

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

RECEIVED
MAR 04 2019
SC Court of Appeals

Appellate Case No: 2018-001262

Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler and South Carolina Public Interest Foundation, ...Appellants,

v.

Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Town of Summerville, Summerville Town Council, William E. McIntosh, III, in his official capacity, Dorchester County Sheriff, Luther C. Knight, in his official capacity, Dorchester School District Two, Dorchester School District Two Board of Trustees, Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in the official capacities, Dorchester School District Four, Dorchester School District Four Board of Trustees, Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees, ...Respondents.

RECORD ON APPEAL
VOLUME I OF II

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-2229

Michael T. Rose
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, SC 29483
(843) 870-1821

Attorneys for Appellant

W. Andrew Gowder, Jr.
AUSTEN & GOWDER, LLC
1629 Meeting Street Road, Suite A
Charleston SC 29405

Michael T. Rose
409 Central Ave.
Summerville SC 29483

Drew Hamilton Butler
235 Magrath Darby Blvd.
Suite 100
Mount Pleasant SC 29464

David Leon Morrison
7453 Irmo Dr., Ste. B
Columbia SC 29212

Erik P. Doerring
PO Box 11390
Columbia SC 29211

William H. Davidson, II
PO Box 8568
Columbia SC 29202-8568

Thomas Kennedy Barlow
PO Box 11367
Columbia SC 29211

Kenneth Allen Davis
PO Box 11844
Columbia SC 29211

Adam Jordan Mandell
94 Pleasant Street
Cambridge MA 02139

Anthony E. Rebollo
PO Box 7788
Columbia SC 29202

Carmen Vaughn Ganjebsani
1900 Barnwell Street
Post Office Drawer 7788
Columbia SC 29202

Robert L. Widener
PO Box 11390
Columbia SC 29211

Kenneth P. Woodington
PO Box 8568
Columbia SC 29202-8568

Charles J. Boykin
Boykin & Davis, LLC
220 Stoneridge Drive, Suite 100
Columbia SC 29210

Tierney Felicia Dukes
PO Box 11844
Columbia SC 29211

INDEX

Order Denying Plaintiffs' Motion to Alter or Amend the Judgment filed June 11, 2018	1
Order on Motion to Dismiss Filed by Defendants Dorchester County School District Four and Dorchester County School District Four Board filed March 15, 2018.....	3
Order Granting Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint filed March 15, 2018.....	12
Consent Order Concerning the Pending Motions to Dismiss, the Pending Motion to Stay Discovery and Leave to File a Second Amended Complaint filed December 28, 2016	24
Answers filed on behalf of Joseph Pye, Dorchester School District Four and its Trustees, Dorchester School District Two and its Trustees, Dorchester County Career and Technology Center and its Trustees.....	38
Second Amended Complaint filed December 12, 2016 with attachments.....	102
Amended Summons and Complaint and Exhibit 6 filed May 6, 2016.....	145
Summons and Complaint filed May 2, 2016.....	245
Transcript of Hearing	340
Defendants Dorchester County School District Four and Dorchester County School District Four Board's Memorandum of Law in Opposition to Plaintiffs' Motion to Reconsider, Alter, or Amend Judgment filed April 16, 2018	403
Plaintiffs' Motion to Reconsider, Alter, or Amend Judgment, and for a Hearing filed April 3, 2018.....	413
Plaintiffs' Motion to Reconsider, Alter, or Amend Judgment, and for a Hearing filed April 3, 2018.....	422
Plaintiffs' Memorandum in Opposition to Defendants' Motions to Dismiss and to Strike Jury Demand filed December 12, 2017.....	437
Memorandum in Support of Motion to Dismiss by Defendants Dorchester County School District Four and Dorchester County School District Four Board filed December 11, 2017.....	474

Notice of Motion and Motion to Dismiss by Defendants Dorchester County School District Four and Dorchester County School District Four Board filed June 21, 2017	491
Motion to Dismiss the Plaintiffs' Second Amended Complaint, Filed by Defendant Captain Tony Phinney, Individually and in his Official Capacity as an Employee of the Dorchester County Sherriff and Subject to his Motion to Dismiss, an Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand filed February 3, 2017	496
Motion to Dismiss Plaintiffs' Second Amended Complaint (By: Defendants Town of Summerville; Summerville Town Council; and William E. McIntosh) and Subject to Their Motion to Dismiss, an Alternative Motion to Strike the Plaintiffs' Jury Demand Applicable to Property-Tax Related Claims filed February 3, 2017.....	503
Motion to Dismiss the Plaintiffs' Second Amended Complaint, Filed by Defendants' Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and the Dorchester County Sheriff, Luther C. Knight in his official capacity and Subject to Their Motion to Dismiss, an Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand filed January 23, 2017	537
Motion to Dismiss of Defendants Town of Summerville; Summerville Town Council; and William E. McIntosh, in his official capacity and Subject to Their Motion to Dismiss, an Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand filed September 15, 2016	570
Motion to Dismiss Filed by Defendants Dorchester County; Dorchester County Council; David Chinnis. George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr. in their official capacities as members of Dorchester County Council; and Dorchester County Sherriff, Luther C. Knight and Subject to Their Motion to Dismiss, an Alternative, Protective Motion to Strike the Plaintiffs Jury Demand filed August 19, 2016	594
Certificate of Counsel	622

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-18-0838

DORCHESTER COUNTY TAXPAYERS ASSOC.,
ET AL.

DORCHESTER COUNTY, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 12(c), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiffs' Motion to Reconsider, Alter or Amend Judgment on the Order on Motion to Dismiss Filed by Defendants Dorchester County School District Four and Dorchester County School District Four Board is denied. Plaintiffs' Motion to Reconsider, Alter or Amend Judgment on the Order Granting Defendants Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jr., Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett, and William R. Hearn, Jr., in their official capacities as members of the County Council; Dorchester County Sheriff, Luther C. Knight, in his official capacity, and Captain Tony Phinney, individually and in his official capacity; and Defendants Town of Summerville, Summerville Town Council, and William E. McIntosh, individually and in his official capacity as a member of Town Council Motions to Dismiss, is denied. Plaintiffs have not met the burden under SCRCPP 52 or SCRCPP 59(e) to warrant reconsideration.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2151
Judge Code

5/14/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of June, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of June, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowler Jr. / 1629 Meeting St., Ste. A
Michael T. Rax / 409 Central Ave. Summerville SC 29405

ATTORNEY(S) FOR THE PLAINTIFF(S)

David L. Morrison / 7453 Tame Dr., Ste. B
Columbia SC 29212

Thomas K. Barlow / P.O. Box 11367 Columbia SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2016CP1800838**

Dorchester County Taxpayers Association William A Harbeson Homer P Gonzalez David Messinger South Carolina Public Interest Foundation	George Resnick James Stephen Greene Jr Gerald E Ziegler Weatherstone Property Owners Association	Dorchester County Summerville Town Of Dorchester County Sheriff Dorchester School District Two Board of Trustees Dorchester County School District Four Board of Trustees	Dorchester County Council Summerville Town Council Dorchester School District Two Dorchester County School District Four

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 40(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Kristi L. Harrington

2151

3/15/2018

Circuit Court Judge

Judge Code

Date

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

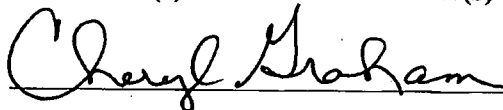
This judgment was entered on 3/15/2018, and a copy mailed first class or placed in the appropriate attorney's box on 3/15/2018, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. 1629 Meeting Street Suite A
Charleston, SC 29405
Michael T. Rose 409 Central Ave. Summerville, SC 29483

Drew Hamilton Butler 171 Church Street, Suite 150
Charleston, SC 29401
Anthony E. Rebollo PO Box 7788 Columbia, SC 29202
David Leon Morrison 7453 Irmo Dr., Ste. B Columbia, SC
29212
Erik P. Doerring PO Box 11390 Columbia, SC 29211
William H. Davidson II PO Box 8568 Columbia, SC
29202-8568
Kenneth Allen Davis /Christopher S. Elliott PO Box 11844
Columbia, SC 29211
Adam Jordan Mandell 220 Stoneridge Suite 100 Columbia,
SC 29210
Thomas Kennedy Barlow PO Box 11367 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonzales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiff(s)

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

**ORDER ON MOTION TO DISMISS
FILED BY DEFENDANTS DORCHESTER
COUNTY SCHOOL DISTRICT FOUR
AND DORCHESTER COUNTY SCHOOL
DISTRICT FOUR BOARD**

FILED - RECORDED
2016 MAR 15 AM 10:16
CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

Defendants Dorchester County School District Four and Dorchester County School District Four Board (hereinafter "District 4 Defendants") move to dismiss under Rule 12(b)(1)

and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.¹ Upon review of the arguments of counsel and the memoranda submitted in support thereof, this Court grants the District 4 Defendants' motion, dismissing the relevant claims against the District 4 Defendants with prejudice.

FACTUAL BACKGROUND

In their Second Amended Complaint, Plaintiffs allege that the District 4 Defendants (1) violated Act No. 388 and (2) took action constituting unconstitutional double taxation by entering into an agreement with Dorchester County for the assignment of school resource officers to the District 4 Defendants' schools.

According to Plaintiffs, this agreement authorizes and requires Dorchester County to appropriate, requires Dorchester County to bill the District 4 Defendants, and requires the District 4 Defendants to reimburse Dorchester County \$120,000.00 for School Resource Officers ("SROs") serving at District 4 Defendants' schools during FY 2015-17. Further, Plaintiffs' Second Amended Complaint contends that the funds to be reimbursed by the District 4 Defendants are not designated as capital expenses and are for the purpose of paying SRO salaries. Plaintiffs have asserted that under this agreement, the District 4 Defendants are "required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff."

Plaintiffs claim that by entering into this agreement, the District 4 Defendants have violated Act 388, which exempts owner-occupied residential property from taxation for school operating purposes. Moreover, Plaintiffs contend that Dorchester County and the District 4

¹ This motion was argued on December 12, 2017, in conjunction with three (3) related motions filed by the other defendants in this matter. Present on behalf of Plaintiffs were W. Andrew Gowder, Jr., Esq. and Michael T. Rose, Esq. Adam J. Mandell, Esq., and Christopher S. Elliott, Esq., of Boykin & Davis appeared on behalf of the District 4 Defendants.

Defendants have taxed their exempt property twice, alleging that “Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County.”

Pursuant to Page 50 of the Dorchester County Budget Ordinance for Fiscal Year 2015-16, referenced in Paragraph 68 of the Second Amended Complaint as Ordinance 15-14, this payment from the District 4 Defendants to Dorchester County is listed as a line item under the category “Charges for Services.” On Page 49 of the Budget Ordinance, a separate category called “Taxes” is listed and includes a separate line item for “Current – Real Estate Taxes.” The amendment to the Budget Ordinance included as Exhibit 7 to the Second Amended Complaint does nothing to alter the revenue source for the payment from the District 4 Defendants.

On June 19, 2017, the District 4 Defendants filed this motion to dismiss Plaintiffs’ claims against them, asserting that (1) this Court lacks subject matter jurisdiction over Plaintiffs’ claims under Rule 12(b)(1), SCRCP, and (2) Plaintiffs have failed to state facts sufficient to constitute causes of action under Rule 12(b)(6), SCRCP.

STANDARD OF REVIEW

Whether this Court has subject matter jurisdiction over a matter is a question of law. See, e.g., Berry v. S.C. Dep’t of Health & Env’tl. Control, 402 S.C. 358, 363, 742 S.E.2d 2, 4 (2013).

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, this Court considers “only the allegations set forth on the face of the plaintiff’s complaint.” Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). Under Rule 12(b)(6), this Court shall dismiss the complaint “if the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the

plaintiff," would not entitle the plaintiff to relief on any theory. McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 190-91, 743 S.E.2d 843, 846 (Ct. App. 2013).

