THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

C.A. No.: 2017-CP-23-01914

James Mikell "Mike" Burns, Garry R. Smith,
and Dwight A. Loftis, ... Appellants,

v.

Greenville County Council and
Greenville County, ... Respondents.

INITIAL BRIEF OF RESPONDENT

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2. Did the Master correctly find that the Road Maintenance Fee and the Telecommunications Fee were consistent with statute, case law, and equal protection?

3. Was the Master within his discretion in denying a fee award under S.C. Code Ann. § 15-77-300 based on his findings that the Challengers had not been the prevailing party, that the County had not acted without substantial justification in this action, and that there were no special circumstances to support an award of attorney's fees?

STATEMENT OF THE CASE

This action was initiated on March 23, 2017 by Joe Dill, Willis Meadows, Michael Barnes, Deirdra Dill, Mike Burns, Bill Chumley, Garry Smith, and Dwight Loftis with the filing of a complaint challenging an ordinance that increased the Greenville County road maintenance fee and imposed a new "uniform charge for the provision of upgraded county-wide public safety telecommunication services to all real property within Greenville County" ("Fee Ordinance" or "Ordinance 4885"). (Complaint, R. at ____). Plaintiffs also filed a motion for a "temporary/ preliminary restraining order/ injunction/ mandamus." (Motion, R. at ____). At the time of filing, J. Dill, Meadows, and Barnes were members of Greenville County Council ("Council") and Burns, Chumley, Smith, and Loftis were members of the South Carolina House of Representatives. (Complaint at ¶¶ 4-5, R. at ____).

The motion was scheduled for hearing on April 13, 2017. Prior to the scheduled hearing, Greenville County and Council (collectively, the "County") filed a memorandum in opposition to the motion that detailed the facts surrounding the passage of the Fee Ordinance and subsequent efforts to repeal a portion of a previously enacted ordinance titled the "Taxpayer Protection Provision" and the Fee Ordinance. (Mem., R. at ____). The memorandum in opposition also attached an affidavit from the County Administrator establishing that no fees had been collected under the Fee Ordinance, nor would any fees be collected until Council reached a decision on the pending ordinances to repeal the Fee Ordinance. (Mem. at Ex. 1 ¶¶ 6, 8, R. at ____). In addition, the memorandum set forth the County's arguments as to why Plaintiffs were unlikely to succeed on the merits. (Mem. at 8-14, R. at ____). Thereafter, the parties reached an agreement, formalized in a consent order entered April 12, 2017, that the motion would be continued based on the County's agreement not to assess fees "based upon pending legislative resolution of separate ordinances now pending before Greenville County Council that might affect the status of

Ordinance 4885." (Order, R. at ____). The County answered on May 23, 2017, raising the following defenses: general denial, failure to state claim, standing, ripeness, mootness, and equitable defenses. (Answer, R. at ____).

Following the enactment of two new ordinances which repeal the Fee Ordinance and provide for an increase of $10.00 per year to the existing road maintenance fee ("Road Maintenance Fee") and a $14.95 fee to be paid annually for each parcel of real property in the County to provide a unified telecommunications system for first responders ("Telecommunications Fee"), Plaintiffs filed an Amended Complaint on June 22, 2017 to challenge the Road Maintenance Fee and the Telecommunications Fee.[1] (Amended Complaint, R. at ____). They also filed an amended motion for "temporary/ preliminary restraining order/ injunction/ mandamus." (Amended Motion, R. at ____).

The County answered on July 7, 2017, raising the same defenses included in its earlier answer. (Answer to Amended Complaint, R. at ____). At the same time, it moved to dismiss certain Plaintiffs on the following grounds:

> 1. As members of County Council, Plaintiffs Joseph B. "Joe" Dill, Willis H. Meadows, and Michael F. Barnes lack standing to pursue this action pursuant to *Newman v. Richland Cnty. Historic Pres. Comm'n*, 325 S.C. 79, 480 S.E.2d 72, 74–75 (1997). Quite simply, a Council member may not "attack a decision of [his] own body" through the courts, even "under the guise of appearing as a citizen and tax-payer." *Id.*
>
> 2. "[B]y enacting the Home Rule Act, . . . the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government." *Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993). It would be a violation of Home Rule for Plaintiffs James Mikell, "Mike" Burns, William M. "Bill" Chumley, Garry R. Smith and Dwight A. Loftis, as members of the Greenville County delegation, to challenge the action of County Council.

[1] The Amended Complaint also added two new Plaintiffs, Thomas and Timothy Barilovits.

3. Plaintiff William M. "Bill" Chumley lacks standing because he is not a citizen, resident, or taxpayer in Greenville County.

(Motion, R. at ____). Plaintiffs moved for summary judgment as to all claims on July 27, 2017. (Motion, R. at ____). All three motions were heard on August 9, 2017. By order dated October 4, 2017, the Circuit Court granted the motion to dismiss as to J. Dill, Meadows, Barnes, and Chumley. (Order, R. at ____). The Circuit Court denied the other motions.[2] (*Id.*).

By consent of the parties, this case was referred to Charles B. Simmons, Jr., Master-in-Equity for Greenville County, by order dated February 9, 2018. The case was tried without a jury on October

[2] With respect to the arguments regarding standing and the County delegation members (other than Chumley), the Circuit Court denied the motion as follows:

> the issue of whether a member of a county's legislative delegation may bring suit against county council has not been resolved by the South Carolina appellate courts. Therefore, at this juncture, the Court denies the Motion to Dismiss as to these Plaintiffs. The Defendants may raise this issue again at a later phase of the litigation; however, the Court is mindful of the South Carolina Supreme Court's guidance that novel issues should not be decided at the pleading stage.

(Order at 3, R. at ____ (citation omitted)). The County maintains that the County delegation members do not have standing to bring this action in any representative capacity. The South Carolina Constitution establishes a system of Home Rule, whereby local governments have authority to adopt ordinances and rules within their respective jurisdictions. S.C. Const. art. VIII, § 1, *et seq.* As stated by this Court,

> *These changes were prompted by the feeling that Columbia should not be the seat of county government, and that the General Assembly should devote its full attention to [problems] at the state level.* It was against this background that Article VIII was written. It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. *If the counties are to remain units of government, the power to function must exist at the county level.*

Knight v. Salisbury, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) (emphasis added). Given this direction, county councils must be free to act without fear of the legislative delegation bringing lawsuits whenever its members disagree with a council decision.

