THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

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Appellate Case No. 2017-000536

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Ernie Washington, in his capacity as Coroner of Hampton County, .....Appellant,

v.

Hampton County, Hampton County Council, and Rose-Dobson-Elliot, as Hampton County Administrator, ..... Respondents.

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# REPLY BRIEF OF APPELLANT

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## STATEMENT OF THE FACTS IN REPLY

In Reply to Respondents' detailed Statement of Facts, the Coroner believes it necessary to expand on the facts initially set forth in his prior Brief. During Coroner Washington's tenure as Coroner, there has been a debate over how to provide the Coroner's Office with a vehicle. Those options included (1) the Coroner's use of his own private vehicle and collecting a mileage reimbursement for official business, (2) the County's assigning a vehicle to the Coroner through the Coroner's Office budget, or (3) providing the Coroner with a vehicle from the County fleet. (Coroner Aff. ¶ 3). Initially, the Coroner chose option 1. He drove his own private vehicle and received a mileage reimbursement for official business. He also was under the impression that should an accident occur while on County business, that the County would cover the damage. (Coroner Aff. ¶ 4).

In 2012, the Coroner got into a car accident while on official County business. The County would not repair the vehicle or pay the private insurance deductible to repair the vehicle. (Coroner Aff. ¶ 5; Coroner Reply Aff. ¶ 4). The Coroner then sought to have a County fleet vehicle assigned to his office for use. Unfortunately, following the accident, the Coroner's Office only had one 1998 body transport van which he drove for months. (Coroner Reply Aff. ¶ 5). The transport van was deemed unsafe by the county mechanic to take out of the county as it left the Coroner stranded multiple times, one time with a dead body inside the vehicle. (Coroner's Reply Mem. at 4). The Coroner was embarrassed when citizens were trying to help him move the disabled van with the body inside. (Coroner's Reply Mem. at 4).

Ultimately, the County gave the Coroner a 2005 gray Explorer with a rear end problem to use in addition to the 1998 van. (Coroner Reply Aff. ¶ 5). In 2013, due in part to the gray Explorer's rear end problems, the Richland County Coroner generously gifted a 2005 blue

Explorer to the Hampton Coroner. (Coroner Reply Aff. ¶ 6; Coroner Aff. ¶ 6). Hampton County agreed to insure the Ford Explorer. (Coroner Aff. ¶ 7).

It was in 2013 that the Hampton County "Sticker War" began when the County demanded that various stickers and decals be placed on the gifted Ford Explorer. (Coroner Aff. ¶ 8). The Coroner objected because he knows first-hand how citizens/family members become hysterical when a vehicle marked "coroner" pulls up on official business. (Coroner Aff. ¶ 9, 16). The coroner thus sought an Attorney General's opinion as to whether County Council could force a constitutional officer to place decals on his car beyond what is required by statute. (Coroner's Mem. Ex. 1 – Letter Requesting AG Opinion; Coroner Aff. ¶ 10). On April 8, 2013, in response to Coroner Washington's request, the South Carolina Attorney General issued an opinion that the Hampton County Council does not have the authority to force the coroner to put stickers on his vehicle. Op. S.C. Att'y Gen., No. 888, 2013 WL 1695523 (April 8, 2013) (Coroner's Mem. Ex. 2 – AG's Opinion). Contrary to Respondents' assertions (*see* Br. of Resp'ts at 12), the Attorney General's opinion was not hinged on whether the gifted vehicle belonged to the County or the Coroner; it is a distinction without a difference.

In June 2016, the gifted Ford Explorer broke down. (Coroner Aff. ¶ 11). Instead of repairing the vehicle, and without any input from Coroner Washington, the Administrator purchased a 2008 Dodge Durango with approximately 182,000 miles for $2,950. The Durango was put into the county fleet and assigned to the Coroner. (Coroner Aff. ¶ 12). Despite the Attorney General's opinion and the Coroner's known wishes, the County delivered the Durango to the Coroner with two long reflective stickers marked "CORONER" on both side rear windows of the vehicle and two County seals (not Coroner's seals) on both the front and passenger doors in addition to the governmental tags that had been ordered. (Coroner's Mem. Ex. 3 – Photos;

Washington Reply Aff. ¶ 8). Coroner Washington was never consulted and never approved the placement of stickers on his vehicle. (Coroner Aff. ¶ 12). The Coroner removed the stickers that Respondents had placed on the Durango, and placed his own Coroner's Office seal on the rear window of the vehicle in addition to the governmental tags. (Coroner Aff. ¶ 13; Coroner Reply Aff. ¶ 9, 10). This displeased the County causing round two of the Sticker War.

