

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-001898

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S.C. SUPREME COURT

Anderson County,.....Petitioner-Respondent,

v.

Joey Preston and the South Carolina Retirement System.....Defendants,

Of whom Joey Preston is..... Respondent-Petitioner,

And, the South Carolina Retirement System is..... Respondent.

**JOEY PRESTON'S RETURN TO ANDERSON COUNTY'S
PETITION FOR WRIT OF CERTIORARI**

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I. The Lower Courts Did Not Err By Refusing to Fashion: An Unpled, Untimely Asserted, Factually Unsupported, Inequitable, and Unconstitutional Remedy.

According to Anderson County (“County”), the Court of Appeals (“Appellate Court” as distinguished from “Trial Court” together as “Lower Courts”) “erred in failing to provide a remedy” in this case. (Cty. Petit. p. 13.) To the contrary, the Appellate Court *correctly* refused to fashion a remedy in this case. The County instead errs for six (6) reasons.

First, as analyzed in Preston’s Petition for Writ of Certiorari (“Preston’s Petition”), the Appellate Court’s Opinion (“Decision”) invalidly issued and is void *ab initio*. The Appellate Court issued its Decision without the mandatory quorum of three judges.¹ Born from a statutorily defective crucible, the Decision invalidly issued as a whole necessitating its *vacatur* as a whole. As such, this Court should: grant Preston’s Petition, set aside the Decision, and reinstate the Trial Court’s final judgment.

Second, as noted in Preston’s Petition, Anderson County impermissibly seeks to obtain relief on factual and legal bases nowhere appearing in its Amended Complaint. (See Preston Petit., p. 7.) Nowhere does the County’s Complaint seek relief based upon the 2008 County Council’s (“2008 Council”) lack of a quorum. (See R. pp. 127-141.) Aware of this defect, Anderson County attempted to file an untimely motion to amend its complaint (“Untimely Motion”). The County filed the Untimely Motion eight and a half months after trial concluded, eight months after the parties submitted written summations, two and a half months after the Trial Court issued its final judgment. (Compare Dates R. pp. 264, 3052, 3099, 3163, 3245.)

¹ (See Preston Petit., pp. 3-7.)

The Trial Court denied the Untimely Motion on November 8, 2013. (R. pp. 44-49.) Anderson County then failed to file a Motion to Alter or Amend (“SCRCP 59 Motion”) seeking reconsideration of Trial Court’s Order thereby foreclosing the County’s efforts to amend its Second Complaint. (See e.g., Preston Petit., pp. 9-11.) Such findings then cemented into the law of the case. Proctor v. Whitlark & Whitlark, Inc., 414 S.C. 318, 333 (2015). Thus, Anderson County impermissibly asks this Court to disrupt established law of the case so it can seek relief based upon alleged quorum issues.

Third, even if this Court allowed the County to pursue relief never before pled, the County did not and cannot prove the claim for which it seeks the equitable remedy. Due to alleged quorum infirmities arising from the appearance of impropriety, the County seeks to impose a constructive trust over state retirement monies. (See Cty. Petit., p. 14.) Yet, South Carolina courts only impose constructive trusts when: “fraud, bad faith, abuse of confidence, or violation of a fiduciary duty” give rise “to an obligation in equity to make restitution ” Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 6 (2012); Lollis v. Lollis, 291 S.C. 525, 529 (1987).² Anderson County was required, but could not, prove such *prima facie* elements by “clear, definite, and unequivocal” evidence. Lollis, 291 S.C. at 530. Moreover, the Appellate Court’s ruling nowhere imposes a constructive trust, or even finds one should exist, but instead finds the Trial Court erred when it concluded its

² The County invokes S.C. Code § 9-1-1680 (“Section 9-1-1680”) to justify imposing a constructive trust on state retirement monies. (See Cty. Petit., p. 14.) The County cites the statute’s reference to “constructive trusts,” omitting the language just prior citing S.C. Code § 8-1-115 (“Lien Provision”). Section 8-1-115 allows liens on state retirement monies but only after the conviction of an official for offenses like embezzlement or misappropriation.” Id. Contrary to how the County hopes to misuse the statute (*i.e.*, as a remedy for impropriety appearances), express inclusion of Section 8-1-115 within Section 9-1-1680 evinces a strong, continued legislative intent to shield state retirement proceeds from legal processes absent a stringent proof.

other findings (as to the remaining claims) foreclosed the imposition of a constructive trust. (R. p. 3689.) To date, no findings or evidence satisfies the required showing for a constructive trust.

Both Lower Courts correctly found the County failed to prove fraud, bad faith, abuse of confidence, or a violation of a fiduciary duty.³ (See e.g., R. pp. 23-28; R. p. 61; R. pp. 71-74; R. pp. 3679-3682; R. p. 3691 (“[T]he record in the instant case does not support a finding that Preston engaged in fraudulent conduct...breached a fiduciary duty...or was at fault.” (emphasis added).)

While it purports to seek review of the analysis supporting such findings, Anderson County simply ignores the Lower Courts’ bases for so ruling and, thus, articulates no legitimate reason as to why the Trial Court and Appellate Court both erred. (See Cty. Petiti., pp. 21-22 (Failing to contest: R. p. 3677 (lack of basis for County to repose special trust due to adversarial positions); R. p. 3677 (Retention of counsel by each party); R. p. 3678 (Finding state law and County Ordinance impose obligations on Council members to raise issues to County Attorney who provides legal opinion if conflict existed or not); R. p. 3679-3682 (Finding no fraud, constructive fraud, or misrepresentation); R. p. 3681 (Finding accusations of fraud and misrepresentation cannot be predicated on issues of or mistakes of law).) Thus, while angling for a legal mulligan, Anderson County simply ignores the holdings it seeks to unglue.

Fourth, the County asks this Court to authorize fashioning of its requested, yet unpled, remedy, notwithstanding the inequity of the same and despite Anderson County’s own unclean hands. As noted in Preston’s Petition, see Preston Petiti., pp. 18-19, the vast majority of retirement benefits the County asks to co-opt have nothing to do with the instant dispute and fall outside any

³ The Appellate Court’s Decision proves internally inconsistent in this way. On one hand, the Decision finds no misconduct existed on Preston’s part. On the other, the Appellate Court reverses the Trial Court’s findings rejecting constructive trust as a viable claim.

exception to the anti-alienation statute. Moreover, the South Carolina Retirement System (“SCRS”) has already informed the County that the funds over which Anderson County seeks to impose a constructive trust have already been depleted.⁴ (See infra.)

