

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM LEXINGTON COUNTY  
IN THE COURT OF COMMON PLEAS  
THE HONORABLE G. THOMAS COOPER, JR.  
CIRCUIT COURT JUDGE  
-----

CASE NO. 2014-CP-32-0697  
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**RECEIVED**

APR 22 2014

S.C. Supreme Court

Vivian Atkins, Robert P. Frick, and Kay Hollis,  
in their official capacity as members of the  
Town Council of the Town of Chapin,

Appellants,

v.

James R. Wilson, Jr. in his official capacity  
as Mayor of the Town of Chapin,  
Gregg White in his official capacity as a  
member of the Town Council of the  
Town of Chapin and the Town of Chapin,

of whom James R. Wilson, Jr. and Gregg White are

Respondents.

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**NOTICE OF APPEAL**  
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Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacity as members of the Town Council of the Town of Chapin, appeal the Order Denying Plaintiffs' Motion for Injunctive Relief and Granting Defendants' Motion to Dismiss issued by the Honorable G. Thomas Cooper, Jr. on March 18, 2014, and his Order Denying Plaintiffs' Motion to Reconsider issued April 8, 2014, and received by the Appellants on April 22, 2014.

April 22, 2014



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Attorney for Respondents

THE STATE OF SOUTH CAROLINA  
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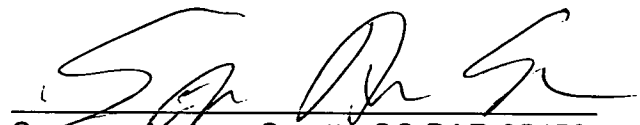
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**PROOF OF SERVICE OF  
NOTICE OF APPEAL**  
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I certify that I have served the Notice of Appeal on the Respondents, James R. Wilson, Jr. and Gregg White, by depositing a copy of it in the United States Mail, postage prepaid, on April 22, 2014, addressed to the attorney of record as follows:

Matthew Todd Carroll  
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SC BAR 74000

April 22, 2014



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Attorney for Appellants

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014CP3200697

Vivian Atkins  
 Kay Hollis

Robert P Frick

James R Wilson Jr  
 Town of Chapin

Gregg White

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

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.  See Page 2 for additional information.
- 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: \_\_\_\_\_
- 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:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

3/19/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on 20th of March 2014, and a copy mailed first class or placed in the appropriate attorney's box on 20th of March 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Spencer Andrew Syrett copy emailed to attorney  
PO Box 7403 Columbia, SC 29202

Matthew Todd Carroll copy emailed to attorney  
1727 Hampton Street Columbia, SC 29201

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

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Court Reporter

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Beth A. Carrigg - Clerk of Court

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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ORIGINAL

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2014 MAR 19 A ELEVENTH JUDICIAL CIRCUIT

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacities as members of the Town Council of Town of Chapin,

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

Civil Action No. 2014-CP-32-00697

Plaintiffs,

vs.

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin; Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin; and the Town of Chapin,

Defendants.

**ORDER DENYING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF AND GRANTING DEFENDANTS' MOTION TO DISMISS**

This matter came before the Court in Lexington County on March 10, 2014 on Plaintiffs Vivian Atkins, Robert P. Frick, and Kay Hollis's Motion for Preliminary Injunction, filed February 26, 2014, and Defendants James R. Wilson, Jr., Gregg White, and the Town of Chapin's Motion to Dismiss, filed March 5, 2014. Counsel for all parties were in attendance at the hearing. For the reasons set forth below, this Court **DENIES** Plaintiffs' Motion for Preliminary Injunction and **GRANTS** Defendants' Motion to Dismiss.

**BACKGROUND**

This case is a dispute over actions taken by Defendant James Wilson, in his official capacity as Mayor of the Town of Chapin, Defendant Gregg White, as Town Councilman, and the Town of Chapin. Wilson was elected Mayor of Chapin in November 2013, and was seated in

early January 2014. As mayor, Wilson serves as a member of the Town Council. Plaintiffs are the three remaining members of the Town Council.