DISCUSSION

MOTION TO DISMISS PLAINTIFFS' CLAIMS AGAINST THE DISTRICT 4 DEFENDANTS PURSUANT TO RULE 12(b)(6), SCRPC.

1. The District 4 Defendants do not have taxing authority.

The District 4 Defendants assert that Plaintiffs' claims with regard to Act 388 and double taxation must be dismissed because Plaintiffs' have failed to state facts sufficient to constitute causes of action against the District 4 Defendants. The basis for their argument is that the District 4 Defendants lack the authority to impose a tax and, therefore, cannot be held liable for Plaintiff's tax-based causes of action.

Pursuant to S.C. Const. Ann. Art. X, § 6, "the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including . . . school districts." However, the grant of taxing authority is permissive, and the South Carolina Constitution does not require the General Assembly to vest taxing authority in each school district.

Pursuant to S.C. Code Ann. § 59-73-20, some school districts have the authority to impose a tax for school purposes. This section was last amended in 1962. However, the District 4 Defendants were created by legislation consolidating Dorchester County School Districts One and Three in 1986. That legislation, Act 536 of 1986, Part I, Section 4, states in relevant part that the "Executive Committee of Dorchester County School District No. 4 shall promptly prepare and submit to the appropriate taxing authority a budget for the ensuing year." A plain reading of this language establishes that the legislation creating the District 4 Defendants

explicitly withholds the taxing authority granted to other school districts under S.C. Code Ann. § 59-73-20.

Plaintiffs allege that the District 4 Defendants have violated Act 388, which exempts certain property from the collection of an ad valorem tax, including:

[O]ne hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

S.C. Code Ann. § 12-37-220(B)(47)(a). Thus, Act 388 imposes limitations on the authority to tax specific types of property for specific purposes. However, the District 4 Defendants lack that authority to tax as a matter of law. Additionally, the District 4 Defendants have adopted a policy reflecting that the District 4 Defendants do not have taxing authority. Specifically, District Policy DC provides “[e]ach school district’s taxing authority is established by state law. In Dorchester County, that authority is vested in Dorchester County Council within statutory limitations.” Thus, because the District 4 Defendants cannot impose a tax as a matter of law, they cannot be held liable for violating Act 388.

As an additional cause of action against the District 4 Defendants, Plaintiffs allege that the District 4 Defendants have engaged in the unconstitutional double taxation of their property. However, double taxation does not occur unless there is “an identity of taxing authority, taxing period, taxing purpose, and person and property taxed.” Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 369, 223 S.E.2d 592, 596 (1976). Similarly as to Plaintiffs’ cause of action under Act 388, the District 4 Defendants cannot violate any prohibition against double taxation because they are not a taxing authority as a matter of law. Therefore, viewing Plaintiffs’ allegations in the

light most favorable to Plaintiffs, the District 4 Defendants do not have taxing authority and, therefore, cannot be held liable for Plaintiffs' allegations of unlawful taxation.²

2. The District 4 Defendants do not use revenue taxed to property exempt under Act 388 to fund the school resource officer program.

While Act 388 does not apply to the District 4 Defendants because of their lack of taxing authority, Act 388 also does not prohibit the District 4 Defendants from funding the school resource officer program from sources other than exempt owner-occupied residential property.

To account for the amounts exempt under Act 388, the State of South Carolina collects an additional one-percent (1%) sales tax which it credits to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to -1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts for the tax revenue lost as a result of the owner-occupied residential property exemption set forth in Act 388. S.C. Code Ann. § 11-11-156(A)(1).

Here, Ordinance 15-14 reflects that the payments to Dorchester County from the District 4 Defendants to fund the school resource officer program are identified as "Charges for Services" rather than "Current - Real Estate Taxes." Thus, based on Dorchester County's budget, the District 4 Defendants have not funded the school resource officer program with exempt property tax revenue but rather from reimbursements from the State. Therefore, because the alleged expenditures by the District 4 Defendants do not violate Act 388 as a matter of law, Plaintiffs have failed to state facts sufficient to constitute their causes of action against the District 4 Defendants.

² Additionally, even if the District 4 Defendants were able to impose the tax alleged by Plaintiffs, Plaintiffs have failed to assert any facts showing that the District 4 Defendants exercised such authority in accordance with the necessary public referendum process set forth in S.C. Code Ann. § 59-73-10, *et seq.*

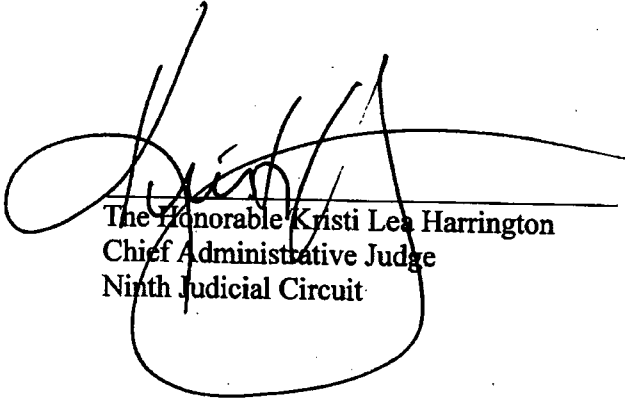
Accordingly, the Second Amended Complaint, on its face, fails to assert facts sufficient to constitute these tax-based causes of action against the District 4 Defendants, and Plaintiffs claims against the District 4 Defendants are hereby dismissed with prejudice.

CONCLUSION

For the aforementioned reasons, this Court GRANTS this motion and dismisses all claims against the District 4 Defendants with prejudice.

AND IT SO ORDERED.

This 9 day of March, 2018



The Honorable Kristi Lea Harrington
Chief Administrative Judge
Ninth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER

Dorchester County Taxpayers Association William A Harbeson Homer P Gonzalez David Messinger South Carolina Public Interest Foundation	George Resnick James Stephen Greene Jr Gerald E Ziegler Weatherstone Property Owners Association	Dorchester County Summerville Town Of Dorchester County Sheriff Dorchester School District Two Board of Trustees Dorchester County Career and Technology Center Board of Trus	Dorchester County Council Summerville Town Council Dorchester School District Two Dorchester County Career and Technology Center

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Kristi L. Harrington
Circuit Court Judge

2151
Judge Code

3/15/2018
Date

For Clerk of Court Office Use Only

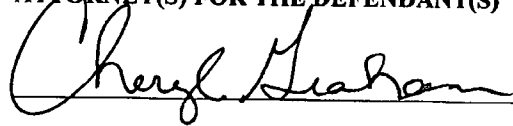
This judgment was entered on 3/15/2018, and a copy mailed first class or placed in the appropriate attorney's box on 3/15/2018, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. 1629 Meeting Street Suite A
Charleston, SC 29405
Michael T. Rose 409 Central Ave. Summerville, SC 29483

Drew Hamilton Butler 171 Church Street, Suite 150
Charleston, SC 29401
Anthony E. Rebollo PO Box 7788 Columbia, SC 29202
David Leon Morrison 7453 Irmo Dr., Ste. B Columbia, SC
29212
Erik P. Doerring PO Box 11390 Columbia, SC 29211
William H. Davidson II PO Box 8568 Columbia, SC
29202-8568
Thomas Kennedy Barlow PO Box 11367 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated; Weatherstone Property
Owners Association, individually and on
behalf of all others similarly situated, George
Resnick; William A. Harbeson; James
Stephen Greene, Jr.; Homer P. Gonzalez;
Gerald E. Ziegler; David Messinger; and
South Carolina Public Interest Foundation,

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry
Hargett and William R. Hearn, Jr., in their
official capacities as members of Dorchester
County Council; Town of Summerville;
Summerville Town Council; William E.
McIntosh, III, in his official capacity;
Dorchester County Sherrieff; Luther C.
Knight, in his official capacity; Dorchester
School District Two; Dorchester School
District Two Board of Trustees; Joseph R.
Pye, Justin Farnsworth, Gail Hughes, Brian
Mitchum, Tanya Robinson, Sam Clark,
Barbara Crosby and Lisa Tupper, in their
official capacities, Dorchester County School
District Four, Dorchester County School
District Four Board of Trustees; Dorchester
County Career and Technology Center; and
Dorchester County Career and Technology
Center Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-18-838

FILED - RECORDED
2018 MAR 15 AM 10:14
CHERYL CRONIN
CLERK OF COURT
DORCHESTER COUNTY

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFFS'
SECOND AMENDED COMPLAINT**

This matter comes before the Court upon the Motion of Defendants Dorchester County (the
"County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry Hargett, and William R. Hearn, Jr., in their official

capacities as members of the County Council; Dorchester County Sheriff, Luther C. Knight (the "Sheriff"), in his official capacity; and Captain Tony Phinney, individually and in his official capacity for an Order dismissing Plaintiffs' Second Amended Complaint; and the Motion of Defendants Town of Summerville (the "Town"); Summerville Town Council ("Town Council"); and William E. McIntosh, individually and in his official capacity as a member of Town Council (with the Town, Town Council and William E. McIntosh, individually and in his official capacity as a member of Town Council together as the "Town Defendants") for an Order dismissing Plaintiffs' Second Amended Complaint.¹

A hearing on this matter was held on December 12, 2017. Appearing on behalf of Plaintiffs were W. Andrew Gowder, Jr., and Michael T. Rose. Appearing on behalf of the County Defendants were Drew Hamilton Butler and Anthony E. Rebollo. Appearing on behalf of the Town Defendants were Erik P. Doerring and William H. Davidson, II. After considering the arguments of counsel, the applicable law, and legal memoranda submitted by the parties, the Court hereby GRANTS the Motions to Dismiss filed by the County Defendants and the Town Defendants.

The Claims

¹ Hereinafter, the movants are referred to collectively as the "County Defendants." Defendants Dorchester County School District Four and Dorchester County School District Four Board of Trustees have filed a separate Motion to Dismiss Plaintiffs' Second Amended Complaint, which is addressed by the Court through separate order. Defendants Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; and Dorchester County Career and Technology Center Board of Trustees have filed Answers to the Plaintiffs' Second Amended Complaint, and have not filed motions to dismiss Plaintiffs' Second Amended Complaint.

Plaintiffs' Second Amended Complaint, which is now the live pleading, was filed on December 12, 2016. In their Second Amended Complaint, Plaintiffs assert five (5) causes of action:

First Cause of Action: "Violations of Act 388," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." Second Amended Complaint at ¶ 101 (the "First Cause of Action").

Second Cause of Action: "Illegal Double Expenditures," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." *Id.* at ¶ 104 (the "Second Cause of Action").

Third Cause of Action: This cause of action, which is not directed against the County Defendants or the Town Defendants, alleges "[t]he failure and refusal of [Dorchester School District Two ("DD2")] to comply with Act No. 98 of 2009 is unlawful." *Id.* at ¶ 106 (the "Third Cause of Action").

Fourth Cause of Action: "Violations of Freedom of Expression, Association and Petition to Redress Grievances Rights Under Article I, Section 2 of the South Carolina Constitution," alleging that Plaintiff David Messinger's constitutional rights were deprived by Town Defendants William E. McIntosh and the Town of Summerville, and the following County Defendants: Chinnis, Phinney, the County and the Sheriff. *Id.* at ¶ 109 (the "Fourth Cause of Action").

Fifth Cause of Action: "Violations of First and Fourteenth Amendment Rights Under the United States Constitution and 42 U.S.C. § 1983," alleging that Plaintiff David Messinger's constitutional rights were deprived by Town Defendants William E. McIntosh and the Town of Summerville, and the following County Defendants: Chinnis, Phinney, the County and the Sheriff. *Id.* at ¶ 112 (the "Fifth Cause of Action").

The Third Cause of Action is not directed at the County Defendants or the Town Defendants and is therefore unaffected by the County Defendants' Motion and this Order. The remaining claims, directed at one or more of the County Defendants and Town Defendants, fall into two groups. The First Cause of Action and Second Cause of Action, which involve S.C. Code Ann. § 12-37-220(B)(47)(referred to herein as "Act 388"), are claims by all of the Plaintiffs

concerning that property tax statute (“Property-Tax Based Claims”). The Fourth Cause of Action and Fifth Cause of Action are claims by Plaintiff David Messinger only, alleging that he is entitled to money damages due to violations of the state and/or federal constitution and 42 U.S.C § 1983 (“Constitutional Claims”).

