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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

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

v.

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

APPELLANTS' PETITION FOR REHEARING

RICHARDSON THOMAS, LLC
By: *s/ William C. Lewis*
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8150
F: (803) 632-8263

will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., PA.
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Avenue (29609)
Post Office Box 2446
Greenville, SC 29602
T: (864) 271-2636
F: (864) 271-2637
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAWFIRM, P.C.
T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
P.O. Box 2765 (29304)
229 Magnolia Street
Spartanburg, SC 29306
T: (864) 585-3873
F: (864) 585-6485
rlangley@hodgelawfirm.com

Attorneys for Appellants and the Class

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Pursuant to Rule 221(a), South Carolina Appellate Court Rules, Appellants respectfully petition this Court for rehearing of *Mark G. Thompson et al v. Clay Killian et al*, Op. No. 28305 (S.C. Sup. Ct. filed Nov. 5, 2025) (Adv. Sh. No. 39 at 8). Appellants respectfully request rehearing limited to the Court's resolution of their unjust enrichment claims and treatment of equitable relief under the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. §§ 15-78-10 et seq., because following this Court's decision in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the SCTCA did not restore sovereign immunity for equitable claims.

As Justice Hill identifies in his well-reasoned dissent, "[t]he majority opinion closes the courthouse doors to citizens wronged by the state who have otherwise meritorious equitable claims." (Hill, J., dissenting). Respectfully, the majority's construction of the SCTCA is inconsistent with the Act's text, structure, history, purpose, and with the constitutional foundations of South Carolina's judicial system. The majority's interpretation effectively writes "equity" into the Act where the Legislature did not place it, expanding the SCTCA beyond its enacted terms; conflicts with *McCall*; and contradicts South Carolina precedent recognizing that equitable claims including unjust enrichment may lie against governmental entities who have violated the rights of their citizens. Appellants respectfully submit that Justice Hill's dissent correctly interprets the SCTCA and should be adopted because after *McCall* abrogated sovereign immunity, and the SCTCA did not restore immunity for equitable claims.

In the alternative, should the Court decline to adopt Justice Hill's dissenting opinion, rehearing remains necessary for clarification and to ensure the opinion is not read to foreclose the availability of equitable remedies that South Carolina courts have always possessed when adjudicating statutory or constitutional claims brought against governmental actors. Without clarification, the opinion risks unintended consequences such as eliminating injunctions,

declaratory judgments, restitution, and other equitable remedies essential to the rule of law. Appellants therefore ask this Court to grant rehearing to correct the SCTCA analysis—or at minimum, to clarify that Section V of the opinion does not bar a court from fashioning equitable ***remedies*** in non-tort actions.

I. The SCTCA does not restore sovereign immunity for equitable claims brought against governmental entities.

The majority of the Court found that the SCTCA restored sovereign immunity for equitable claims, and that as a result, the trial court correctly dismissed Appellants' unjust enrichment claim. Op. at p.11. In doing so, the majority improperly assumed the role of the legislature, expanding the scope of the SCTCA to restore sovereign immunity to equitable claims. *See Hodges v. Rainey,* 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.") (citing *Timmons v. South Carolina Tricentennial Comm'n,* 254 S.C. 378, 175 S.E.2d 805 (1970)).

Respectfully, this was erroneous for the reasons now articulated by Justice Hill in his thorough and historically grounded dissent.[1]

A. The SCTCA restored sovereign immunity only for torts.

After this Court abolished sovereign immunity in *McCall v. Batson*, the General Assembly passed the SCTCA, which by its very own title and language, intended to reinstate sovereign immunity for governmental entities for tort liability only subject to the exceptions or waivers expressly listed therein. *See* Op. at p.19 ("The SCTCA did not restore sovereign immunity as to anything

[1] Appellants respectfully incorporate by reference their full prior arguments on this issue.

other than certain tort liability.") (J. Hill, dissenting). The SCTCA's title, purpose, text, structure, and history including its constitutional foundations confirm this.

The General Assembly titled this Act the "South Carolina **Tort** Claims Act." *See* Op. at p.19 (S.C. Code Ann. § 15-78-10 (2005) ("This chapter may be cited as the 'South Carolina Tort Claims Act'."). The purpose of the SCTCA is stated in the legislative findings at section 15-78-20(b): "[t]he General Assembly…intends to grant…immunity from liability and suit for any ***tort*** except as waived by this chapter." (emphasis added). *Id.* "Equity is not mentioned." *Id.* And as pointed out by Justice Hill, "[i]nterpreting the SCTCA as fully restoring sovereign immunity breezes over the repeated references to 'torts' and negligence pervading the SCTCA. The legislative findings of the SCTCA use some form of the word "tort" three times in its first paragraph." *Id.* (citing S.C. Code Ann. §§ 15-78-10, -20(a)).