Plaintiffs state four distinct causes of action in their Complaint. First, Plaintiffs claim that Mayor Wilson has improperly denied their requests to have certain items placed on the agenda for consideration by the Council under Town Ordinance 2.206. Second, Plaintiffs challenge the employment contract entered into between Mayor Wilson and Karen Owens. On January 24, 2014, Mayor Wilson entered into the contract on behalf of the Town of Chapin to have Ms. Owens serve as "Director of Communication and Economic Development" without approval from the Town Council. Additionally, Mayor Wilson made adjustments to the budget to fund Ms. Owens' position without receiving approval from the Council. Third, Plaintiffs seek to enforce a contract entered into with David W. Knight. On December 3, 2013, Mr. Knight entered into a contract with the Town of Chapin wherein he would represent the Chapin Utility Department in exchange for compensation of \$1,500 per month. Mayor Wilson has not signed any checks payable to Mr. Knight since the employment contract was entered into. Finally, Plaintiffs claim that they are entitled to attorneys' fees and costs under Section 15-77-300 of the South Carolina Code of Laws.

### ANALYSIS

#### **I. Plaintiff's Motion for Preliminary Injunction**

##### **a. Standard of Review**

Plaintiffs have filed a motion for a preliminary injunction, asking the Court to "order[] the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council." (Compl. ¶ 12.). A preliminary injunction should issue "only if necessary to preserve the *status quo ante*." *Poynter Invs., Inc. v. Century Builders of*

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*Piedmont, Inc.*, 378 S.C. 583, 586. Plaintiffs' Motion, however, is actually in the form of a mandamus petition, which "is to command and execute, and not to inquire and adjudicate." *Sanford v. South Carolina State Ethics, Comm'n*, 385 S.C. 483, 493 (2009) (internal quotation and citation omitted).

Mandamus is "the highest judicial writ known to the law." *Willimon v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 170 (1963). Because it involves one branch of government ordering another branch to undertake specific actions, mandamus is proper only in the narrow circumstance where an officer: (1) has a duty to perform the act; (2) the act is ministerial in nature; (3) the petitioner has a specific legal right for which discharge of the duty is necessary; and (4) there is a lack of any other legal remedy. 385 S.C. 483 at 494. When there is any doubt about the officer's legal obligations, or if he is vested with any discretion in performing those duties, then mandamus must be rejected. *See, e.g., id.* (denying mandamus request due to the absence of any "ministerial act to be performed"); *Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 438, 445 S.E.2d 441, 445 (1994) (denying mandamus request because the school board's challenged conduct involved the exercise of "discretionary authority").

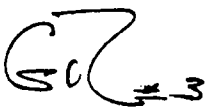
**b. Application of the Law**

Chapin has a mayor-council form of government. Chapin Town Ord. § 2.101. Under this system, Mayor Wilson is:

- Chapin's Chief Executive Officer, *id.* § 2.105;
- Chapin's Chief Administrative Officer, S.C. Code Ann. § 5-9-30, Chapin Town Ord. § 2.402; and
- The presiding officer over all meetings of Council, S.C. Code Ann. § 5-9-30(3), Chapin Town Ord. § 2.205.

As part of his authority regarding Council meetings, Ordinance § 2.206(b) provides as follows:

"The agenda shall be approved by the Mayor, prior to distribution." This "approval" authority is



unambiguous—the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council’s consideration. Case law is uniform that the authority to “approve,” such as that vested in Mayor Wilson by Ordinance § 2.206(b), includes the discretion to deny or reject. *See Paslay v. Brooks*, 198 S.C. 345, 354, 17 S.E.2d 865, 869 (1941) (“Undoubtedly, the power to approve a claim as the one before us carries with it the discretion to disapprove.”); *see also State ex rel. Pilkinton v. Bush*, 198 S.W.2d 1004, 1005 (Ark. 1947) (“The very act of approval, unless limited by the context of the statute providing therefor, imports the act of passing judgment, the use of discretion and a determination as a deduction therefrom.” (quoting *Fuller v. Bd. of Univ. & Sch. Lands*, 129 N.W. 1029, 1032 (N.D. 1911))); *People v. Riggs*, 87 P.3d 109, 114 (Colo. 2004) (“The term ‘approval’ itself implies knowledge and the exercise of discretion after knowledge.”); *Morse v. Curtis*, 200 S.E.2d 832, 835 (N.C. Ct. App. 1973) (“Indeed, Black’s Law Dictionary defines it: “the act of approval” imports the act of passing judgment, the use of discretion and determination as a deduction therefrom.” (quoting *Brice v. Robertson House Moving Wrecking & Salvage Co.*, 105 S.E.2d 439, 446 (N.C. 1958))).