Affording the County such relief does not further equity; it belies equity. Permitting such relief allows the County to retain all of the Severance Agreement’s benefits, while Preston receives none. Preston cannot be restored to his position as County Administrator; someone else now holds the position. (R. at 30; R. pp. 3689-3692.) Preston’s employment contract has now lapsed. SCRS has used and invested all of the severance proceeds obtained by it. And, Preston has substantially depleted his remaining funds, in no small part, fighting the instant litigation, while outstanding legal expenses tower and mount. (R. pp. 30-31.)

Even if the County were correct in all other regards (it’s not) and licensed to siphon the state retirement fund, Anderson County’s analysis still fails. Contrary to what it asserts, the County cannot reclaim funds paid in exchange for benefits it has already obtained and cannot return. Pursuant to ample South Carolina decisional law, local governmental bodies remain liable—in equity—for the value of the benefits obtained under otherwise invalid contracts.⁵ (See FN5.) As such, Anderson County cannot retain the benefits received from Preston (which cannot be returned) *and* simultaneously reclaim the reciprocal value paid for those benefits. Equity forecloses such result. Id.

⁴ The remedy sought by the County impermissibly superimposes equity atop legal relief.

⁵ See Craig v. Bell, 211 S.C. 473, 484, 46 S.E.2d 52, 57 (1948); United States Rubber Products, Inc. v. Batesburg, 183 S.C. 49, 56 (1937); Spartanburg v. Leonard, 186 S.E. 395 (1936); Bolton v. Wharton, 163 S.C. 242, 294 (1931); Peurifoy v. Boswell, 162 S.C. 107, 127-128 (1931).

Allowing such remedy requires the Court to disregard the County's unclean hands and pretend as if its misconduct never occurred. But it did. (See Discussion infra at §2(b).) The County wants equity administered--in ostrich-like fashion—hoping to have its bad behavior and a fill of equity too. The only answer is 'no.' "One of equity's most important aspects is the principle of 'right and fair dealing,' between parties to particular transaction." Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 426 (2013). Compassed by this tenet, the Court should reject the County's Petition along with the relief it requests.

Fifth, none of the authority advanced by the County supports imposing an unpled remedy based upon unpled factual predicates. (See Cty. Pet., p. 14.) Unlike this case, in all decisions cited by the County, the factual bases for relief squarely sat before the court.⁶ Of note, two of the decisions, the Daniel and Watson Decisions, were decided a half-century before enactment of the modern rules of civil procedure. But, left unmentioned by the County, this Court abrogated Dibble in Ex parte Brown, 393 S.C. 214, 223 (2011).

None of the decisions cited by the County remotely resembles any fact, claim, or issue here. Daniel involved the ability of a court to review a probate order obtained in *ex parte* fashion. Watson discussed an insurance coverage dispute, a legal adjudication. Dibble analyzed a court's ability to appoint a lawyer where the recipient client lacked a right to receive an appointment. Holland resolved the correct operation of equitable tolling under the Antiterrorism and Effective Death Penalty Act of 1996. Indeed, the authority cited teaches only one thing: no precedent supports what Anderson County urges.

⁶ The County cited: State ex rel. Daniel v. Strong, 185 S.C. 27, 43 (1937) ("Daniel Opinion"); Watson v. Am. Colony Ins. Co., 179 S.C. 149, 152 (1936) ("Watson Opinion"); Ex parte Dibble, 279 S.C. 592, 595 (1983); Holland v. Florida, 560 U.S. 631, 650 (2010) ("Holland Opinion.")

Sixth, allowing Anderson County to pursue an unpled remedy would violate Preston's state and federal due process rights. "Fundamentally, due process requires notice, a meaningful opportunity to be heard, and judicial review." Thompson v. State, 415 S.C. 560, 566 (2016). It is axiomatic: a Defendant, like Preston, is entitled to know the relief sought against him and the factual basis alleged to support such relief.

Absent a properly pled Complaint, Preston did not receive adequate "notice." By granting the requested relief, Preston would lose a "meaningful opportunity to be heard." He would lose the chance to interpose: an answer, new defenses, corresponding defenses, alternative counterclaims mirroring the newly-sought relief. He would lose the opportunity to present evidence and be heard in a competent forum. Allowing a remedy on unpled relief after the case ends and on appeal violates due process.⁷

For this very reason, the South Carolina Rules of Civil Procedure require litigants to plead the facts under which they claim relief. Rule 8(a), SCRCF. It is also the reason why the substantive law of South Carolina disallows claim splitting. See Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34 (1999). The Court should reject the County's request because it offends due process and, "[i]t is well known that equity follows the law." Smith v. Barr, 375 S.C. 157, 164 (Ct. App. 2007).

⁷ Preston would have alternatively asserted: quasi-contract claims; set-off; and indemnification under his original employment agreement's indemnity clause, which incidentally survived termination. (R. p. 001898.) Preston would also have asserted estoppel as a defense, which may lie against government bodies in factual circumstances as this. See Greenville County v. Kenwood Enters., 353 S.C. 157, 171 (2003); Hippenmeyer, Reilly, Arenz, Molter, Bode, & Gross, S.C. v. Village of Lac La Belle, Wisconsin, 133 Wis. 2d 474, 394 N.W.2d 919 (Ct. App. Aug. 7, 1986).

II. Both Lower Courts Correctly Followed Precedent When They Determined Anderson County Could Not Invoke Rescission As a Remedy.

Contrary to the County's assertions, both Lower Courts correctly found Anderson County could not invoke the remedy of rescission because the Parties could not be restored to their prior subject positions. (See R. pp. 29-31; R. pp. 75-77; R. pp. 3689-3692.) In addition, as the Trial Court also found, Anderson County could not invoke any equitable remedy, including that of rescission, due to the County's unclean hands. (See R. pp. 31-35; R. pp. 57-58.) Both findings correctly foreclose rescission as an available remedy.

A. Rescission Proved Unavailable Because the Lower Courts Could Not Return the Parties to the *Status Quo* Before the Severance Agreement's Execution.

