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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07273  
Appellate Case No. 2014-000961

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MAR 09 2016

SC Court of Appeals

Betty J. Keitt.....Appellant/Petitioner,

v.

City of Columbia.....Respondent.

**PETITION FOR REHEARING**

J. LEWIS CROMER & ASSOCIATES, L.L.C.  
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Pursuant to Rule 221, SCACR, Appellant/Petitioner, Betty J. Keitt, respectfully petitions the Court for rehearing on the Opinion filed on February 17, 2016, affirming the trial court's order to dismiss Appellant's claims against the City of Columbia ("Respondent" or "City"). Appellant believes the subject Opinion overlooked or misapprehended points as to the underlying public policy discharge claim.

### ARGUMENT

#### **I. THE SUBJECT OPINION OVERLOOKED OR MISAPPREHENDED THAT APPELLANT'S PUBLIC POLICY DISCHARGE CLAIM IS PRECLUDED DUE TO AN EXISTING REMEDY UNDER THE SOUTH CAROLINA WHISTLEBLOWER ACT.<sup>1</sup>**

Keitt respectfully suggest that the Court overlooked or misapprehended the substantive case law in determining that Keitt had an existing or reasonable remedy under the South Carolina Whistleblower Act, S.C. Code Ann. §§ 8-27-10 through -60 (Supp. 2015). The subject opinion giving rise to this petition notes that the Whistleblower Act provides that an employee is entitled to bring an action against her employer under the Act when she is terminated within one year of reporting the alleged wrongdoing; however it does not address the explicit limitations set forth in the very same provision. Specifically, the Whistleblower Act states: "No action may be brought under this chapter unless (1) the employee has exhausted all available grievance or other administrative remedies; and (2) *any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing.*" S.C. Code Ann. § 8-27-30(A) (emphasis added). This requirement means that, in order for Keitt to have a remedy available under the Whistleblower Act, it was necessary for the City to find that she was terminated in retaliation for her reports. This requirement is problematic for several reasons.

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<sup>1</sup> In the subject opinion, the Court does not address the remaining issues since they made a dispositive determination on the prior issue. To the extent any of those remaining issues are considered, Keitt relies upon her already briefed argument.

As an initial matter, the City's grievance process did not find that Keitt's termination was a result of her reporting the misconduct. Keitt would specifically need such a finding to have an available remedy under the Whistleblower Act. Since she did not meet this requirement, there is no existing remedy available to her. Additionally, it is inequitable to restrict Keitt to this remedy where the final grievance decision is not made by an independent body nor subject to direct judicial appeal.

The City's grievance procedure is governed by the County and Municipal Employee Grievance Procedure Act, S.C. Code Ann. §§ 8-17-110 through -160. This act provides that the decision of the grievance committee or governing body, depending on the circumstances, is "final." *See Rowe v. City of West Columbia*, 334 S.C. 400 (Ct. App. 1999) (citing to S.C. Code Ann. § 8-17-140): This means there is no direct appellate review of the decision and for purposes of the Whistleblower Act, the employee is held to this "final" decision when determining if a remedy is available. This "finality" of the decision does not preclude all judicial review because "[a] terminated city or county employee, like other employees, retains the right to challenge the termination by bringing a breach of contract or *wrongful discharge action* in circuit court." *Id.* at 406-07 (emphasis added). In the present action, Keitt has exercised her right to challenge the termination by bringing her claim of wrongful discharge in violation of public policy.

As the Court noted in the subject opinion, the South Carolina Supreme Court explained that the public policy exception "provide[s] a remedy for a clear violation of public policy where no other reasonable means of redress exists." *Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 228 (1999). This "reasonableness" distinction is especially important in the present action. Assuming, *in arguendo*, that the Whistleblower Act provides a remedy, then such remedy is unreasonable where a City employee can only proceed under the Whistleblower Act if the City's own internal grievance process finds that the City terminated the employee for whistleblowing. It would be inequitable to

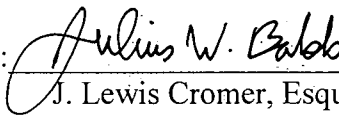
require Keitt to seek a factual determination on her whistleblower claim from the very body which decided not to reemploy her. *Wright v. Marlboro County School District*, 317 S.C. 160, 165 (Ct. App. 1994). This is markedly different if Keitt was instead a state employee proceeding under the State Employee Grievance Procedure Act, since the State Employee Grievance Committee is an “independent entity and was not the subject of the very allegations of mismanagement and inaction reported by the public employees.” *Id.* However, as a City (municipal) employee, the “final” decision rests with the City which is the very entity being sued for wrongful discharge and thus inequitable and not a “reasonable means of redress.” Accordingly, Keitt does not have an existing remedy under the Whistleblower Act and her public policy discharge claim should not have been dismissed.

### CONCLUSION

The Appellant respectfully requests a rehearing on the basis that the Court of Appeals overlooked or misapprehended the points addressed herein.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, L.L.C.

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Columbia, South Carolina  
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**PROOF OF SERVICE**

I, Iris W. Ray, an employee of J. Lewis Cromer & Associates, L.L.C., hereby certify that I have served the Appellant's Petition for Rehearing on the City of Columbia by causing a copy to be hand-delivered, on March 9, 2016, addressed to the City of Columbia's attorney of record, W. Allen Nickles, III, at the following address:

W. Allen Nickles, III  
The Nickles Law Firm  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201

*Iris W. Ray*  
\_\_\_\_\_  
Iris W. Ray  
Litigation Paralegal

March 9, 2016

**J. LEWIS CROMER  
& ASSOCIATES L.L.C.**

ATTORNEYS AND COUNSELORS AT LAW

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March 9, 2016

**Via Hand Delivery**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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**Re: Betty J. Keitt v. City of Columbia**  
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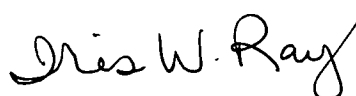
Dear Ms. Kitchings:

Enclosed please find the one (1) original and seven (7) copies of the Appellant's Petition for Rehearing on the above referenced matter. Also, enclosed is the original and (1) copy of the Proof of Service. Please file and return the clocked copies to us via our courier.

By copy of this letter, I am serving a copy of the Petition on opposing counsel. Should you have any questions and/or concerns, please feel free to call us. Thank you in advance for your kind assistance in this matter.

With kind regards, I remain

Sincerely,



Iris W. Ray  
Litigation Paralegal

/iwr  
Enclosures

cc: W. Allen Nickles, III, Esquire (*via hand-delivery*)