Because Mayor Wilson has the discretionary authority to approve or deny items to be placed on the Town Council's agenda, Plaintiffs cannot demonstrate that Mayor Wilson has a duty to place *any* item requested on the agenda. Therefore, Plaintiffs have failed to satisfy the first requirement for mandamus by showing that there is a duty to perform the requested action. Plaintiff's Motion for Preliminary Injunction is therefore **DENIED**.



## II. Defendants' Motion to Dismiss under Rule 12(b)(6)

### a. Standard of Review

Rule 12(b)(6), SCRCP, tests the legal sufficiency of a complaint. Under this rule, the Court should dismiss a claim if it fails “to state facts sufficient to constitute a cause of action.” *Id.* When evaluating a motion under this rule, the Court is not to read unalleged facts into the pleadings, *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005), nor need it credit the claimant’s legal conclusions or predicate act labels, *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002). The Court is free to take judicial notice of matters of public record when reviewing a motion under Rule 12(b)(6). *See, e.g.*, Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding.”); *Sec’y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (“In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.”).

### b. Application of the Law

#### i. Mayor Wilson's Authority to Approve the Chapin Town Council Agenda

Plaintiffs ask this Court to declare the rights and status of the parties as to Chapin Town Ordinance 2.206(a)-(b), which provide as follows:

- (a) Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless at least two (2) members object.
- (b) The agenda shall be approved by the Mayor, prior to the distribution. It shall be prepared under the supervision of the Clerk/Treasurer

*GR*  
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Plaintiffs assert that the above Ordinance does not grant Mayor Wilson any discretion to refuse to place a requested item on the agenda. However, as stated in Section I(b) above, Ordinance 2.206(b) grants Mayor Wilson the authority and discretion to approve and, inherently, to deny any item requested to be on the agenda for a Council meeting.

Plaintiffs further assert, in the alternative, that if Mayor Wilson does have authority to control the agenda for Chapin Town Council meetings, then such authority offends the First Amendment and Fifteenth Amendments to the United States Constitution by abridging the right to assemble, the right to petition the government for redress of grievances, and the right to vote. The guarantees of the First Amendment have been incorporated to apply to the States and its political subdivisions. *See DeJonge v. Oregon*, 299 U.S. 353 (1937); *Edwards v. South Carolina*, 372 U.S. 229 (1963). However, should Mayor Wilson choose not to place a matter on the agenda as requested by other Councilmembers, Ordinance 2.206 still provides that "[m]atters not on the agenda may be considered upon request of a member unless [a majority of the Council] object." This provision acts as a safeguard against autocratic mayoral action that may otherwise rise to a constitutional deprivation of basic rights. There is little, if any, evidence in the record that Plaintiffs invoked this section of Ordinance 2.206.

**ii. Plaintiffs' Claim that the Employment of Karen Owens as Director of Communication and Economic Development was Improper**

Plaintiffs' second claim is that Mayor Wilson wrongly failed to get full approval from the Town Council prior to hiring and paying Karen Owens to be Chapin's Director of Economic Development. As such, they seek to void Ms. Owens's employment. However, there is no dispute that the Town Council voted unanimously during its January 15, 2014 meeting to "hire an Economic Development/Administrative Assistant to the Mayor." (Chapin Town Council

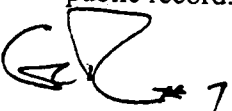
2.206

Meeting Minutes, at 1 (Jan. 15, 2014)).<sup>1</sup> Once the Town Council created the position, the South Carolina Code vested Mayor Wilson with the authority to fill the position on his own. Indeed, the mayor's hiring authority is a key distinguishing characteristic of the mayor-council form of government. *See* S.C. Code Ann. § 5-9-30(1) (giving the mayor the power and duty "to appoint and . . . suspend or remove all municipal employees"); *id.* § 5-9-30(2) (vesting the mayor with the authority "to direct and supervise the administration of all departments, offices and agencies" unless otherwise indicated by law); *id.* § 5-9-40 ("All departments, offices and agencies under the direction and supervision of the mayor shall be administered by an officer appointed by and subject to the direction and supervision of the mayor."). Chapin's Ordinances reinforce this power. *See* Chapin Town Ord. § 2.403 (indicating that, with exceptions inapplicable to the Plaintiffs' second claim, "all officers and employees of the town shall be appointed by the Mayor"). Thus, Mayor Wilson has been given full authority under state and municipal law to appoint Ms. Owens.

