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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
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2024-001481
Appellate Case No. 2025-000207
Opinion No. 28331

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.

RESPONDENTS' PETITION FOR REHEARING

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INTRODUCTION

Respondents respectfully petition this Court for rehearing under Rule 221, SCACR. This Court's May 13, 2026, Opinion fundamentally restructures the relationship between South Carolina's judicial system and the General Assembly. Overruling *Lindsay v. National Old Line Insurance Co.* and its progeny empowers the General Assembly to enact retroactive legislation to decide the outcome of pending cases. 262 S.C. 621, 207 S.E.2d 75 (1974). The seismic implications of this holding warrant reconsideration.

If the Court is not inclined to revisit its central holding, it should reconsider the decision not to rule on whether Respondents' claims are vested. That narrow question is squarely presented in the record, has been briefed by the parties, and is ripe for resolution. A ruling will determine whether any road fee case filed after the *Burns* decision and Act 236 remains viable, providing much needed clarity to the parties.

LEGAL STANDARD

A petition for rehearing should be granted when the Court has "overlooked or misapprehended" a point of fact or law. Rule 221(a), SCACR.

ARGUMENT

I. The Court overlooked the ramifications of permitting the General Assembly to dictate the outcome of identified pending cases through retroactive legislation.

The Opinion authorizes the General Assembly to enact retroactive legislation that changes the applicable substantive law in pending cases. Slip Op. at 12 ("the General Assembly may determine the retroactive application of statutory amendments so long as doing so does not disturb final judgments or violate an independent constitutional limitation"). The federal authorities cited by the Court go further. *Patchak v. Zinke* approves retroactive statutes "even when [they] effectively ensure[] that one side wins." 583 U.S. 244, 250 (2018); Slip Op. at 10.

The consequences of the Court's holding are significant.

First, the General Assembly now has the power to decide pending cases. The judicial function—the power to "interpret[] and declare[] the law" in particular controversies—has historically belonged exclusively to the courts. Slip Op. at 8 (quoting *State ex rel. McLeod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979)). Retroactive legislation aimed at deciding pending cases is the legislative usurpation of the judicial function. The Opinion characterizes this consequence as the ordinary "constitutional dialogue between the branches." *Id.* at 12. Respectfully, genuine "dialogue" respects the dignity of both parties and is not a one-way street. For over half a century, this Court's *Lindsay* jurisprudence struck the right balance. Under that framework, when the General Assembly disagreed with a decision of this Court, it could change the law prospectively, and the courts would then apply the new rule to future cases only. However, when the General Assembly retroactively changes the law for the purpose of deciding pending cases, this pushes aside the courts entirely. This is not genuine dialogue between coequal branches. It is the legislature seizing the judicial power from the courts.

Second, the practical consequences of overturning *Lindsay* are not theoretical. Now, defendants facing significant liability need not rely exclusively on a legal defense. They now have the incentive to chase a political bailout by turning to the General Assembly. Consequently, the legislative process becomes a parallel forum for resolving pending cases, accessible to parties with the financial resources and the political connections to influence it. Moving forward, the defense strategy in every significant civil case in South Carolina will now include lobbyists. Plaintiffs, in turn, will be forced to respond in kind. Cases and controversies that should be adjudicated in our courts will instead become political contests in the General Assembly.

Some concrete examples are not hard to imagine. A financial-services defendant in a South Carolina Unfair Trade Practices Act case could lobby for a retroactive exemption after years of litigation. A hospital facing a medical-malpractice claim could seek a retroactive change to any statutory standard of care. A builder in a construction-defect class action could obtain a retroactive exemption after discovery, expert work, and motions practice are complete. A municipality resisting a FOIA enforcement action could secure a retroactive narrowing of the term "public record." In each example, the result is the same: a pending case is effectively resolved by legislation rather than the judiciary. Under the rule the Opinion adopts, every significant civil defendant in South Carolina now has acquired a second forum, namely the General Assembly. This outcome threatens the administration of justice, the credibility of the courts, and the ability of South Carolinians to access a neutral adjudicator.