For a fourth time, Anderson County claims the Lower Courts erred by finding rescission unavailable as a remedy. Both Lower Courts rejected Anderson County's accusations of wrongdoing, including all species of fraud, as leveled against Preston. (See Discussion supra at § I.) As both Lower Courts agreed: "In order to invoke its equitable powers to rescind a contract, and in the absence of fraud, the Court must be able to return the parties to their *status quo* before the contract's formation." (R. p. 30; R. p. 3690.)⁸ Without explaining or challenging how the Lower Courts somehow erred, Anderson County assumes, without factual basis, the predicate needed to reach its desired outcome. (Cty. Petit., p. 15.)

Abandoning much of the precedent it previously offered in error, see e.g., R. p. 3447, FN75, Anderson County persists in citing the inapposite case of Griggs v. E.I. DuPont de Nemours & Co., 385 F.3d 440, 452 (4th Cir. 2004). As the Lower Courts found, however, Griggs has no

⁸ See also King v. Oxford, 282 S.C. 307, 313, 318 S.E.2d 125, 129 (Ct.App. 1984); Rice and Santos, Inc. v. Jones, 279 S.C. 201, 305 S.E.2d 74 (1983); Brazell v. Windsor, 384 S.C. 512, 517 (2009).

bearing on South Carolina law. (R. p. 33.) Griggs involved equitable remedies allowed under ERISA. Id. at 443. Id. Furthermore, Griggs supports Preston's position, not that of Anderson County, namely, rescission proves generally unavailable when the court cannot restore parties to their prior positions. Griggs, 385 F.3d at 452 ("[P]laintiff must make restoration of what he got under the contract in order to get rescission, and his inability to do so will not excuse such restoration.").⁹

Moreover, the Griggs decision validates Preston's argument: "rescission may be granted if the court can balance the equities and fashion an appropriate remedy that would do equity to both parties and afford complete relief." Id. Yet, precisely for the reasons articulated by the Trial Court, see R. pp. 30-31, here, rescission cannot be granted in a manner that does equity to both parties.¹⁰ (See also R. p. 3692; see also Discussion supra at I.) Nor does the County now explain, nor has it ever explained, how rescission could occur while accomplishing equity to both parties.¹¹

B. The County's Unclean Hands Barred Anderson County From Invoking Equity.

As discussed in Preston's Petition, the Appellate Court erred by finding the County's unclean hands did not matter. (See Preston Petit. pp. 19-21.) In this regard, Anderson County generically questioned whether the Trial Court properly distinguished the County from the misconduct of its

⁹ South Carolina precedent requires parties seeking to invalidate a settlement agreement to tender whatever consideration they received in exchange. See Taylor v. Palmetto State Life Ins. Co., 196 S.C. 195, 12 S.E.2d 708, 710 (1940). The County was also required, but did not, affirm the entire Severance Agreement or rescind it in its entirety. First Equity Inv. Corp. v. United Serv. Corp. of Anderson, 299 S.C. 491, 497, 386 S.E.2d 245, 249 (1989).

¹⁰ The County does not seek review of any of the Lower Courts' factual findings as to why the Parties cannot be returned to their prior positions. (Cty. Petit. pp. 15-16.)

¹¹ The County lays claim to enhanced rescission rights. This is wrong. Such notion violates a fundamental tenet: "equality is equity--a principle that has long been embodied in [South Carolina] jurisprudence." Myers v. Sinkler, 235 S.C. 162, 175 (1959).

governing body members. (R. p. 3165.) Without meaningful discussion, the Appellate Court adopted the County's generic analysis.

In eight detailed bullet points, the Trial Court's order set forth ample factual bases supporting why it ruled the County's unclean hands foreclosed the sought-after equitable relief. (R. p. 57.) Contrary to the County's arguments, the Trial Court did, in fact, make detailed findings about the same. (Compare p. 33-34, Bullet Points 1-8 with Bullet Point 9.) In fact, the Trial Court even included specific findings as to what misconduct it did not impute to Anderson County. (See R. pp. 42-43.)

Without addressing specific findings, the Appellate Court held the Trial Court erred by imputing the actions of incoming members of the 2009 Council ("Incoming Members") and also by listing conduct having nothing to do with the parties' dispute. The Appellate Court erred in both regards. The Trial Court specifically found the Incoming Members acted in concert with the Incoming Members in a common effort and plan "to harass and interfere with Preston's ability to execute his duties." (R. p. 34; R. p. 57 ("Each bullet point [addresses] sitting County Council members acting alone or in concert with Council-elect."))

The evidence of record established the group (i.e., sitting and Incoming members): planned and attended a series of meetings where they plotted adverse employment actions; implemented all such adverse actions planned, with the exception of Preston; openly referenced a common plan to "run [Preston] off"; authored joint correspondence-on Anderson County's official letterhead—interfered with Preston's job duties and copying "All Media Outlets"; established agenda items; authored Council resolutions; and abused the Freedom of Information Act by requesting from Preston over 59,000 pages of documents. (R. pp. 32-34.)

If any question still persisted, as discussed in Bullet Point 5 of the Trial Court's Order, see R. pp. 33 & 57, FN28, Anderson County expressly "ratifie[d] and approve[d] the payment of the defense costs [of Waldrep]," see R. p. 3300, lines 46-48, resulting from Waldrep's and C. Wilson's misconduct found by the Trial Court as calculated to: "intentionally thwart[] [and]...interfere[] with [Preston's] ability to do his job..." (R. p. 33.) Anderson County paid the resulting legal fees even though Waldrep and C. Wilson were sued in their individual capacities. (R. p. 1686, lines 1-11.) C. Wilson testified Anderson County paid Waldrep's legal fees "because his actions were, in the view of county council, performed in his official capacity." (R. p. 1687, lines 17-20.) Yet, to date, neither the County nor the Appellate Court can explain how such misconduct can simultaneously be ratified by Anderson County and yet not attributable to it.

The Appellate Court also erred when it found the Trial Court's findings failed to relate to "the subject matter of this litigation." (R. p. 3693.) All evidence relied upon by the Trial Court involved misconduct jointly pursued by both sitting Council members and Incoming Members. Likewise, all such evidence led up to the Severance Agreement, occurred during its approval process, or otherwise related to lawsuit's subject. In Bullet Point 1, the Trial Court also found Waldrep and C. Wilson's votes were tainted and, therefore, further supported application of the unclean hands doctrine. (See R. p. 32.)

"If...[citizens] must turn square corners when they deal with the Government, it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens.'" Daniell v. Sherrill, 48 So.2d 736, 739 (Fla. 1950). Applying a like standard of rectangular rectitude, here, the Court should bar the County from invoking its equitable powers with unclean hands.

