THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2019-000374

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, ... Appellants.

v.

City of Columbia ..... Respondent.

and

Larry Strickland, Denious L. Dimery and Baily G. McClinton, ... Appellants

v.

City of Columbia ..... Respondent.

RESPONDENT'S INITIAL BRIEF

NICKLES LAW FIRM, LLC

W. Allen Nickles, III, SC Bar #4226
4430 Ivy Hall Drive
Columbia, South Carolina 29206
(803) 466-0372
wanickles@nickleslaw.com

Attorney for Respondent

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STATEMENT OF ISSUE ON APPEAL

1. Whether or not Appellants established all criteria necessary to obtain relief on their promissory estoppel claim.

ADDITIONAL SUSTAINING GROUNDS

1. City Council has the sole authority for making policy decisions regarding City funded group health plans.

2. City Council's legislative exercise to examine and fund budgetary components, including group health costs, cannot be delegated or compromised.

3. City Council's decision to require participants in the group health plan to contribute financially was within its delegated authority.

4. Appellants failed to prove an "unambiguous promise" that group health insurance offered at retirement was guaranteed to continue for their lifetimes without charge.

5. Legislative immunity, separation of powers and constitutional spending limitations bar the relief sought by Appellants.

STATEMENT OF THE CASE

PROCEDURAL BACKGROUND

Appellants were formerly employed by the Respondent, City of Columbia ("City"). At the time of their various retirements, City policy provided individual health coverage without charge for employees and retirees. A premium was charged for spouse and dependent coverage.

Due to increasing costs and the obligation to prefund benefits, in 2009 City Council announced that it was considering a change in policy that would require all participants in its group health plans to pay a premium. Committees were formed and public meetings were called to address this change. As a result of this process, Council voted to charge a premium for all active and retired members under 65 who chose to continue participating in the City's group health insurance plan effective July 1, 2009. The cost to individual participants was set at $33.18/month, with the City contributing $800.00/month for each member. (Def. Ex. 1, (tab 15, p. 4))

On August 10, 2009, a group of retirees under 65 years of age filed suit asserting that the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge James R. Barber, III granted summary judgment on all claims. (Barber Order)

On January 23, 2013, this Court affirmed summary judgment on all claims except promissory estoppel. Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013) That claim alone was remanded to determine: (a) whether "promises" of future benefits were authorized; and (b) whether Appellants could reasonably rely upon "promises" of future benefits. Judge Barber's summary judgment order dismissed Appellants' estoppel claim on the basis of reliance only. Accordingly, this Court made no ruling on whether Appellants could establish damages and had no reason to rule on the City's affirmative defenses, including

legislative/sovereign immunity, separation of powers, and political question.

In January 2013, the City extended the premium requirement to its Medicare supplemental coverage for post-65 retirees. On August 27, 2013, Appellants Strickland, Dimery and McClinton filed a class action suit on behalf of all post-65 retirees, alleging that the City was estopped from charging this premium. By order dated August 2, 2016 the late Tanya A. Gee denied class certification. (Gee Order) On April 19, 2017, former Chief Justice Jean H. Toal denied Appellants' motion to reconsider. (Toal Order)

The two cases were consolidated for nonjury trial on August 18, 2018. The only claim remaining in each case was Appellants' assertion that the City is estopped from imposing any charge for their continuing participation in group health coverage and must provide reimbursement for any insurance premiums paid. Following a two day bench trial, the Honorable R. Scott Sprouse held that Appellants failed to prove reliance damages. Accordingly, judgement was issued in favor of the City. (Sprouse Order) This appeal followed.