Third, the Opinion's reliance on the federal framework does not require this result. *Plaut*, *Patchak*, and *Bank Markazi* set a federal floor. They hold that retroactive legislation reaching pending cases does not categorically violate federal separation of powers. They do not require South Carolina to adopt the same rule under its own Constitution. To the contrary, this Court has recognized that "the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). For more than fifty years, this Court understood the South Carolina Constitution to provide greater protection.

South Carolina's constitutional structure makes that protection especially important. South Carolina is one of only two states[1] in which all judges, including every Justice of this Court, are elected by the General Assembly rather than appointed by the Governor or chosen by the people.

[1] Virginia is the other.

No judgeship is held for life. Justices of this Court serve ten-year terms and must return to the General Assembly for reelection. South Carolina is, in this Court's own words, a "legislative state" whose dominant General Assembly traces to the colonial Commons House's accretion of power against the royal executive, and whose constitutional system has "retrenched somewhat from the colonial levels of legislative control" but never fully so. *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 650–51, 744 S.E.2d 521, 526–27 (2013); *see* Slip Op. at 7–8 (relying on *S.C. Public Interest Foundation*'s account of South Carolina's "rich and unique constitutional history").

Those features do not make the judicial checks on retroactive legislation less necessary. They make it more necessary. In a state where the General Assembly already occupies an unusual, dominant constitutional position, the court's protection of vested rights against legislative interference is one of the few categorical structural safeguards available. The Opinion narrows that safeguard at precisely the point where it is most needed.

Respectfully, the decision to overturn *Lindsay* and its progeny should be reconsidered and Judge Young's order finding Act 236 unconstitutional as applied to pending cases should be affirmed.

II. Alternatively, the Court should now resolve the vested cause of action exception it expressly preserved.

If the Court decides not to reverse course on its central holding, the Court should reconsider its decision not to rule that the Respondents and the putative classes of millions of South Carolina residents who were charged illegal road fees (under this Court's holding in *Burns*) possess vested rights in their lawsuits, thus shielding their claims from Act 236 retroactivity. In other words, the Court can avoid striking down Act 236 retroactivity as unconstitutional while recognizing Respondents' vested rights. This strikes the right balance.

The Opinion does not hold that retroactive legislation has no limits. Rather, it holds that the Separation of Powers Clause does not categorically prohibit retroactive amendments reaching pending cases. Slip Op. at 9. The Opinion expressly preserves "specific protections for vested rights, due process, contracts, ex post facto laws, and bills of attainder" as "independent constitutional limitation[s]" on retroactive legislation. *Id.* at 9, 11. Footnote 7 declined to address Respondents' due-process and vested-rights arguments on the merits because the Court concluded those theories were "not meaningfully developed." *Id.* at 12 n.7. The Court accordingly exercised the discretion under *I'On, LLC v. Town of Mount Pleasant* to decline to reach alternative sustaining grounds. 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). The Court did not reject the theories on the merits.

A. *The McManus rule.*

South Carolina has long recognized that an accrued cause of action is property (a vested right) and is constitutionally protected from retroactive abolition. In *United States Rubber Co. v. McManus*, this Court held as follows:

> A **vested right of action is property** in the same sense in which tangible things are property, and is equally protected against arbitrary legislative interference. . . . To permit the legislature to destroy vested rights of action would be in violation of the due process clauses of the Federal Constitution and the State Constitution.

211 S.C. 342, 349–50, 45 S.E.2d 335, 338 (1947) (emphasis added).

A right of action is vested under *McManus* when it is "absolute, complete and unconditional, and not dependent upon any future act, contingency or decision." *Id*. The Opinion now confirms that the substantive vested-rights, due-process, contract, ex-post-facto, and bill-of-attainder protections remain in force as "independent constitutional limitation[s]" notwithstanding the overruling of *Lindsay*. Slip Op. at 11.

