THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

Appellate Case No. 2014-000829
Circuit Court Case No. 2014-CP-32-00697

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, ... Defendants,

of whom

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

REPLY IN SUPPORT OF PETITION FOR REHEARING

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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Columbia, South Carolina
April 11, 2016

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INTRODUCTION

Nowhere in their opposition brief did the Appellants provide any legal analysis in response to the core issues raised in the Respondents' Petition for Rehearing. They did not identify any authority that suggests the law-of-the-case doctrine and appellate jurisdiction are discretionary in nature. They did not identify any authority that suggests courts can add words to a statute or ordinance. They did not provide any explanation or analysis of the ordinances at issue in this case—other than to summarily claim that the ordinances "clearly" support the Appellants' misguided construction.

Instead, they peppered their brief with hyperbolic political rhetoric—"absolutely unconscionable," "dereliction of duty," "specious," "ridiculous"—while sidestepping the actual merits of the Respondents' Petition. The Judiciary is not a proper audience for such politicking, as political outcomes are irrelevant to both the exercise of appellate jurisdiction and the foundational principles of statutory construction. Judge Cooper recognized this in the latter context when he scolded the Appellants for trying to run an end-around his prior declaratory rulings:

> If, in the eyes of the voters, the Mayor does not properly exercise his authority over the agenda, then they will hold him accountable at the ballot box. But this Court is not a proper venue for such a political argument.
>
> * * *
>
> "To the contrary, it is the duty of the courts to interpret a statute as they find it, without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well or ill conceived."

(R. p. 17 (quoting 73 Am. Jur. 2d *Statutes* § 164, at 398–99 (2012)).)

Nevertheless, the Appellants' memorandum contained several errant statements. They are addressed below to ensure clarity in the record.

ARGUMENT

I. This appeal should be dismissed for lack of appellate jurisdiction.

A. Whether the Town of Chapin appeared in the trial-level proceedings is not relevant to this Court's appellate jurisdiction, as Judge Cooper's rulings applied equally to all parties as a matter of law.

The Respondents' primary argument is that the Appellants' failure to include the Town of Chapin in their appeal divested the Court of appellate jurisdiction through operation of the law-of-the-case doctrine. (Pet. for Reh'g at 3–12.) In response, the Appellants did not engage in any discussion of the merits of this argument, and only attempted to distinguish one of the numerous authorities cited in the Respondents' Petition. (Return to Pet. for Reh'g at 1.) But even that minimal effort was incorrect.

The Respondents cited *Conner v. City of Forest Acres*, 348 S.C. 454, 461–62, 560 S.E.2d 606, 609–10 (2002), for the basic proposition that appellate jurisdiction does not vest over a party unless the appellant timely designates that party as a "respondent" in a notice of appeal. The Appellants attempted to distinguish *Conner* on grounds that "[a]ll of the Respondents in *Conner* had appeared and participated in the case," which they contend is not the case here. (Return to Pet. for Reh'g at 1.)

The Appellants are wrong, as the Town of Chapin did appear below, and nothing in the Record supports the Appellants' argument to the contrary. The Appellants never filed an affidavit of default against the Town of Chapin. They never sought entry of default against the Town of Chapin. They never sought a default judgment against the Town of Chapin.

Instead, the Public Index for the trial-level proceedings makes clear that the Town of Chapin was represented in the proceedings below. (Ex. A, Public Index for *Atkins v.*

Wilson, Case No. 2014-CP-32-697.) And Judge Cooper's rulings applied equally to all of the parties. (*See* R. pp. 1–18 (declaring the law of Chapin as it relates to all parties).)

Even if the Appellants were correct and the Town had not made an appearance, the analysis of this Court's jurisdiction and the application of the law-of-the-case doctrine would be no different. As a matter of both law and logic, Judge Cooper's declarations regarding the enforceability of Chapin's ordinances and dismissal of the case applied to the municipality itself, not only to its individual officials. *See, e.g.*, S.C. Code Ann. § 15-53-80 ("In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard."); *United States ex rel. Hudson v. Peerless Ins. Co.*, 374 F.2d 942, 945 (4th Cir. 1967) (explaining that when potential liability is "joint and several or closely interrelated and a defending party establishes that plaintiff has no cause of action or present right of recovery, this defense generally inures also to the benefit of a defaulting defendant" (quoting 6 *Moore's Federal Practice* § 55.06, at 1821 (2d ed. 1965))). The Appellants acknowledged the necessary applicability of Judge Cooper's rulings to the Town when they included it as a defendant to their Complaint. (R. p. 19.)