Further, Ordinance § 8.103(a) gives the Mayor the authority to "transfer funds within and between departments" after the Council has approved the Mayor's proposed budget. Under this system, the Town Council sets the budget and the Mayor is vested with authority and discretion to move funds within the budget as long as he does not exceed the budget. There are no allegations that Mayor Wilson exceeded the current fiscal year's budget when paying Ms. Owens's salary. Thus, the Court determines that Plaintiffs' claim that Plaintiffs have failed to state a claim under Rule 12(b)(6) entitling them to relief.

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<sup>1</sup> Because these meeting minutes are public records, the Court may consider them when resolving this Motion. *See, e.g., Sec'y of State for Defence*, 484 F.3d at 705 ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record.").



### iii. Plaintiffs' Claim for Breach of Contract

Plaintiffs next assert that the Town Council approved the hiring of David K. Knight as attorney for the Chapin Utility Department and properly designated Mr. Knight's compensation at \$1,500 per month. Plaintiffs claim that though a check has been prepared for Mr. Knight, Mayor Wilson has refused to sign it, and thus, they are entitled to an order compelling the Mayor to do so.

While styling their claim as a writ of mandamus asking the Court to order Mayor Wilson to perform a specific act, Plaintiffs are, in essence, attempting to assert a breach of contract claim on behalf of Mr. Knight. However, Plaintiffs do not have standing to bring a contract claim on behalf of a third party. *See Park v. Safeco Ins. Co.*, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (indicating that a litigant who is not a party to a contract lacks "primary standing" to assert a breach-of-contract claim). If Mr. Knight believes that Mayor Wilson or the Town of Chapin has breached an agreement, then Mr. Knight would be the proper plaintiff in such an action. Accordingly, Plaintiffs third claim is hereby dismissed.

### iv. Attorneys' Fees and Costs

Finally, Plaintiffs have requested attorneys' fees and costs under South Carolina Code § 15-77-300(A). Section 15-77-300 provides that:

- (A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:
- (1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and
  - (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

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The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

S.C. Code Ann. § 15-77-300 (Supp. 2013).

Section 15-77-300 allows a prevailing party who is contesting "state action" to recover reasonable costs and fees. However, the statute allows fees and costs to be recovered against "the appropriate agency" and only if "the agency" acted without substantial justification. A "prevailing party" is:

one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention.

*Heath v. County of Aiken*, 302 S.C. 178, 182-83 (1990) (citation omitted).


In the previous sections of this Order, the Court has dismissed each of Plaintiffs' claims and denied Plaintiffs Motion for Injunctive Relief. Thus, Plaintiff has failed to "successfully prosecute the action" by "prevailing on the main issue" and is therefore not a prevailing party entitled to attorneys' fees under Section 15-77-300. Thus, Plaintiffs' claim for attorneys' fees and costs is dismissed.

#### CONCLUSION

For the reasons set forth herein, this Court hereby **DENIES** Plaintiffs' Motion for Injunctive Relief and **GRANTS** Defendants' Motion to Dismiss.

**IT IS SO ORDERED**

Columbia, South Carolina  
March 18, 2014

  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit

ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS  
IN THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2014-CP-32-00697

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacities as members of the Town Council of the Town of Chapin,

APR - 9 4:45  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

4/9

Plaintiffs,

vs.

**ORDER DENYING PLAINTIFFS' MOTION TO RECONSIDER**

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin; Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, and the Town of Chapin,


Defendants.

This matter comes before the Court by way of Plaintiffs Vivian Atkins, Robert P. Frick, and Kay Hollis's Motion to Reconsider filed March 31, 2014 pursuant to Rule 59(e), SCRPC. Specifically, Plaintiffs ask this Court to reconsider its Order Denying Plaintiffs' Motion for Injunctive Relief and Granting Defendants' Motion to Dismiss filed March 18, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiffs' Motion under Rule 59(e), SCRPC to Reconsider this Court's Order filed March 18, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

**IT IS SO ORDERED.**

Columbia, South Carolina  
April 8, 2014

  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit