's more frequently used in the federal system where district
16 judges can certify issues or cases for an immediate appeal to
17 the circuit courts. But it's in our Rule 54(b). It was
18 addressed in such cases as Link vs. Pickens County School
19 District; in a case I was involved in, Ashenfelder vs. City of
20 Georgetown.

21 So it does exist, and this is an appropriate use of it, I
22 would submit, because the goal here is judicial economy and to
23 get this issue before the Supreme Court, with all the possible
24 defenses and wrinkles to be decided by the Court at one time.
25 It's an appropriate use of 54(b).

1 I don't think it affects the order of Judge Dickson or
2 the pending motions for reconsideration before Judge Dickson.
3 Frankly, I don't know why we haven't gotten a decision from
4 Judge Dickson because it's been a couple of years, and I don't
5 know if Your Honor has been in contact with him. I think at
6 one status conference a while back, you indicated that you may
7 reach out to him.

8 But the bottom line is, as far as I'm concerned, the only
9 issue we're asking to (indiscernible) is your decision on this
10 retroactivity question and that the rest of the case would
11 remain in the circuit court in its current posture.

12 And, again, so I'm not trying to -- I'm not trying to
13 bring anything before the Supreme Court more than the
14 retroactivity issue that was decided in Butts that was
15 addressed by the Chief Justice in his Consolidation Order, and
16 I don't think it would impact the remainder of this case,
17 which will simply be in the same posture awaiting a ruling
18 from Judge Dickson on the Motion to Reconsider.

19 THE COURT: What did he rule on that is being
20 reconsidered?

21 MR. LEWIS: I'll tell you, Your Honor. He dismissed the
22 case kind of on the same grounds as the Aiken dismissal. 236
23 was not raised at that time.

24 One solution to this, you know, that I think would make
25 it simpler, just from a procedural scenario, is if Your Honor

1 -- assuming that Judge Dickson upholds his previous order and
2 denies our Motion to Reconsider, we would appeal that. I
3 think under Rule 220 that he can raise any issue to affirm in
4 the record. I think Andrew would be able to bring up Act 236.

5 I'm happy to make a recommendation or an affirmative
6 representation on the record that we would not prohibit Andrew
7 from raising on appeal as an additional ground for potential
8 averments Act 236 in the Brown appeal post a potential denial
9 of a Motion for Reconsideration.

10 In the event that Judge Dickson does change his mind,
11 then we can approach this ruling. My concern is, Judge, we go
12 through all the procedural machinations that don't make sense,
13 get up on appeal -- and I've been up there -- and I think
14 Andrew would agree -- they kick it back down because it's not
15 appropriate.

16 I mean, you know, that's kind of -- I'm trying to make it
17 clean, Your Honor. And I think everyone knows where this is
18 going. That's the only reason why I'm voicing that as a
19 potential solution to Andrew's procedural problem that we're
20 trying to be efficient to.

21 MR. LINDEMANN: And, quite frankly, if we're trying to be
22 clean, with all deference to Mr. Lewis, if the entire Brown
23 case goes up, including Judge Dickson's ruling, assuming he
24 denies reconsideration, then the Brown appeal has numerous
25 issues in it, not just this (indiscernible) issue.

1 So what I'm trying to do is put the retroactivity issue
2 cleanly before the Supreme Court with all potential arguments
3 before the Courts so they can decide this issue. That's the
4 cleanest way for this case to go forward.

5 And, quite frankly, the appeal that's currently pending
6 in the Aiken cases, which Mr. Lewis is involved in on behalf
7 of his clients in that case, we've got oral arguments
8 scheduled in front of the Supreme Court in February. It's
9 well ahead of the rest of them.