Accordingly, the Town was an indispensable party to the appellate proceedings because it had an interest in the trial court's judgment, even if the Appellants were somehow correct that the Town made no appearance below. *See, e.g.*, *Miner v. Champion*, 95 S.E.2d 668, 669–71 (Ga. 1956) (dismissing an appeal *sua sponte* for lack of jurisdiction when a trial court dismissed in its entirety an amended complaint filed against six defendants, four of whom had defaulted, but the plaintiff only appealed the order as to the two defendants who did appear).

For reasons that only they know, the Appellants chose not to appeal those rulings as to all three trial-level defendants. Those rulings, "right or wrong," are now the law of the case as they relate to the Town of Chapin. *Davis v. Parkview Apts.*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014). And because those rulings are now unreviewable as to one party below, the Court lacks appellate jurisdiction here. *See generally* 4 C.J.S. *Appeal and Error* § 353 ("Nonjoinder") (2007) ("Generally, a proceeding to review a judgment, order, or decree will be dismissed if all parties who are essential to the review are not made parties to the proceedings, unless there has been a proper summons and severance or equivalent proceeding or unless the defect may be and is cured.").

Accordingly, the Court should reconsider its earlier rulings, vacate its opinion, and dismiss this appeal. *See, e.g.*, *Jemison v. Brown*, 202 So. 2d 44, 45 (Ala. 1967) ("It is academic that all parties to an action whose interest will be affected by a reversal of the judgment or decree appealed from must be made parties to the appellate proceedings. Otherwise we cannot consider the case as to the non-joined appellees.").

B. Whether the Appellants attempted to hire an adverse attorney is also irrelevant, and such efforts would have been improper in any event.

Nor should the Court credit the Appellants' irrelevant posturing about whether they were given the chance to appoint a Town Attorney for purposes of this case. For one, as explained in Footnote 2 of the Petition for Rehearing, the Appellants would have been prohibited by law from participating in any appointment or selection of adverse counsel. *See generally* S.C. Code Ann. § 8-13-700; Rule 1.7(b)(3), S.C. Rules of Prof'l Conduct.

Moreover, their claim that they are seeking an honest opportunity to select counsel for the Town is a charade. After Judge Cooper resolved this case, Councilwoman

Hollis filed a second lawsuit regarding open-government issues, but she sued only the Town of Chapin in this second matter. As Judge Gee noted when permitting Mayor Wilson to intervene in that case, three Council meetings were noticed "for the purpose of planning the Town's defense to Ms. Hollis's suit." (Ex. B, Order at 1–2 in *Hollis v. Town of Chapin*, 2015-CP-32-1735 (Aug. 3, 2015).)

All three times, the Appellants here—Councilwoman Hollis, Councilman Frick, and Councilwoman Atkins—refused to show up for the meetings. Judge Gee rightly observed that the Appellants' refusal to attend meetings was designed "to prevent a quorum of Council from convening" as part of "an apparent effort to put the Town of Chapin into default in this suit." (*Id.* at 2.)

The Appellants' attempted coopting of the Judiciary to achieve political results through engineered default judgments was completely improper, and it undercuts entirely their suggestion they have operated with the purest of intents, only to be faced with supposedly "unconscionable" conduct by Mayor Wilson.[1] The Court should reject all of the Appellants' misguided, irrelevant posturing on this tangential issue.

II. The Court is charged with enforcing legislation according to its plain language, not recasting the law to match what a litigant thinks it "should" be.

The Appellants did not provide any substantive response to the Respondents' discussion of the Court's construction of Chapin Ordinance § 2.206(b). Instead, they only argued that consideration of anything that any councilmember may request "should not be blocked by giving the Mayor sole authority of all agendas." (Return to Pet. for Reh'g at 1.) But what the law "should" allow is a policy argument that is beyond the Court's

[1] Judge Kelly ultimately dismissed Appellant Hollis's second lawsuit by order dated January 8, 2016. Neither that ruling nor Judge Gee's earlier order have been appealed.

consideration, not a legal argument rooted in the actual words of the relevant ordinances here. *See Cox v. Bates*, 237 S.C. 198, 213, 116 S.E.2d 828, 834 (1960) ("Therefore plaintiff and others so minded may seek at the ballot box remedy for what they consider to be a wrong. Much of his argument here is, wittingly or not, concerned with legislative policy, with which the court has nothing to do.").