Findings

A. Property-Tax based Claims

1. **This Court Lacks Jurisdiction.** As to the Property-Tax Based Claims, the Court finds Plaintiffs’ Property-Tax Based Claims must be dismissed due to lack of subject-matter jurisdiction. The South Carolina Revenue Procedures Act (“RPA”) provides the exclusive remedies for the Plaintiffs’ Property-Tax Based Claims. The South Carolina Constitution specifies that “[t]he General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.” S.C. Const. Articles X, at § 10, and XVII, at §2. For tax matters, the General Assembly exercised that constitutional power when it enacted the RPA: “It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine . . . a dispute concerning property taxes.” S.C. Code Ann. § 12-60-20 (emphasis added). Moreover, the General Assembly made it clear that “[t]he South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.” *Id.*

To that end, the RPA provides specific remedies for disputing a real property tax assessed by a county. The taxpayer may file a written protest with the County Assessor, or pay the property taxes and file a claim for refund with the County Assessor. S.C. Code Ann. § 12-60-2520, et seq; S.C. Code Ann. § 12-60-2560. After the County Assessor issues his response to a taxpayer’s protest, or the County Assessor, County Treasurer and the County Auditor render a decision on the taxpayer’s refund claim, the taxpayer may then appeal the decision to the County Board of Assessment Appeals within thirty days. S.C. Code Ann. § 12-60-2530; S.C. Code Ann. § 12-60-

2560(B). After a decision by the County Board of Assessment Appeals, the taxpayer may then seek judicial review through the Administrative Law Court. S.C. Code Ann. § 12-60-2540; S.C. Code Ann. § 12-60-2560(C). Thus, under the RPA, a taxpayer may contest a proposed property tax assessment without first paying the tax through the protest procedures, or the taxpayer may pay the tax and then file a refund claim. Under both procedures, the taxpayer has further review through the County Board of Assessment Appeals and then the Administrative Law Court.

The remedies under the RPA are exclusive. Section 12-60-80(A) of the RPA specifically states “[e]xcept as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.” The exception set forth in subsection (B), referred to herein as “the RPA Exception,” is for “an action for a declaratory judgment where the sole issue is whether a statute is constitutional.”

The Plaintiffs have not made any claim coming within the RPA Exception. To the contrary, the Plaintiffs contend that Act 388 and other statutes cited in their Second Amended Complaint are valid and constitutionally permissible. In addition, the RPA Exception is inapplicable in any event because, by its express terms, it “does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons.” S.C. Code Ann. § 12-60-80(B). (Emphasis added.) Here, the Plaintiffs describe themselves in the Second Amended Complaint as a limited class. See Second Amended Complaint at ¶ 15.

In this case, the Second Amended Complaint confirms that the Plaintiffs’ claims involve a dispute concerning property taxes in that Act 388 is the focus of their Second Amended Complaint. The case law also supports this conclusion and confirms that the RPA applies to the Property-Tax Based Claims at issue here. See Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d 39 (S.C. 2004) and B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007), aff’d as modified 605 S.E.2d 551 (S.C. Ct. App. 2004).

Plaintiffs argue that the RPA's provisions only apply to tax disputes involving the "illegal and wrongful collection of taxes," and that Plaintiffs do not challenge the "collection" of property taxes herein but only how the Defendants apparently use or spend the property tax revenues that have been collected. Plaintiffs cite Section 12-60-80(A) in support, which provides that "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes."

Plaintiffs reliance on the language of Section 12-60-80(A) does not support their position. This language emphasizes that there is no other remedy other than the RPA where it is alleged that taxes have been illegally or wrongfully collected; however, the RPA applies to tax disputes regardless of whether the tax has been collected (see state-based tax dispute procedures under S.C. Code Ann. § 12-60-410 et seq.), and specifically to County property tax disputes such as those herein where the taxpayer is free to protest a proposed property tax assessment without first having to pay the taxes or before the taxes are otherwise collected.

Consequently, this Court lacks subject matter jurisdiction as the First and Second Causes of Action.²

B. Constitutional Claims

As to Plaintiff David Messinger's Constitutional Claims, the Court finds they must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for the reasons set forth below.

2. Grounds for Dismissal of the Fourth and Fifth Causes of Action.

²To the extent that the Plaintiffs' Property-Tax Based Claims include requests for equitable relief, those requests are insupportable because the Plaintiffs have an adequate remedy at law under the RPA.

The Fourth and Fifth Causes of Action, asserted by Plaintiff David Messinger only, allege that the County, Chinnis, the Sheriff, Phinney, the Town and McIntosh violated his state and federal constitutional rights and that, as a result, he should be awarded monetary damages. Chinnis and the Sheriff are sued only in their official capacity. Complaint at ¶¶ 30 and 37. Phinney and McIntosh, however, are sued in both their individual and official capacities. Complaint at ¶ 38.

Messinger's Fourth Cause of Action must be dismissed because (a) it alleges only a claim for money damages based on violations of his rights under the South Carolina State Constitution and (b) state law claims are not cognizable under 42 U.S.C. § 1983. Quillan v. Evatt, 445 S.E.2d 639, 640 (S.C. Ct. App. 1994) (holding that Section 1983 claims, which are limited to violations of rights protected by the United States Constitution and federal law, were not available for injuries allegedly suffered at the hands of state officials).

Furthermore, Chinnis is a member of County Council and McIntosh is a member of the Town Council. Therefore, they are immune from Plaintiff's Messinger's state-based Constitutional Claims under the South Carolina Tort Claims Act, S.C. Code Ann § 15-78-10, et. seq. (the "TCA"). The TCA defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d). The County is a political subdivision of the State and the Town is a body corporate and a municipal corporation of the State of South Carolina located in the County. The TCA's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). Under the TCA, "Scope of official duty" or "scope of state employment" mean (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i).

In addition, Plaintiff Messinger's Constitutional Claims in the Fourth Cause of Action are barred due to legislative immunity. The common law legislative immunity has been retained by several sections of the TCA. See S.C. Code Ann. §§ 15-78-20(b) ("All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved"); 15-78-60(1) (preserving sovereign immunity for "legislative, judicial, or quasi-judicial action or inaction"); 15-78-60(2) (preserving sovereign immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"); and 15-78-60(4) (preserving sovereign immunity for "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies").

Accordingly, Plaintiff Messinger's Fourth Cause of Action is deficient as a matter of law and is hereby dismissed.

Messinger's Fifth Cause of Action is deficient because it is based on claimed injuries to reputation arising out of allegedly "false and defamatory statements," which is not cognizable in an action under 42 U.S.C. § 1983. See Paul v. Davis, 424 U.S. 693, 712 (1976) (holding that defamation did not constitute a violation of constitutional rights and, therefore, did not state a claim under § 1983, further noting that harm or injury to reputation, even where inflicted by an officer of the state, "does not result in a deprivation of any 'liberty' or 'property' recognized by state or federal law").

In addition, the Eleventh Amendment bars Plaintiff Messinger's Fifth Cause of Action against Defendant Sheriff and Defendant Phinney. The plain text of 42 U.S.C. § 1983 provides that, for a claim to be viable, the defendant must be a "person" as that term is used in the statute. Under the Eleventh Amendment to the United States Constitution, however, neither the state, nor

a state official acting in an official capacity, comes within the meaning of "person" as that term is used in 42 U.S.C. § 1983. Will v. Mich. Dep't. of State Police, 491 U.S. 58 (1989).

Sheriffs and their deputies are state officials and, as such, they are not amenable to a suit under 42 USC § 1983. See Cone v. Nettles, 417 S.E.2d 523, 524 (S.C. 1992) (holding that sheriffs and deputy sheriffs are state officials and that "a cause of action against a sheriff or sheriff's deputies cannot be maintained under 42 U.S.C. §1983). Accordingly, it is clear that a South Carolina sheriff, and those working under him in the Sheriff's Department, may not be sued in their official capacity under § 1983. Therefore, the § 1983 claims asserted against Defendant Sheriff and Defendant Phinney, sued in his official capacity "as an employee of the Dorchester County Sheriff," must be dismissed.

CONCLUSION

For the reasons stated herein, Plaintiffs' First and Second Causes of Action are dismissed because this Court lacks subject-matter jurisdiction over this matter. Pursuant to the RPA, the Administrative Law Court has exclusive jurisdiction to hear and rule on the matters raised in Plaintiffs' First and Second Causes of Action

Plaintiff Messinger's Fourth Cause of Action is dismissed on the grounds that it alleges only a money damages claims based on violations of his rights under the South Carolina State Constitution and state law claims are not cognizable under 42 U.S.C. § 1983. Further, Plaintiff Messinger's Fourth Cause of Action are dismissed on the ground that the individual Defendants are immune from liability for the alleged state-based Constitutional Claims under the Tort Claims Act, or, in the alternative, are immune due to legislative immunity.

Plaintiff Messinger's Fifth Cause of Action is dismissed on the ground that claimed injuries to reputation arising out of allegedly "false and defamatory statements" are not cognizable in an action under 42 U.S.C. § 1983. In addition, the Eleventh Amendment bars Plaintiff Messinger's

claims against Defendant Sheriff and Defendant Phinney and those claims are, therefore, dismissed for that alternative reason as well.

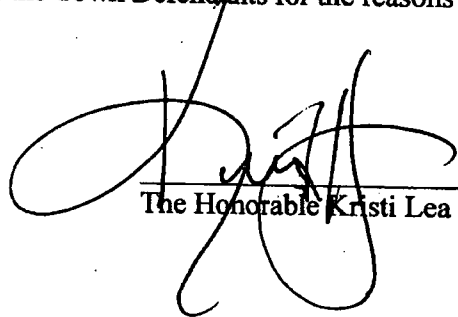
IT IS THEREFORE ORDERED that the Motions to Dismiss filed by the County Defendants and the Town Defendants are GRANTED as to Plaintiffs' First and Second Causes of Action, which are now dismissed without prejudice and may be refiled in the Administrative Law Court, provided the Plaintiffs have met the requirements under the RPA to do so.

IT IS FURTHER ORDERED that the Motions to Dismiss filed by the County Defendants and the Town Defendants are GRANTED as to Plaintiffs' Fourth and Fifth Causes, which are dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC.

IT IS FURTHER ORDERED that, since the Plaintiffs' Third Cause of Action was not directed against the County Defendants or the Town Defendants, this case is dismissed in its entirety as to the County Defendants and the Town Defendants for the reasons stated above.

AND IT IS SO ORDERED.

March 9, 2018
Charleston, South Carolina.