STATEMENT OF FACTS

Each of the Appellants participates in the City's group health insurance program. Appellants testified that during their employment fellow employees, including city managers, supervisors and human resources staff, informed them that retirees receive group health coverage without cost. Appellants also introduced newsletters available to employees and retirees. (Pl. Ex. 1-13) None of the newsletters expressed any "promise" that retirement benefits will be permanent or remain free of charge. Instead, the newsletters reported information that was accurate when published. (Tr., p. 191-192)

While employed and during retirement Appellants received written notice through group health booklets regarding "escalating health care costs" and "the possibility of contribution

increases." (Def. Ex. 1 (tabs 16-23); Pl. Ex. 14-19 (cover, p. 1);(Tr., pp. 54-55, 93-95, 113-114, 139-141, 154-155, 261, 286-287, 291-292, 350-352) Appellants acknowledged that health care benefits are determined by City Council on an annual basis as part of the City-wide budget. (Tr., pp. 51-52, 95-96, 116-117, 120-121 136-137, 290-291, 352) Appellants further conceded that no supervisor, department head or City manager has the authority to spend funds which are not budgeted. (Tr., pp. 51-52, 96, 103, 117-118, 260, 262, 288, 291) Appellants were also on notice by way of state law, ordinance and City handbooks issued during their employment that the City reserves the right "to revise, supplement or rescind any policies . . . in its sole and absolute discretion." In the same fashion, Appellants were advised that the City reserves the right to "alter its rules, policies and procedures from time to time." (Def. Ex. 1 (tab 27))

As firefighters, Appellants participate in the State's retirement system with full pension benefits available upon twenty-five (25) years of service. The pension does not include health insurance. Instead, Appellants voluntarily participate in the City's group health plan under the same conditions offered to active employees. Exhibits admitted without objection and Appellants' testimony confirm that they signed applications for group health insurance during employment and as retirees confining their participation to the same terms and benefits as other participants. (Def. Ex. 2 (tab 1 (p-q)); (tab 2(a)(c)); (tab 3(e)(o)); (tab 4(e)(l)); (tab 5(b-d)(g-j)); (tab 6(d)(m)); (tab 7(a-b)); (tab 8(i-j)(n-o)); (tab 9(c)(e)(g)(p)); (tab 10(a)(c)(e)); (Tr., pp. 57-58, 96-97, 118, 141-142, 293-295, 352). Similarly, exhibits and Appellants' testimony establish that they were informed in writing by the City's benefits administrator that "current policy" provided retirees health insurance without charge. (Pl. Ex. 22, 25, 27, 29, 30); (Tr., p. 65, 123, 292) Appellants conceded that the term "current" means "now" or "at the present." (Tr., pp. 56-57, 156) Appellants

also knew that the benefits administrator could not personally guarantee future benefits. (Tr., pp. 63, 74-75,288-289)

Even in asserting reliance upon various representations regarding future benefits, Appellants expressed disagreement and changed their testimony as to the nature of the representations relied upon. For example, Appellant Joseph A. Floyd, Sr. testified in his deposition that his insurance benefits were frozen at retirement and subject to no reduction regardless of plan changes. (Def. Ex. 3 (tab 13, pp. 31-33)) Appellant Alma C. Hill shared this belief. (Def. Ex. 3 (tab 15, pp. 28-29)) Appellant Barry N. Martin testified that he was entitled to more expensive individual coverage without charge. (Def. Ex. 3 (tab 16, pp. 26-28)) At trial, Floyd conceded that personally designed policy terms are not practical. (Tr., 263-265) In contrast, Appellant Cam Gillam testified that he is entitled to a "high quality" policy, even though he cannot articulate the policy terms. (Tr., pp. 61-62) Appellant Frank Cruz stated that his service as a firefighter prohibits the City from ever reducing his coverage regardless of changes in the group health plan. (Tr., pp. 316-317) Cruz admitted, however, that neither he nor any of his supervisors made personal commitments to fund benefits. (Tr., pp. 317-318)