At bottom, Ordinance § 2.206(b)'s plain language does not distinguish among the various types of meetings when vesting the Mayor with approval authority over meeting agendas. The Appellants have not identified anything whatsoever to rebut this point. Accordingly, the Court should reconsider and reverse its earlier opinion that incorrectly assumed that this authority was limited only to "regular" meetings.

III. The Supreme Court has recognized that there is a difference between the authority to call a meeting and the authority to establish its agenda.

Finally, the Appellants took issue with the citation to *McConnell v. Haley*, 393 S.C. 136, 711 S.E.2d 886 (2011), in the Respondents' Petition. The Appellants apparently misunderstood the purpose of that citation, as they argued that the salient point from that case is "mere dicta." (Return to Pet. for Reh'g at 2.)

The Respondents directed the Court to *McConnell* as an illustration of the South Carolina Supreme Court recognizing that there is a difference between the authority to call a meeting and the authority to prescribe the agenda for that meeting. Whether that observation is found in dicta—a contention with which the Respondents disagree—is irrelevant. The point is that the two actions are not the same, nor do they naturally blend together, as the Court assumed on Page 10 of its opinion.

Importantly, the Respondents' argument did not rely solely on *McConnell*, but also pulled from the Chapin Town Ordinances, the State Municipal Code, and the State

Freedom of Information Act to demonstrate the fundamental point that the authority to determine what is considered at a meeting is separate and distinct from the authority to determine when a meeting will take place. While *McConnell* recognized this distinction in a separation-of-powers context that derives from the State Constitution, the distinction in this case comes from the division of powers that arises under Chapin's strong-mayor form of government.

The Appellants did not address any other aspect of the Respondents' argument on this point beyond an empty assertion of the supremacy of Town Council. (Return to Pet. for Reh'g at 2.) In addition to ignoring the numerous powers given to the Mayor under the strong-mayor form of government, their position fails to account for the fact that Town Council itself gave the Mayor the authority to approve meeting agendas when it passed Ordinance § 2.206(b), and did so without any restrictions or limitations on the types of meetings to which this power applied. Under Home Rule, the Council was free to pass such an ordinance. S.C. Code Ann. § 5-7-250(b).

That the Appellants do not care for the consequences of how the Mayor has used this unambiguous authority is a political problem that they should try to solve at the ballot box, not through misguided arguments to the Judiciary.[2] In the event the Court does not dismiss this appeal, it should revisit its earlier opinion, enforce the Chapin Town Ordinances according to their plain language, and affirm Judge Cooper's decision below.

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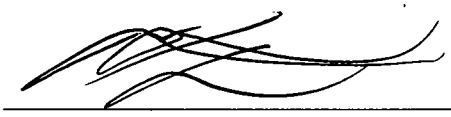
[2] The politicization of this case is obvious from the Appellants' *ad hominem* attack on the Respondents' legal fees. In response, the Respondents would respectfully note that the Respondents are the defendants here—not the parties who initiated any proceedings, and not the parties who chose to involve the Judiciary in a political dispute.

CONCLUSION

For the reasons discussed above and in the Respondents' Petition, the Court should reconsider its earlier opinion and dismiss this appeal for lack of jurisdiction. Alternatively, it should construe the Chapin Town Ordinances according to their plain language and reconsider its opinion, which interpreted the relevant ordinances here in conflict with several principles of statutory construction.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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April 11, 2016
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Exhibit A

Public Index for *Atkins v. Wilson*, Case No. 2014-CP-32-697 (Lexington County)