The Honorable Kristi Lea Harrington

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1800838

✓ Dorchester County Taxpayers Association Homer P Gonzalez David Messinger South Carolina Public Interest Foundation	George Resnick James Stephen Greene Jr Gerald E Ziegler Weatherstone Property Owners Association	Dorchester County Summerville Town Of Dorchester County Sheriff Dorchester School District Two Board of Trustees Dorchester County School District Four Board of Trustees	Dorchester County Council Summerville Town Council Dorchester School District Two Dorchester County School District Four

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Deadra L. Jefferson
Circuit Court Judge

2128
Judge Code

12/28/2016
Date

For Clerk of Court Office Use Only

This judgment was entered on **12/28/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **12/28/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. 1629 Meeting Street Suite A
Charleston, SC 29405
Michael T. Rose 409 Central Ave. Summerville, SC 29483

Drew Hamilton Butler 171 Church Street, Suite 150
Charleston, SC 29401
Anthony E. Rebollo PO Box 7788 Columbia, SC 29202
David Leon Morrison 7453 Irmo Dr., Ste. B Columbia, SC
29212
Erik P. Doerring PO Box 11390 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers
Association, individually, and on behalf
of all others similarly situated;
Weatherstone Property Owners
Association, individually, and on behalf
of all others similarly situated, George
Resnick; William A. Harbeson; James
Stephen Greene, Jr.; Homer P.
Gonzalez; Gerald E. Ziegler; David
Messinger, and South Carolina Public
Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey,
Jay Byars, Willie Davis, Carroll S.
Duncan, Larry Hargett and William R.
Hearn, Jr., in their official capacities as
members of Dorchester County Council;
Town of Summerville; Summerville
Town Council; William E. McIntosh,
III, in his official capacity; Dorchester
County Sheriff; Luther C. Knight, in his
official capacity; Dorchester School
District Two; Dorchester School District
Two Board of Trustees; Joseph R. Pye,
Justin Farnsworth, Gail Hughes, Brian
Mitchum, Tanya Robinson, Sam Clark
Barbara Crosby and Lisa Tupper, in
their official capacities; Dorchester
County School District Four, Dorchester
County School District Four Board of
Trustees; Dorchester County Career and
Technology Center; and Dorchester
County Career and Technology Center
Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-18-838

FILED - RECORDED
2016 DEC 28 AM 11:33
CHERYL DEAN
CLERK OF COURT
DORCHESTER COUNTY

Consent Order Concerning the Pending
Motions to Dismiss, the Pending Motion to
Stay Discovery and Leave to File a Second
Amended Complaint

The Plaintiffs filed their Complaint in this case on May 2, 2016. They filed an Amended
Complaint on May 6, 2016.

1 10/7
[Signature]

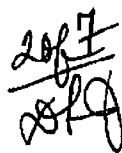
On August 15, 2016, Answers to the Amended Complaint were filed by Defendants Dorchester School District Two; Dorchester School District Two Board of Trustees; Dorchester School District Four; Dorchester School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees; and Joseph R. Pye (collectively referred to herein as the "Served School District Defendants").

On August 19, 2016, a Motion to Dismiss the Amended Complaint was filed by Defendants, Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sheriff, Luther C. Knight, in his official capacity (collectively referred to herein as the "County Defendants").

On September 15, 2016, a Motion to Dismiss the Amended Complaint was filed by the Town of Summerville; Summerville Town Council; and William E. McIntosh, III, in his official capacity (collectively referred to herein as the "Town Defendants").

On September 21, 2016, one of the Plaintiffs, William A. Harbeson, mailed a Request for Production (the "RFPD") on the Served School District Defendants, the County Defendants and the Town Defendants (collectively referred to herein as the "Defendants"). On October 13, 2016, the County Defendants filed a Motion to Stay Discovery pending a decision of the Motions to Dismiss referenced above. The Served School District Defendants and the Town Defendants joined in that motion.

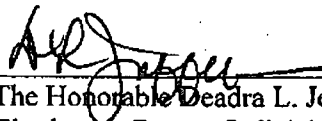
The Motions to Dismiss and the Motion to Stay were scheduled to be heard by the Court on November 7, 2016. However, the undersigned counsel for the Plaintiffs and the Defendants

2 

(collectively referred to herein as the "Parties") conferred prior to the scheduled hearing date and have consented to the entry of this Order, the terms of which are set forth below:

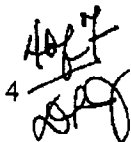
1. The County Defendants and the Town Defendants withdraw their Motions to Dismiss, without prejudice to their right to refile such motions in the future—asserting the same and/or different, additional grounds—in response to the forthcoming Second Amended Complaint, discussed in Paragraph 3 below.
2. No discovery shall be conducted in this case until the later of (a) the filing by all Defendants of amended answers in response to the forthcoming Second Amended Complaint (referenced in paragraph 3 below) or (b) a ruling by the Court on any and all pending Rule 12 motions to dismiss, filed by the Defendants in lieu of amended answers, in response to the forthcoming Second Amended Complaint (discussed in paragraph 3 below); furthermore, the 30-day deadline for Defendants to respond and/or object to Plaintiff Harbeson's RFPD shall not commence to run until the later of the two preceding dates.
3. The Plaintiffs are granted leave to file a Second Amended Complaint by December 7, 2016, and if they fail to do so, their First Amended Complaint (which is presently the live Complaint) shall be dismissed.
4. In their forthcoming Second Amended Complaint, or any other complaint or amended complaint filed in these proceedings, the Plaintiffs agree to withdraw, and to not assert in these proceedings, any claim or cause of action based on the refund, assessment and/or collection of South Carolina taxes.

WHEREFORE, the Parties respectfully request that the Court grant this Consent Motion.



The Honorable Deadra L. Jefferson
Charleston County Judicial Center
100 Broad St., Suite 336
Charleston, SC 29401-2236
Office: (843) 958-5147
Fax: (843) 958-5148

 Dec. 20
November __, 2016



WE SO MOVE AND CONSENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER, PA
PO DRAWER 22247
Charleston, South Carolina 29413-2247
(843) 727-2229
ATTORNEYS FOR THE PLAINTIFFS

WE SO MOVE AND CONSENT:

Anthony E. Rebollo
Drew Hamilton Butler
Anthony E. Rebollo
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE COUNTY DEFENDANTS

WE SO MOVE AND CONSENT:

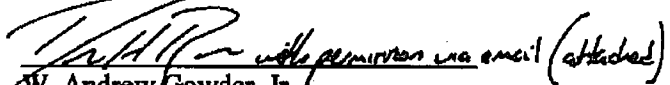
Erik Doerring
MCNAIR LAW FIRM, PA
PO Box 11390
Columbia, SC 29211
(803) 799-9800
ATTORNEYS FOR THE TOWN DEFENDANTS

WE SO MOVE AND CONSENT:

David L. Morrison by AER w/permission
David L. Morrison
MORRISON LAW FIRM, LLC
7453 Irmo Dr., Suite B.
Columbia, SC 29212
(803) 661-6285
ATTORNEYS FOR THE SERVED SCHOOL DISTRICT DEFENDANTS

5 *OM 7*
[Signature]

WE SO MOVE AND CONSENT:


W. Andrew Gowder, Jr.

PRATT-THOMAS WALKER, PA

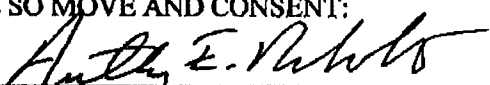
PO DRAWER 22247

Charleston, South Carolina 29413-2247

(843) 727-2229

ATTORNEYS FOR THE PLAINTIFFS

WE SO MOVE AND CONSENT:


Drew Hamilton Butler

Anthony E. Rebollo

RICHARDSON PLOWDEN & ROBINSON, P.A.

1900 Barnwell Street

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

ATTORNEYS FOR THE COUNTY DEFENDANTS

WE SO MOVE AND CONSENT:


Erik Doerring

McNAIR LAW FIRM, PA

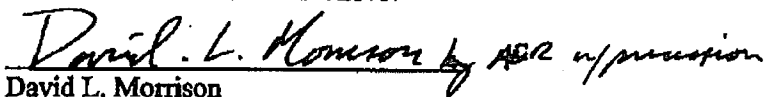
PO Box 11390

Columbia, SC 29211

(803) 799-9800

ATTORNEYS FOR THE TOWN DEFENDANTS

WE SO MOVE AND CONSENT:


David L. Morrison

MORRISON LAW FIRM, LLC

7453 Irmo Dr., Suite B

Columbia, SC 29212

(803) 661-6285

ATTORNEYS FOR THE SERVED SCHOOL DISTRICT DEFENDANTS

5



WE SO MOVE AND CONSENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER, PA
PO DRAWER 22247
Charleston, South Carolina 29413-2247
(843) 727-2229
ATTORNEYS FOR THE PLAINTIFFS

WE SO MOVE AND CONSENT:

Drew Hamilton Butler
Anthony E. Rebollo
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE COUNTY DEFENDANTS

WE SO MOVE AND CONSENT:



Erik Doerring
McNAIR LAW FIRM, PA
PO Box 11390
Columbia, SC 29211
(803) 799-9800
ATTORNEYS FOR THE TOWN DEFENDANTS

WE SO MOVE AND CONSENT:

David L. Morrison
MORRISON LAW FIRM, LLC
7453 Irmo Dr., Suite B
Columbia, SC 29212
(803) 661-6285
ATTORNEYS FOR THE SERVED SCHOOL DISTRICT DEFENDANTS

5 7 of 7
[Handwritten initials]

Beth Tobul

From: Drew Butler
Sent: Friday, November 04, 2016 1:54 PM
To: Beth Tobul
Subject: FW: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Please print as an attachment to our Proposed Consent Order

NAME	LOCATION
 RICHARDSON PLOWDEN ATTORNEYS AT LAW	Drew Hamilton Butler Attorney at Law dbutler@richardsonplowden.com Richardson, Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 AND P.O. Box 21203 Charleston, SC 29413 Tel: 843-805-6550 Cell: 803-760-6904 www.RichardsonPlowden.com

FILED - RECORDS
2016 DEC 28 AM 11:33
CLERK OF COURT
DORCHESTER COUNTY

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (843) 714-2609 and permanently delete this e-mail.

From: Michael [<mailto:mrose5@sc.rr.com>]
Sent: Friday, November 04, 2016 12:51 PM
To: Tony Rebollo
Cc: wag@p-tw.com; 'David Morrison'; EDoerring@MCNAIR.NET; Drew Butler; 'Michael'
Subject: RE: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Tony,

Please sign for me also, and copy me on future communications with Andy.

Thanks.

Mike

From: Tony Rebollo [<mailto:TRebollo@RichardsonPlowden.com>]
Sent: Friday, November 04, 2016 12:14 PM
To: Michael <mrose5@sc.rr.com>
Cc: wag@p-tw.com; 'David Morrison' <david@dmorrison-law.com>; EDoerring@MCNAIR.NET; Drew Butler <DButler@RichardsonPlowden.com>
Subject: RE: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Thanks. We will sign per Andy's prior email, marry it up with the other signature pages, and will send to the court.

From: Michael [<mailto:mrose5@sc.rr.com>]
Sent: Friday, November 04, 2016 12:10 PM

To: Tony Rebollo
Cc: 'Michael'; wag@p-tw.com; 'David Morrison'; EDoerring@MCNAIR.NET; Drew Butler
Subject: FW: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Tony,

The version in the attachment above looks good to me, subject to the change you reference below.

Thanks.

Mike

From: Tony Rebollo [<mailto:TRebollo@RichardsonPlowden.com>]
Sent: Friday, November 04, 2016 11:54 AM
To: Michael <mrose5@sc.rr.com>
Cc: wag@p-tw.com; 'David Morrison' <david@dmorrison-law.com>; EDoerring@MCNAIR.NET; Drew Butler <DButler@RichardsonPlowden.com>
Subject: FW: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Mike:

See below and attached. At bottom of P. 3 I will change "requests" to request. Thanks.

Anthony E. Rebollo
(803)576-3722

From: Tony Rebollo
Sent: Friday, November 04, 2016 10:45 AM
To: 'wag@p-tw.com'; 'David Morrison'; 'Doerring, Erik'; Drew Butler
Subject: Weatherstone Property Owners Association, et al v. Dorchester County; et al

ALL Pages Now attached:

Andy, David and Erik:

I am attaching a draft consent order based on our discussion about the hearing presently set for next Monday (11-7-16). Please review and, unless you have any changes, Drew and I would appreciate it if you would sign, scan and email back to us today so we can all avoid the time and expense of having to go to the hearing. Thanks.

Anthony E. Rebollo
(803)576-3722

From: Tony Rebollo [<mailto:trebollo@richardsonplowden.com>]
Sent: Friday, November 04, 2016 10:43 AM
To: Tony Rebollo
Subject: Your Scan File Is Attached

Opitrak Scan Notification

Beth Tobul

From: Drew Butler
Sent: Friday, November 04, 2016 1:58 PM
To: Beth Tobul
Subject: FW: Weatherstone Property Owners Association, et al v. Dorchester County, et al

Please print as an attachment to our Proposed Consent Order

HOME	VCARD	BIO	LOCATION
	Drew Hamilton Butler Attorney at Law dbutler@richardsonplowden.com Richardson, Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 AND P.O. Box 21203 Charleston, SC 29413 Tel: 843-805-6550 Cell: 803-760-6904 www.RichardsonPlowden.com		

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (843) 714-2609 and permanently delete this e-mail.