10 THE COURT: And this is the same -- the same issues?

11 MR. LINDEMANN: Same issues --

12 MR. LEWIS: Not retroactivity. Everything but
13 retroactivity.

14 MR. LINDEMANN: Right. Retroactivity is not in that
15 case. The General Assembly had not enacted 236 at the time
16 that those Rule 12 motions were argued, which is the same with
17 the Orangeburg cases. The Orangeburg case was very early. I
18 think we got a decision from Judge Dickson before we got a
19 decision from Judge Keesley. It's just reconsiderations
20 that's been pending, I think, over two years now.

21 THE COURT: Well, I -- I'm kind of in a diplomatic
22 pickle. I've had a conversation or two with Judge Dickson
23 about this. I don't know what else I can do to get him to
24 sign an order one way or the other. I just -- I can only
25 leave it at that. Other than draft an Order and sit down

1 there with a pen and make him sign it, I don't know what else
2 to do.

3 So I would -- if we can -- if you guys can figure out a
4 way so that you can get my issue up without his issue blocking
5 it and being sent back, put the magic language in the Order.

6 What I'd like y'all to do is -- Mr. Lewis, Mr. Lindemann,
7 get together, write up an Order on today's so that it gets you
8 -- you're all on the same page -- gets you what you want to
9 get to the Supreme Court and the path that you think is
10 quickest and reflects your side's position, and I'll take a
11 look at that.

12 I think we also have one case with Judge Shaw that's kind
13 of in waiting on a --

14 MR. LEWIS: Your Honor, we did have the wrong pending
15 Motion to Reconsider in the Hyman matter in Horry County.
16 That has been ruled on now, and that appeal has been filed or
17 Notice of Appeal has been filed in that case, if that's what
18 you're referencing, but I think it is.

19 THE COURT: All right. Let's -- I had -- I think it was
20 Ms. Babcock had written a little update for me, which I very
21 much appreciated, because I really thought we were maybe a
22 little bit closer to my doing anything being done, and it
23 appears that we were. And I went back and looked at my notes
24 from our last conference where we talked over this, and I'll
25 be honest with you, my notes don't always make sense in light

1 of some of the things that we are arguing about.

2 So let's just go through it. From the Aiken case, is
3 there anything for me to do?

4 MR. LEWIS: No, Your Honor.

5 MR. LINDEMANN: No, Your Honor.

6 THE COURT: Okay. All right.

7 All right. On the Anderson case, I've got "case
8 dismissed without prejudice." That still stands?

9 MR. LEWIS: It's not my case.

10 THE COURT: Anybody here on -- I guess nobody would be
11 here on the Anderson case, at least not alive.

12 All right. The Beaufort case, Calkins vs. Beaufort.
13 There was -- it looks like an additional Motion for Judgment
14 on the Pleadings, Judge Mullens -- or there was a Motion to
15 Deny, a Motion to Dismiss, denied. And then Judge Mullens was
16 going to send it to Judge Bonds, and then, in the meantime, it
17 got assigned to me.

18 There seems to be a Motion for a Class Certification out
19 there, but I don't really know that that needs to be done.
20 They assigned it to me in June of 2023, and there's a
21 stipulation to mediate the case filed in July of 2023.

22 So is there anything for me to do on the Beaufort/Hilton
23 Head case?

24 MR. ROSS APPEL: Your Honor, Ross Appel here on behalf of
25 plaintiffs in the Beaufort case. The Beaufort case is

1 essentially on hold until we get a ruling from the Supreme
2 Court in the Aiken case, because there's a lot of very
3 important, common legal issues present there.

4 So there's nothing we need from Your Honor in the
5 Beaufort case or, frankly, any of the other cases we're
6 involved in until we get a ruling in Aiken.

7 MR. JIM GILLIAM: Judge Young, this is Jim Gilliam. I
8 represent Beaufort County. I would agree with what Mr. Appel
9 said.

10 MR. CURTIS COLTRANE: Judge Young, this is Curtis
11 Coltrane, representing the Town of Hilton Head Island, and I
12 would agree with Ross and with Jim that, at this point, the
13 case is on hold pending the Supreme Court's decision in the
14 Aiken case.