Lexington County
Eleventh Judicial Circuit
Public Index

Lexington County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

Vivian Atkins , plaintiff, et al VS James R Wilson Jr , defendant, et al

Case Number:	2014CP3200697	Court Agency:	Common Pleas	Filed Date:	02/26/2014
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Other / Circuit Civil	Disposition Date:	03/19/2014	Disposition Judge:	Cooper, G. Thomas Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Vivian					Plaintiff		06/02/2014
Carroll, Matthew Todd	1727 Hampton Street Columbia SC 29201				Defendant Attorney		03/10/2014
Town of Chapin					Defendant		04/14/2014
White, Gregg					Defendant		02/27/2014
Wilson, James R Jr					Defendant		03/05/2014
Frick, Robert P					Plaintiff		02/27/2014
Hollis, Kay					Plaintiff		02/27/2014
Syrett, Spencer Andrew	PO Box 7403 Columbia SC 292027403				Plaintiff Attorney		02/26/2014
Town of Chapin					Defendant		04/14/2014
Carroll, Matthew Todd	1727 Hampton Street Columbia SC 29201				Defendant Attorney		03/10/2014
White, Gregg					Defendant		02/27/2014
Wilson, James R Jr					Defendant		03/05/2014

Exhibit B

Order from the Honorable Tanya Gee in *Hollis v. Town of Chapin*, 2015-CP-32-1735 (Lexington County)

FILED

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Kay Hollis,	)	Civil Action No. 2015-CP-32-1735
Plaintiff,	)	
vs.	)	ORDER
Town of Chapin,	)	
Defendant.	)	

Before the Court is a motion by James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin, to intervene in this litigation as a defendant. Mayor Wilson's motion is made pursuant to both Rule 24(a), SCRCP, which authorizes intervention as a matter of right, and Rule 24(b), SCRCP, which allows permissive intervention in appropriate circumstances. The Court finds that intervention is appropriate under either rule, and grants Mayor Wilson's motion for the reasons explained below.

BACKGROUND

This lawsuit arises out of Ms. Hollis's dissatisfaction with two acts by Mayor Wilson in his official capacity: his response to a request for records she made pursuant to the Freedom of Information Act, and his rescheduling of the Town Council's monthly meetings to a date later in each month. (Compl. ¶¶ 5–22 & accompanying exhibits.) Ms. Hollis is a member of Chapin Town Council, but has sued the "Town of Chapin," rather than Mayor Wilson himself, seeking declaratory relief regarding these two acts.

Ms. Hollis appears to have served her complaint on the Town of Chapin by sending a copy of it to Town Hall. In response, Mayor Wilson called a special meeting of Town Council for the purpose of planning the Town's defense to Ms. Hollis's suit. Ms.

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Hollis and two other councilmembers—Vivian Atkins and Robert Frick—refused to attend that special meeting in order to prevent a quorum of Council from convening. (Aff. Hollis ¶ 5; Aff. Atkins ¶ 6; Aff. Frick ¶ 7.)

Mayor Wilson then called a second special meeting of Council for the same purpose. Again, Ms. Hollis, Ms. Atkins, and Mr. Frick refused to attend, once more preventing a quorum. (Aff. Hollis ¶ 6; Aff. Atkins ¶ 7; Aff. Frick ¶ 8.)

Finally, Mayor Wilson placed this same topic on the agenda to be discussed at the next monthly meeting of Town Council. For a third time, Ms. Hollis and her political allies on Council refused to attend that meeting in an apparent effort to put the Town of Chapin into default in this suit. (Aff. Hollis ¶ 7; Aff. Atkins ¶ 8; Aff. Frick ¶ 9.)[1]

Following three unsuccessful efforts to engage his colleagues on Town Council, Mayor Wilson filed a motion to intervene in this lawsuit in order to defend the authority vested in his office by the South Carolina Code and the Chapin Town Ordinances.

Both Mayor Wilson and Ms. Hollis have briefed the issues before the Court, and affidavits have been submitted from Mayor Wilson, Ms. Hollis, Ms. Atkins, and Mr. Frick. On July 30, 2015, the Court heard Mayor Wilson's motion, and both Mayor Wilson and Ms. Hollis were represented by counsel at that hearing. After carefully considering all of the evidence, arguments from counsel, and the governing law, the Court grants Mayor Wilson's motion to intervene as a defendant in this case.

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[1] The Court is aware and takes judicial notice of the fact that Ms. Hollis, Ms. Atkins, and Mr. Frick have previously sued Mayor Wilson regarding his exercise of mayoral authority to establish meeting agendas for Town Council. That case was captioned *Atkins v. Wilson*, Civil Action No. 2014-CP-32-697 (Lexington County Ct. Com. Pl.). By order dated May 5, 2014, The Honorable G. Thomas Cooper, Jr., dismissed their claims against Mayor Wilson, and that decision is currently pending before the South Carolina Court of Appeals.

