THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Cout Judge

Appellate Case No. 2025-000791

Cameron M. Butler, ……..… Appellant,

v.

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

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other Authorities:

ARGUMENT

The crux of this case can be resolved by this Court in the answers to three questions: (1) was there any express statutory authorization, prior to 2023, for state agencies to charge non-cash payment processing fees; (2) is there any actual and legitimate evidence that the South Carolina General Assembly intended to make the 2023 enactment of section 8-21-15(B)(8) retroactive; and (3) does the South Carolina Code of Laws make state officers subject to the same statutory penalty imposed on local officials identified in chapter 21 of Title 8 of the Code, who also charge unauthorized fees in violation of statutory laws. The answer to the first two questions is a resounding no. The answer to the third question is indubitably yes. Thus, for the reasons discussed herein, other materials submitted, and the applicable appellate standard of review, this Court should reverse the decision by the circuit court in this case.

I. RESPONDENTS' ASSERTION THAT THERE EXISTS CLEAR LEGISLATIVE INTENT TO APPLY S.C. CODE ANN. § 8-21-15(B)(8) RETROACTIVELY TO PENDING LITIGATION IS COMPLETELY UNSUBSTANTIATED.

Respondents claim that the General Assembly's enactment of § 8-21-15(B)(8) was "intended to take care of the lawsuits against the DMV over the professing [sic] fee." *See* Respondents' Brief, p. 6. Respondents further claim that the 2023 enactment "was to remedy that (and now this) litigation." *Id*. Respondents offer absolutely no legislative language, legislative history, or other objective and verifiable evidence supporting their claim about legislative intent to apply § 8-21-15(B)(8) retroactively. *Cf*. Whele v. S.C. Retirement System, 363 S.C. 394, 611 S.E.2d 240, 244 (2005) (per curiam) ("The most powerful indication of

legislative intent is the lack of legislative history and debate which accompanied the change in the definition of average final compensation.'").

Initially, Respondents cite a legislative update, published by the Office of Research and Constituent Services for the South Carolina House of Representatives as evidence of legislative history supporting Respondents' argument. *See* Respondents'Brief, p. 6 (*citing* S.C. Leg. Upd., Vol. 40, No. 16, 125th General Assembly, 1st Sess. (May 8, 2023). This Court should ignore any reference to that legislative update for two primary reasons. First, the update contains no language indicating that the legislature was aware of any pending litigation or that it intended to "take care of" or "remedy" any pending litigation.

Second, The very document cited by Respondents to this Court expressly states that it is a summary "prepared by the staff of the South Carolina House of Representatives" and is "not the expression of the legislation's sponsor(s) nor the House Of Representatives." S.C. Leg. Upd., Vol. 40, No. 16. Moreover, that legislative update further cautions that it should not "be construed by a court of law as an expression of legislative intent." Thus, the record is completely devoid of any legislative history, legislative language, or other objective evidence of the General Assembly's intent to retroactively apply § 8-21-15(B)(8) to the fees paid prior to the statute's enactment.

Although Respondents claim that "[i]t is not "pure conjecture" that the General Assembly knew about and wanted to remedy these lawsuits," they offer nothing more than pure conjecture that the legislature either was aware of or intended to resolve pending litigation on the subject of non-cash payment processing fees. The only thing that can definitively be said about the enactment of § 8-21-15(B)(8) is that, in 2023, the legislature empowered state agencies to charge

non-cash payment processing fees where that power had not previously been expressly granted by any statute.[1] Granting state agencies a statutory authority that previously did not exist cannot be a logical basis for determining that the General Assembly intended to absolve those agencies of their previous illegal actions.

The Respondents also cite *Carolina Power & Light Co. v. Town of Pageland*, 321 S.C. 538, 471 S.E.2d 137 (1996) for the proposition that a court can deduce whether the General Assembly intended retroactive application of a statutory enactment merely from the "practical effect of the prospective application of a statute," rather than the legislature's expression of intent through the words of an enactment or amendment. *See* Respondents' Brief, p. 7-9. Respondents' contention is a clear misreading of *Carolina Power & Light* and ignores the precedent cited by the Supreme Court in that decision. Contrary to Respondents' interpretation of that case, the *Carolina Power & Light* opinion did not merely recite the amending statutory language which allowed rural electric co-operatives to "continue" to serve annexed areas, but instead found that the amendment evidenced a clear legislative intent favoring retroactive application.