Nothing in the SCTCA or South Carolina jurisprudence purports to reinstate sweeping sovereign immunity for all non-tort claims. Justice Hill even identifies that "in *Murphy v. Richland Memorial Hospital,* when the Court stated the SCTCA 'first completely restores sovereign immunity,' it cited to § 15-78-20(b), which speaks only to immunity for tort causes of action. 317 S.C. 560, 563, 455 S.E.2d 688, 690 (1995)." *Id.* In effect, the majority's conclusion reads "equity" into the SCTCA where the General Assembly chose not to include it. Indeed, the Generally Assembly's choice to title the Act the tort claims act, specifically reference "tort" and "negligence," and omit "equity" shows our legislature's unambiguous intention to restore sovereign immunity for tort liability only. *See Hodges,* 341 S.C. at 87.

B. Historically, equitable claims have been allowed against government entities.

Justice Hill's dissent thoroughly traces the historical origins of sovereign immunity from England to the United States and then to South Carolina to arrive at the conclusion that it is not the General

Assembly's intent to restore sovereign immunity for all non-tort claims. Despite a debate regarding whether sovereign immunity has always existed in South Carolina, even if it did, the reception statute would have allowed citizens to sue the sovereign or the government just as the English subjects could in equity. *See* Op. at 17 (citing S.C. Code Ann. § 14-2-50 (2017). The doctrine of sovereign immunity was rooted in the English monarchy and never fully imported into our laws. Even in England, equitable courts could hear petitions of right against the Crown. South Carolina's reception statute (§ 14-1-50) adopted this English common-law tradition allowing equitable claims to proceed against the government; and nothing in the SCTCA abrogated these long-standing principles. Because South Carolina eliminated sovereign immunity in *McCall*, and because the SCTCA reinstated immunity only for torts, unjust enrichment claims remain viable unless expressly excluded. Equitable claims were not.

C. The majority misapprehends the SCTCA's treatment of Implied-Contract Claims.

By narrowing the SCTCA's contract exception to only express breach-of-contract actions, the majority adopts a view of sovereign immunity that South Carolina abandoned forty years ago in *McCall.* Relying on cases distinguishing legal contract claims from equitable restitution, the majority reasons that the SCTCA bars unjust enrichment because it views such claims as "equitable" obligations implied by law or quasi-contractual claims like unjust enrichment, rather than legal contracts or contracts implied in fact. On that basis, the majority concludes that unjust enrichment falls outside the statute's exception for "liability based on contract." *See* Op. at 11–13.

However, as identified by Justice Hill, the majority's interpretation—limiting the SCTCA's contract exception to express or purely legal breach-of-contract claims—effectively revives the very "consent to be sued" fiction that this Court rejected in *McCall*. Op. at 18-19.

McCall held "[s]overeign immunity can no longer by tolerated in this State," and expressly abolished the doctrine to the extent it prevented suit without the State's consent. *McCall,* 285 S.C. at 246–47, 329 S.E.2d at 742–43. Now, by confining the contract exception in the SCTCA to only one narrow category of contract claims and excluding long-recognized quasi-contract obligations, the majority's reading re-creates—albeit indirectly—the same barrier *McCall* dismantled. In practical effect, the government is again immune unless it expressly "agrees" to be sued, a result fundamentally at odds with the historical and doctrinal course *McCall* set for South Carolina law.

Respectfully, this reasoning misunderstands both the text of the SCTCA and South Carolina's longstanding treatment of implied-contract claims. As the dissent explains, the distinction between contracts implied in fact and those implied in law has never determined whether a claim is "based on contract" for purposes of sovereign immunity. *See* Op. at 19. Section 15-78-20(d) states unequivocally that "nothing" in the SCTCA "affects liability based on contract," and nothing in the statute limits that preservation to one particular species of contract theory. *See id*.

More importantly, as the dissent correctly notes, South Carolina courts have repeatedly allowed unjust enrichment and other implied-contract claims against governmental entities without ever suggesting sovereign immunity barred them. *See Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 7-10, 532 S.E.2d 868, 872-73 (2000); *Townes Assoc. Ltd. v. City of Greenville,* 266 S.C. 81, 84–88, 221 S.E.2d 773, 774–776 (1976), *abrogated in part on other grounds by Matter of Estate of Kay*, 423 S.C. 476, 481, 816 S.E.2d 542, 545 (2018); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia,* 409 S.C. 568, 582–84, 762 S.E.2d 696, 703–04 (2014)

(discussing unjust enrichment claim brought against city without mentioning sovereign immunity).

The very decisions the majority relies on to emphasize the equitable nature of unjust enrichment—*Myrtle Beach Hospital* and *Stanley Smith & Sons*—involved claims brought against government actors, and neither opinion ever mentioned sovereign immunity as an obstacle. Likewise, in *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 568, 582–84, 762 S.E.2d 696, 703–04 (2014), this Court addressed an unjust enrichment claim against a municipality on the merits, again without raising sovereign immunity. It makes little sense to read the General Assembly's decision in § 15-78-20(d) to preserve "liability based on contract" to exclude precisely the type of contract-based obligations that our courts have long recognized in actions against the State and its political subdivisions.