The City offered the testimony of former City Manager, Steve Gantt, Human Resources Director, Pamela Benjamin and Budget and Program Management Director, Missy Caughman. These witnesses confirmed that City Council reserves to itself the authority to determine benefits provided to employees and retirees. Mr. Gantt held several administrative position before serving as City Manager. (Tr., pp. 163-167) He testified without objection that neither he nor his fellow administrators had authority to make policy, bind Council or exceed expenditures approved by Council. (Tr., pp.170, 176-186) This testimony is consistent with the City's ordinances and state law. (Def. Ex. 1, (tab 1); Stipulations of Fact Nos. 15, 16) Ms. Benjamin has served as a human

resources professional in state and municipal governments for more than twenty years. (Tr., pp. 355-356) She testified that in her prior positions and as Director of the City's Human Resources Office, human resources staff routinely administer employee and retiree benefits. (Tr., p. 362) Ms. Benjamin further testified that the authority to administer does not extend to policymaking or offering any "promise" that benefits will be provided beyond the time frame affected by the City's budget or designated by Council vote. (Tr., pp. 363-365) Ms. Caughman testified that she had been involved in budgeting for employee and retiree benefits since her first employment with the City in 1998. (Tr., pp. 373-374) Ms. Caughman further testified that Council alone votes on employee and retiree benefits, including any charges that might be imposed. (Tr., pp. 375-376) Records of City Council meetings admitted without objection confirm that Council received information from staff and outside consultants before voting on imposing charges for employee and retiree health benefits, including the actions challenged by Appellants. (Def. Ex. 1 (tab 2, pp. 1-3, 5, 8, 9, 11); (tab 3, p. 2); (tab 4, pp. 7-8); (tab 5, p. 5); (tab 6, p. 4); (tab 7, p. 4); (tab 8, pp. 1-2); (tab 9, pp. 3-6); (tab 10, pp. 6-7); (tab 11, p. 4); (tab 12, pp. 3-7); (tab 13); (tab 14); (tab 15))

SUMMARY OF ARGUMENT

This appeal represents an effort to remove detrimental reliance from the elements necessary to prevail on a promissory estoppel cause of action. Instead, Appellants argue their expectation that a promise will be fulfilled is sufficient to prevail and that the proper remedy is measured by the value of the promise rather than the cost of reliance. As addressed below, this argument has been rejected by three respected jurists in this case and is incompatible with opinions issued by this Court. In addition, controlling precedent establishes that the decision to modify the City's group health benefits was legislative in nature and cannot be reversed unless found to be beyond Council's authority or unconstitutional. Should this Court determine to review criteria for relief

beyond detrimental reliance, the record does not contain the necessary proof of an authorized, unambiguous promise sufficient to support a finding of reasonable reliance. Finally, the remedy Appellants seek is constitutionally barred.

ARGUMENT

1. Judge Sprouse correctly held that Appellants failed to satisfy all criteria necessary to obtain relief on their promissory estoppel claim.

A claim of promissory estoppel requires proof of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. See, Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984) In ruling that Appellants failed to meet the burden of proof necessary to obtain relief on their promissory estoppel claim, Judge Sprouse focused on the requirement of demonstrating injury in reliance on the alleged promise. This makes sense, because a failure to prove reliance damages renders inquiries regarding ambiguity, reasonableness and foreseeability unnecessary.

The remand order in Bishop specifically affirms dismissal of Appellants' contract claim seeking enforcement of continuing health insurance without charge. The order further states that any relief under promissory estoppel requires proof of "injury **in reliance** on the promise." 401 S.C. at 664, 738 S.E.2d at 261 (Emphasis added). This holding is in keeping with the principal that promissory estoppel is not measured by the expected value of the promise. Instead, relief is available only when the plaintiff can prove a specific loss **other than the promise** such as an opportunity obtainable or an injury sustained but for actions taken in reliance. Barnes v. Johnson, 402 S.C. 458, 474-476, 742 S.E.2d 6, 14-15 (Ct. App. 2013) (reversing a promissory estoppel judgment despite the Appellant's sympathetic situation based upon failure to prove an

unambiguous promise and "injury sustained in reliance upon such a promise.")