III. After Litigating for Eight Years, the Court Should Disallow the County From Amending Its Complaint Now.

Anderson County recognizes it lacks a properly pled basis for relief. It is for this reason that the County asks to amend its Complaint (yet again) eight years after the case began. Preston has addressed many of the issues pertaining to the County's third issue elsewhere in this response. As a result, where possible, Preston will provide summary responses.

As an initial matter, the amendment sought by Anderson County is foreclosed by Cunningham v. Anderson Cnty., 414 S.C. 298, 303-304 (2015). The facts of Cunningham mirror those here. The County sought to invalidate Cunningham's employment contract and won. Even though he knew the County sought to invalidate his contract, Cunningham made a tactical decision not to allege an alternative claim for relief. Then Cunningham lost.

When the Court of Appeals ruled, however, its ruling allowed Cunningham to resurrect the alternative claim he chose not to pursue in the first place. This Court held:

The court of appeals' opinion effectively gives Cunningham an opportunity to make an argument he has never made before. **We hold Cunningham is limited to the allegations in his complaint and his chosen strategy before the trial court.** Because he has not preserved the argument he is an at-will employee, we find the court of appeals' remand erroneous.

Id. at 298. This case presents virtually the same facts.

Just like Cunningham, Anderson County knew Preston aimed to disqualify the votes of Waldrep and C. Wilson. Just like Cunningham, the County made a tactical decision not to pursue an alternative claim based upon quorum defects if the disqualification of Waldrep and C. Wilson eventuated. Just like Cunningham, the County lost. And, just like with Cunningham, the Appellate Court issued a Decision granting the County the alternative relief it chose not to pursue and not alleged in its operative Complaint. Just like in Cunningham, then, the same result should obtain

and this Court should limit the County “to the allegations in [its] complaint and [its] chosen strategy” at trial court. The Court should deny the County’s Petition.

Several other reasons, treated elsewhere, necessitate denying the County’s sought-after amendment:

- 1) If allowed, such amendment would deprive Preston of due process. Such an amendment would allow the County to obtain relief under an unpled claim to which Preston never had: a chance to respond, interpose defenses, assert alternate counterclaims, or present evidence.
- 2) The County never raised the quorum issues as a basis for relief during trial. The County only raised such issues, for the first time, in its SCRP 59 motion. The County, therefore, failed to timely raise the issues and cannot pursue them now.
- 3) Anderson County already tried to amend its Complaint, see R. pp. 44-49, on July 15, 2013. The Trial Court denied the Untimely Motion on November 15, 2013. The County elected to forgo seeking reconsideration of the order denying the motion to amend. The County cannot raise issues on appeal (i.e., the ability to amend) not raised in a motion to reconsider. Those findings, incorporated herein by reference, see R. pp. 44-49, ripened into the law of the case and cannot now be collaterally undone. The law of the case forecloses any amendment. (Preston Petit., pp. 7-8.)
- 4) Allowing amendment unfairly prejudices Preston, since it would allow the County to proceed under one theory, try the case and lose, only to re-litigate under a disparate, mutually exclusive theory. (R. p. 46.) Preston would also incur prejudice from such an amendment by losing his procedural right to seek a continuance during trial under Rule 15(b), SCRPC. (R. p. 46.)
- 5) Anderson County has already been adjudged as having unduly delayed in pursuing the amendment. (R p. 46.)
- 6) The Quorum Claim the County seeks to add lacks merit rendering the amendment futile. (R. p. 47.)

Accordingly, for the reasons stated above and set forth elsewhere herein, the Court should disallow Anderson County’s amendment in the eighth year of this litigation.

IV. Baird Is the Law of This State--Not the Unworkable Formula Stitched Together By the County From Snippets of New Jersey, Alaska, and Kansas Opinions.

After concluding the votes of Thompson, R. Wilson, C. Wilson, and Waldrep were improperly cast, both Lower Courts found the Supreme Court's holding in Baird v. Charleston County, 333 S.C. 519, 535, 511 S.E.2d 69, 79 (1999) controlled. (R. pp. 12-16; R. pp. 3682-3683.) Adopting the majority view, the Baird Court held:

In general, the vote of a council member who is disqualified because of interest or bias in regard to the subject matter being considered may not be counted in determining the necessary majority for valid action. See W.J. Dunn, *What Constitutes Requisite Majority of Members of Municipal Council Voting on Issue*, 43 A.L.R.2d 698, 748 (1955). Therefore, a court has jurisdiction to invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote.

Id. at 535, 511 S.E.2d at 77-78.¹²

Relying upon a patchwork quilt of inapposite authority from other jurisdictions (see Cty. Petit. pp. 17-19), the County tries to side-step the binding precedent established by Baird by, once again, re-arguing only one tainted vote sufficed to rescind Preston's Severance Agreement. (Cty. Petit., pp. 17-18.) To make matters worse, the authority cited by Anderson County has no application to this case. For example, the decision of Thompson v. City of Atlantic City, 921 F.2d 427, 190 N.J. 359 (2007), which Anderson County portrays as "remarkably similar" to this case, does not even vaguely resemble the facts or legal issues at bar.

Thompson arose under a peculiar set of facts under New Jersey's Faulkner Act resulting from an odd set of facts where Tracey Thompson sued Atlantic City and was then elected mayor.

¹² In following Baird, the Trial Court cited eighteen different opinions from around the country which accord with the Baird Court's analysis and reject that of County. (R. p. 13, FN10.) Yet, the County simply ignores such authority, cites no error infecting the decisions of either of the Lower Courts, and ironically disavows the standard adopted by the Baird Court, which its own attorneys originally advocated in that case. (See, e.g., R. p. 3122.)