On August 15, 2016, Coroner Washington had his then-attorney appear on his behalf at a County Council meeting to discuss the legal merits of the Coroner's position regarding whether the County could force him to place decals on his vehicle. After the Coroner left the August 15 Council meeting thinking that the matter was resolved, Council nonetheless voted affirmatively on a motion regarding the placement of decals in the Coroner's absence. (Coroner's Mem. Ex. 7 – Council Minutes). County Council voted to approve:

> the issuance of the County Fleet Vehicle [Dodge Durango] for the Hampton County Coroner **pursuant to Hampton County Personnel Policy** as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the Hampton County Fleet Pool assigned to the coroner shall have state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. **Shall the coroner refuse to comply with county council's directive; the coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours.**

(Coroner's Mem. Ex. 7 – Minutes) (emphasis added).

The next morning, on August 16, 2016, Administrator Dobson-Elliott came to the Coroner's Office to discuss Council's vote the night before. The Administrator told Coroner Washington that he needed to place the Coroner's Office seal on the front doors of the Durango within the next 48 hours or the vehicle would be taken from him. The Administrator even went into specifics on the sizing and placement of the seals that were being demanded. (Coroner's Mem. Ex. 4 – Email, Aug. 16, 2016). The County took this position despite the Coroner's

attorney's arguments at Council the night before, despite the Coroner's known wishes, and despite the Attorney General's opinion which stated Council did not have the authority to force the decals onto the vehicle.

On August 23, 2016, Rose Dobson-Elliott sent an e-mail to Coroner Washington advising that County Council's action to require him to put additional decals on his car was to be implemented within 48 hours or they would take the vehicle from him. (Coroner's Mem. Ex. 5 – Email, Aug. 23, 2016). She also asked him to let her know when "we" can expect "you" to comply with the Council's directive. (Coroner Aff. ¶ 15). On October 3, 2016, the Hampton County Attorney notified the Coroner's counsel that at the council meeting that night, it was anticipated that Council would again demand that the vehicle be returned. Council did, in fact, vote to apprehend the vehicle at the meeting. (Coroner Aff. ¶ 16).

On October 4, 2016, Coroner Washington filed a Complaint for Declaratory Judgment and for Injunctive Relief and a Motion for Emergency Temporary Restraining Order to enjoin Respondents from removing the Coroner's vehicle should the Coroner refuse to place more decals on his vehicle. (Coroner's Aff. ¶ 18).

## ARGUMENT

### I. REPLY TO RESPONDENTS' ARGUMENTS REGARDING THE COUNTY'S LEVEL OF CONTROL OVER THE CORONER.

Respondents argue that the Home Rule Act does not apply to this case and argue that S.C. Code Ann. § 4-9-650[1] is inapplicable here because the statute only applies to the county administrator. (Br. of Respt's at 11). They claim that *Eargle v. Horry Cnty.*, 344 S.C. 449, 545 S.E.2d. 276 (2001), does not support the Coroner's position because "*Eargle* involved a challenge by a constitutional officer to action taken solely by the county administrator." (Br. of Resp'ts at 11). The action in *Eargle* was brought against the County and the administrator regarding whether "the County, through the Administrator" had the authority to suspend employees of the elected official. *Eargle*, 344 S.C. at 452, 545 S.E.2d at 278.

A county administrator serves as "the administrative head of the county government" and is "responsible for the administration of all the departments of the county government which the council has the authority to control." S.C. Code Ann. § 4-9-620. In *McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004), the Court stated "since § 4-9-650 specifically states that the county administrator does not have authority over elected officials whose offices are created by the Constitution, **the *county* has no authority to control** the Clerk of Court." *McCormick*, 361 S.C. at 94, 603 S.E.2d at 587. The fact that the county council voted to take away the Coroner's vehicle, instead of the administrator deciding on her own to take the vehicle, does not somehow nullify S.C. Code Ann. § 4-9-650. With regard to authority over elected

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[1] "With the exception of organizational policies established by the governing body, *the county administrator shall exercise **no authority** over any elected officials* of the county whose offices were created by the Constitution or by the general law of the State." S.C. Code Ann. § 4-9-650 (emphasis added).

officials, county council enjoys no more power than the administrator. If the administrator is without authority to control the Coroner, then so too is the county.