17, 2018.[3] At that time, the parties presented a set of stipulated facts and exhibits together with additional witness testimony and exhibits. (Court's Ex. 1, R. at ____).

The Master issued an order on November 28, 2018 finding for the County on all claims. (Order, R. at ____). The Master incorporated the stipulated facts in his order and made additional findings of fact based on the evidence presented at trial. (*Id.*). He found that both fees were validly enacted uniform service charges and did not violate equal protection. (*Id.*). In addition, he found that the Challengers had not satisfied any of the elements for a fee award under the state action statute, S.C. Code Ann. § 15-77-300. The Challengers served a notice of appeal on December 21, 2018.

FACTS

The parties stipulated to the following facts, which were incorporated in the Master's order:

> 1. December 13, 2004. Greenville County Council ("Council") passed Ordinance 3867. The ordinance, although primarily a supplemental appropriations measure, includes an additional Section 3, which provides:
>
> SECTION 3. Taxpayer Protection Provision. A three-fourths vote by the full membership of County Council shall be required to take any action, which would raise taxes or fees or harm the County's AAA credit rating. Such actions include the following: to approve the issuance of General Obligation Bonds (bonds pledging the full faith and credit of Greenville County); to increase Ad Valorem Property Tax Levies for the County General Operating Millage; to increase the amount of any fee assessment established by County Council; to implement any new fee or tax assessment; to increase County expenses if such increase would, during the budget period in which the expenses would be incurred, lower County reserves to a level less than the greater of 30% of operating expenses or three months of operating expenses; and to approve Supplemental Appropriations.
>
> 2. January 24, 2017. Council adopted County Council Rules for 2017.
>
> 3. February 7, 2017. For the first time since its original enactment in 1993, an ordinance was introduced to increase the County Road Maintenance Fee ("Fee Ordinance"). In addition, the Fee Ordinance included "a uniform charge for the provision of upgraded county-wide public safety telecommunication services to all real property within Greenville County." The title of the Fee Ordinance and a memorandum from the Council Chairman directed that the ordinance would be

[3] D. Dill and the Barilovitses were voluntarily dismissed from this action. (Orders of Dismissal, R. at ____). By the time of trial, the only remaining Plaintiffs were Burns, Smith, and Loftis (collectively, the "Challengers").

presented for First Reading by title only and would be referred to the Finance Committee. The Memo further noted that it would serve as compliance with Council Rules for the introduction of an ordinance by title only.

4. February 13, 2017. Council's Finance Committee passed the Fee Ordinance by a vote of three to two.

5. February 21, 2017. The Fee Ordinance was presented for Second Reading. The Second Reading of the Fee Ordinance passed by a margin of seven to five, and it was placed in line for Third Reading.

6. February 17, 2017. Public hearing on the Fee Ordinance was noticed.

7. March 7, 2017. Public hearing was conducted. Third Reading on the Fee Ordinance passed by a vote of seven to four. At that time, the proposed Fee Ordinance became Ordinance 4885.

8. March 14, 2017. The Attorney General's office issued an opinion regarding the Fee Ordinance in response to a request by Representatives Loftis and Burns.

9. March 21, 2017. First Reading on an ordinance to repeal Section 3 ("The Taxpayer Protection Provision") of Ordinance 3867 ("Repeal Ordinance"). The Repeal Ordinance referred to Committee of the Whole.

10. March 23, 2017. This action is filed.

11. March 24, 2017. The Plaintiffs filed a motion for a temporary relief against the enforcement of the Fee Ordinance (4885).

12. April 4, 2017. Committee of the Whole approved the Repeal Ordinance. At the Council meeting the same night, the Repeal Ordinance received Second Reading. In addition, two new ordinances creating a telecommunications fee ("Telecommunications Fee") and increasing the road maintenance fee ("Road Maintenance Fee") and repealing the Fee Ordinance (4885) were presented for referral to the Committee of the Whole.

13. April 12, 2017. The Court issued a consent order continuing the hearing on Plaintiffs' motion for temporary relief pending Defendants' agreement not to collect any fees based on pending ordinances that might affect the Fee Ordinance (4885).

14. April 18, 2017. Third reading of the Repeal Ordinance passes by a vote of seven to four. It provides that "Section 3 adopted as part of Ordinance No. 3867, and appearing as Appendix A to this ordinance, is hereby repealed."

15. May 2, 2017. The Telecommunications Fee and the Road Maintenance Fee received First Reading.

16. May 16, 2017. The Telecommunications Fee and the Road Maintenance Fee received Second Reading.

17. June 6, 2017. The Telecommunications Fee and the Road Maintenance Fee were presented for public hearing and received Third Reading, passing by votes of

nine to three (Telecommunications Fee) and seven to five (Road Maintenance Fee). These ordinances repeal the Fee Ordinance (4885).

18. June 22, 2017. Plaintiffs filed their amended Summons and Complaint.

(Stipulation, Order, R. at ____). It is undisputed that no fees were collected under Ordinance 4885 prior to its repeal. (*See* Tr. at 104:25- 105:12, R. at ____).

As set forth in the Telecommunications Fee, the fee is imposed for the following reasons:

> WHEREAS, first responders and public safety service providers in Greenville County, including city and county law enforcement, fire departments and emergency medical services, communicate with each other over a series of radio networks dedicated to public safety communications; however, these networks are independently operated with uneven coverage, mixed bands and incompatible equipment; and
>
> WHEREAS, while this mixture of unconnected networks has functioned for decades, those on the front line have identified a need to upgrade public safety communications for all first responders serving Greenville County; and
>
> WHEREAS, upgrades to the public safety telecommunications network in Greenville County are needed now as many of our County-wide first responders are using equipment that is nearing end of life and does not allow for interoperability among first responder agencies; and
>
> WHEREAS, a public safety telecommunications network is designed, built and maintained to a higher standard than consumer telecommunications as it must work reliably in emergencies when consumer networks face overload or failure; and
>
> WHEREAS, moving all County-wide public safety telecommunications to a single network platform will promote the safety of life and property in Greenville County by providing much needed modernization of current public safety telecommunications infrastructure, ensures County-wide emergency and public safety telecommunications coverage to all persons and property located in Greenville County, improves County-wide public safety telecommunications coverage and reliability, advances the goal of ensuring interoperable communications for first responders agencies within Greenville County and State-wide, provides significant benefits in crisis management operations where immediate communications can save lives and prevent the loss of property, eases the transition to future technologies while reducing the risks associated with equipment obsolescence, and minimizes capital expenses related to necessary infrastructure upgrades . . . .

(Ct. Ex. 1 at Ex. 18, R. at ____). "First responders and public safety service providers" include, among others, "city and county law enforcement, fire departments and emergency medical

services." (*Id.*). Therefore, the Telecommunications Fee is not limited to fire services as argued by the Challengers, but rather links all County first responders and public safety providers on one network for the first time. (*Id.*, Tr. at 120:18-121:9, R. at ____).

As set forth in the Road Maintenance Fee,

> WHEREAS, for almost 25 years Greenville County and its citizens have benefitted from the use of the road maintenance fee as a dedicated source of funding to support the maintenance and improvement of its public road system across the County; and
>
> WHEREAS, the County has reviewed the road maintenance fee and determined that although the number of registered vehicles in Greenville County has increased, the additional revenue generated is insufficient to overcome increased maintenance costs, and the buying power of $15.00 in 1993 is estimated to be the equivalent of $8.88 in 2016; and
>
> WHEREAS, Greenville County strives to maximize the life expectancy and riding surface condition of the County's road infrastructure, however, maintenance demands continue to climb due to growth of our community, increased traffic volume, sustaining pavement conditions against deterioration, along with the addition of 300+ miles of public roads under the County's responsibility; and
>
> WHEREAS, the decreased buying power of the current fee is insufficient to keep up with increased costs of maintenance and County Council finds it necessary to increase the Road Maintenance Fee to $25.00; and
>
> WHEREAS, with funding for a local match, Greenville County has an opportunity to apply for available South Carolina State Infrastructure Bank funds to accelerate major local GPATS road improvement projects that would alleviate traffic congestion and benefit the citizens of Greenville County . . . .

(Ct. Ex. 1 at Ex. 19, R. at ____).

The County Administrator, the individual charged with the administration of the proceeds of the revenue from both fees, testified that the County separately accounts for the proceeds from the fees, that the funds collected do not exceed 5% of the County's prior fiscal year budget, that the funds do not fund services that were previously funded by property tax revenue, and that the funds are used to pay costs related to the provision of the services for which the fees are paid. (Tr. at 105:13-110:18, 135:4-6, R. at ____). The County Administrator further testified that each

vehicle registered in the County is subject to the $25.00 Road Maintenance Fee (Tr. at 107:16-18, R. at ____) and that each parcel is charged the same $14.95 Telecommunications Fee (Tr. at 110:16-18).

STANDARD OF REVIEW

With respect to stipulated and undisputed facts, "[w]hen an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court is not required to defer to the trial court's legal conclusions. *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999). Moreover, with respect to the ordinances at issue each of which is proper on its face, this Court should not consider prior events in the legislative process. *Med. Soc'y of S.C. v. Med. Univ. of S.C.*, 334 S.C. 270, 513 S.E.2d 352 (1991); *see Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999) (acknowledging the enrolled bill rule's applicability in the context of a county ordinance, but finding it not relevant to that case).

With respect to the Challengers' arguments relating to attorney's fees, "[t]he decision to award or deny attorneys' fees under the state action statute will not be disturbed on appeal absent an abuse of discretion by the trial court in considering the applicable factors set forth by the statute." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.*

ARGUMENT

"[C]ourts have no legislative powers." *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964). Generally, "all laws concerning local government shall be liberally construed" in the local government's favor. S.C. Const., art. VIII, § 17; *see also* S.C. Code Ann. § 4-9-25 ("The powers of a county must be liberally construed in favor of the county"). The reason for this deference to local government is the legislature's "realization that different local governments have different problems that require different solutions. . . . By enacting statutes like

§ 4-9-25 . . . the General Assembly gave local governments the power to deal with these problems at the local level rather than at the State Capitol." *Hospitality Ass'n of S.C. v. Cnty. of Charleston*, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995). To that end, "[t]he party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt." *Skyscraper Corp. v. Cnty. of Newberry*, 323 S.C. 412, 417, 475 S.E.2d 764, 766 (1996); *Univ. of S.C. v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964) (holding that a legislative enactment will be held invalid only when its invalidity appears so clearly as to leave no room for reasonable doubt).

Here, the County contends, and the Master found, that the Road Maintenance Fee and the Telecommunications Fee are both valid uniform service charges. As such, they are not taxes as argued by the Challengers.

I. The Road Maintenance Fee and the Telecommunications Fee were passed by a positive majority of Council.

As an initial matter, the stipulated facts recite that each of the Repeal Ordinance, Road Maintenance Fee, and the Telecommunications fee passed at Third Reading. (*See* Ct. Ex. 1 at ¶¶ 14, 17, R. at ____). This alone should be dispositive on the issue of whether these ordinances received the requisite number of votes for passage. Rule 220, SCACR (providing that an appellate court can affirm for any reason appearing in the record).

A. The validity of the repealed Fee Ordinance did not present a case or controversy.

As set forth in the stipulated facts, the Fee Ordinance was repealed. (Ct. Ex. 1 at ¶ 17 & Exs. 18-19, R. at ____). No party contends it is currently a validly enacted ordinance. Moreover, no funds were collected pursuant to that ordinance. (*See* Tr. at 104:16-17, R. at ____). Therefore, the Master correctly found that there was no active case or controversy with respect to the Fee Ordinance. (Order at 5, R. at ____).

B. The Taxpayer Protection Provision was an ordinance, not a rule of Council, and was repealed by a majority vote.

As found by the Master, there is nothing improper about the Repeal Ordinance. (Ct. Ex. 1 at Ex. 14, Order at 5, R. at ____). The repealed provision ("Taxpayer Protection Provision") reads,

> SECTION 3. Taxpayer Protection Provision. A three-fourths vote by the full membership of County Council shall be required to take any action, which would raise taxes or fees or harm the County's AAA credit rating. Such actions include the following: to approve the issuance of General Obligation Bonds (bonds pledging the full faith and credit of Greenville County); to increase Ad Valorem Property Tax Levies for the County General Operating Millage; to increase the amount of any fee assessment established by County Council; to implement any new fee or tax assessment; to increase County expenses if such increase would, during the budget period in which the expenses would be incurred, lower County reserves to a level less than the greater of 30% of operating expenses or three months of operating expenses; and to approve Supplemental Appropriations.

(Ct. Ex. 1 at Ex. 1, R. at ____). The provision, passed as part of supplemental budget appropriation in 2004, provides that a three-fourths vote of Council is required to "raise taxes or fees." It does not provide that a super-majority is required for its repeal.[4] It is a procedural provision and does not, of itself, increase any fee or tax. As a result, the Taxpayer Protection Provision could be repealed by ordinance in the ordinary course, which would only require a majority vote. (*See* Ct. Ex. 1 at Ex. 3, Section IV, R. at ____).

This is consistent with the general proposition that Council must be able to repeal and amend ordinances by subsequent legislative action adopting an ordinance of equal dignity with the

[4] Council may not have been able to include such a provision even if it had been so inclined. *See* Council Rules at Section III(D)(11) ("In all particulars not specifically set forth in these rules or by Acts of the South Carolina General Assembly describing rules or procedures to be guided by the County Council, the presiding officer shall be guided by the most recent edition of Mason's Manual of Legislative Procedure."); Mason's Manual of Legislative Procedure § 512.8 ("An action requiring a two-thirds vote for passage can be repealed by a majority vote. The general rule is that an act requiring two-thirds vote for passage can be reconsidered or rescinded by majority vote.").

first. *See Simpkins v. City of Gaffney*, 315 S.C. 26, 431 S.E.2d 592 (Ct. App. 1993). As stated by this Court,

> The rule is similarly and more fully stated by McQuillin, Municipal Corporations, 3rd Ed., Volume 6, Sec. 21.10: 'Specific grant of power to repeal ordinances, however, ordinarily is not necessary since it is the general rule that power to enact ordinances implies power, unless otherwise provided in the grant, to repeal them. It is patently obvious that *the effectiveness of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it.*' The following is also quoted from the cited section of McQuillin: 'The power of repeal extends, generally speaking, to all ordinances. Indeed, a municipal corporation cannot abridge its own legislative powers by the passage of irrevocable ordinances. The members of its legislative body are trustees for the public, and the nature and limited tenure of their office impress the ordinances enacted by them with liability to change. *One council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government.* Accordingly, in the absence of a valid provision to the contrary, a municipal council or assembly, having the power to legislate on, or exercise discretionary or regulatory authority over, any given subject may exercise that power at will by enacting or repealing an ordinance in relation to the subject.

Wright v. City of Florence, 229 S.C. 419, 424–25, 93 S.E.2d 215, 217–18 (1956) (emphasis added).

The Challengers have attempted to avoid this result by arguing the Taxpayer Protection Provision was a rule of County Council and as such required eight votes for suspension or amendment. (App. Br. at Argument I). The County agrees with the Challengers that a county council may establish its own rules, subject to general state law. S.C. Code Ann. § 4-9-110. However, the Taxpayer Protection Provision was an ordinance, not a rule of Council.

At the time the Repeal Ordinance was introduced, Section IV(B)(4) of the Council Rules appeared as follows:

> **(4) Votes Required for Passage** – (Note – Some actions require 3/4 vote per Section 3 of Ordinance No. 3867, *See* Appendix A to these Rules)
>
> (a) A Majority of all Council Members shall be required to pass ordinances, amendments, and resolutions, except as provided herein.
>
> (b) A vote of two-thirds (2/3) of the Members of Council shall be required for passage of:
>
> (i) Any ordinance or amendment authorizing a supplemental appropriation
> (ii) Authorization for the issuance of general obligation bonds,
> (iii) Any increase in the tax levy for Greenville County or any special purpose district or political subdivision which requires Council approval
> (iv) Approval of rezoning a property or text amendment to the zoning ordinance wherein action of council is contrary to the recommendation of the Planning Commission or the Planning and Development Committee.
>
> (c) Any matter receiving a tie vote fails.
>
> (d) Abstentions shall be counted as positive votes unless a written statement of a conflict is given to the Chairman.

(Ct. Ex. 1 at Ex. 3, R. at ____). As shown there, the Taxpayer Protection Provision is not part of the Rule. Instead, the Note and Appendix A (which is a copy of the Taxpayer Protection Provision) direct Council's attention to the previously enacted ordinance. The Note and Appendix A were added in 2013 by Memorandum from the County Attorney. (Def. Ex. 1, Tr. at 114:14-17, 5:5-6, R. at ____). They were similarly removed in 2017. (Def. Ex. 2, Tr. at 114:14-17, 5:5-6, R. at ____). They are not part of the Rule and were not added or removed by any Council action or vote. (Tr. at 115:3-15, 116: 15-23, R. at ____). As testified by the County Administrator, the Note was a "reference" and nothing more. (Tr. at 115:15, 116:20, R. at ____).

The Repeal Ordinance did not increase taxes or fees, and it did not trigger any other super-majority requirement. The Rule itself only provides for a super-majority under the circumstances listed in (b), none of which are implicated by any of the ordinances at issue here. (Ct. Ex. 1 at Ex.

3, R. at ____). Therefore, the Repeal Ordinance was properly enacted after three readings by majority vote.

C. The Telecommunications Fee and the Road Maintenance Fee received the requisite number of votes for passage.

Once the Repeal Ordinance passed, there was not a requirement for anything more than a simple majority for the passage of a uniform service charge such as the fees at issue here. (*See* Ct. Ex. 1 at Ex. 3, R. at ____). The Road Maintenance Fee received a majority for each of three readings. The Telecommunications Fee received nine votes at Third Reading and thus was validly enacted even if the Taxpayer Protection Provision had been applicable.

In addition, both fees should be determined to be valid by operation of S.C. Code Ann. § 6-1-330(A), which provides:

> A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.

For purposes of this section, a "positive majority" vote "means a vote for adoption by the majority of the members of the entire governing body, whether present or not." S.C. Code Ann. § 6-1-300(5). Council has twelve members. Therefore, a service fee may be implemented by a vote of seven members of Council.

In interpreting a statute, the Court applies the following principles,

> [q]uestions of statutory interpretation are questions of law. . . . The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the

> statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

In re Estate of Hover, 407 S.C. 194, 203-04, 754 S.E.2d 875, 879 (2014) (citations and quotations omitted).

There is no case law interpreting S.C. Code Ann. § 6-1-330(A). However, the Attorney General's office has opined as follows:

> In reading section 6-1-330 in conjunction with the authority previously given to counties in section 4-9-30, we believe with respect to section 6-1-330, the Legislature intended to prescribe a particular methodology by which a county may impose a service or user fee, rather than giving counties the authority they already possessed under section 4-9-30.

Op. S.C. Att'y Gen. (Feb. 16, 2007); *see also* Op. S.C. Att'y Gen. (Aug. 23, 2012) ("[S]ection 6-1-330 of the South Carolina Code provides the procedure for imposition of a new service or user fee within a municipality. . . ."). These opinions are consistent with the plain language of the statute and do not place any additional caveats on the ability of a county to adopt a fee using the method provided by S.C. Code Ann. § 6-1-330. This construction is consistent with general principles of statutory construction.

However, when addressing the question presented as to the repealed Fee Ordinance (4885), the Attorney General's office deviated from these established positions to find that this statute, rather than creating a procedure for enacting a fee, sets a floor for the number of votes required. As a result, the Attorney General's office opined that a three-fourths vote was required for the passage of the Fee Ordinance rather than a "positive majority." (Ct. Ex. 1 at Ex. 9, R. at ____). This opinion is inconsistent with the general rules outlined above because it adds requirements to those plainly set forth by the legislature in the statute.

"[C]ourts may not enlarge by construction the language of a clear and unambiguous statute." *Jordan v. Montgomery Ward & Co.*, 442 F.2d 78, 82 (8th Cir. 1971). Quite simply,

> [C]ourts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the powers of government among three departments, the legislative, the executive, and the judicial.

Laird, 243 S.C. at395, 134 S.E.2d at209; *Bentley v. Spartanburg Cnty.*, 398 S.C. 418, 426, 730 S.E.2d 296, 301 (2012) ("[W]e are interpreters not legislators and are bound by the language of [the statute] as written."). For this reason, this Court should find both ordinances are valid because they were enacted by a positive majority consistent with the procedure outlined in S.C Code Ann. § 6-1-330.

II. The Road Maintenance Fee and the Telecommunications Fee are valid uniform service charges.

There is nothing improper about the uniform service charges imposed by the Telecommunications Fee and the Road Maintenance Fee. Generally,

> [t]he party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt. In determining whether a statute violates equal protection, this Court accords great deference to a legislatively created classification; the classification will be upheld if it is not plainly arbitrary and there is any reasonable hypothesis to support it.

Skyscraper Corp., 323 S.C. at417, 475 S.E.2d at766 (citations omitted).

The General Assembly has authorized counties to make uniform service charges. S.C. Code Ann. § 4-9-30(5)(a). In assessing whether a fee is a valid uniform service charge, courts in South Carolina consider the following: (1) whether "the revenue generated is used to the benefit of the payers, even if the general public also benefits[;]" (2) whether "the revenue generated is used only for the specific improvement contemplated[;]" (3) whether "the revenue generated by the fee does not exceed the cost of the improvement[;]" and (4) whether "the fee is uniformly imposed on all the payers." *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown v. Cnty. of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992)). It does not matter for purposes of this analysis that some payers will benefit more than others and that the projects funded by the fee may benefit the public at large in addition to those paying the fee. *See, e.g., Brown*, 308 S.C. at 185, 417 S.E.2d at 568 ("A service charge is imposed on the theory that the portion of the community which is required to pay [the charge] receives some special benefit as a result of the improvement made with the proceeds of the charge.").

In 1997, five years after *Brown*, the General Assembly enacted S.C. Code Ann. § 6-1-330, which provides procedural requirements for local governing bodies "to charge and collect a user or service fee." Section 6-1-330 is consistent with *Brown*, and there is no indication that *Brown* has been superseded by statute. *See German Evangelical Lutheran Church of Charleston v. City of Charleston*, 352 S.C. 600, 605 n.8, 576 S.E.2d 150, 152 n.8 (2003) (citing *Brown* for distinction between taxes and fees). The Master correctly analyzed the facts in this case in the context of *Brown* and § 6-1-330 to find that the Telecommunications Fee and the Road Maintenance Fee were valid fee ordinances and not taxes.

A. The *Brown* Elements

With respect to the *Brown* elements, the second and third elements were not disputed by the parties as a matter of fact or as a matter of law. As testified by the County Administrator, the

revenue generated is used only for the specific improvements referenced in the ordinances (Tr. at 106:5-9, 107:25-108:3, R. at ____), and the revenue generated does not exceed the cost of the improvements (Tr. at 106:17-20, 110:3-5, R. at ____).

On the question of uniformity, the parties do not dispute the following: (1) the Road Maintenance Fee is a $10.00 per vehicle per year increase (from $15.00 to $25.00) to a fee that had been in place since 1993 without challenge; and (2) the Telecommunications Fee is $14.95 per parcel per year in order to pay for a single network telecommunications system for County first responders. The Challengers have approached the issue of uniformity as if this were an *ad valorem* property tax, which it is not. Instead, the Master and the County have applied the analysis applied in *Brown* in upholding a similar road maintenance fee implemented in Horry County.

Contrary to the Challengers' arguments, there is no requirement that a uniform service charge be imposed according to the value of the real or personal property involved. Instead, the requirement is that the charges be uniform. *Brown*, 308 S.C. at186, 417 S.E.2d at568. A flat per vehicle or per parcel fee satisfies this requirement. *Id.* The structure of the Road Maintenance Fee (per vehicle per year) is identical to the road maintenance fee upheld as a valid uniform service charge in *Brown*. As a result, *Brown* is dispositive here as to the Road Maintenance Fee. It does not matter for purposes of this analysis that some vehicles are more valuable than others, that some vehicles use county roads more, or that some vehicles put more wear and tear on the roads.

This Court has not hesitated to affirm other types of uniform service charges in addition to road maintenance fees. *See, e.g., Skyscraper Corp.*, 323 S.C. at 418, 475 S.E.2d at 767 (upholding county ordinance governing solid waste disposal fees which charged multitenant properties differently depending on whether leases were recorded or not); *Hospitality Ass'n of S.C.*, 320 S.C. at230, 464 S.E.2d at120 (upholding a town ordinance imposing a fee on gross proceeds from

tourists' short-term rentals); *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 34, 358 S.E.2d 392, 396 (1987) (upholding a county ordinance imposing fees on certain properties to fund sewer developments). Therefore, these cases all support the conclusion that the Telecommunications Fee, which applies to all real property at the same rate, is uniform.

With respect to benefit to the fee payer, *Brown* states that this element is met in the case of road maintenance fees if the funds collected are "specifically allocated for road maintenance." *Brown*, 308 S.C. at 185, 417 S.E.2d at 568. This is true even though the "general public obtains a benefit." *Id.* The fee at issue here is identical to that upheld in *Brown*. It is imposed on all cars registered in the County for the purpose of maintaining County roads. (*See* Ct. Ex. 1 at Ex. 19, Tr. at 106:5-107:18, R. at ____). It is this fact that distinguishes this fee from that in *Fairway Ford, Inc. v. Cnty. of Greenville*, 324 S.C. 84, 476 S.E.2d 490 (1996) (citing *Brown* and invalidating $200 per plate fee on dealer and wholesaler tags because benefit inured to all cars and not just those with dealer or wholesaler tags).

The benefit analysis for the Telecommunications Fee is similar. In discussing a transfer fee "equal to .25% of the purchase price on the conveyance of real property" where "the revenue generated by the transfer fee is used solely for acquiring, improving, operating, and maintaining parks and public recreational facilities," this Court found that all of the *Brown* elements were met, including benefit to the fee payer as follows:

> In this case, it is undisputed the transfer fee is used only for parks and recreational facilities, *the payers benefit because their real property values are enhanced*, the transfer fee does not generate more revenue than that spent on such facilities, and all payers pay a uniform percentage of the sale price of property conveyed.

C.R. Campbell Constr. Co., 325 S.C. at 237, 481 S.E.2d at 438 (emphasis added). Therefore, the "special benefit" element is met if the fee enhances real property values.

Telecommunications Fee revenues are to be spent on "(1) the lease, purchase, lease-purchase, or maintenance of County-wide public safety telecommunications network infrastructure and network components including radios for County departments, towers, equipment, P-25 compliant communication service or similar services as technology advances, computer hardware, software and non-recurring costs of initially establishing the network platform; and rates associated with the network service provider's service and provider's recurring charges." As set forth in the Telecommunications Fee,

> WHEREAS, moving all County-wide public safety telecommunications to a single network platform will promote the safety of life *and property* in Greenville County by providing much needed modernization of current public safety telecommunications infrastructure, ensures County-wide emergency and public safety telecommunications coverage to all persons *and property* located in Greenville County, improves County-wide public safety telecommunications coverage and reliability, advances the goal of ensuring interoperable communications for first responders agencies within Greenville County and State-wide, provides significant benefits in crisis management operations where immediate communications can save lives *and prevent the loss of property* . . . .

(Ct. Ex. 1 at Ex. 18, R. at ____) (emphasis added).

The protection of property and property values implicit in the enacting language is underscored by the testimony presented at trial. For example, Burns testified as follows:

> Q. Okay. And so let's use your half acre that you talked about, unwooded half acre. If there's a couple of miscreants out there maybe doing some mischievous on your property, the telecommunications, the philosophy there is going to hopefully speed up law enforcement to get out there and to take care of those miscreants; correct?
> A. That would be a good thing; yes, sir.
> Q. Okay. And that would benefit you as a property owner; right?
> A. It would.
> Q. As opposed to somebody who maybe leased your property to go hunting on it; right?
> A. I guess; yes, sir.

(Tr. at 31: 19-32:6, R. at ____). J. Dill testified,

Q. Okay. And with respect to the telecommunications fee, you own real property in Greenville County?
A. I do.
Q. And that real property stands to benefit from better coordinated, faster, first responder services; wouldn't it?
A. It would, yes.

(Tr. at 55:2-8, R. at ____). The County Administrator further testified,

Q. Could the new system that Greenville County is putting into place, could that enhance property values for individual property owners?
A. Absolutely.

(Tr. at 135: 17-20, R. at ____). The Telecommunications Fee is designed to benefit property owners in the form of better-coordinated public safety response. This service will be available to all property owners within the county. Again, under the reasoning of *Brown*, it should not matter that some parcels may have a higher need for first responders. Property owners have a special interest in prompt response to protect their property, to support and enhance their property values, and to hedge against potential enhanced liability to third parties. This is true even for parcels that may not need first responder assistance in any given year.

Given the above, the Master correctly found that the *Brown* elements were met as to both fees.

B. S.C. Code Ann. § 6-1-330

S.C. Code Ann. § 6-1-330 empowers local governing bodies to collect service or user fees if:

(1) the governing body enacts an ordinance authorizing the fee by a "positive majority" vote;

(2) the governing body provides public notice of the proposed fee, and if the fee is to fund a service that was previously funded by property tax revenue, the notice must include that fact in the text of the published notice;

(3) the governing body holds a public hearing and receives public comment before the final vote on the ordinance adopting the fee;

(4) the revenue derived from the fee must be used to pay costs related to the provision of the service or program for which the fee was paid; and

(5) if the revenue generated by a fee is five percent or more of the governing body's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the body's general fund.[5]

Both the Road Maintenance Fee and the Telecommunications Fee comply with these requirements. As discussed above, a positive majority of Council approved each of the fees.