From: Andy Gowder [mailto:wag@p-tw.com]
Sent: Friday, November 04, 2016 12:04 PM
To: Doerring, Erik
Cc: Tony Rebollo; Michael; David Morrison; Drew Butler
Subject: Re: Weatherstone Property Owners Association, et al v. Dorchester County, et al

Please sign for Mike and me. Thanks.

Sent from my iPhone

On Nov 4, 2016, at 11:56 AM, Doerring, Erik <EDoerring@MCNAIR.NET> wrote:

Attached is the Consent Order, signed on behalf of the Town Defendants.

Erik

MCNAIR
ATTORNEYS

Erik P. Doerring
Shareholder
edoerring@mcnair.net

McNair Law Firm, P.A.
Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201
803 799 9800 Main | 803 753 3277 Fax
Mailing Post Office Box 11390 | Columbia, SC 29211
VCard | Bio URL | Website
Visit our Tax Blog at: <http://www.sctaxlawyers.com>



From: Tony Rebollo [<mailto:TRebollo@RichardsonPlowden.com>]
Sent: Friday, November 04, 2016 11:51 AM
To: Michael <mrose5@sc.rr.com>
Cc: wag@p-tw.com; 'David Morrison' <david@dmorrison-law.com>; Drew Butler <DButler@RichardsonPlowden.com>; Doerring, Erik <EDoerring@MCNAIR.NET>
Subject: RE: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Mike:

I resent the document because I didn't realize the printer copied on both sides of the page before I scanned. I'll re-send you one with the pages that were left out.

Anthony E. Rebollo
(803)576-3722

From: Michael [<mailto:mrose5@sc.rr.com>]
Sent: Friday, November 04, 2016 11:36 AM
To: Tony Rebollo
Cc: wag@p-tw.com; 'David Morrison'; Drew Butler; 'Michael'; EDoerring@MCNAIR.NET
Subject: FW: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Gentlemen,

Andy Gowder has forwarded me for review the proposed Consent Motion in the attachment to the e mail below. Since He is temporarily unavailable due to his traveling, I am e-mailing you to call to your attention the following errors in wording:

1. Words obviously are missing at the top of page 2. What is there now is not a complete sentence.
2. In the last sentence at the bottom of page 3 change the word "requests" to "request."

Otherwise, the Consent Order looks good to Andy and me. Please forward to use the final corrected version.

Thanks.

Mike Rose

Begin forwarded message:

From: Tony Rebollo <TRebollo@RichardsonPlowden.com>
Date: November 4, 2016 at 10:39:06 AM EDT
To: "wag@p-tw.com" <wag@p-tw.com>, David Morrison <david@dmorrison-law.com>, "Doerring, Erik" <EDoerring@MCNAIR.NET>, Drew Butler <DButler@RichardsonPlowden.com>
Subject: Weatherstone Property Owners Association, et al v. Dorchester County; et al

Andy, David and Erik:

I am attaching a draft consent order based on our discussion about the hearing presently set for next Monday (11-7-16). Please review and, unless you have any changes, Drew and I would appreciate it if you would sign, scan and email back to us today so we can all avoid the time and expense of having to go to the hearing. Thanks.

Anthony E. Rebollo
(803)576-3722

From: Tony Rebollo [<mailto:trebollo@richardsonplowden.com>]
Sent: Friday, November 04, 2016 10:30 AM
To: Tony Rebollo
Subject: Your Scan File Is Attached

Copitrak Scan Notification

PRIVILEGE AND CONFIDENTIALITY NOTICE: This communication (including any attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, that may attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward or disseminate this communication. If you have received this communication in error, please notify the sender immediately by email and delete this communication and all copies.

<0308_001.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

C/A #: 16-CP-18-838

COPY

ANSWER ON BEHALF OF DEFENDANT

JOSEPH R. PYE

(Jury Trial Demanded)

The Defendant, Joseph R. Pye, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52, 53 and 54 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraph 55 is denied as stated.

14. As to Paragraph 56, this Defendant admits that it received a report and that the report made various financial recommendations. As to the content of those recommendations, this Defendant craves reference to the document itself as the best evidence of its content. All remaining allegations are denied.

15. As to Paragraph 57, this Defendant craves reference to the report itself as the best evidence of its content. All remaining allegations are denied.

16. Paragraph 58 is denied as stated.

17. Paragraphs 59, 60 and 61 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

18. As to Paragraph 62, this Defendant denies that teachers have been laid off due to funding issues for SRO's. This Defendant presently lacks sufficient information to admit or deny the allegation that costs charged for SRO's by the Sheriff or County are used to fund other

purposes and therefore cannot admit or deny those allegations. The remaining allegations are denied.

19. Paragraph 63 is denied.

20. As to paragraphs 64, 65 , 66, 67 and 68, this Defendant craves reference to the contract documents themselves as the best evidence of their content. All remaining allegations are denied.

21. Paragraph 69 is denied.

22. Paragraphs 70, 71, 72 and 73 state allegations against other Defendants and require no response from this Defendant. To the extent these paragraphs were intended to state allegations against this Defendant, they are denied.

23. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others.

24. Paragraph 75 is denied as stated.

25. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

26. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

27. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

28. Paragraph 81 is denied.

29. Paragraphs 82, 83, 84, 85, 86, 87, 88 and 89 are denied.

30. Paragraph 90 is denied.

31. Paragraph 91 is denied.

32. Paragraph 92 is denied as stated.

33. Paragraphs 93 and 94 are denied.

34. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations.

35. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

36. Paragraph 97 is denied insofar as it relates to DD2.

37. Paragraph 98 is denied.

38. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

39. Paragraphs 100 and 101 are denied.

40. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

41. Paragraphs 103 and 104 are denied.

42. As to Paragraph 105, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

43. Paragraphs 106 and 107 are denied.

44. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

45. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

46. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

47. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

48. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

49. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

50. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

51. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

52. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

53. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

54. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

55. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

56. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

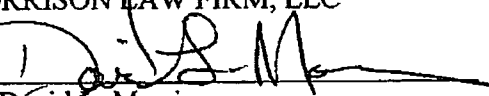
57. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

FOR A THIRTEENTH DEFENSE

58. This Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-70.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Joseph R. Pye, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B
Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
JOSEPH R. PYE

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

C/A #: 16-CP-18-838

Plaintiffs,)

CERTIFICATE OF SERVICE

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

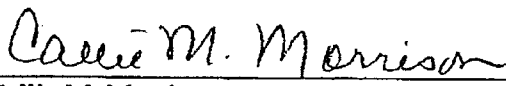
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211



Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

C/A #: 16-CP-18-838

COPY

**ANSWER TO THE SECOND AMENDED
COMPLAINT BY DEFENDANT
DORCHESTER SCHOOL DISTRICT FOUR
(Jury Trial Demanded)**

The Defendant, Dorchester School District Four, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information and other allegations as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those identifying allegations and therefore denies those allegations and demands strict proof thereof. All other allegations are denied.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.
10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.
11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.
12. Paragraphs 48, 49, 50, 51, 52 and 53 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.
13. Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62 63, 64, 65, 66, 67, 68 and 69 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.
14. As to Paragraph 70, this Defendant admits that it entered into a contract regarding School Resource Officers and craves reference to the contract as the best evidence of its terms.
15. Paragraphs 71, 72 and 73 are denied.
16. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others. All remaining allegations are denied.
17. Paragraph 75 is denied as stated.
18. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.
19. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

20. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

21. Paragraph 81 is denied.

22. Paragraphs 82 is denied.

23. Paragraphs 83, 84, 85, 86 and 87 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

24. Paragraph 88 is denied.

25. Paragraph 89 is denied.

26. Paragraphs 90 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

27. Paragraph 91 is denied.

28. Paragraph 92 is denied as stated.

29. Paragraphs 93 and 94 are denied.

30. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity or those allegations and therefore denies those allegations.

31. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

32. Paragraph 97 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

33. Paragraph 98 is denied.

34. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

35. Paragraphs 100 and 101 are denied.

36. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

37. Paragraphs 103 and 104 are denied.

38. Paragraphs 105, 106 and 107 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

39. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

40. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

41. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

42. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

43. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

44. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

45. Plaintiffs lack standing to seek the relief sought in the Amended Complaint.

FOR A SIXTH DEFENSE

46. The Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

47. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

48. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

49. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

50. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

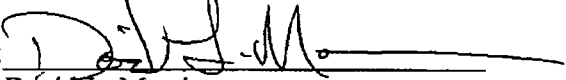
51. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

52. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiffs, the Defendant, Dorchester School District Four, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER SCHOOL DISTRICT FOUR

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

C/A #: 16-CP-18-838

CERTIFICATE OF SERVICE

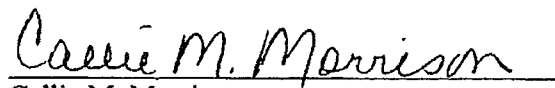
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211


Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

C/A #: 16-CP-18-838

COPY

**ANSWER ON BEHALF OF DEFENDANT
DORCHESTER SCHOOL DISTRICT FOUR
BOARD OF TRUSTEES
(Jury Trial Demanded)**

The Defendant, Dorchester School District Four, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52 and 53 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62 63, 64, 65, 66 67, 68 and 69 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.

14. As to Paragraph 70, this Defendant admits that it entered into a contract regarding School Resource Officers and craves reference to the contract as the best evidence of its terms.

15. Paragraphs 71, 72 and 73 are denied.

16. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others. All remaining allegations are denied.

17. Paragraph 75 is denied as stated.

18. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

19. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

20. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

21. Paragraph 81 is denied.

22. Paragraphs 82 is denied.

23. Paragraphs 81, 82, 83, 84, 85, 86 and 87 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

24. Paragraph 88 is denied.

25. Paragraph 89 is denied.

26. Paragraphs 90 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

27. Paragraph 91 is denied.

28. Paragraph 92 is denied as stated.

29. Paragraphs 93 and 94 are denied.

30. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations.

31. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

32. Paragraph 97 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

33. Paragraph 98 is denied.

34. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

35. Paragraphs 100 and 101 are denied.

36. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

37. Paragraphs 103 and 104 are denied.

38. Paragraphs 105, 107 and 107 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

39. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

40. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

41. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

42. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

43. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

44. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

45. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

46. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

47. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

48. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

49. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

50. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

51. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

52. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the

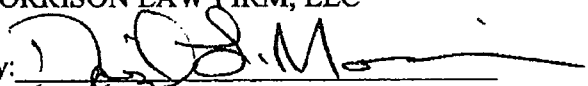
recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

FOR A THIRTEENTH DEFENSE

53. The Defendant Dorchester School District Two Board of Trustees is not a proper party. Dorchester School District Two Board of Trustees is not a body politic separate and apart from Dorchester School District Two. Instead, Dorchester School District Two Board of Trustees is the governing body of Dorchester School District Two.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Dorchester School District Four Board of Trustees, prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER SCHOOL DISTRICT FOUR
BOARD OF TRUSTEES

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

C/A #: 16-CP-18-838

Plaintiffs,)

v.)