Unusual legal consequences arose as a result of the executive functions typically conferred upon New Jersey mayors, which included the approval and negotiation of settlement agreements. Id. at 433. Nowhere does Thompson advance the ‘one bad apple taints the barrel’ standard advocated by the County. Not one word of Thompson applies to legislative action or vote counting. Not one word of Thompson addresses the treatment of individual votes, disqualification of individual votes, or the disqualification of the total vote of a constituted body. Not one word of Thompson applies to this case.¹³

Anderson County enumerates a list of five (5) factors that it amalgamates from various courts spanning a razor slim minority of jurisdictions. Predictably, such factors nowhere appear in South Carolina jurisprudence as South Carolina Courts follow the majority position adopted in Baird. Nonetheless, the Trial Court issued specific findings rejecting each of the factors identified by the County and again restated the same in its Order denying Anderson County’s Motion to Alter Amend. (See R. pp. 65-66.) Preston incorporates such rulings herein. (R. pp. 65-66.)¹⁴ The

¹³ The decision of Appeal of City of Keene, 693 A.2d 412, 415 (N.H. 1997) supports Preston’s position, not that of Anderson County. Keene accords with Baird noting “an administrative or legislative act need not be invalidated if the conflicting interest did not determine the outcome.” Id. at 800. Under South Carolina law, the “appointment and removal of a public officer is a legislative or governmental function[.]” Newman v. McCullough, 212 S.C. 17, 25 (1948); see also S.C. Code §4-9-620. (R. p. 22.) Thus, Keene bolsters Preston’s position. The decisions of Dowling Realty v. City of Shawnee, 85 P.3d 716, 719 (Kan. Ct. App. 2004), Griswold v. City of Homer, 925 P.2d 1015, 1029 (Alaska 1996), and Winslow v. Town of Holderness Planning Bd., 480 A.2d 114, 117 (N.H. 1984) likewise prove inapposite. All three holdings involve planning commissions, which deploy quasi-judicial powers. See Winslow, 480 A.2d at 266 (For example, “rezoning [is] quasi-judicial act...”) Contrary to what the County argues, the Griswold decision does not automatically invalidate a vote due to the participation of a conflicted voter but instead applies a factoring test unique to Alaska law. Like Keene, Winslow follows Baird, and similarly notes, “legislative act[s]” are not invalidated due to conflicted votes not impacting the majority vote. Id.

¹⁴ The County mischaracterizes the Severance Agreement as conferring solely an “individual benefit.” (See Cty. Petit., p. 17.) The evidence at trial confirmed those Council members who

Lower Courts' reasoning, in this regard, accords with substantial South Carolina precedent.¹⁵

Preston discusses such authority in § V below.

Anderson County also contends—one of the votes leading up to the Severance Agreement's approval, would not have passed under the Baird standard. Specifically, the County references the vote to end debate and call for the question, which passed 4-3 ("Parliamentary Vote"). Such analysis fails for numerous reasons:

- As the Trial Court held, when the tainted votes were discounted, the Parliamentary Vote passed. (R. p. 17.)
- Under Robert's Rules of Order Article 1 § 7, debate would eventually close regardless. (R. p. 17, FN15.) The evidence of record confirmed no change in outcome would have eventuated had debate persisted. (R. p. 17; see also R. p. 450, line 21-p. 451, line 8; R. p. 632, line 25-633, line 8; R. p. 1243, lines 16-20; R. p. 1268, lines 20-23; R. p. 1351, line 16-p. 1622, line 25.)
- "[H]ad [any Council] members felt that additional debate could materially change their ultimate vote, they could have voted against the final vote adopting the Severance Agreement." (R. p. 17.) This did not occur.
- "Third, adverse parliamentary rulings can be appealed under the Anderson County Code." (R. p. 17, FN15 citing ACC § 2-37(g).) Here, no appeal occurred. (R. p. 17; R. pp. 1918-1959.)
- Finally and most importantly, South Carolina Courts do not review the parliamentary processes of legislative bodies. See State v. Lewis, 181 S.C. 10, 186 S.E. 625, 631 (1936) ("That is merely a matter of parliamentary procedure, which each body, by special rule, may, and usually does, regulate for itself."); Smith v. Jennings, 67 S.C. 324, 328, 45 S.E. 821, 822-23 (1903) (Same); see also MASON'S MANUAL OF LEGISLATIVE PROCEDURES § 71, at 72 (1975) ("[C]ourts will not disturb a ruling on a

appropriately voted in favor of the Severance Agreement did so in hopes of promoting the public good. (R. pp. 15, FN13; R. pp. 65-66.)

¹⁵ The lower court rejected Anderson County's premise (which it now repeats (see Cty. Petit., p. 17)) that because a Chairperson of Council or a Subcommittee votes on an issue, their influence somehow overwhelms the independent judgment of other elected officials. (R. p. 15.) The County cites no authority for such proposition under South Carolina law.

parliamentary question made by a legislative . . . body having authority necessary to make rules for its government . . .”).

To date, Anderson County has never challenged or articulated any reason why any of the above findings were in error. This Court should, therefore, vacate the Appellate Court’s Opinion and affirm the Trial Court’s final judgment.

V. The Severance Agreement Was: Not a Product of Fraud & Abuse of Power, Was Not Unreasonable & Capricious, and Did Not Violate Public Policy.

As discussed above, see Discussion supra at § I (incorporated herein), and as found by both Lower Courts, Anderson County failed to prove any of its accusations of fraud and abuse of power in this case. The County’s Petition fails to identify any evidence to the contrary, but instead resorts to rhetoric and accusations for which never offered evidence. Accordingly, the County has furnished this Court with no basis to grant certiorari in this regard.

Moreover, while Anderson County sought rescission based upon a violation of public policy, the County’s Amended Complaint never alleged how. (Compare R. pp. 133-134, ¶¶37-39 with R. pp. 18-19.) Nor does it do so now. (Cty. Petit., pp. 19-21.) In an unchallenged ruling, which the County continues to ignore, the Trial Court specifically found "greater harm" would result by disregarding the “strong public policy” whereby “South Carolina courts” defer to “the discretionary decision-making conferred upon legislative bodies by statute." (R. at 18-19.) The County has never challenged this finding.

Remaining under the County’s fifth ground supporting its Petition is its argument portraying the 2008 Council’s decision as “arbitrary and capricious.” Once again, the County repeats the same, eight year old accusations but omits discussion of applicable legal standards and ignores the actual evidence of record. (Cty. Petit., pp. 19-21.)

As an overarching principle, noted by the Trial Court, "[i]t is not the prerogative of the courts to pass upon the wisdom of [a] County Council's decision." (See R. p. 19; Bear Enterprises v. County of Greenville, 319 S.C. 137, 140 (Ct. App. 1995) When evaluating a County Council's decision-making, then, South Carolina courts use a "fairly debatable" standard of review. That is to say, South Carolina courts will refuse to substitute their own judgment for that of a County Council where a contested decision is "even fairly debatable." Bear Enters., 319 S.C. at 141. A party challenging a County Council's decision-making as "arbitrary and capricious" shoulders a steep burden of proof and must prove the same by clear and convincing evidence. (See R. p. 19-22; compare Pressley v. Lancaster Cnty., 343 S.C. 696, 704 (Ct. App. 2001) with Bear Enters., 319 S.C. at 141.¹⁶ When applied, here, Anderson County plainly failed to satisfy its burden.