Following remand, both Judge Gee and Justice Toal rejected Appellants' assertions that each was entitled to the same expectation relief (continued group health coverage without charge and reimbursement for premiums paid). In denying class certification Judge Gee held that to prevail each Appellant must "demonstrate how he was prejudiced or how his position was made worse **in reliance** on a promise by the City." (Gee Order, p. 4 (emphasis added)) In the order denying reconsideration of class certification Justice Toal stated "the controlling law of this state [requires] individualized examinations necessary to address the **detrimental reliance** (injury) element of [Appellants'] estoppel claims. . . ." (Toal Order, p. 2 (emphasis added)) Judge Sprouse independently reached the same conclusion, finding Appellants' evidence of detrimental reliance lacking in substance, clarity and specificity.

The detrimental reliance element necessary to obtain relief on a promissory estoppel claim requires each Appellant to prove first that he would have been better off (or at least as well off) if he had not relied upon the asserted promise, and second, provide a measure of relief not dependent upon speculation. Judge Sprouse correctly ruled that Appellants failed on both counts. Although some testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future, no Appellant identified an available employment opportunity that offered better or equal pay, benefits or future guarantees.(Tr., pp. 64-65, 91-92, 98, 114-116, 134, 152, 156-157, 254-257, 295, 320, 333, 353-354) Other Appellants testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay $33.18 per month for individual group health coverage, compared to the $800 per month contributed by the City. Even these Appellants concede that they experienced substantial increases in pay during employment, obtained significant promotions, enjoyed personal

gratification and received valuable pension benefits as a result of their employment with the City. (Tr., pp. 49-50, 64, 98-99, 115, 142, 160-161, 257-258, 285-286, 335) Significantly, no Appellant considered the value of receiving health insurance without cost for decades of employment and following retirement when calculating their "loss" occasioned by a change in plan requirements. (Tr., pp. 61-62, 94, 98-99, 114-115, 134, 153, 259-260)

Having considered all testimony and documents presented, Judge Sprouse held that Appellants did not prove that any lost opportunity would have exceeded **or equaled** the compensation, benefits, retirement pension and continuing access to group health insurance made available through their employment with the City. (Sprouse Order, pp. 6, 8) Appellants argue that Judge Sprouse imposed an unfair burden in requiring them to show lost advantageous opportunities or sacrificed benefits by remaining in the City's employ. Appellants' focus on the phrase "better off" misinterprets and misrepresents the basis of the challenged decision. Read in its entirety, Judge Sprouse's opinion adheres to established precedent by requiring proof of detrimental reliance beyond mere expectation that a promise will be fulfilled. It was Appellants' failure to demonstrate detrimental reliance through evidence of equal or better compensation and benefits than obtained from employment with the City that resulted in denial of their requested relief. Barnes, *supra*; See also, Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009)

As Judge Sprouse properly observed, the burden of proving reliance damages addressed in Craft applies here as it applied in Barnes. In Craft this Court found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that a recognizable injury resulted from his reliance.

Specifically, Craft could not show that he lost another business opportunity.

Like Craft, Appellants assert that they relied upon representations regarding a future event, here retirement. Like Craft, however, no Appellant offered evidence that he lost a better (or equal) opportunity, with regard to pay, career advancement, personal satisfaction or guaranteed benefits, in reliance upon promises received. As in Craft and Barnes, this failure eliminates promissory estoppel as a basis for relief.

Appellants attempt to distinguish Craft, arguing that the imposition of any premium, regardless of the continuing contributions by the City, is sufficient evidence of "injury." As in Craft, however, Appellants assert that they relied upon authorized representations and lost a prospective benefit or opportunity. If the value of an authorized representation were sufficient to support promissory estoppel relief, this Court would have been compelled to consider Craft's expected income stream lost from cancellation of future business at the Commission for the Blind. Instead, the trial judge awarded summary judgment and this Court affirmed.

At trial and on appeal, Appellants argue that a 1987 Hofstra Law Review article entitled "Promissory Estoppel Damages" supports the assertion that they are entitled to expectation damages. Appellants offer this article in hope of influencing the Court to depart from established precedent and to award their cost of maintaining health insurance without demonstrating any reliance loss.[1] As Craft confirms, however, promissory estoppel is not available to compel specific performance or to enforce even an authorized promise. Instead, based upon decisions issued by this Court, Judge Gee and Justice Toal, Judge Sprouse correctly ruled that promissory estoppel relief requires a detrimental change of position (lost employment opportunity for example)

[1] This article was published before the Barnes and Craft decisions, each requiring proof of reliance damages in commercial settings. The article is not cited in any opinion in this State and there are no South Carolina cases identified in the article as adopting the author's suggestions for awarding expectation relief.

separate from the value of the promise itself. No Appellant identified a specific or comparable employment opportunity or benefit lost due to the expectation of post-employment benefits. Their argument to the contrary, mere expectation of future benefits does not establish a basis for relief regardless of the "reasonableness" of the expectation or the authority of the promise. Therefore, as in Craft and Barnes, Judge Sprouse correctly concluded that Appellants' promissory estoppel claim fails.

ADDITIONAL SUSTAINING GROUNDS:

The following arguments are presented as additional grounds for sustaining the decision to deny Appellants relief on their promissory estoppel cause of action. See, I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 418, 526 S.E. 2d 716, 722 (2000), applying SCACR Rule 220(c), "[t]he appellate court may affirm any ruling, order, or judgement upon any ground(s) appearing in the Record on Appeal."

1. City Council has the sole authority for making policy decisions regarding City funded group health plans.

After the Bishop decision was issued, our Supreme Court accepted an action in its original jurisdiction challenging a decision by the State's Budget and Control Board to alter premiums charged to members of the State's group health insurance plan. Members of the Board included the Governor, Comptroller General, State Treasurer and other high office holders. Finding that their action violated the separation of powers guaranteed by our constitution, the Supreme Court confirmed that "[i]ncluded within the legislative power is the **sole prerogative to make policy decisions**; to exercise discretion as to what the law will be." The Court went on to observe that "while non-legislative bodies may make policy determinations when delegated such power by the

legislature, absent such a delegation, **policymaking is an intrusion upon the legislative power**." Hampton v. Haley, 403 S.C. 395, 403-404, 743 S.E.2d 258, 262 (2013)(emphasis added)

Applying the above principles to the funding group health insurance for public employees, the Court held: "appropriation of public funds is a legislative function and the . . . power to reduce appropriations according to [administrative] criteria would be an impermissible delegation of legislative powers." Id. at 409, 265. Accordingly, to determine whether any representations regarding future group health insurance benefits were authorized, this Court must examine the form of government adopted by the City of Columbia, the manner in which legislative/policymaking functions are performed and distinctions between legislative and administrative responsibilities.

As stipulated by the Appellants, the City of Columbia has adopted a council-manager form of government. (Stipulation of Fact Nos. 15-16; see also, City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-1)[2] The legislative powers of the City and the determination of all matters of policy are vested in the City Council, with each member, including the Mayor, having one vote. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-5) The City Manager is the chief executive officer and head of the administrative branch of the City's government. The City Manager must operate within financial limits imposed by the budget approved by City Council. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-32(a)(b)) The Director of Human Resources works under the City Manager and has administrative supervision over the Department of Human Resources, including employee benefits. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-122) Department heads, including the Fire Department, are subject to the City Manager and are

[2] The City's ordinances were reorganized by Ord. No. 2016-042 on June 21, 2016. The substance of the ordinances addressed above are consistent with those in place during the period relevant to this litigation, including the duties of the City Manager (former Ord. § 2-114), responsibilities of department heads (former Ord. § 2-151) and administrative authority of the Director of Human Resources (former Ord. § 2-125) referenced in Bishop, *supra.* at fn. 6.

responsible for administering their departments. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-151) Under the council-manager form of government, the municipal council has exclusive authority to adopt the budget, provide for the general welfare of the municipality and to carry out any duties not prohibited by law or constitution. S.C. Code Ann. § 5-13-30. For this reason, neither a city manager nor any department head "have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative authority granted to the municipal council." Todd v. Smith, 305 S.C. 227, 231, 407 S.E. 2d 644, 646-647 (1991) (addressing the council-manager form of government) In this context, Appellants cannot identify any "authorized promise" of future health benefits. Moreover, the relief requested would undermine Council's legislative authority to make policy decisions regarding expenditure of public funds.

2. City Council's legislative exercise to examine and fund budgetary components, including group health costs, cannot be delegated or compromised.

In keeping with the preservation of legislative authority maintained by the City's Council, neither individual employees nor Council members may bind the City regarding future health insurance; See, Willoughby v. City Council of City of Florence, 51 S.C. 462, 29 S.E. 242 (1898) (verbal assurances insufficient to bind a municipality); State v. Burgess, 408 S.C. 421, 438, 759 S.E.2d 407, 416 (2014) (a governing body is prevented from delegating its "high functions" to any entity or officer and may not "surrender or restrict any portion of [the] power conferred upon it") A resolution duly adopted by a municipal council "is a legislative enactment and presumed to be constitutional." Sandlands C & D, LLC v. County of Horry, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011), *quoting* Aakjer v. City of Myrtle Beach, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010). As these authorities illustrate, Appellants' requests to be insulated from the consequences of a legislative decision based on promises of future benefits are unenforceable through the judicial

process. Instead, any remedy must be obtained legislatively absent proof of unlawful or unconstitutional conduct on the part of Council.

3. City Council's decision to require all participants in the group health plan to contribute financially was within its delegated authority.

Should this Court decide to evaluate its authority to enjoin City Council from enforcing its resolution as to Appellants or compel Council to modify or ignore the resolution requiring members of its group health plan to make financial contributions, the record must contain proof that the challenged resolution was invalid, keeping in mind that in "[t]his state's constitution . . . the powers of local governments should be liberally construed." Sandlands, *supra.*, *citing* S.C. Const. art. VIII, § 17; see also, Denene, Inc. v. City of Charleston, 532 S.C. 208, 574 S.E.2d 196 (2002) (rehearing denied).

Legislative power is inherently subject to exercise by way of enactment, revision and repeal. In recognition of this power, our Supreme Court has long and consistently held that a council "has no authority to make ... a contract [or other commitment] extending beyond the terms of its office; that the acts of former councils relating to governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect upon succeeding councils." Newman v. McCullough, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) Thus, "[t]he power conferred upon municipal councils to exercise legislative or governmental functions is done so to be exercised as often as may be found needful or politic..." Id.; see also, Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013)(discussing Newman), reversed in part on other grounds, 414 S.C. 298, 778 S.E.2d 884 (2015)

A two-step analysis is employed to determine the validity of a local governmental act. First, the court must determine "whether the [municipality] had the power to enact the ordinance."

Because City Council had the requisite power, this Court would be compelled to ascertain "whether the [challenged action] is inconsistent with the Constitution or the general laws of this state." If it is determined that the challenged action is not barred by the Constitution or other general law, the Court may not intervene in the valid exercise of the Council's legislative authority. Sandlands, *supra.*, at 471-472, 290-291. An act within a governmental agency's authority may not be declared unconstitutional if by any reasonable construction it can be harmonized with state and federal constitutions. City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961)

Each Appellant concedes that City Council has the authority to set budgets, establish pay and provide employee benefits. The express law of this State confirms this authority. See, S.C. Code Ann. § 5-13-30(3) As stated above, the absence of a statutory or constitutional prohibition bars any infringement on the decision by City Council to impose premium costs for employee and retiree health benefits. Hampton v. Haley, *supra.* at 403, 262 (separation of powers doctrine expressed in S.C. Const. art. I, § 8 prohibits judicial interference in legislative functions); Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010) (challenge to the "wisdom, policy or expediency of an [legislative] act" raises a "nonjusticiable political question"); Smith v. Tiffany, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) ("a court may not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.")

While department heads and human resources personnel may explain and administer **current policies** regarding compensation and benefits, these individuals cannot prohibit future City Councils from making policy changes affecting compensation and benefits. Appellants testified that they were aware their supervisors and other City administrators could not promise or deliver pay or benefits beyond terms approved by City Council. Appellants agreed that any

representations by their fellow employees or published in newsletters regarding retiree benefits were consistent with City policy at the time. Appellants further conceded that City policies changed during their employment and retirement, including changes in the group health insurance program. Accordingly, the record before this Court establishes Appellants cannot utilize the judicial branch to invalidate constitutionally adopted legislation requiring their contribution to the City's group health plan.

4. Appellants failed to prove an "unambiguous promise" that group health insurance offered at retirement was guaranteed to continue for their lifetimes without charge.

Promissory estoppel requires evidence of a promise unambiguous in its terms. See, A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 587, 812 S.E.2d 759, 763 (Ct. App. 2018) To satisfy this burden, Appellants were required to prove by "clear and convincing evidence" that an authorized promise was communicated in an unambiguous manner. Barnes, *supra*, at 471, 12 According to the Oxford Dictionary of the English Language, "unambiguous" means: "not open to more than one interpretation, incontrovertible, incontestable, undeniable, irrefutable, beyond dispute, indubitable, not in doubt, beyond doubt, beyond a shadow of a doubt, unarguable, inarguable, undebatable, and unanswerable." See, oxforddictionaries.com/definition/unambiguous) The inability to articulate the terms of a promise clearly and convincingly also renders reliance unreasonable. Rushing v. McKinney, 370 S.C. 280, 295, 633 S.E.2d 917, 924 (Ct. App. 2006)

Judge Sprouse ruled that Appellants relied upon representations that health insurance would be provided without cost throughout their retirements even though the City always retained the right to change its policies. The City has never challenged Appellants' honesty or sincerity.

The question remains, however, whether Appellants reliance was based on an "unambiguous promise" having been placed on notice individually, through ordinance and state law, that the City has a council-manager form of government and that the City's Council reserves to itself all legislative authority. While Appellants' observations of earlier retirees receiving insurance without charge, statements of current policy and even predictions as to the future by fire chiefs, personnel staff and others may have created an expectation of some form of health insurance without charge, this expectation does not rise to the level of a clear definite, specific, unambiguous promise required for promissory estoppel relief. Barnes, *supra.*, at 471, 12.

The ambiguity of Appellants' expectations is illustrated by their testimony. As addressed above, Appellant Floyd has changed his position during this litigation as to the benefits promised, while fellow Appellants Hill, Martin, Gillam and Cruz expressed disagreement as to the terms of their expected benefits. Moreover, Appellants should have known that representations exceeding the administrative functions of their supervisors, department heads and City managers could not bar the City's Council from exercising its legislative authority. See, Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 633-35, 620 S.S. 2d 65, 68 (2005) (precluding promissory estoppel based on notice that future payments were contingent on school board approval) Like the teachers in Davis, Appellants were on notice that "promises" of future benefits were contingent on Council funding. In addition, Appellants were aware that any guarantees were inconsistent with signed acknowledgments and warnings that escalating health costs could require contributions by participants in the group health plan. (Def. Ex. 1 (tabs 16-23); Pl. Ex. 14-19) These facts, and the Supreme Court's decision in Hampton v. Haley demonstrate that no verbal or written promise could be reasonably relied upon to bar City Council from exercising its legislative authority to appropriate funds and allocate premium costs for participation in the City's group health program.

Indeed, a ruling that statements made by fellow employees, regardless of position, could prohibit future City Councils from exercising their legislative prerogative, would be inconsistent with controlling law and compromise municipal authority established by state law and constitution.

5. Legislative immunity, separation of powers and constitutional spending limitations bar the relief sought by Appellants.