In fact, the cases relied upon by the *Carolina Power & Light* Court stand for the principle that a court must find that legislative intent from some affirmative declaration by the General Assembly. *See Carolina Power & Light Co.*, 471 S.E.2d at 140 (*citing American Nat'l Fire Ins. Co. v. Smith Grading and Paving, Ins.*, 317 S.C. 445, 454 S.E.2d 897, 899 (1995) ("statute must contain express words evincing an intent that it be retroactive or words necessarily implying such an intent"). *American Nat'l Fire Ins. Co.*, itself, cites *Pulliam v. Doe*, 246 S.C. 106, 142 S.E.2d

[1] Indeed, the prior litigation referenced by Respondents was filed two years prior to the enactment of § 8-21-15(B)(8) and Respondents offer no evidence that the case was publicized or ever came to the attention of the General Assembly. There was not even a decision by the circuit court in that case that might have come to the attention of the legislature until 2024.

861 (1965), which held that a statute will not be given retroactive effect unless required by express words or must necessarily be implied from the language used therein. *Id*. at 863. Respondents' urging that this Court should focus on the "practical effect" of prospective application of § 8-21-1(B)(8), untethered to any actual pronouncement in the legislation itself, not only asks this Court to legislate, but also falls far short of any evidence so compelling "as to leave no room for doubt" that the General Assembly intended retroactive application of the statute. *Carolina Power & Light Co.*, 471 S.E.2d 140. In any event, it is folly to compare the "practical effect" of retroactively applying an amendment to prevent the displacement of a faultless electric service provider and its equally faultless utility customers with the "practical effect" of protecting these state agencies from their own hubris of imposing fees on citizens in the absence of the required express authorization by the legislature.

II. RESPONDENTS CONTINUE TO ASSERT THAT THEY HAD SOME PRE-EXISTING AUTHORITY TO CHARGE PAYMENT PROCESSING FEES WITHOUT IDENTIFYING A SPECIFIC STATUTE AUTHORIZING SUCH FEES.

Respondents continue to make vague references to their authority to impose fees, even prior to enactment of § 8-21-15(B)(8), without ever identifying a single statute authorizing such fees. For example, Respondents assert that § 8-21-15(B)(8) "simply confirms that the DMV and other agencies have the authority to charge certain fees through SCI as they have done for over two decades under the Master Contract." *See* Respondents' Brief, p. 11. Respondents also claim that because the circuit court found that the statutory amendment "merely establishes a specific exception for a fee that already fell within a more general exception to the statutory fee prohibition," § 8-21-15(B)(8) "thus clarifies the remedy already available to the DMV and other state agencies for charging processing fees under the twenty year old Master Contract." *See*

Respondents' Brief, p. 12; *see also* Respondents' Brief, p.13 (claiming that the the General Assembly's intent was to "remedy" pending litigation over these fees "by clarifying this type of fee is excepted from the fee prohibition.").

It goes without saying that the Master Contract, created solely between the state agencies and SCI, is not a statutory grant of authority to charge payment processing fees. While vaguely asserting that there was a "general exception" to the admitted statutory fee prohibition, neither the circuit court nor Respondents identify for this Court where it should find, within the entire South Carolina Code of Laws, this elusive pre-existing statutory authority. The reason for this omission is simple, there simply was no pre-existing statutory authority that § 8-21-15(B)(8) either "confirms" or "clarifies." Respondents contend that the circuit court did not find that these fees were authorized by § 8-21-15(B)(5) (excepting from the general prohibition those fees associated with the sale of goods and tangible products by a state agency) or by the South Carolina Procurement Code. Which begs the question: which statute created the circuit court's asserted "general exception" to § 8-21-15(A)'s prohibition on agency fees not authorized by statute. Under the *de novo* standard of review, this Court should certainly find that § 8-21-15(B)(8) was not a remedial enactment and there was no pre-existing independent statutory authority for Respondents to impose payment processing fees.

III. RESPONDENTS ARE "PUBLIC OFFICERS" NAMED IN CHAPTER 21 OF TITLE 8 OF THE SOUTH CAROLINA CODE OF LAWS AND THESE FEES EXCEED THE AMOUNT PERMITTED BY THAT CHAPTER OF THE CODE.