In addition, the County provided notice of and held a public hearing to receive public comment on the proposed fees prior to their final reading. (Ct. Ex. 1 at ¶¶ 17, Ex. 17, Pl. Exs. 1 and 2, Order at 10, R. at ____). The County Administrator testified that neither fee funds a service that was previously funded by property tax revenue; therefore, there were not any additional notice requirements. (Tr. at 105:13-110:18, 135:4-6, R. at ____). The Challengers have made a passing reference that the user fees "were to fund a service previously funded by tax revenue" at the end of Section I of their brief, but have not presented any argument in support of that contention, nor have they presented any evidence in support. As such, any argument on this point should be deemed conclusory and not considered by this Court. *See S.C. Dep't of Soc. Servs. v. Sims*, 359 S.C. 601, 606, 598 S.E.2d 303, 306 (Ct. App. 2004) (conclusory nature of arguments and lack of supporting authority could lead to finding that issues on appeal have been abandoned); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) (issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal). Moreover on the merits, the evidence supports the Master's finding that the fees did not fund any service previously funded by property tax revenue. (Order at 10, R.at ____). As testified by Councilman Meadows, the County Administrator is "the person with the most knowledge about

[5] There are some exceptions for fees for stormwater, sediment, or erosion control that are not applicable here. S.C. Code Ann. § 6-1-330(D).

what funds are used to pay what expenses of the county." (Tr. at 80:23-81:1, R. at ____). Therefore, the County Administrator's testimony on this point should be deemed conclusive.

Finally, the testimony of the County Administrator also established that the revenue from these fees is set aside to pay only for the projects or services for which the fees are paid and that the revenue from each of these fees respectively totals less than five percent of the County's total budget for any given fiscal year. (Tr. at 105:13-110:18, 135:4-6, R. at ____). Thus, both fees meet the requirements of S.C. Code Ann. § 6-1-330.

C. The Challengers' arguments relating to taxes are misplaced.

The Challengers, rather than addressing the analysis required for fees, take the position that the fees at issue are in fact taxes. S.C. Code. § 6-1-300 clarifies that, for purposes of Title Six, Chapter 1, Article 3, fees and taxes are distinct, and a "'[s]ervice or user fee' means a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee." "Service or user fee" also includes 'uniform service charges.'" S.C. Code Ann. § 6-1-300. This definition is consistent with the criteria established in *Brown*.[6]

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[6] The Challengers' reliance on federal cases applying the Tax Injunction Act with respect to federal property is misplaced given the issue here: the validity of the Telecommunications Fee and Road Maintenance Fee as a matter of state law. The fee discussed in the primary case cited by the Challengers, *United States v. City of Huntington, W. Va.*, 999 F.2d 71 (4th Cir. 1993), was ultimately upheld as a valid municipal service fee by the Supreme Court of Appeals of West Virginia. *City of Huntington v. Bacon*, 473 S.E.2d 743, 750 (W. Va. 1996). As discussed there, "states are free to choose their own fiscal policies." The *Bacon* court further reasoned,

> The only limitations the Supreme Court of the United States may impose upon a state's power to determine its own fiscal policies are those expressed in the Constitution of the United States. One such limitation expressed in the Constitution of the United States is that the federal government is not subject to any taxation by a state or political subdivision unless explicitly authorized by Congress. Therefore, where a federal entity is involved, the federal courts may determine whether a particular funding mechanism employed by a state or its political subdivision is, in fact, a tax: Where a federal right is involved, a federal

For the reasons argued above and as found by the Master, the Telecommunications Fee and the Road Maintenance Fee are valid uniform service charges. In other words, the County had the power to enact these fees, there is not any preemption, and the fees are consistent with the law of this state. *See S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 394-95, 629 S.E.2d 624, 627 (2006) ("Determining whether a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county had the power to enact the ordinance. If the state has preempted a particular area of legislation, then the ordinance is invalid. . . . However, if the county had the power to enact the ordinance, then the Court ascertains whether the ordinance is inconsistent with the Constitution or general law of this state." (citations omitted)). This is consistent with the general premise that "[i]mplicit in the [Home Rule] Act is the realization that different counties will have different problems which will require different solutions. To require all counties to use the same means of financing for local improvements would defeat the objective of achieving complete local autonomy." *Robinson*, 293 S.C. at 31, 358 S.E.2d at 395. It is irrelevant whether the County could have used tax revenues to fund these services because the County was acting within its statutorily given powers and the general law of this state in enacting the Telecommunications Fee and the Road Maintenance Fee.

The Challengers also appear to argue that the Telecommunications Fee is a fire protection fee or somehow for the benefit of special purpose districts and not the County. This argument is

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> court is not bound by the characterization given to a state tax by a state court nor relieved from the duty of considering the real nature of the tax and its effect on the federal right asserted.
>
> It follows, therefore, that a state is not bound by a federal court's characterization of a state tax or fee when a federal right is not involved. After all, as we have previously stated, states are free to determine their own fiscal policy as long as the fiscal policy does not violate the Constitution of the United States.

Id. at 750–51 (citations and internal quotations omitted).

contrary to the language of the ordinance and the testimony of the County Administrator. (Ct. Ex. 1 at Ex. 18, Tr. at 118:15-23, R. at ____). The Telecommunications Fee will provide funds to link all County first responders on the same telecommunications system for the first time, including the sheriff's department, emergency medical services, and fire departments. (Tr. at 121:1-13, R. at ____). At the time of trial, first responders were not all on the same system and, as a result, when multiple first responders responded to a call, "[w]e have to use cell phones or shout at each other. Very inefficient. And it puts the first responders and public safety personnel at risk." (Tr. at 121:7-9, R. at ____). As testified by the County Administrator, "This fee was put in place for the County, not for the fire districts." (Tr. at 118:18-19, R. at ____). For this reason, the Challengers' arguments about fees relating to fire protection are unavailing.

III. The Road Maintenance Fee and the Telecommunications Fee comport with equal protection.

"The party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt." *Skyscraper Corp.*, 323 S.C. at417, 475 S.E.2d at766. "In determining whether a statute violates equal protection, this Court accords great deference to a legislatively created classification; the classification will be upheld if it is not plainly arbitrary and there is any reasonable hypothesis to support it." *Id.* "The fact that the classification may result in some inequity does not render it unconstitutional." *Davis v. Cnty. of Greenville,* 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994).