Anderson County cites three (3) grounds for contending Preston's Severance Agreement was arbitrary and capricious: (Issue 1) Preston's claim for "anticipatory breach" was premised on a prediction of what would happen, see Cty. Petit., p. 20; (Issue 2) Preston served as an at-will employee, who the County could terminate at any time, Id.; (Issue 3) the Severance Agreement paid Preston more than his Master Employment Agreement provided, Id. at 21; and (Issue 4) the debate on Preston's Severance was a "sham," Id.¹⁷ Preston addresses the same below.

¹⁶ Importantly, the County has not ever and does not now challenge any of the Trial Court's legal findings regarding the correct legal standards and burden of proof. In fact, the County simply ignores the same. (See Cty. Petit. pp. 19-21; R. p. 67) The County also never contested the factual findings supporting the Trial Court's ruling in this regard.

¹⁷ While Anderson County characterizes the vote on Preston's Severance Agreement as "a sham," what the County really complains about is that a majority of the 2008 Council had sufficient votes to approve the Severance Agreement, notwithstanding the vocal dissents of C. Wilson and Waldrep, who should not have even participated in the voting process. As of November 18, 2008, Anderson County passed almost all important decisions by a vote of 5 to 2; the two negative votes were always C. Wilson and Waldrep. (R. pp. 632, line 25-p. 633, line 8.) Indeed, when Bright interviewed all 2008 Council members--for the very first time--his notes reflect that 5 members of the 2008 Council desired to end the "leadership wasteland" resulting from the efforts to run Preston

As found by the Trial Court, the evidence of record demonstrated the Severance Agreement was not arbitrary and capricious for the following reasons:

- **The Options Outline By Legal Counsel—Issues 1, 2, & 3:**

Approval of the Severance Agreement fell within the advice of employment specialist, Tom Bright (“Bright”), who identified settling with Preston as one of the options outlined to the County personnel committee. (See R. pp. 525-526.)

- **The Exposure Assessment Given By Legal Counsel—Issues 1, 2, & 3:**

The 2008 Council relied upon the opinion of an outside employment specialist who told them the downside risk presented by Preston’s claims could total up to two million dollars or more. (R. pp. 462, line 8-p. 463, line 12, Bright (“[T]his could certainly clear two million-dollars in exposure...”; R. p. 495, lines 19-21.)

- **The Severance Agreement Released Both Employment and Tort Claims—Issues 1, 2, & 3:**

"Preston's claims, as articulated in correspondence from his attorney dated October 23, 2008, included potential tort claims and exceeded severance claims arising strictly from the four corners of his Master Employment Agreement. " (R. pp. 20, FN16 citing pp. 2026-2028; p. 454, lines 9-13; p. 490, lines 1-25 (“[Preston's attorney] specifically was identifying tort claims against individual council members...”).) Contrary to Anderson County’s portrayal, then, Preston’s claim was not merely one for anticipatory breach but also included tort claims.

- **The Severance Agreement Contained A Broader Release Than That in the Master Employment Agreement—Issue 3:**

off. (R. p. 487, lines 12-25; R. p. 2413 (Bright Notes); R. p. 2424 (Bright Notes).) By contrast, Waldrep wanted to suspend Preston without conducting the required hearing so he could search for a reason to justify firing him. (R. p. 634, lines 21-25; R. p. 2414.) Similarly, C. Wilson also sought a reason she could cite as a basis for firing Preston. (R. p. 2425.) According to Bright, Waldrep and C. Wilson both knew about the likelihood of a negotiated settlement over a month prior to the November 18, 2008 meeting. (R. p. 2425 (C. Wilson on 10/13/08: “5 council members looking to buy out [Preston’s] contract.”); R. p. 508, lines 1-15 (Waldrep on 10/13/08: “[F]ive council members wanted to buy-out Preston”; R. p. 509, line 13-p 511, line 3 (same).) In fact, both C. Wilson and Waldrep knew settlement negotiations were ongoing and bitterly opposed the same. Both C. Wilson and Waldrep attended a personnel committee meeting—on October 27, 2008--where settlement terms transmitted by Preston on October 23, 2008 were discussed. (R. p. 515, lines 1-21.) Thus, Anderson County is disingenuous when it portrays the November 18, 2008 meeting as a sham.

As the Trial Court found, the release contained in the Severance Agreement exceeded the scope of the release contemplated by Preston's Master Employment Agreement. (Compare R. p. 1894, ¶E with R. p. 1986 ¶6; with R. p. 527, line 11-p. 529, line 20.))

- **The Severance Agreement Terminated Preston's Indemnity Protections—Issue 3:**

The Severance Agreement terminated an indemnity provision set forth in Preston's Master Employment Agreement, which originally was intended to survive the Agreement, but was terminated under the Severance Agreement. (Compare R. p. 8 §14 with R. p. 1986 ¶6 with R. p. 1894.))

- **The Stated Intentions of Two Sitting Council Members and Incoming Members Would Have Violated Preston's Statutory Rights—Issue 1, 2, & 3:**

"Based on what the members of County Council knew at the time, such actions could very well have violated Preston's legal and contractual rights," as Preston's Master Employment Contract and South Carolina statute provided for a hearing before dismissal or suspension without cause. (R. pp. 20-21; R. p. 1897, ¶13 & S.C. Code §4-9-620.)¹⁸ "To follow such course could very well have [and did result] in the costly litigation feared by the County's employment lawyer...who: "[E]stimated potential exposure, including attorneys' fees and costs, of up to two million dollars (\$2,000,000.00)."¹⁹ (R. p. 21; R. p. 616, line 17-p. 617, line 22; 623, line 22-624, line 3; 1254, lines 17-25, Greer; 462, lines 8-25.)