DISCUSSION

The South Carolina Rules of Civil Procedure "permit liberal intervention," especially when "judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Elec. Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). In particular, Rule 24(a), SCRCP, provides that a non-party may intervene as a matter of right in the following circumstance:

> Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Similarly, Rule 24(b), SCRCP, vests the Court with discretion to permit intervention "when a statute confers an unconditional right to intervene" or "when the applicant's claim or defense and the main action have a question of law or fact in common," as long as such intervention will not delay the case or prejudice the original parties.

After examining the evidence and arguments presented, the Court finds that Mayor Wilson meets the standard to intervene under both of these rules.

I. Intervention as a Matter of Right

Rule 24(a)(2), SCRCP, outlines three factors that a movant must satisfy in order to intervene as a matter of right: timeliness of the motion, an interest in the litigation that will be impaired but for the movant's intervention, and inadequacy of representation by the current parties. Each is addressed below in turn.

A. Timeliness

The Supreme Court has established four factors to consider when evaluating the timeliness of intervention:

(1) "the time that has passed since the applicant knew or should have known of his or her interest in the suit";

(2) "the reason for the delay";

(3) "the stage to which the litigation has progressed"; and

(4) "the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial."

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

This lawsuit was served on the Town of Chapin on May 22, 2015, and Mayor Wilson's motion to intervene was filed within the time for serving a responsive pleading to the complaint. There was no delay in filing this motion beyond Mayor Wilson's futile attempts to communicate with other members of Town Council prior to filing.

The case has not progressed beyond the simple filing of the complaint. The Court finds that Ms. Hollis would not suffer any prejudice if this motion is granted beyond having legitimate defenses presented in opposition to her claims, which is not sufficient to prevent intervention. Accordingly, the Court finds that Mayor Wilson timely filed and served his motion.

B. Interest of Movant

Rule 24(a)(2)'s second criterion for intervention as a matter of right requires the proposed intervenor to have an "interest relating to the property or transaction which is the subject of the action," and resolution of the case without the intervenor's involvement "may as a practical matter impair or impede his ability to protect that interest."

As described above, Ms. Hollis's complaint arises out of her dissatisfaction with the way in which Mayor Wilson has executed his mayoral authority with regard to responding to a request for records under the Freedom of Information Act and to rescheduling meetings of Council.

Regarding the production of records, this issue relates to the Mayor's authority to "direct and supervise the administration of all departments" within the Town of Chapin, as provided by South Carolina Code § 5-9-30(2). This issue also relates to various Chapin Town Ordinances, including Ordinance 2.101, which creates a strong-mayor form of government for the Town of Chapin; Ordinance 2.105, which establishes the mayor as the Town's Chief Executive Officer; and Ordinance 2.402, which designates the mayor as the Town's Chief Administrative Officer.

Responding to a Freedom of Information Act request for records maintained by the Town arguably falls within the mayor's normal executive, administrative, and supervisory authority and discretion; in fact, Ms. Hollis acknowledged the mayor's authority on this issue when she sent her request for records directly to Mayor Wilson. Therefore, any challenge to Mayor Wilson's response would implicate his office's authority and discretion on this issue, which could be impaired in his absence if he were not permitted to intervene in this litigation.

Regarding rescheduled meetings of Council, this is an issue that the Chapin Town Ordinances commit to the mayor's discretion. Ordinance 2.201(a) authorizes the mayor to reschedule Council's monthly meeting, which Mayor Wilson has done here. The effect of rescheduling a meeting, at a minimum, implicates and relates to the mayor's authority regarding the Council's meeting agenda—the scope of which Ms. Hollis has previously

litigated against Mayor Wilson. Once more, the authority of the mayor's office could be impaired on this issue if he were not permitted to intervene in this litigation.

Because Mayor Wilson, in his official capacity, has multiple interests in this litigation that could be impaired or impeded if he remained absent from this case, the Court finds that Mayor Wilson satisfies the second prong of the Rule 24(a)(2) analysis.

C. Representation by Existing Parties

The final criterion for intervention under Rule 24(a)(2) is that the existing parties do not "adequately represent" the proposed intervenor's interests. The burden to prove this element lies with the movant, but "[t]his burden is minimal and the applicant need only show that the representation of his interests 'may be' inadequate." *Berkeley Electric Cooperative*, 302 S.C. at 191, 394 S.E.2d at 715.