Brown is again instructive on this point, and states as follows:

> If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the equal protection clause fails. *Robinson v. Richland County Council, supra; Medlock v. S.C. Fam. Farm Dev.*, 279 S.C. 316, 306 S.E.2d 605 (1983). The requirements of equal protection are satisfied if: (1) the classification bears a reasonable relation to the legislative purpose; (2) the members of the class are treated alike under similar circumstances; and (3) the classification rests on some reasonable basis. *Medlock,*

> *supra.* In addition, the burden is upon those challenging the legislation to prove lack of rational basis. *Ex parte Yeargin,* 295 S.C. 521, 369 S.E.2d 844 (1988).
>
> A legislatively created classification will not be set aside as violative of the equal protection clause unless it is plainly arbitrary and there is no reasonable hypothesis to support the classification. *Samson v. Greenville Hosp. System,* 295 S.C. 359, 368 S.E.2d 665 (1988); *Medlock, supra.* Horry County placed all registered vehicles in a class which reasonably relates to the legislative purpose of generating funds for maintaining and improving county roads. Appellant has presented no evidence to show that this classification is arbitrary.
>
> Appellant merely argues that the members of the class are not treated equally because county residents who reside outside a municipality and those who reside within a municipality are in one class. The members of this class, however, are all treated alike as each owner registering a vehicle in the county must pay $15.00 per vehicle.
>
> The classification rests on a reasonable basis as the vehicle owners are the persons who most often would use the roads. Therefore, the ordinance does not violate the equal protection clause.

308 S.C. at 186–87, 417 S.E.2d 565 at 568–69.

As argued above, the Road Maintenance Fee is nearly identical to that affirmed in *Brown.* Similarly, the Telecommunications Fee places all owners of land in a class, which reasonably relates to the legislative purpose of providing coordinated first responder and public safety services to every parcel in the County. All class members have the same access to first responder services, and every parcel could potentially require these services. Therefore, the classification treats all class members equally, the classification directly relates to the legislative purpose, and the classification rests on a reasonable basis. As such, the ordinances do not violate equal protection.

IV. The Master was within his discretion in denying the Challengers' request for attorney's fees pursuant to S.C. Code Ann. § 15-77-300 based on his findings (1) that the Challengers were not the prevailing party in this action, (2) that the County's actions in this litigation were substantially justified, and (3) that there were no special circumstances present to justify an attorney's fee award.

The Challengers further seek an attorney's fee award pursuant to S.C. Code Ann. § 15-77-300. To recover attorney's fees under this section, three requirements must be met: (1) the party

seeking attorney's fees must be the prevailing party in an action contesting government action; (2) the Court must find the governmental entity acted without substantial justification in pressing its claim; and (3) the Court must find there are no special circumstances rendering an award of attorney's fees unjust. *Jasper Cnty. Bd. of Educ. v. Jasper Cnty. Grand Jury*, 303 S.C. 49, 51, 398 S.E.2d 498, 499 (1990). The Master found that "*no factor* supports a fee award[.]" (Order at 12-13, R. at ____ (emphasis added)).

On appeal, the Challengers argue that they are entitled to a fee award based on an argument that the County acted without substantial justification with respect to the original passage of the Fee Ordinance. (*See* App. Br. at Statement of the Issues, Argument at III). As an initial matter, they have not appealed the Master's findings on the other two required factors (prevailing party and special circumstances). As such, the denial of attorney's fees should be affirmed by operation of the two issue rule based on the Master's rulings on the other two required elements. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), *abrogated on other grounds by, Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

On the merits, the Master was within his discretion in finding that the County's actions in this case did not lack substantial justification. "[I]n deciding whether a state agency acted with substantial justification, the relevant question is whether the agency's position in litigating the case had a reasonable basis in law and in fact." *Layman*, 376 S.C. at445, 658 S.E.2d at326. The only conduct considered for purposes of this analysis is that relating to the civil action itself. *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 366 S.C. 503, 508 n.3, 623 S.E.2d 91, 93 n.3 (2005).

As outlined above, the County agreed in the consent order continuing the hearing on the motion for injunctive relief that no fees would be collected under Fee Ordinance based upon the then-pending Repeal Ordinance, Road Maintenance Fee, and Telecommunications Fee. At that time, the County had presented an outline of its factual and legal defenses with respect to the original complaint as set forth in their memorandum opposing the first request for a temporary injunction.[7] (Mem., R. at ____). All issues relating to the Fee Ordinance were moot by the time of trial. As noted by the Master,

> Although the Court does not reach the merits of the repealed Fee Ordinance (4885), the Court notes, for purposes of the Plaintiffs' attorney's fee request, that there was a genuine dispute between the parties as to the validity of the Fee Ordinance (4885) and that both parties' positions on this issue prior to the repeal had a reasonable basis in law and fact.

(Order at 5, n.3, R. at ____). The Challengers have not set forth any argument showing that this finding was unsupported by the record or contained an error of law. As a result, the Master's ruling on this point should be affirmed.

CONCLUSION

In their brief, the Challengers seek to convince the Court that the Telecommunications Fee and the Road Maintenance Fee are taxes in disguise. However, the Challengers have not met their burden of showing these ordinances are invalid given the case law and statutory requirements set forth above. In addition, the Challengers have not shown that the Master abused his discretion in denying their request for attorney's fees pursuant to S.C. Code Ann. § 15-77-300. For these reasons, this Court should affirm the Master's order in its entirety.

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[7] Although unrelated to the County's conduct in this action, it is noteworthy that the repeal process began prior to the filing of this lawsuit. (*See* Ct. Ex. 1 at ¶¶ 9,10, R. at ____).

Respectfully submitted,

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August 21, 2019
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

RECEIVED
AUG 23 2019
S.C. SUPREME COURT

C.A. No.: 2017-CP-23-01914

James Mikell "Mike" Burns, Garry R. Smith,
and Dwight A. Loftis, ... Appellants,

v.

Greenville County Council and
Greenville County, ... Respondents.

PROOF OF SERVICE

I certify that I have served the *Respondents' Initial Brief and Designation of Matter to be Included on the Record on Appeal* on all attorneys of record by depositing a copy of the same in the United States Mail, postage prepaid, on August 21, 2019, addressed to:

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