S.C. Code Ann. § 8-21-30 provides that "[I]f 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 . . ." Respondents fallaciously assert that they are not public

officers named in Title 8, Chapter 21 of the Code. Respondents interpretation of § 8-21-30 quite literally writes § 8-21-15(A) out of the South Carolina Code of Laws and defeats clear legislative intent. Likewise, these payment processing fees are also fees for services mentioned in the same chapter of Title 8.

Just recently, the South Carolina Supreme Court spoke to the scope of § 8-21-30. *See Thompson v. Killian*, Op, No. 28305 (S.C. Sup. Ct. filed Nov. 5, 2025) (Howard Adv. Sh. No. 39). "The first part of section 8-21-30 establishes the conditions that must occur for an officer to be liable to forfeit the improperly charged fees. The phrase 'any officer herein named' restricts liability to officers identified in chapter 21, while 'for any services herein mentioned' confines the provision's scope to fees for specific services listed in the chapter." Any interpretation that Respondents are not "officers" named in chapter 21 creates a glaring absurdity. While § 8-21-15(A) prohibits any state agency from charging fees not authorized by statute, Respondents assert that the term "agency" does not include or refer to the agency's "officers." In other words, Respondents argue that the fee prohibition set forth in § 8-21-15(A) only applies to the "agency" and not to its public "officers," who control the actions of that entity, and would be, therefore, free to impose fees otherwise prohibited by the statute. Respondents' interpretation robs § 8-21-15(A) of any efficacy and renders the legislature's obvious intent to prohibit unauthorized fees null and void.[2] *See Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705, 715

[2] "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect." *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578 (2000) (*quoting Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998).

(2014) (must presume legislature did not intend to perform useless or futile acts, "but rather intended its statutes to accomplish something").

Because the only rational and sensible interpretation of the term "state agency," as used in § 8-21-15(A) necessarily refers to and incorporates its "officers," then Respondents are "officers" identified in chapter 21 of Title 8. Likewise, the payment processing fees are fees for specific services also mentioned in that chapter of the Code. "[T]o prevail under [§ 8-21-30], a plaintiff must show the defendant (1) was an officer named in chapter 21 and (2) charged an improper fee for services mentioned in chapter 21." *Killian*, *supra*. Section 8-21-15(A) states that state agencies may not "initially 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 . . . ." Thus, by enacting § 8-21-15(A), the General Assembly has expressly set the fee for a state agency's services, such as accepting non-cash payments, at zero dollars. Id.

The most common sense reading of S.C. Code Ann. §§ 8-21-10, 15, and 30 is that the General Assembly established a general prohibition on both specific local and all state public officers charging unauthorized fees, of which § 8-21-30 is an enforcement remedy mechanism.[3] Unlike the specific local officials named in chapter 21, the broader description of state agencies, departments, boards, committees, commissions, or authorities is used in place of specific state

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[3] Interestingly, although Respondents argue, without any evidence, that the General Assembly was aware of and concerned about resolving ongoing litigation about payment processing fees, the legislature did not address a key issue in that litigation: namely, whether state agency heads are public officers for purposes of § 8-21-30. The legislature's inaction on that subject should certainly be considered as further evidence of the General Assembly's intent that state officers be held accountable under § 8-21-30. *See generally Wehle v. S.C. Retirement System*, 363 S.C. 394, 611 S.E.2d 240, 245 (2005) (per curiam) and *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 580 S.E.2d 100, 114 (2003) (the presumption is that the legislature is aware of court interpretation of statutes and legislative inaction can be construed as evidence of legislative intent).

officer titles because state entities and their officers take a myriad of different names and designations. *See* S.C. Code Ann. § 8-21-15(A) and (B).[4] Because these state officers and agency fees are mentioned in chapter 21 of Title 8, § 8-21-30, Appellant is entitled to a declaration that Respondents are in violation of § 8-21-30, and this Court should reverse the circuit court's contrary ruling in this case.

CONCLUSION

For the reasons set forth herein, as well as Appellant's Brief and the Record on Appeal, this Court should reverse the circuit court's grant of summary judgment for Respondents and find that Appellant is entitled to summary judgment, as a matter of law.

Respectfully submitted,

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[4] Notably, unlike clerks of court, sheriffs or other distinct local public officers, the officers of state agencies and other entities use a multitude of titles such as secretary, director, president, chief, executive director, chief executive officer, adjutant general, or commissioner, just to name some. Thus, it would be functionally impossible for the General Assembly to use the title of each state public officer encompassed by §§ 8-21-15 and 30.