CERTIFICATE OF SERVICE

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

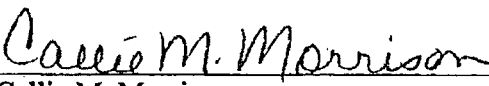
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211


Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers
Association, individually and on behalf
of all others similarly situated;
Weatherstone Property Owners
Association, individually and on behalf
of all others similarly situated; George
Resnick; William A. Harbeson; James
Stephen Greene, Jr.; Homer P.
Gonzalez; Gerald E. Ziegler; David
Messinger; and South Carolina Public
Interest Foundation,

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey,
Jay Byars, Willie Davis, Carroll S.
Duncan, Larry Hargett and William R.
Hearn, Jr., in their official capacities as
members of Dorchester County Council;
Town of Summerville; Summerville
Town Council; William E. McIntosh,
III, in his official capacity; Dorchester
County Sheriff; Luther C. Knight, in his
official capacity; Dorchester School
District Two; Dorchester School District
Two Board of Trustees; Joseph R. Pye,
Justin Farnsworth, Gail Hughes, Brian
Mitchum, Tayna Robinson, Sam Clark,
Barbara Crosby and Lisa Tupper, in
their official capacities; Dorchester
County School District Four; Dorchester
County School District Four Board of
Trustees; Dorchester County Career and
Technology Center; and Dorchester
County Career and Technology Center
Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A #: 16-CP-18-838

A large, stylized, outlined stamp of the word "COPY" with a small square icon to its left.

**ANSWER TO SECOND AMENDED
COMPLAINT BY DEFENDANT
DORCHESTER SCHOOL DISTRICT TWO
(Jury Trial Demanded)**

The Defendant, Dorchester School District Two, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52, 53 and 54 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraph 55 is denied as stated.

14. As to Paragraph 56, this Defendant admits that it received a report and that the report made various financial recommendations. As to the content of those recommendations, this Defendant craves reference to the document itself as the best evidence of its content. All remaining allegations are denied.

15. As to Paragraph 57, this Defendant craves reference to the report itself as the best evidence of its content. All remaining allegations are denied.

16. Paragraph 58 is denied as stated.

17. Paragraphs 59, 60 and 61 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

18. As to Paragraph 62, this Defendant denies that teachers have been laid off due to funding issues for SRO's. This Defendant presently lacks sufficient information to admit or deny the allegation that costs charged for SRO's by the Sheriff or County are used to fund other

purposes and therefore cannot admit or deny those allegations. The remaining allegations are denied.

19. Paragraph 63 is denied.

20. As to paragraphs 64, 65 , 66, 67 and 68, this Defendant craves reference to the contract documents themselves as the best evidence of their content. All remaining allegations are denied.

21. Paragraph 69 is denied.

22. Paragraphs 70, 71, 72 and 73 state allegations against other Defendants and require no response from this Defendant. To the extent these paragraphs were intended to state allegations against this Defendant, they are denied.

23. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others.

24. Paragraph 75 is denied as stated.

25. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

26. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

27. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

28. Paragraph 81 is denied.

29. Paragraphs 82, 83, 84, 85, 86, 87, 88 and 89 are denied.

30. Paragraph 90 is denied.

31. Paragraph 91 is denied.

32. Paragraph 92 is denied as stated.

33. Paragraphs 93 and 94 are denied.

34. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations.

35. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

36. Paragraph 97 is denied insofar as it relates to DD2.

37. Paragraph 98 is denied.

38. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

39. Paragraphs 100 and 101 are denied.

40. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

41. Paragraphs 103 and 104 are denied.

42. As to Paragraph 105, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

43. Paragraphs 106 and 107 are denied.

44. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

45. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

46. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

47. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

48. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

49. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

50. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

51. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

52. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

53. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

54. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

55. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

56. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

57. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Dorchester School District Two, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER SCHOOL DISTRICT TWO

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

C/A #: 16-CP-18-838

Plaintiffs,)

CERTIFICATE OF SERVICE

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

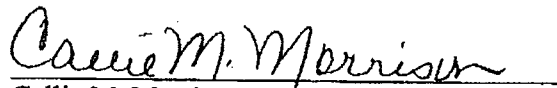
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211


Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A #: 16-CP-18-838

COPY

**ANSWER ON BEHALF OF DEFENDANT
DORCHESTER SCHOOL DISTRICT TWO
BOARD OF TRUSTEES
(Jury Trial Demanded)**

The Defendant, Dorchester School District Two, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCF.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52, 53 and 54 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraph 55 is denied as stated.

14. As to Paragraph 56, this Defendant admits that it received a report and that the report made various financial recommendations. As to the content of those recommendations, this Defendant craves reference to the document itself as the best evidence of its content. All remaining allegations are denied.

15. As to Paragraph 57, this Defendant craves reference to the report itself as the best evidence of its content. All remaining allegations are denied.

16. Paragraph 58 is denied as stated.

17. Paragraph 59, 60 and 61 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

18. As to Paragraph 62, this Defendant denies that teachers have been laid off due to funding issues for SRO's. This Defendant presently lacks sufficient information to admit or deny the allegation that costs charged for SRO's by the Sheriff or County are used to fund other

purposes and therefore cannot admit or deny those allegations. The remaining allegations are denied.

19. Paragraph 63 is denied.

20. As to paragraphs 64, 65, 66, 67 and 68, this Defendant craves reference to the contract documents themselves as the best evidence of their content. All remaining allegations are denied.

21. Paragraph 69 is denied.

22. Paragraphs 70, 71, 72, and 73 state allegations against other Defendants and require no response from this Defendant. To the extent these paragraphs were intended to state allegations against this Defendant, they are denied.

23. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others.

24. Paragraph 75 is denied as stated.

25. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

26. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

27. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

28. Paragraph 81 is denied.

29. Paragraphs 82, 83, 84, 85, 86, 87, 88 and 89 are denied.

30. Paragraph 90 is denied.

31. Paragraph 91 is denied.

32. Paragraph 92 is denied as stated.

33. Paragraphs 93 and 94 are denied.
34. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations.
35. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.
36. Paragraph 97 is denied insofar as it relates to DD2.
37. Paragraph 98 is denied.
38. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.
39. Paragraphs 100 and 101 are denied.
40. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.
41. Paragraphs 103 and 104 are denied.
42. As to Paragraph 105, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.
43. Paragraphs 106 and 107 are denied.
44. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.
45. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.
46. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

47. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

48. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

49. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

50. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

51. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

52. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

53. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

54. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

55. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

56. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

57. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

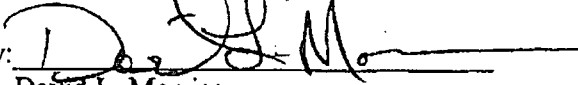
FOR A THIRTEENTH DEFENSE

58. The Defendant Dorchester School District Two Board of Trustees is not a proper party. Dorchester School District Two Board of Trustees is not a body politic separate and apart from Dorchester School District Two. Instead, Dorchester School District Two Board of Trustees is the governing body of Dorchester School District Two.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Dorchester School District Two Board of Trustees, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

(Signature to follow on page 8)

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER SCHOOL DISTRICT TWO
BOARD OF TRUSTEES

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

C/A #: 16-CP-18-838

Plaintiffs,)

CERTIFICATE OF SERVICE

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

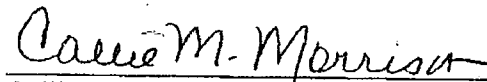
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211



Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

C/A #: 16-CP-18-838

COPY

**ANSWER TO SECOND AMENDED
COMPLAINION BY DEFENDANT
DORCHESTER COUNTY CAREER and
TECHNOLOGY CENTER
(Jury Trial Demanded)**

The Defendant, Dorchester County Career and Technology Center, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52 and 53 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62 63, 64, 65, 66, 67, 68 and 69 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.

14. Paragraph 70 and 71 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.

15. As to Paragraphs 72 and 73, this Defendant admits that it entered into a contract regarding School Resource Officers and craves reference to the contract as the best evidence of its terms.

16. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others. All remaining allegations are denied.

17. Paragraph 75 is denied as stated.

18. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

19. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.

20. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.

21. Paragraph 81 is denied.

22. Paragraphs 82 is denied.

23. Paragraphs 83, 84, 85, 86 and 87 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

24. Paragraph 88 is denied.

25. Paragraph 89 is denied.

26. Paragraph 90 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

27. Paragraph 91 is denied.

28. Paragraph 92 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

29. Paragraphs 93 and 94 are denied.

30. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations.

31. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

32. Paragraph 97 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

33. Paragraph 98 is denied.

34. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

35. Paragraphs 100 and 101 are denied.

36. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

37. Paragraphs 103 and 104 are denied.

38. Paragraphs 105, 106 and 107 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

39. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

40. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

41. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

42. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

43. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

44. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

45. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

46. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

47. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

48. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

49. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

50. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

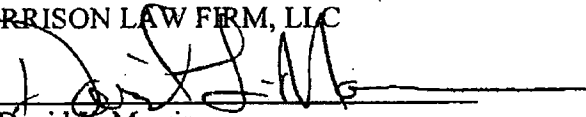
51. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

52. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Dorchester County Career and Technology Center, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER COUNTY CAREER AND
TECHNOLGY CENTER

Columbia, South Carolina

January 19, 2017

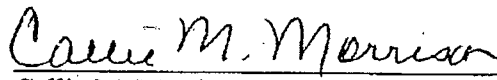
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211


Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

Plaintiffs,)

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A #: 16-CP-18-838

COPY

**ANSWER TO SECOND AMENDED
COMPLAINT BY DEFENDANT
DORCHESTER COUNTY CAREER and
TECHNOLOGY CENTER
BOARD OF TRUSTEES
(Jury Trial Demanded)**

The Defendant, Dorchester County Career and Technology Center Board of Trustees, answers the Second Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Second Amended Complaint fails to state facts sufficient to state a cause of action. This Defendant reserve the right to file a motion pursuant to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE

2. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

3. This Defendant denies that the Plaintiffs are entitled to any relief and denies the violation of any law.

4. Paragraphs 1, 2 and 4 state legal conclusions which require no response. To the extent Paragraphs 1, 2 and 4 were intended to state any factual allegations, they are denied.

5. As to Paragraph 3, this Defendant admits upon information and belief that any allegations against individual Defendants employed by this Defendant are allegations made against them in their official capacities only. As such, those Defendants should be dismissed from this litigation.

6. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, state identifying information as to the Plaintiffs. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof.

7. Paragraphs 14, 15 16, 17 and 18 are denied.

8. As to Paragraphs 19, 20, 21, 22 and 23, this Defendant admits that those organizations are governmental entities located in Dorchester County.

9. As to Paragraphs 24, 25, 26, 27, 28 and 29, this Defendant admits that the School Districts and the Career and Technology Center are governmental entities in located in Dorchester County with a Board as a governing body.

10. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are admitted upon information and belief.

11. Paragraphs 40, 41, 42, 43, 44, 45, 46 and 47 are admitted.

12. Paragraphs 48, 49, 50, 51, 52 and 53 do not state factual allegations but instead state legal conclusions which require no response. This Defendant craves reference to the laws, regulations and materials referenced as the best evidence of their content. This Defendant denies all remaining allegations contained in these Paragraphs.

13. Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62 63, 64, 65, 66, 67, 68 and 69 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.

14. Paragraph 70 and 71 appear to state allegations against other Defendants. This Defendant lacks sufficient information to form a belief as to the truth and veracity of those allegations and therefore denies those allegations and demands strict proof thereof. All remaining allegations are denied.

15. As to Paragraphs 72 and 73, this Defendant admits that it entered into a contract regarding School Resource Officers and craves reference to the contract as the best evidence of its terms.

16. As to Paragraph 74, this Defendant admits only that it has entered contracts and lacks information as to contracts between others. All remaining allegations are denied.

17. Paragraph 75 is denied as stated.
18. As to Paragraph 76, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.
19. As to Paragraph 77, this Defendant craves reference to the contract and denies any double taxation. All remaining allegations are denied.
20. As to Paragraphs 78, 79 and 80, this Defendant lacks sufficient information to form a belief as to the truth and veracity of those claims and therefore denies those claims.
21. Paragraph 81 is denied.
22. Paragraphs 82 is denied.
23. Paragraphs 83, 84, 85, 86 and 87 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.
24. Paragraph 88 is denied.
25. Paragraph 89 is denied.
26. Paragraph 90 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.
27. Paragraph 91 is denied.
28. Paragraph 92 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.
29. Paragraphs 93 and 94 are denied.
30. As to Paragraph 95, this Defendant lacks sufficient information to form a belief as to the truth and veracity or those allegations and therefore denies those allegations.