This Court has applied the *McManus* over the years, and it remains good law. In *Goff v. Mills*, 279 S.C. 382, 308 S.E.2d 778 (1983), the Court relied on *McManus* to hold that retroactive enlargements of a limitations period may govern claims not yet barred under the prior statute, but cannot revive a stale cause of action. *Id.* at 386, 308 S.E.2d at 780. The Court of Appeals applied the same rule in *Estes v. Roper Temporary Services, Inc.*, 304 S.C. 120, 403 S.E.2d 157 (Ct. App. 1991), holding that the Payment of Wages Act could not be applied retroactively to a wage claim already barred when the Act took effect, because to do so "would not just be giving retroactive effect to the Act, it would also be reviving a cause of action already barred." *Id.* at 123, 403 S.E.2d at 159. What *McManus*, *Goff*, and *Estes* share is the recognition that the legislature's retroactive power stops where it would alter the substantive character of a vested cause of action whether by reviving a barred claim or, as here, by abolishing a pending one. The substantive principle is the same.

B. ***Why McManus has not been more extensively developed.***

For more than fifty years, this Court addressed the fundamental unfairness of retroactive legislation applied to pending litigation through the categorical Separation of Powers rule first articulated in *Lindsay*. *McManus* did not fall into disuse because it was wrong. It has never been overruled. It fell into disuse because *Lindsay* made it unnecessary on the precise scenario *Lindsay* covered. Now, with *Lindsay* overruled, *McManus* stands as the sole, operative protection for litigants against retroactive legislation.

C. ***The land-use analogue.***

The *McManus* rule operates the way the vested rights doctrine has long operated in the land use context. When a property owner relies on the zoning ordinance in force at the time of permit application and substantially commences a project at great expense, the right to complete the

project is vested. A subsequent zoning amendment (at odds with the vested approval) is prospectively valid and binds every owner whose project has not yet vested. But the new ordinance cannot constitutionally be applied to a vested project. *Pure Oil Division v. City of Columbia*, 254 S.C. 28, 34, 173 S.E.2d 140, 143 (1970) (protecting "the good faith reliance by the owner on the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit"); *see also* S.C. Code Ann. § 6-29-1510 *et seq.* (the "Vested Rights Act"). The doctrine does not invalidate the new ordinance. The doctrine recognizes that a vested right is constitutionally protected, and that an otherwise valid law cannot reach it.

The *McManus* rule is the same concept applied in the context of a filed claim. Such a claim is property, and an otherwise valid retroactive amendment cannot constitutionally reach it without violating substantive due process.

D. *McManus is consistent with the law of other states.*

Several state high courts apply the same rule under their state due process or vested rights provisions, and they do so by the same mechanism, holding the otherwise valid retroactive statute inapplicable to vested causes of action rather than facially invalid.

The Florida Supreme Court applied this rule on facts closely parallel to ours in *American Optical Corp. v. Spiewak*, 73 So. 3d 120 (Fla. 2011). There, the Florida Legislature enacted an Asbestos and Silica Compensation Fairness Act that imposed new prima facie elements on asbestos claims and expressly applied retroactively to pending cases, with a legislative declaration that the Act was "remedial in nature" and "d[id] not impact vested rights." *Id.* at 131. The Florida Supreme Court disagreed, holding that "[j]ust because the Legislature labels something as being remedial . . . does not make it so," *id.* at 131, and that "[w]hen a cause of action accrues, it becomes a substantive vested right," *id.* at 123. The Court then held that "statutes that operate to abolish or

abrogate a preexisting right, defense, or cause of action cannot be applied retroactively." *Id.* at 133. The Court accordingly declared the Act unconstitutional "as applied" to plaintiffs whose causes of action had accrued before its effective date, leaving the Act prospectively in force. *Id.* at 122, 133. *Spiewak*'s framework is the doctrinal posture *McManus* and the Opinion together leave available in South Carolina. An otherwise valid retroactivity provision may be rendered inapplicable to vested causes of action by the state due process clause.