The Supreme Court has established a three-factor test for assessing the "adequacy of representation" prong:

(1) "whether the existing parties will undoubtedly make all of the intervenor's arguments";

(2) "whether the existing parties are capable and willing to make such arguments"; and

(3) "whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent."

Id.

Regarding the first two factors, three members of the Chapin Town Council—Ms. Hollis, Ms. Atkins, and Mr. Frick—have submitted affidavits indicating that they have obstructed and will continue to obstruct any effort by the Town of Chapin to present any of the intervenor's arguments in this case. Mr. Frick, for instance, repeatedly attests in his affidavit that he "did not want the Town to defend the lawsuit so I refused to attend the

meeting," apparently on the belief that he and the others could drive this case toward default. (Aff. Frick ¶¶ 7–9.) Based on the council members' affidavits, the Court finds that there is no realistic chance that the existing parties will make (or are capable and willing to make) Mayor Wilson's arguments here.

Finally, the executive, administrative, and supervisory decisions giving rise to this case were taken by Mayor Wilson in his official capacity. To the extent his discretionary decisions may form a justiciable claim, a point on which the Court currently does not express any opinion, he alone can offer his perspective as to why he undertook those decisions. Accordingly, the Court finds that Mayor Wilson satisfies the third and final prong of the Rule 24(a)(2) analysis, and permits him to intervene in this case as a matter of right.

II. Permissive Intervention

Mayor Wilson has alternatively sought to intervene by permission pursuant to Rule 24(b), SCRCP. As noted above, that rule allows for permissive intervention when "a statute confers an unconditional right to intervene" or "an applicant's claim or defense and the main action have a question of law or fact in common," as long as the intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* The Court finds, as independent grounds for granting intervention, that both potential grounds for permissive intervention are present here.

As explained above, Mayor Wilson alone has defenses to present to Ms. Hollis's allegations in this case. Those defenses involve issues that are wholly overlapping of those presented in the complaint. Likewise, the statutes and ordinances under which the mayor has exercised his office's authority implicitly permit him to intervene in litigation

when his conduct arising under them has been challenged. Otherwise, an elected executive's discretionary authority could be altered or erased without the officeholder's input.

Finally, because this case has not advanced beyond the pleadings stage, permitting Mayor Wilson to intervene will not unduly delay or prejudice this case's adjudication.

Accordingly, the Court grants Mayor Wilson's alternative request to be permitted to intervene pursuant to Rule 24(b), SCRCP.

CONCLUSION

For the reasons explained above, the Court grants Mayor Wilson's motion to intervene in this litigation as a defendant. The Court accepts as timely filed the proposed "Answer of James R. Wilson, Jr.," which was attached as an exhibit to Mayor Wilson's motion. Finally, the caption of this case shall be amended to the following: "Kay Hollis v. Town of Chapin and James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin."

AND IT IS SO ORDERED.

Tanya A. Gee
Circuit Court Judge

August 3, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

FILED CASE NO. 2015 CP-32-1735

ORIGINAL

Kay Hollis

2015 AUG 10 AM 9:14

Town of Chapin

PLAINTIFF(S)

DEFENDANT(S)

JM

KEITH A. CARMICHAEL
CLERK OF COURT
LEXINGTON SC

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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: See attached order granting Mayor James R. Wilson, Jr.'s motion to intervene.

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

2756
Judge Code

8/13/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of Aug 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Aug 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Andy Syrett

ATTORNEY(S) FOR THE PLAINTIFF(S)

Matthew Todd Carroll

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Carnegie

CLERK OF COURT

Court Reporter:

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.

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondents, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below via U.S. Mail, postage paid, to the following address(es):

Pleading: Reply in Support of Petition for Rehearing

Parties Served: Spencer Andrew Syrett
712 Richland Street, Suite E
Post Office Box 7403
Columbia, SC 29202
Attorney for Appellants

Edwin T. Mathis

April 11, 2016

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April 11, 2016

Via Hand Delivery
The South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
1220 Senate Street
Columbia, SC 29201

Re: Vivian Atkins v. James R. Wilson, Jr.
Appellate Case No. 2014-000829

Dear Ms. Kitchings:

Enclosed for filing please find an original and six copies of Respondents' Reply in Support of Petition for Rehearing in this matter. Please return a clocked copy via our courier.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

MTC/tm
Enclosure

cc: Spencer Andrew Syrett (via United States mail)