31. Paragraph 96 states legal conclusions and craves reference to a letter. The legal conclusions require no response. As to the letter, this Defendant craves reference to the letter itself as the best evidence of its content. All remaining allegations are denied.

32. Paragraph 97 appears to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

33. Paragraph 98 is denied.

34. As to Paragraph 99, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

35. Paragraphs 100 and 101 are denied.

36. As to Paragraph 102, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

37. Paragraphs 103 and 104 are denied.

38. Paragraphs 105, 106 and 107 appear to make allegations against another Defendant and not this Defendant. To the extent Plaintiffs intended to state allegations against this Defendant, they are denied.

39. As to Paragraph 108, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

40. Paragraphs 109 and 110 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

41. As to Paragraph 111, this Defendant repeats and reiterates each and every response and affirmative defense contained herein as if fully re-stated verbatim.

42. Paragraphs 112 and 113 appear to state claims related to other Defendants and therefore require no response from this Defendant. To the extent these Paragraphs were intended to state claims against this Defendant, they are denied.

FOR A THIRD DEFENSE

43. Plaintiffs fail to state facts sufficient to constitute a cause of action and the Second Amended Complaint should be dismissed.

FOR A FOURTH DEFENSE

44. The Court lacks subject matter jurisdiction over this action.

FOR A FIFTH DEFENSE

45. Plaintiffs lack standing to seek the relief sought in the Second Amended Complaint.

FOR A SIXTH DEFENSE

46. The Second Amended Complaint should be dismissed because it seeks to raise a non-justiciable issue, a political question, attacking the Defendant's policy judgment on legislative budgetary issues with such a challenge raising no case or controversy for this Court's decision.

FOR A SEVENTH DEFENSE

47. This Defendant is entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

48. This Defendant is entitled to immunity under the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

49. This Defendant is entitled to legislative immunity.

FOR A TENTH DEFENSE

50. This Defendant is entitled to budgetary immunity.

FOR AN ELEVENTH DEFENSE

51. This Defendant is entitled to immunity under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. Section 15-78-60 (1), (2), (4), (5) and (11).

FOR A TWELFTH DEFENSE

52. The Plaintiffs' claim for attorney's fees has no legal basis and should be stricken and/or dismissed. Further answering, the Plaintiffs' prayer for attorney's fees is barred by sovereign immunity and by the public policy of the State of South Carolina. Moreover, there is no provision in the Declaratory Judgment Act nor any contractual provision authorizing the recovery of attorney's fees against a governmental entity under the circumstances presented by this litigation.

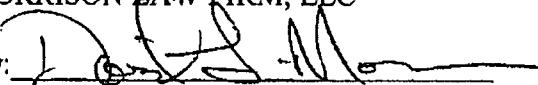
FOR A THIRTEENTH DEFENSE

53. The Defendant Dorchester County Career and Technology Center Board of Trustees is not a proper party. This Defendant is not a body politic separate and apart from County Career and Technology Center. Instead, County Career and Technology Center Board of Trustees is the governing body of County Career and Technology Center.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, the Defendant, Dorchester County Career and Technology Center Board of Trustees, prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

(Signature to follow on page 8)

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT
DORCHESTER COUNTY CAREER AND
TECHNOLGY CENTER BOARD OF TRUSTEES

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Dorchester County Taxpayers)
Association, individually and on behalf)
of all others similarly situated;)
Weatherstone Property Owners)
Association, individually and on behalf)
of all others similarly situated; George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P.)
Gonzalez; Gerald E. Ziegler; David)
Messinger; and South Carolina Public)
Interest Foundation,)

C/A #: 16-CP-18-838

Plaintiffs,)

CERTIFICATE OF SERVICE

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey,)
Jay Byars, Willie Davis, Carroll S.)
Duncan, Larry Hargett and William R.)
Hearn, Jr., in their official capacities as)
members of Dorchester County Council;)
Town of Summerville; Summerville)
Town Council; William E. McIntosh,)
III, in his official capacity; Dorchester)
County Sheriff; Luther C. Knight, in his)
official capacity; Dorchester School)
District Two; Dorchester School District)
Two Board of Trustees; Joseph R. Pye,)
Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tayna Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in)
their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of)
Trustees; Dorchester County Career and)
Technology Center; and Dorchester)
County Career and Technology Center)
Board of Trustees,)

Defendants.)

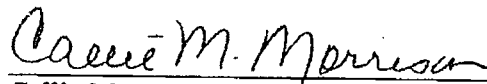
The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tayna Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, does hereby certify that service of the **ANSWERS TO PLAINTIFFS' SECOND AMENDED COMPLAINT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esquire
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

Drew Hamilton Butler, Esquire
Anthony E. Rebollo, Esquire
Post Office Box 7788
Columbia, South Carolina 20202

Erik P. Doerring, Esquire
Post Office Box 11390
Columbia, South Carolina 29211


Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

✓ Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated; Weatherstone Property
Owners Association, individually, and on
behalf of all others similarly situated, George
Resnick; William A. Harbeson; James Stephen
Greene, Jr.; Homer P. Gonzalez; Gerald E.
Ziegler; David Messinger; and South Carolina
Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry
Hargett and William R. Hearn, Jr., in their
official capacities as members of Dorchester
County Council; Town of Summerville;
Summerville Town Council; William E.
McIntosh III, individually and in his official
capacity as a member of Summerville Town
Council; Dorchester County Sheriff; Luther C.
Knight, in his official capacity; Captain Tony
Phinney, individually and in his official
capacity as an employee of the Dorchester
County Sheriff; Dorchester School District
Two; Dorchester School District Two Board of
Trustees; Joseph R. Pye, Justin Farnsworth,
Gail Hughes, Brian Mitchum, Tanya Robinson,
Evan Guthrie, Barbara Crosby and Lisa
Tupper, in their official capacities; Dorchester
County School District Four; Dorchester
County School District Four Board of Trustees;
Dorchester County Career and Technology
Center; and Dorchester County Career and
Technology Center Board of Trustees,

Defendants.

Civil Action No.: 2016-CP-18-838

LED-RECORDED
2016 DEC 12 PM 3:38
CHERYL L. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

SECOND
AMENDED COMPLAINT

JURY TRIAL DEMANDED

Each of the above-named Plaintiffs brings the following actions seeking declaratory, mandamus, injunctive, monetary and other legal relief, as alleged herein. For their Second Amended Complaint, the Plaintiffs state as follows:

I. PRELIMINARY STATEMENT

1. As alleged herein, this is a civil action for declaratory, mandamus, injunctive and/or monetary relief brought for violations and threatened violations of, and to enforce the requirements of, *inter alia*, the First, Fourteenth and Fifth Amendments to the United States Constitution; Article I, Section 2 of the South Carolina Constitution; S.C. Code Ann. §12-37-220(B)(47)("Act 388"); Act No. 98 of 2009; the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members, to (1) obtain a declaration from the Court that the South Carolina Constitution and South Carolina statutes have been and will be violated by certain expenditures of taxpayer funds, pursuant to certain unlawful ordinances, resolutions, motions and contracts mandating or authorizing those expenditures and promulgated, passed or entered into by Defendants Dorchester County ("County") and Dorchester County Council ("Council"); the Town of Summerville ("Town") and Summerville Town Council ("Town Council"); and Dorchester School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center (collectively "School District" or "School Districts"); (2) obtain a declaration from the Court that Dorchester School District Two unlawfully has failed and refused to comply with Act No. 98 of 2009; (3) obtain from the Court injunctions preventing the continued violations of law alleged herein; (4) obtain a writ of mandamus to require Dorchester School District Two and its agents to comply with Act No. 98 of 2009; and (5) otherwise obtain from the

Court remedies to violations of various federal and state-protected rights afforded to each of the Plaintiffs by the Constitution of the United States and by the Constitution and statutes of the State of South Carolina, as alleged herein. This action is not brought to challenge the collection of or to request a refund of any tax. With the exception of Plaintiff Messenger regarding his Section 1983 claims as stated below, this action is not brought to seek money damages.

3. The allegations against the Defendants, except as further specifically described herein, are made as to those Defendants only in their official capacities. All actions by all Defendants at all relevant times were taken under color of state law.

4. The Plaintiffs have standing to bring this lawsuit due to (a) their status as taxpayers harmed by the *ultra vires* acts of the Defendants wrongfully expending taxpayer funds, see, e.g., *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), citing *Mauldin v. City Council*, 33 S.C. 1, 11 S.E. 434 (1890); and (b) the public importance of the issues in the lawsuit that need judicial guidance and are capable of being repeated, see, e.g., *Sloan v. Dept. of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008). This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this Court under the South Carolina Constitution; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; 42 U.S.C. §1983; and the following decisions, which address public importance and taxpayer standing:

South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App.

2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

This action raises Constitutional and statutory issues of great public importance, namely the proper interpretation of the United States Constitution and the South Carolina Constitution and enabling statutes. Plaintiffs ask the Court to grant them standing based upon the great public importance of the constitutional and statutory issues this action raises, and based upon their status as taxpayers.

II. PARTIES

A. The Plaintiffs

5. The Weatherstone Property Owners Association ("Weatherstone POA") is a non-profit corporation formed in 2003 under the laws of the State of South Carolina; and has its principal place of business and owns real property in Berkeley County and the Town of Summerville, South Carolina. The mission of the Weatherstone POA is to preserve and to protect the property and liberty interests of homeowners and residents of the Weatherstone area and subdivision, all or nearly all of whom reside in and pay property taxes to the Town. The Weatherstone POA is suing as a representative of itself and of its members who reside in and are citizens, qualified electors and taxpayers in the Town. The Weatherstone POA brings this action individually on its behalf and its members and on behalf of all others similarly situated. The Weatherstone POA has standing as a Plaintiff in this action as a representative of its members who are taxpayers and due to the public importance of the issues in this lawsuit.

6. George Resnick ("Resnick") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County.

Resnick has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Resnick has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

7. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town and of the County, and owns property, including an owner-occupied residence, located and being taxed by the Town and County. Harbeson has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Harbeson has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

8. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of the Town and County, and owns property, including an owner-occupied residence, located and being taxed by the Town and County. Greene has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Greene has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

9. Homer P. Gonzalez ("Gonzalez") is a citizen, resident and taxpayer of Berkeley County and of the Town, and owns property, including an owner-occupied residence, located and being taxed by the Town. Gonzalez has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Gonzalez has paid and will continue to pay

taxes, including property taxes on his owner-occupied residence, which fund the Town, and brings this action individually on his behalf and on behalf of all others similarly situated.

10. Gerard E. Ziegler ("Ziegler") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed by the County. Ziegler has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Ziegler has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. David Messinger ("Messinger") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed by the County. Messinger has standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit. Messinger has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of itself and its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts. DCTA brings this action individually on its behalf, its members and on behalf of all others similarly situated. DCTA has standing as a Plaintiff in this action as a representative of its members who are taxpayers and due to the public importance of the issues in this lawsuit.

13. The South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. The SCPIF brings this action individually, on its behalf and on behalf of all others similarly situated, as a representative of taxpayers and because of the great public importance of the issues that this civil action raises that are capable of being repeated and that require judicial guidance. The SCPIF seeks declaratory, injunction and mandamus relief, but not money damages.

14. Plaintiffs are entitled to standing (a) based on their status as taxpayers and fee payers who have contributed to the funds at issue and as residents in Dorchester County, the School Districts and/or the Town of Summerville who are affected by residential and commercial development within Dorchester County, the School Districts and the Town of Summerville and who are affected adversely by the failure of Dorchester School District Two and their agents to comply with Act No. 98 of 2009; and (b) because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

15. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this Second Amended Complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

16. Each of the above-described Plaintiffs alleging taxpayer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of themselves

and of their fellow taxpayers and residents regarding the proper use, expenditure and allocation of tax receipts by the County, the Town and the School Districts named as Defendants in this action; regarding the failures by Dorchester School District Two and related Defendants to comply with Act No. 98 of 2009; and regarding violations by certain governmental officials of the constitutional rights of the Plaintiff Messinger. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interests involved are the prevention of the unlawful expenditures of money raised by taxation; residential and commercial development beyond the capacities of necessary supporting infrastructure, including water, sewer, drainage, schools and roads; and violations of constitutional rights. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the County, the Town and/or the School Districts followed the requirements and procedures set out in the United States and South Carolina constitutions, state enabling statutes and County, Town and School District ordinances, procedures, rules, motions, resolutions, guidelines and customs specifically designed to ensure wise management of the public fisc, development not exceeding supporting infrastructure and violations of citizens' rights to free expression and petition their government for redress of grievances. .