Respondents argue that the vehicle policy at issue is an "organizational policy" and thus may be enforced against elected officials. The Home Rule Act indeed does provide that a County Council may exercise some authority over an elected official in areas concerning "organizational policies." Organizational policies include "areas such as employee grievances, S.C. Code Ann. § 4-9-30(7), the establishment of an accounting and reporting system, S.C. Code Ann. § 4-9-30(8), and of a centralized purchasing system, S.C. Code Ann. § 4-9-160, and the submission to [the county] of annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds, S.C. Code Ann. § 4-9-140." Op. S.C. Att'y Gen., 1978 WL 34687, at *1 (Feb. 7, 1978). According to the Attorney General, organizational policies include those areas in which the Council is expressly authorized to act. Op. S.C. Att'y Gen., 1978 WL 34687, at *2 (Feb. 7, 1978). S.C. Code Ann. § 4-9-30(7) expressly authorizes a county to develop personnel policies and procedures such as Hampton County's vehicle policy, however, in the same sentence, the statute expressly exempts elected officials from such personnel policies. S.C. Code Ann. § 4-9-30(7) (empowering counties "to develop personnel system policies and procedures for county employees by which **all county employees are regulated <u>except</u> those elected directly by the people.**").

S.C. Code Ann. § 4-9-30(7) and *Eargle* state that a County cannot enforce its personnel policies upon elected officials or their employees because elected officials are not employees of the County. The Hampton County Vehicle Policy at issue is one such personnel policy. Therefore, Hampton County cannot enforce its apparent personnel policy of requiring decals on the Coroner's vehicle whether the vehicle comes from the county fleet or not.

Even if the policy did apply, the plain language of that policy gives only the elected official the duty to enforce the vehicle policy. (Mem. of Defs. Ex. – Hampton County Vehicle Policy). Coroner Washington declined to enforce the county's vehicle policy onto himself leaving the county with no enforcement mechanism since the county may not direct an elected official to do a job. *See* S.C. Code Ann. § 4-9-650.

While the honorable lower court judge opined that he saw no evidence that the county intended to make good on its threat to remove the coroner's transportation, in their brief to this honorable appellate court, it is clear that the county, through county council, believes that it owes no duty to fund the coroner a vehicle. (Br. of Resp'ts at 9). Thus, the threat continues and clearly injunctive relief was and is warranted.

It is true that the Council has total control over budgetary matters,

> and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions, S.C. Code Ann. § 4-9-140, nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. *See generally*, 20 C.J.S. Counties §§ 100(a), (b) and (c) (1940); 56 Am. Jur. 2d Municipal Corporations §§ 237–239 (1971); 3 Mcquillin Municipal Corporations § 12.118 (3rd ed. 1973); *cf., Hayes v. Brockton*, 48 N.E.2d 683 (Mass. 1943).

Op. S.C. Att'y Gen., 1978 WL 34687, at *2 (Feb. 7, 1978). The Coroner cannot operate the Coroner's Office without a vehicle. The lower court's Order even found that "[t]he County's attempt to take the Coroner's vehicle away could result in an inability of the Coroner to perform the duties of the office." (Order at 4). If Respondents had succeeded in their attempt to remove the Coroner's vehicle, they absolutely would have prevented the proper functioning of the Coroner's Office.

Respondents argue that they are not exercising control over the Coroner's Office, but rather that they are only exercising control over the vehicle they assigned to the Coroner's Office. Should this overreach be allowed, this county council in particular will then attempt to control elected officials under the guise of controlling assets assigned to the offices of elected officials.

In their brief, Respondents cite to S.C. Code Ann. § 17-5-100 which states that "Coroners must execute all lawful orders directed to them by the respective governing bodies of their respective counties." (Br. of Resp'ts at 3). This statute was first codified in 1893. In 1975, South Carolina enacted what is commonly referred to as the Home Rule Act codified at §§ 4-9-10, *et seq.* *See City of Myrtle Beach v. Richardson*, 280 S.C. 167, 169, 311 S.E.2d 922, 924 (1984). The Home Rule Act of 1975 completely rewrote the powers of counties and local governments in this State. *See City of Newberry v. Pub. Serv. Comm'n of S.C.*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986). Section 4-9-650, *supra*, withdraws from the county administrator or council the power to direct elected officials to act in a certain manner.

"The case law of this State is clear that when there is a conflict between statutory provisions, the later enacted legislation prevails." *City of Newberry*, 287 S.C. at 407, 339 S.E.2d at 126. There exists a fundamental conflict between the 1893 statute and § 4-9-650. One statute says that Coroners must execute the orders of their county governing bodies and the other states county governing bodies have no authority over coroners. Thus, § 17-5-100 which was enacted in 1893 was impliedly repealed by the enactment of the Home Rule Act in 1975 as the two statutes are irreconcilable.