Further, the majority's opinion cannot be squared with this Court's precedent. This Court has long recognized that a cause of action for equitable estoppel may lie against governmental entities. *See Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 692 S.E.2d 499 (2010) (citing *Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001)). The Supreme Court reaffirmed in *Quail Hill, LLC*, that a governmental body "is not immune from the application of the doctrine of estoppel where its officers or agents act within the proper scope of their authority." *Id.* at 236, 692 S.E.2d at 506. The breadth of the majority's decision in this case—that the SCTCA bars equitable claims brought against governmental entities—effectively eliminates the long-recognized claim for equitable estoppel entirely, and would insulate government officials who provide erroneous information from any accountability. This is contrary to *Quail Hill*, *Grant*, and decades of South Carolina equitable jurisprudence.

The dissent correctly points out the flaw in the majority's approach: the SCTCA cannot "preserve" an immunity that did not exist. After *McCall v. Batson*, South Carolina no longer recognized common-law sovereign immunity. Nowhere in the Constitution, the SCTCA, or this Court's decisions is there any basis for concluding that the State or its subdivisions are immune from equitable, contract-based claims such as unjust enrichment. The majority's contrary conclusion effectively reads into the SCTCA a categorical bar on equitable claims that the Legislature did not enact and South Carolina jurisprudence does not recognize.

II. In the alternative, the majority should clarify that its holding does not foreclose equitable remedies in non-tort actions.

Appellants agree with Justice Hill that the SCTCA did not reinstate sovereign immunity for equitable claims after *McCall* as discussed previously; however, even if the Court declines to revisit its unjust enrichment ruling, rehearing is necessary to clarify that the Court did not intend to abolish our courts' authority to award equitable remedies pursuant to valid legal claims brought against governmental entities.

Indeed, the majority's analysis has the potential to conflate two distinct legal concepts: (1) equitable claims or causes of action brought by a citizen against a governmental entity; and (2) the remedies courts may employ that are authorized by law (injunction, mandamus, declaratory relief, restitution). By equating the two, or rather, failing to distinguish between the two, the opinion implies that South Carolina trial courts may never award equitable relief to citizens who have been wronged by their governments. This cannot be correct.

South Carolina courts have long recognized their authority to fashion equitable remedies when necessary to declare rights and prevent unlawful action, including ordering restitution or

refunds as ancillary relief to a declaratory judgment. *See* S.C. Code Ann. §§ 15-53-120[2], -130[3]; *see, e.g.*, *Brackenbrook N. Charleston, LP v. County of Charleston,* No. 02-CP-10-2047, 2003 WL 25460561 (S.C. Ct. Com. Pl. July 11, 2003), *rev'd on other grounds*, 360 S.C. 390, 602 S.E.2d 39 (2004); *Robinson v. Asbill*, 328 S.C. 451, 458–59, 492 S.E.2d 414, 418 (Ct. App. 1997) *See* S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."). Nothing in the SCTCA purports to displace these remedies.

CONCLUSION

Appellants, like Justice Hill, "can find no constitutional text, statute, or South Carolina appellate decision providing sovereign immunity is a bar to the equitable claims of our citizens." Op. at 20. This is because such claims are routinely allowed to proceed through our court system as they should in this case. Should the Court decline to revisit its opinion regarding Appellants' unjust enrichment claim, Appellants request rehearing to revisit and request the Court clarify that "equitable claim" does not mean "equitable relief." Without such clarification, the opinion risks unintended consequences—including the effective elimination of injunctions, declaratory judgments, and restitution relief when a citizen is harmed or her rights violated by her government.

For the foregoing reasons, Appellants respectfully request that the Court grant rehearing and adopt Justice Hill's dissent, correcting the majority's holding on unjust enrichment; or, in the

[2] "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."

[3] "This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. **It is to be liberally construed and administered**." (emphasis supplied).

alternative, clarify that the Court's opinion does not foreclose equitable remedies—such as injunctions, declaratory judgments, mandamus, or restitution relief—in actions against governmental entities. Appellants further request such other relief as the Court deems just and proper.

RICHARDSON THOMAS, LLC

By: *s/ William C. Lewis*
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8150
F: (803) 632-8263

will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., PA.
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Avenue (29609)
Post Office Box 2446
Greenville, SC 29602
T: (864) 271-2636
F: (864) 271-2637
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAWFIRM, P.C.
T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
P.O. Box 2765 (29304)
229 Magnolia Street
Spartanburg, SC 29306
T: (864) 585-3873
F: (864) 585-6485
rlangley@hodgelawfirm.com

Attorneys for Appellants and the Class

Dated: November 20, 2025