The City cannot be judicially barred from making changes in its group health insurance program and cannot be compelled to provide an unfunded benefit. See, Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 635-637, 743 S.E.2d 808, 814-815 (2013) (public entities are immune from liability on the basis of decisions to fund or impose costs for liabilities); Tenney v. Brand Hove, 341 U.S. 367, 376-378 (1951) (exercise of discretion in selecting projects for public funding is not a matter of judicial review); Sandlands, *supra.* at 460, 284 (a duly adopted resolution is a legislative enactment and presumed to be constitutional); S.C. Const., art. X, § 14 (public subdivisions barred from incurring public indebtedness beyond revenue production) These legal principals establish the reach and limits of governmental authority in matters involving expenditure of public funds. Contrary to Appellants' assertions in this proceeding, and their apparent reliance on a separate trial court order also under appeal, the relief requested is not available even had they satisfied all elements of their estoppel claim. [3]

CONCLUSION

As Judge Barber, this Court, Judge Gee, Justice Toal and Judge Sprouse have correctly ruled, it was incumbent upon Appellants to prove each element of their promissory estoppel cause

[3] Appellants offer a decision by Judge Nicholson involving estoppel claims against the City of North Charleston as supporting remand for purposes of determining relief. (Appellant's Brief p. 14) This decision is on appeal and cannot be considered as authoritative. In addition, the City of North Charleston has a different form of government (strong mayor) and an ordinance authorized the extension of post-employment benefits. In contrast, Appellants were on notice that benefits are part of the annual budgeting process and that the City's elected Council alone has the authority to offer or modify benefits. Also, unlike Judge Nicholson, Judge Sprouse did not bifurcate this case and, despite years to prepare evidence and retain experts, Appellants did not present any calculation of loss beyond their own speculations.

of action. In this instance, Appellants failed to establish "injury" beyond the expenditure of premiums necessary to maintain group health coverage. This expenditure alone cannot support a monetary judgment in Appellants favor, particularly in view of their failure to identify any lost opportunity or benefit comparable to the promotions experienced, increases in compensation, pension payments and access to group health insurance that the City has continued to offer at a significant discount.

In addition to the evidentiary deficiencies identified by Judge Sprouse, Appellants did not prove a promise unambiguous in its terms. Instead, the notices provided by state law, ordinance and repeated communications from the City regarding the opportunity to revise policy and to increase contributions required for group health insurance participation render unreasonable their reliance upon representation concerning permanent benefits without charge. Finally, independent of any analysis regarding satisfaction estoppel criteria Appellants failed to prove that the City exceeded its legislative authority in requiring all participants in its group health plan to share in the costs associated with the benefits, and the relief requested by Appellants is constitutionally barred.

Respectfully submitted,

NICKLES LAW FIRM, LLC

By: 

W. Allen Nickles, III, S.C. Bar #4226
4430 Ivy Hall Drive
Columbia, South Carolina 29206
wanickles@nickleslaw.com
(803) 466-0372

Attorney for Respondent

June 26, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2019-000374

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, ... Appellants.

v.

City of Columbia ..... Respondent.

and

Larry Strickland, Denious L. Dimery and Baily G. McClinton, ... Appellants

v.

City of Columbia ..... Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Respondent's Initial Brief and Designation of Matter by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
Bloodgood & Sanders, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464

Christopher Bryant, Esquire
Yarborough Applegate, LLC
291 East Bay Street, Floor 2
Charleston, SC 29401

Susan K. Dunn, Esquire
American Civil Liberties Union
Foundation of South Carolina
P.O. Box 20998
Charleston, SC 29413-0098

This 26 day of June, 2019.

NICKLES LAW FIRM, LLC

By: _____

W. Allen Nickles, III, S.C. Bar #4226
4430 Ivy Hall Drive
Columbia, South Carolina 29206
(803)
wanickles@nickleslaw.com

Attorneys for Respondent

NICKLES LAW FIRM, LLC
W. Allen Nickles, III
ATTORNEY AT LAW
4430 Ivy Hall Drive
Columbia, South Carolina 29206

Telephone: (803) 466-0372 Email:wanickles@nickleslaw.com

June 26, 2019

Via Hand Delivery
The Honorable V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Cruz, et al. v. City of Columbia
Appellate Case No.: 2019-000374

Dear Ms. Allen:

Enclosed for filing, please find Respondent's Initial Brief, Designation of Matter and Certificate of Service in the above matter. Please file the originals and return the extra, clocked-in copies with the bearer.

Thank you for your cooperation and assistance in this matter.

Sincerely,

W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Nancy Bloodgood, Esquire
File #15-205