## II. THE CORONER'S ARGUMENT REGARDING HAMPTON COUNTY'S PERSONNEL POLICY IS PROPERLY PRESERVED.

Respondents argue that the Coroner's Issue I.b.[2] is not preserved because the Coroner did not ask the Court for a declaration regarding the vehicle policy and because the lower court did not make a ruling regarding the vehicle policy. (Br. of Resp'ts at 14). Issue I.b. is inherently tied to the larger issue of who has the authority to decide how the Coroner's vehicle will comply with S.C. Code Ann. § 56-3-1710, and to what extent may Respondents exercise authority over the Coroner. Further, Respondents admit that enforcement of the County's vehicle policy was "undeniably an issue before the lower court." (Br. of Resp'ts at 20). In fact, this lawsuit became necessary when County Council voted to enforce the "Hampton County Personnel Policy as it relates to the vehicle policy" on the Coroner's 2008 Dodge Durango by apprehending the vehicle from him if he refused to comply. (Coroner's Mem. Ex. 7 – Minutes). Because Respondents relied upon the personnel policy to attempt to force the Coroner to place the additional decals on the vehicle, the issue was squarely before the Court which is why the Court entered the policy as an exhibit.

## III. S.C. CODE ANN. § 56-3-1710 DOES NOT REQUIRE ANYMORE IDENTIFIERS THAN THE CORONER'S VEHICLE CURRENTLY HAS.

Respondents assert that there is no controversy as to the number of identifiers because the Coroner has consented to two identifiers on the vehicle. (Br. of Resp'ts at 15). The Coroner does have two identifiers on his vehicle: a governmental plate and the Coroner's Office seal on the rear window. The Coroner agrees with the lower court that "[t]hese marks are sufficient for

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[2] The Coroner's Issue I.b. is titled: "Hampton County's vehicle policy does not apply to the Coroner and even if it does, the Coroner has complied with it." (Br. of Appellant at 10).

compliance with the state statute." (Order at 5).[3] The primary issue is that the lower court determined that the **County** may decide how to comply with the statute, yet the County mandated that the Coroner's vehicle have ***six*** total identifiers: two County seals which are blue, gold, and white on the front doors, two high-visibility reflective "CORONER" stickers on the side rear windows, the Coroner's seal which is brown, gold, and white on the rear window, and a governmental license plate. The County never conceded to allow less identifiers or allow the Coroner to select his identifier thus forcing this suit. (Washington Reply Aff. ¶ 11).

## IV. THE CORONER HAS NOT ABANDONED HIS PRAYER FOR A PERMANENT INJUNCTION.

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

Respondents argue that the Coroner has abandoned his prayer for a permanent injunction because the Coroner did not reargue the merits of his case within the confines of Issue III. The legal basis for the Coroner's prayer for injunctive relief is found within the preceding sections of the Brief where it is argued that Respondents are without authority to force the Coroner to place decals on his vehicle and are without authority to strip him of his official vehicle. (Br. of Appellant at 5–12). Of course irreparable harm will befall the Coroner if the County takes his vehicle away; that is why the motion for temporary restraining order was filed in the first place. As the lower court found, "[t]he County's attempt to take the Coroner's vehicle away could result in an inability of the Coroner to perform the duties of the office." (Order at 4). Yet

[3] The Coroner takes the position that two markers on the vehicle is more than the statute requires, but the Coroner consented to the rear decal and license plate as reasonable.

Respondents still claim that they can "recall the vehicle from the coroner" (Br. of Resp'ts at 17) and further yet that they are "not required to provide Washington with a vehicle." (Br. of Respt's at 9). Injunctions are drastic remedies, but the injunction prayed for is not near as drastic as the County's removing the Coroner's vehicle because he did not want his vehicle decorated like a Christmas tree.

Respondents argue that the alleged harm is to the general public and not to the Coroner. (Br. of Resp'ts at 18). The Coroner is the one Respondents are seeking to punish for not following their unreasonable demand to place the decals on the vehicle, however, the public would indeed suffer as well if their Coroner is stripped of his official vehicle and cannot perform his duties. Because the true issue here is political overreaching, money damages will not suffice leaving the Coroner with no adequate legal remedy. Therefore, a permanent injunction is and was warranted.

## V. THE CORONER MAINTAINS HIS ENTITLEMENT TO ATTORNEY FEES.

The Coroner craves reference to the arguments presented in Section V of the Brief of Appellant and maintains that he should be awarded attorney fees. (Br. of Appellant at 17–19).