The Texas Supreme Court reached the same conclusion in *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126 (Tex. 2010), where the Court held a successor-liability statute, enacted to dispose of a pending asbestos claim, unconstitutionally retroactive *as applied*. The Texas Court framed the underlying constitutional concern in language that captures Respondents' position here: the bar on retroactive legislation "protects settled expectations that rules are to govern the play and not simply the score," and "prevents the abuses of legislative power that arise when individuals or groups are singled out for special reward or punishment." *Id.* at 145. The Court emphasized why constitutional vigilance is most necessary in exactly this posture: "it is precisely because retroactive rectification of perceived injustice seems so reasonable and even necessary, especially when there are few to complain, that the constitution prohibits it." *Id.* at 150.

Most recently, in *Dupuis v. Roman Catholic Bishop of Portland*, 2025 ME 6, 331 A.3d 294, the Maine Supreme Judicial Court held that a statute reviving previously time-barred sexual-abuse claims could not constitutionally be applied to claims for which a limitations defense had vested. *Id.* ¶ 56, 331 A.3d at 318. The Court drew the line that bears directly on this case: "Not all retroactive legislation is prohibited, but retroactive legislation cannot impair vested rights. Once a statute of limitations has expired for a claim, a right to be free of that claim has vested, and the claim cannot be revived." *Id.* And the Court held that, where the result of retroactive legislation is

to abrogate vested rights, "the rationale and basis for the legislation become irrelevant." *Id.* ¶ 47, 331 A.3d at 313 (quoting *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, ¶ 47 n.16, 281 A.3d 618). The same rule, applied here, dictates that the rationale for Section 2(E)'s retroactivity is constitutionally irrelevant once the provision operates to abrogate vested causes of action.

Adopting *McManus* as the operative limit places South Carolina in the mainstream of state constitutional protection for pending causes of action. The doctrinal mechanism, holding the retroactive provision inapplicable to vested claims rather than facially invalid, preserves the Opinion's central holding while honoring the substantive constitutional limit the Opinion expressly preserved.

E. *Respondents' causes of action are vested.*

On the present record, the *McManus* test is satisfied. In *Burns v. Greenville County Council*, this Court held that road maintenance fees are not lawful service or user fees under Section 6-1-300(6). 433 S.C. 583, 861 S.E.2d 31 (2021). Following *Burns*, the law of South Carolina was settled. Road maintenance fees were unlawful. The Butts and Brown plaintiffs sued counties imposing the very same fees, used for the very same purpose, that *Burns* had invalidated.

Respondents' causes of action were accrued, perfected, and unconditional when filed. They have been actively litigated ever since. Each Respondent's right of recovery is, in the *McManus* sense, "absolute, complete and unconditional." 211 S.C. at 349-50, 45 S.E.2d at 338. It is not contingent on any future act, decision, or event. As such, Respondents' claims are vested property rights under *McManus*.

F. *The Court can resolve the question now.*

The vested rights question is a question of law on the face of the record. There is no genuine dispute that the refund actions were filed before Act 236 and that they have been continuously pending since. Deciding the *McManus* question now will spare the parties, the trial court, and this Court the cost of an unnecessary second appeal over the vesting question.

The Opinion can be cabined to give effect to the protection it preserved. Section 2(E) is prospectively valid. It reaches any motorist who paid a road-maintenance fee but had not filed suit on the cause of action before Act 236 took effect. It does not, however, reach the vested causes of action filed after *Burns*. That construction does not disturb the Opinion. It applies the Opinion's own express preservation of vested rights protection to the cases that need it most.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant the Petition and reconsider its decision to overrule *Lindsay* and its progeny; or, in the alternative, hold that Section 2(E) of Act No. 236 does not apply to Respondents' causes of action because those causes of action vested before the Act's enactment.

Respectfully submitted,

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