15 THE COURT: Okay. Good.

16 How about a Charleston County case? Got dismissed
17 without prejudice. So that one is just dead. Nothing for me
18 to do on that one, I take it.

19 How about Florence case? Florence County -- Biggs vs.
20 Florence County. Go ahead.

21 MR. STEVE MATTHEWS: This is Steve Matthews. I represent
22 Florence County in that matter. It's essentially in the same
23 posture as the Hilton Head. There's a motion pending to
24 certify the class. That has been opposed for various reasons,
25 including prematurity.

1 The pending appeal of the Aiken case, which has to do
2 with the availability of class certification and issues like
3 this, will have a substantial, perhaps dispositive impact on
4 that. So that is essentially, in my view, on hold pending the
5 disposition by the Supreme Court of the Aiken appeal.

6 Ross, is that a fair summary?

7 MR. ROSS APPEL: Yeah, that's absolutely right. So
8 Beaufort, Florence, Spartanburg, Georgetown, Richland are all
9 in that boat, from our perspective. Those are the cases that
10 our firm is involved in on the plaintiff's side, and we're all
11 waiting to see what happens with the Aiken appeal.

12 MR. JIM GILLIAM: And, Judge Young, I represent Richland
13 County, and I would agree with what Mr. Appel said.

14 THE COURT: All right. That was Richland County?

15 MR. JIM GILLIAM: Yes, sir.

16 THE COURT: All right. All waiting on -- all agreed,
17 waiting on Aiken appeal.

18 All right. So that was Richland County and what other
19 ones?

20 MR. ROSS APPEL: Florence, Georgetown, Spartanburg.

21 THE COURT: There's -- I've got two Spartanburg cases?

22 MR. ROSS APPEL: That's right.

23 THE COURT: Marlboro and (indiscernible).

24 MS. SARAH SPRUILL: Your Honor, this is Sarah Spruill. I
25 represent Spartanburg County. Those both have orders staying

1 them until somebody lifts it. Mr. Appel is correct; they're
2 hanging out, waiting on what happens in Aiken also.

3 THE COURT: Okay. So all agree, everybody is waiting on
4 the Aiken ruling.

5 What I'd like to do is, after today, write a little
6 letter to the Chief Justice and say here's a status on what --
7 you know, I got this Order; it assigned all these cases to me.
8 It's a little bit confusing on the record. And so I'm just
9 reporting back to you this is where we're at. And it sounds
10 like -- now, all of them are awaiting that Court to rule on
11 the Aiken case and then the Butts case and then this case. Is
12 that right?

13 MR. LEWIS: That's correct, Your Honor. If you go
14 through the rest of the cases, at least on the plaintiff's
15 counsel, I've been on the other side of those, and they're in
16 the same position. Some of them are on appeal, but it really
17 doesn't have nothing for you to do, Your Honor.

18 And we can also, if you want, Grace in my office -- I'm
19 happy to take a stab at writing that for you, if you want a
20 clean update on what we gave you in this format.

21 THE COURT: That would be wonderful.

22 MR. LEWIS: Yeah, I'll make sure it circulates to all
23 counsel and they're okay with it. It will be pretty benign,
24 but I think I know what you're looking for and it will be in a
25 better narrative format than what we sent to you kind of in

1 the checklist way.

2 THE COURT: All right. So Greenville case, all awaiting
3 Aiken.

4 MR. LEWIS: Yes, Your Honor.

5 MS. SARAH SPRUILL: That's correct, Your Honor.

6 THE COURT: And Horry County?

7 MR. LEWIS: On appeal. On appeal. Nothing for you to
8 do.

9 THE COURT: It's on appeal already?

10 MR. LEWIS: Yeah. A Notice of Appeal has been filed.

11 MS. LINDSEY JENKINS: This is Lindsey Jenkins for Horry
12 County. I agree with that.

13 THE COURT: Okay. How about Kershaw?

14 MR. FRED HANNA: Your Honor, this is Fred Hanna from the
15 Smith Robinson firm. It's in the same boat as these other
16 ones. It's just kind of sitting out, waiting on Aiken.