Respondents argue that the Coroner has failed to follow the statutorily-mandated procedure to request attorney's fees under S.C. Code Ann. § 15-77-300 because no petition for fees was filed within thirty days after final disposition of the case. (Br. of Resp'ts at 24). "Where there has been an appeal, 'final disposition of the case' occurs when the remittitur is filed in the circuit court." *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 366 S.C. 503, 507, 623 S.E.2d 91, 93 (2005) (citing *McDowell v. S.C. Dep't of Soc. Serv.*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989)). Thus, the appeal of this matter has tolled the time to file a petition for fees until a remittitur is filed in circuit court. The case cited by Respondents, *Broadwell v.*

*Whiteacre*, 300 S.C. 72, 386 S.E.2d 307 (Ct. App. 1989) involved a circuit court granting attorney fees where no petition had been filed. In this case, the prayer for fees was summarily denied without the court making the required statutory findings as required by S.C. Code Ann. § 15-77-300 and as set forth in *Heath v. Aiken Cnty.*, 295 S.C. 416, 420–21, 368 S.E.2d 904, 906 (1988) ("*Heath I*") ("We therefore reverse the attorney's fees portion of the order and remand the issue for the required statutory findings.").

Instead of filing a petition after the order denying attorney fees, the Coroner filed a notice of appeal. If a remittitur in the Coroner's favor is submitted to the lower court at the conclusion of this appeal, then a petition pursuant to S.C. Code Ann. § 15-77-310 will be timely filed at that time.

## CONCLUSION

Wherefore, for the foregoing reasons and for all the reasons set forth in the Brief of Appellant, the Coroner requests relief as follows:

(1) That this Court reverse the circuit court's declaration that Hampton County, not the Coroner, can decide how the Coroner's vehicle will comply with S.C. Code Ann. § 56-3-1710;

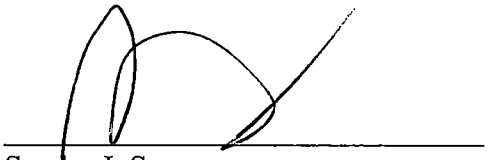
(2) That this Court find as a matter of law Respondents' attempt to exercise authority over the Coroner by taking away his vehicle unless he complies with their directive to place decals on his vehicle is barred by S.C. Code Ann. § 4-9-650; such being the case especially where Respondents' directive has the effect of controlling how the Coroner conducts death notifications—a core function of his office;

(3) That this Court reverse the circuit court order insofar as it determined that S.C. Code Ann. § 56-3-1710 requires "an official emblem or marker in addition to its government

plates" and to find as a matter of law that the statute only requires one of the three alternatives listed;

(4) That this Court remand the matter of the Coroner's request for permanent injunction to enjoin Respondents from interfering with the smooth operation of the Coroner's Office by taking away his vehicle or forcing him to place or keep the decals on the vehicle; and

(5) That this Court reverse the circuit court's ruling that attorney's fees pursuant to S.C. Code Ann. § 15-77-300 are not warranted, and requests that the Coroner be entitled to attorney's fees accrued at the lower court and appellate court levels.



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PROOF OF SERVICE

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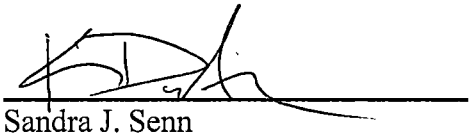
I certify that I have served the Reply Brief of Appellant on Hampton County, Hampton County Council, and Rose-Dobson-Elliot, as Hampton County Administrator, by depositing a copy of the same in the United States Mail, postage prepaid, on August 16, 2017, addressed to their attorneys of record, A. G. Solomons, Jr., Post Office Box 969, Estill, South Carolina 29918, and Kathleen C. Barnes, Post Office Box 897, Hampton, South Carolina 29924.

August 16, 2017



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August 16, 2017



The Honorable Jenny Abbott Kitchings
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RE: Ernie Washington, in his capacity as Coroner of Hampton County, Appellant, v. Hampton County, Hampton County Council, and Rose-Dobson-Elliot, as Hampton County Administrator, Respondents,
Appellate Case No. 2017-000536

Dear Ms. Kitchings:

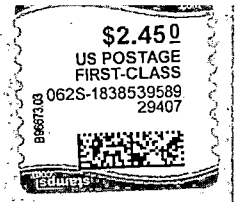
Enclosed for filing please find the original and one (1) copy of the Reply Brief of Appellant as well as Proof of Service. If you would, please file the original and return a file-stamped copy of each filing to me in the enclosed self-addressed envelope.

Thank you and with kind regards, I am,

Sincerely,

Sandra J. Senn
Kevin M. DeAntonio

Enclosures
cc: A. G. Solomons, Jr., Esquire
Kathleen C. Barnes, Esquire

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