- **The 2008 Council Articulated *Bona Fide* Reasons Supporting Their Decision: Issue 4:**

¹⁸ See also R. pp. 520, lines 8-19; R. p. 1260, line 10-p. 1261, line 1; R. p. 1788, lines 12-25; R. p. 1260, line 10-p. 1261, line 1; R. pp. 2429-2434, 2635, 2825, 2827-2828, 2831.) While it is incorrect that the County did not have legal exposure to Preston's potential claims, even if true, the County never explains why it is arbitrary or capricious for a sitting Council "to safeguard against imminent litigation, for which they had received notice and for which their employment attorney opined would expose the County to millions of dollars in exposure. (R. pp. 68-69 ("No authority exists to support the notion that elected officials must standby and idly watch as the County becomes entrenched in litigation. Legislative bodies routinely address issues in prospective fashion.")).

¹⁹ (See R. p. 462, lines 8-25 ("[T]his could certainly clear two million dollars in exposure..."); R. pp. 623, line 22-p. 624, line 3; see also R. p.1254, lines 17-25; R. p. 1614, line 16-p. 1622, line 25.) Of course, in hindsight, the 2008 Council's decision-making and analysis proved prescient even by the time of trial, since Anderson County had already spent more than two million dollars (\$2,000,000.00) in pursuing Joey Preston. (R. p. 1410, lines 2-21; 661, line 17-p. 662, line 6.) To date, according to the Anderson Independent Mail, that amount now approximates \$2.6 Million Dollars (\$2,600,000.00). (See R. p. 3244.)

Each of the 2008 Council members, who the Court found properly voted for the Severance Agreement, provided independent and lucid reasons supporting their votes.²⁰ The members cited *inter alia* the desire to avoid the exposure expressed by Anderson County's lawyer, concerns about the constant distraction from the County's business, adverse impacts on economic development, and the ability to allow Anderson County to move beyond the infighting once Preston departed. (See FN 20.)

- **The Vote Was Not a Sham—Issue 4:**

Preston has discussed the aspects of the voting process in FN17 above, which is incorporated herein by reference.

For the reasons set forth above, the decision made by the 2008 Council was “fairly debatable” as confirmed by the evidence presented at trial. As such, the decision must remain undisturbed. 319 S.C. at 140, 459 S.E.2d at 885.²¹ The Court should deny the County's Petition.

VI. As Both Lower Courts Found, Preston Had No Duty of Disclosure.

Anderson County's sixth ground supporting its Petition similarly fails. To support its claims for fraud, constructive fraud, and negligent misrepresentation, the County contends Preston had a duty to analyze the potential conflicts of each Council member and report them during the November 18th, 2009 meeting. The County's argument lacks merit.

First, Anderson County failed to introduce any evidence “linking” any of the improprieties it alleged (but did not prove) “to Preston's Severance Agreement.” (R. p. 25.) The County

²⁰ (R. pp. 1-43 (citing R. pp. 1254, lines 17-25; R. p. 1260, line 10-p. 1261, line 1; R. p. 1266, line 2-p. 1267, line 4; R. p. 1614, line 16-p. 1622, line 25; R. p. 616, line 17-p. 617, line 17; R. p. 618, line 15-p. 619, line 2; R. p. 620, lines 14-24; R. p. 623, line 22-624, line 3; R. p. 627, lines 4-13; R. p. 660, line 7- p. 665, line 19; 2423.)

²¹ The County raises the issue of Preston's at-will status suggesting Preston's Master Employment Agreement was invalid. Unfortunately, the precedent relied upon by the County in this regard did not issue until five years later. Legislative bodies do not have to foresee what an appellate court may decide five (5) years later. The question before the Lower Courts was whether, based upon the information then available, County Council's decision-making was fairly debatable.

promised clear and convincing evidencing demonstrating a *quid pro quo* exchange for a laundry list of items outlined by its Complaint. The County failed to deliver.

Second, Anderson County impermissibly attempts to shift to Preston the positive legal duty of the Council members to disclose conflicts of interest, if such conflicts existed, which they did not. Such analysis contradicts the County's own Code, which "expressly confers such duty, first on the individual Council member, and then if doubts persist, on the County Attorney." (Anderson County Code §2-352(b).) Council members were required to pose any questions they had to the County Attorney, not Preston, for an advisory opinion. (Anderson County Code § 2-289.)

Third, Anderson County impermissibly interchanges legal conclusions with factual knowledge, conflating the two. (R. p. 19.) This is wrong. Misrepresentations as to matters of law cannot support fraud claims. Barber v. Barber, 291 S.C. 399, 400 (Ct. App. 1987). Whether conflicts of interest exist under Anderson County's ethics provisions constitutes a legal determination and fails to support any of the County's claims. It is for this very reason why such inquiries must be posed to the County Attorney, not the County Administrator, a lay official.

"Moreover, to the extent duties of disclosure existed, the impacted *elected officials* possessed positive legal duties to disclose any issues implicating ethical matters." (R. p. 19.) But, in any event, the County never proved such disclosures were material to the outcome because all the remaining, non-disqualified members testified they would not have voted differently had such disclosures been made. (R. p. 19.) Indeed, the evidence of record confirms the same. (R. p. 19.)

Moreover, by November 18, 2008, the Court found "Preston did not possess a duty to disclose information about his employment claims to County Council." (R. p. 25.) "It [was] clear to [the lower court] that by October and November of 2008, Preston and County Council had

assumed positions adverse to each other." (R. p. 25.) By that time, Preston had already sued two Council members individually. (See R. pp. 2640-2647.) He had employed personal counsel to pursue an anticipatory breach of contract claim and tort claims against certain Council members and Council-elect. (R. pp. 2029-2032.) The County and the individual Council members each had also retained their own attorneys. (R. pp. 2029-2032.)

VII. Anderson County Plainly Breached Preston's Severance Agreement.

Anticipating the Appellate Court's ruling will end in reversal, the County grows increasingly uneasy about the covenant not to sue ("Covenant") found in Paragraph 8 of Preston's Severance Agreement. Clear and unambiguous, the Covenant states in material part:

The County agrees and hereby covenants irrevocably **never** to make **any** claim or demand, or to **commence**, cause or **permit** to be **instituted or prosecuted any claim**, charge, proceeding or **action** at law or **in equity** against Mr. Preston, his heirs, **legal representatives**, or assigns, by reason of any claim, demand or cause of action which the County may now have, or may hereinafter acquire, relating to **Mr. Preston's employment** with the County or his actions as an employee on behalf of the County, expressly including, but not limited to, **all** actions taken by Mr. Preston within the scope and course of his employment as **County Administrator**.