17 MR. LEWIS: That's correct, Your Honor.

18 THE COURT: Lee County? That says, "Dismissed with
19 prejudice."

20 Orangeburg County is today.

21 Richland County, all agree, all agree, all agree on those
22 last three.

23 All right. Good. Well, that would be very helpful if
24 you can put that together and then I can write the Chief and
25 say these are -- as far as I can tell, I don't need to do

1 anything else, I've done all I can, and you'll need to move it
2 and rule.

3 MR. FRED HANNA: Your Honor, if I could just touch on one
4 thing that Mr. Lindemann referenced earlier, and just to give
5 you kind of the full picture, since you are asking, you know,
6 what needs to be done. I just wanted to let you know, in
7 Butts, the Georgetown case where your ruling on Act 236 is on
8 appeal, we did file a Motion to Stay the Briefing Deadlines in
9 that case. The idea being that, with Mr. Lindemann's motion,
10 if there are going to be two appeals on Act 236, it makes
11 sense for them to be on the same timeline. That motion has
12 been fully briefed but it has not been ruled on.

13 So I just say all that to let you know that, if the
14 Supreme Court were to grant our motion and say we're going to
15 hold the briefing deadlines in abeyance until there's a ruling
16 on Mr. Lindemann's motion in the Orangeburg case, I think
17 you'd probably want to be aware of that. Again, there's no
18 ruling right now, but we'll certainly let you know when that
19 motion is ruled upon.

20 THE COURT: Okay.

21 All right. Anybody else? All right. So I think we've
22 all kind of got our marching orders then. So, Mr. Lewis,
23 Mr. Lindemann, y'all will work on an Order for today.

24 MR. LINDEMANN: Are you looking for a joint order from
25 us, Your Honor?

1 THE COURT: Yeah, that you can agree on to the extent
2 that you can. It sounds like you-all are on the same page.

3 MR. LEWIS: Yeah, we might be able to agree, Andrew. I
4 really -- let's take a stab at it. I just want to talk to
5 everybody since so many people are involved and impacted by
6 this. Maybe we can come up with an Order to send to Judge
7 Young that we both can agree on.

8 MR. ROSS APPEL: And without the risk of overcomplicating
9 this, I mean, you know, we represent the plaintiffs in the
10 Butts case. To the extent that we can cooperate in our appeal
11 in order to get Andrew's issue in front of the Supreme Court,
12 I mean, we've stated as such that we don't have an objection
13 to that in our response to Georgetown's Motion to Stay the
14 Briefing. We're happy to cooperate to drive efficiencies on
15 this should that be the most elegant way to proceed.

16 THE COURT: Well, gosh, you phrased that so nice, how
17 could I disagree with that?

18 You know, I just get a lot of cases where people just
19 aren't working together, but it's nice to have people that are
20 working together. So I appreciate it.

21 So if you want to -- if you want to jump in the fray and
22 help out, that's wonderful.

23 All right. So is two weeks enough time to get this Order
24 together?

25 MR. LINDEMANN: I would think so.

1 THE COURT: Okay. I'll just put down two weeks. If we
2 don't hear from you in two weeks, then Eliza will reach out to
3 figure out where we're at, because I'd like to move this off
4 my plate because I'm moving on to the criminal side for the
5 next year, and I'm trying to clean my plate of outstanding
6 civil stuff to the extent that's ever possible. So if y'all
7 could help me out on that, you will earn my gratitude forever.

8 Okay. Well, thank you very much. I appreciate your hard
9 work.

10 MR. LINDEMANN: Thank you, Your Honor.

11 MR. LEWIS: Thank you, Your Honor.

12 (The above hearing concluded.)
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Certificate of Transcriber

CASE NAME: Brown v. Young/Orangeburg County

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/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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S.C. SUPREME COURT

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants Harold M. Young, Matt Stokes, Orangeburg County, and Orangeburg County Council certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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