(R. p. 1987, ¶8 (emphasis added).) Despite the Covenant's terms, Anderson County claims it did not breach the Covenant when it permitted the commencement of this action wherein it asserts equitable claims predicated on breaches of duties Preston owed as County Administrator. The County's argument lacks merit.

By suing Preston, Anderson County committed an obvious breach of the Covenant. As an initial matter, the County denies breaching the Covenant because Paragraph 8's terms do not foreclose a lawsuit against Preston seeking the Severance Agreement's rescission. The County simply invents such construction pretending language exists in the Covenant nowhere so appearing.

Anderson County and Preston were both represented by counsel who negotiated and authored the Covenant. The Covenant uses simple language communicating clear and unambiguous terms: the County irrevocably covenanted to never institute a lawsuit against Preston for *any* claim, equitable or legal, as related to his County employment. Yet, the County construes the Covenant to mean—*never*--except for its claim to co-opt Preston's retirement account. And, the County interprets its promise not to pursue--*any claim or action*—to except impliedly its claims for: fraud, constructive fraud, misrepresentation, breach of fiduciary duty, abuse of power, constructive trust, and unjust enrichment.

Despite what the County argues, Attorney Tom Bright actually confirmed the Parties did intend to implement an incontestability clause of sorts. According to Bright, the Parties intended the Covenant to operate as an incontestability clause of sorts since their intent was to include a provision to effect "a no fault divorce" meaning the Parties wanted the Covenant to ensure they were not "gonna have anything to do with each other." (R. p. 473, lines 1-4.)

The County also denies it breached the Covenant by arguing the claims it allege do not relate to Preston's prior employment as County Administrator. Simply untrue. As the Trial Court found, see R. p. 36, Anderson County plainly supports the claims asserted in the instant lawsuit with actions taken by Preston as a County employee. (See R. pp. 129-130, ¶¶12, 13, & 17 (Thompson's job application); R pp. 131-132, ¶¶25-28 (Farm to school lunch program); R. pp. 132-133, ¶¶30-33 (McAbee travel); R. p. 129, ¶¶11(a)-(c) (Employment memos.))

Moreover, seven of the County's eleven claims hinge upon accusations that Preston breached duties owed as Anderson County's Administrator. (See R. p. 134, 3rd Cause of Action ("COA"), ¶45 (Breached fiduciary duties"); R. p. 135, 4th COA, ¶49, (Disclosure duty); R. p. 136, 5th COA, ¶56 (Disclosure duty); R. p. 137, 6th COA, ¶64 (same); R. p. 138, 8th COA, ¶76 (Contract breached);

R. p. 139, 9th COA, ¶79 (Fiduciary duties); R. p. 139, 11th COA, ¶86 (Preston has been unjustly enriched.) To make matters worse, the County's Petition—presently before the Court--relies upon allegations relating to Preston's employment. (See e.g., Cty. Petit., p. 21.)

Anderson County relies upon two cases unhelpful to its arguments. First, the County cites: Winchester Drive-In Theatre, Inc. v. Warner Bros. Pictures Distrib. Corp., 358 F.2d 1007, 1016 (D.C. Cir. 1985). Winchester involved a challenge to the validity of an oral covenant under the California Statute of Frauds. A dispute also arose between the parties about whether the oral covenant embraced one or two disputes. Contrary to holding stated by Anderson County, the Winchester Court noted: "Attorney fees necessarily incurred in defense of suit are a proper item of damages." Id. at 436. Unlike in Winchester, the Covenant here has clear and unambiguous terms, unequivocally breached by Anderson County.

Next, the County misapprehends the decision of Schneider v. Dumbarton Developers, Inc., 767 F.2d 1007, 1016 (D.C. Cir. 1985). Schneider's reasoning accords with Preston's analysis: "[L]itigation in defiance of a promise not to sue could constitute a breach." Id. at 1016. No recovery of fees eventuated in Schneider because the contract at issue did not contain a covenant to sue. By contrast, attorney's fees are available, here, because a covenant exists.

An array of courts have allowed the recovery of attorney's fees as a proper element of damage when a party breaches a covenant not to sue. See S&D Mech. Contractors, Inc. v. Enting Water, Inc., 71 Ohio App.3d 228, 241, 593 N.E.2d 354, 363 (Ohio Ct. App. 1991); Anchor Motor Freight, Inc. v. Int'l Bd. of Teamsters, 700 F.2d 1067, 1072 (6th Cir. 1983). Treatment of attorney's fees as an element of damage likewise accords with South Carolina law. See Benedict College v. National Credit Systems, Inc. v. Ford, 400 S.C. 538, 550 (Ct. App. 2012). Last,

Anderson County never asked the Trial Court to reconsider its findings about Anderson County's breach of the Severance Agreement. (See R. pp. 3163-317.)

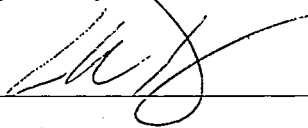
VIII. The County Seeks a Preemptive, Advisory Opinion About Its Exposure to Attorney's Fees.

Anderson County improperly asks this Court to determine how much it owes Preston in attorney's fees under S.C. Code §15-77-300. While Preston agrees Anderson County owes him a considerable amount, at present, the County's request proves unworkable, since Preston cannot file a fee petition until after "final disposition" of the case. S.C. Code §15-77-310. As a result, no evidentiary record or order exists to review as to the statutorily required findings. S.C. Code §15-77-300. Thus, the County seeks an impermissible advisory opinion, which South Carolina courts lack the jurisdiction to provide. Booth v. Grissom, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975).

CONCLUSION

For the reasons set forth above, this Court should deny Anderson County's Petition, grant Preston's Petition, Vacate the Court of Appeal's Decision, and reinstate the Trial Court's Final Judgment.

Respectfully submitted,



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Oct. 15, 2017

Attorneys for Respondent Joey R. Preston

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-001898

RECEIVED
JUL 20 2017
S.C. SUPREME COURT

Anderson County.....Petitioner-Respondent,
v.
Joey Preston and the South Carolina Retirement System..... Defendants,
Of whom Joey Preston isRespondent-Petitioner,
And, the South Carolina Retirement System is.....Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Respondent-Petitioner Joey Preston, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings: Joey Preston, Respondent-Petitioner's Return to Anderson County, Petitioner-Respondent's Petition for Writ of Certiorari

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October 16, 2017