17. Plaintiffs Weatherstone POA and DCTA have standing based on the individualized injuries that have been or will be suffered by their members as a result of the actions of the Defendants described in this Second Amended Complaint. Members of these organizations would otherwise have standing to sue in their own right both as taxpayers and because of the public interest of the issues. The interests at stake in this case are germane to each organization's purpose. Neither the claims the Weatherstone POA and DCTA assert, nor the relief they request, requires the participation of the individual members of either of those organizations in this action.

18. Each of the Plaintiffs, whether alleging taxpayer standing, public interest standing, actual injury to its, his or her real or personal property or liberty or acting on behalf of organizational members, has suffered and will suffer an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

B. The Defendants

19. Dorchester County is a body corporate and a corporation of the State of South Carolina located in South Carolina.

20. Dorchester County Council ("County Council") is the elected governing body of Dorchester County created and operating under the laws of the State of South Carolina.

21. The Town of Summerville is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

22. Summerville Town Council ("Town Council") is the elected governing body of the Town of Summerville created and operating under the laws of the State of South Carolina.

23. The Dorchester County Sheriff ("Sheriff") is the elected Sheriff of Dorchester County.

24. Dorchester School District Two ("District 2" or "DD2" individually or collectively with District Two Board of Trustees) is a subdivision and an independent public school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

25. Dorchester School District Two Board of Trustees ("District 2 Board" or "DD2 Board" individually or collectively with Dorchester School District Two) is the elected independent governing body of District 2 created and operating under the laws of the State of South Carolina.

26. Dorchester School District Four ("District 4" or "DD4" individually or collectively with District Four Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

27. Dorchester School District Four Board of Trustees ("District 4 Board" or "DD4 Board" individually or collectively with Dorchester School District Four) is the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

28. Defendant Dorchester County Career and Technology Center ("DCCTC" individually or collectively with Dorchester County Career and Technology Center Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

29. The Dorchester County Career and Technology Center Board of Trustees ("DCCTC Board" individually or collectively with the Dorchester County Career and Technology Center) is the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

30. David Chinnis ("Chinnis") is the Chairman and a member of Dorchester County Council, and is being sued in his official capacity.

31. George Bailey ("Bailey") is the Vice Chairman and a member of Dorchester County Council, and is being sued only in his official capacity.

32. Jay Byars ("Byars") is a member of Dorchester County Council, and is being sued only in his official capacity.

33. Carroll S. Duncan ("Duncan") is a member of Dorchester County Council, and is being sued only in her official capacity.

34. Larry Hargett ("Hargett") is a member of Dorchester County Council, and is being sued only in his official capacity.

35. Willie Davis ("Davis") is a member of Dorchester County Council, and is being sued only in his official capacity.

36. William R. Hearn, Jr. ("Hearn") is a member of Dorchester County Council, and is being sued only in his official capacity.

37. Luther C. Knight ("Knight") is the Sheriff of Dorchester County and, on information and belief, a former employee of Knight and Whittington, LLC, and is being sued only in his official capacity.

38. Tony Phinney ("Phinney") is a Captain in and, at all times pertinent, has been an employee of the Dorchester County Sheriff's office; and is being sued in both his individual and official capacities.

39. William E. McIntosh III ("McIntosh") is an attorney employed by and/or a member of Knight and Whittington, LLC law firm; is a member of Summerville Town Council; and is being sued in both his individual and official capacities.

40. Joseph R. Pye ("Pye") is the Superintendent of Dorchester School District Two, and is being sued only in his official capacity.

41. Justin Farnsworth ("Farnsworth") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

42. Gail Hughes ("Hughes") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

43. Brian Mitchum ("Mitchum") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

44. Tanya Robinson ("Robinson") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

45. Barbara Crosby ("Crosby") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

46. Evan Guthrie ("Guthrie") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

47. Lisa Tupper ("Tupper") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

III. STATUTORY AND REGULATORY FRAMEWORK

A. SRO FUNDING - ACT 388 AND DOUBLE TAXATION VIOLATIONS

48. S.C. Code Ann. § 5-7-12(B) defines a School Resource Officer ("SRO") as:

[A] person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." *Id.* (emphasis added).

49. The United States Department of Labor describes the duties of an SRO as follows:

We also believe that the SRO's primary duty of providing for the safety and security of students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly

relates to the functional areas of safety and health discussed in 29 C.F.R. § 542.201(b). Op. Fair Labor Standards Act (FLSA 2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007)(emphasis added).

50. S.C. Code Ann. § 5-7-12(A) allows the County and the Town to designate certain officers as SROs, but states nothing about how those SROs may be funded. Specifically, S.C. Code Ann. § 5-7-12(A) states:

The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a [SRO] and to work within the school systems of the municipality or county. The person assigned as a [SRO] shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event . . . [If an SRO] arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event When acting pursuant to this section and outside of the sworn municipality or county of the [SRO], the officer shall enjoy all authority, rights, privileges, and immunities . . . he would have enjoyed if operating in his sworn jurisdiction. Id. (Emphasis added.)

The SROs used in schools as alleged herein are “for school operating purposes” within the meaning of S.C. Code Ann. § 12-37-220(B)(47)(a), and the protection of schools, faculty and students and the other services those SROs provide are essential and necessary to the operations of schools. Plaintiffs do not dispute that the County and the Town have the authority under S.C. Code Ann. § 5-7-12(A) to designate certain officers as SROs. However, Plaintiffs do dispute that the County and the Town may spend funds obtained by taxing owner-occupied homes to fund SROs, because doing so would violate S.C. Code Ann. § 12-37-220(B)(47)(a),(c), as stated below.

51. However, S.C. Code Ann. § 12-37-220(B)(47)(a),(c)(“Act 388”) restricts how SROs can be funded. Specifically, S.C. Code Ann. § 12-37-220 (B)(47)(a),(c) states in pertinent part:

(a) Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12-37-250, one hundred percent

of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

(c) The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two-thirds majority of the membership of each house of the General Assembly; *Id.* (emphasis added).

52. The South Carolina Legislature was so adamant about its intention not to spend for "school operating purposes," S.C. Code Ann. § 12-37-220 (B)(47)(a)(emphasis added), taxes raised on "owner-occupied residential property" that the Legislature made it extraordinarily difficult to do that by having Act 388 state that "[t]he exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded roll call vote of at least a two-thirds majority of the membership of each house of the General Assembly." S.C. Code Ann. § 12-37-220(B)(47)(c)(emphasis added). Thus, by statute, this state exemption from spending taxes raised on owner-occupied property for school operating purposes can be rescinded only by 2/3 vote of each house of the Legislature. This exemption has never been rescinded.

53. Act 388 exempts owner-occupied residential property from all property taxes imposed for "school operating purposes" with the exception of "bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State." S.C. Code Ann. § 12-37-220(B)(47)(b); 2015 S.C. AG LEXIS 105, attached as Exhibit #1 and incorporated herein by reference, see also Op. S.C. Att'y Gen., 2007 WL 1302772 (April 24, 2007).

B. DD2 FAILURES TO FILE ANNUAL DEVELOPMENT REPORTS

54. The South Carolina General Assembly Act No. 98 of 2009 states as follows:

(A98, R1, S234) AN ACT TO REQUIRE THE SUPERINTENDENT OF DORCHESTER COUNTY SCHOOL DISTRICT NO. 2 TO PREPARE AND SUBMIT TO THE COUNTY AND THE MUNICIPALITIES WITHIN

DORCHESTER SCHOOL DISTRICT NO. 2 AN ANNUAL REPORT
DETAILING INFORMATION REGARDING THE IMPACT OF
DEVELOPMENT ON SCHOOLS WITHIN THE DISTRICT, TO REQUEST
FROM THE COUNTY AND ALL MUNICIPALITIES WITH LAND
ENCOMPASSED BY THE DISTRICT APPLICATIONS FOR LAND
DEVELOPMENT PROJECTS THAT INCLUDE RESIDENTIAL HOUSING
THAT MEET CERTAIN CRITERIA, TO DETERMINE WHETHER A
PARTICULAR PROJECT WILL RESULT IN A SUBSTANTIAL IMPACT ON
THE DISTRICT'S ABILITY TO PROVIDE SERVICES TO THE ADDITIONAL
STUDENT POPULATION, AND TO PREPARE AND SUBMIT A REPORT TO
THE COUNTY AND ALL MUNICIPALITIES WITHIN THE DISTRICT
DETAILING THE IMPACT AND NEED FOR ADDITIONAL RESOURCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) At the beginning of each fiscal year of Dorchester County School District No. 2, the superintendent of the district shall prepare and submit and obtain proof of delivery to the governing body and to the land planning commission of the county and each municipality with land encompassed by the district a report describing the current and projected status and needs of the district. This report will include, but not be limited to, the following:

- (1) a list of all schools in the district with the number of classrooms, current enrollment, and the enrollment capacity of each school and of the entire district;
- (2) the district's student enrollment over the previous ten years and projected enrollment over the next ten years;
- (3) the district's capital improvement program, including all schools existing, under construction, or planned and plans for funding those schools;
- (4) current and projected construction costs for new schools and the cost of mobile classrooms, the causes of any cost increases over previous estimates, and the sources for the information;
- (5) the most recent five-year history of the audited operating and capital expenditures of the district;
- (6) the most recent five-year history of the county assessed tax base used for financing purposes in the district;
- (7) identification of federal, state, and local laws or regulations which the district recommends be repealed or relaxed to save costs and increase efficiency for the district and an explanation of how the savings and increased efficiency could occur;
- (8) a list of additional facilities, teachers, and other resources projected to be necessary to service the additional student population of the district over the next ten years; and
- (9) all other information and recommendations by the district regarding how county or municipal governments could help the district better meet its needs and the needs of its students.

(B) The superintendent shall on a quarterly basis request in writing from the governing body and from the local planning commissions of each county and municipality with land encompassed by the district a copy of all land development applications and accompanying materials involving residential housing:

- (1) that are greater than twenty-five acres in size; or
- (2) with an anticipated residential population density equal to or greater than the average residential density of all land developments within the boundaries of the district, or both. The superintendent shall request that the applications and materials be provided to the district within ten days after receipt of the applications and materials by a local planning commission or governing body.

The superintendent and the planning commissions may agree that the information is to be provided electronically or by some other suitable means and that the request is considered ongoing and the information will be provided automatically whenever any residential land development application is received that meet these criteria.

(C) The superintendent shall review all applications for land development projects described in subsection (B) and report the results of that review to the board of trustees. The superintendent and the board both will determine whether the additional anticipated increase in student population resulting from the land development project will have a substantial impact on the district's ability to provide services to the additional student population. If either determination is positive, the superintendent and the board shall prepare a report that describes the impact and details the need for additional facilities, teachers, and other resources necessary to service the additional student population, and provide in that report current updated information regarding the subjects described in subsection (A). In determining whether a particular project may result in a substantial impact, the superintendent and the board shall consider not only the impact of the particular project but also the aggregate impact of the project with other projects pending at the time the superintendent conducts his review. The report must be provided, within thirty days of the district's receipt of the application, to the applicable county or municipal governing body and local planning commission. The report must be maintained as part of the land development application and made available to the public.

SECTION 2. This act takes effect upon approval by the Governor.
Ratified the 19th day of February, 2009.

Became law without the signature of the Governor – 2/26/09. Id. (emphasis added).

IV. FACTUAL ALLEGATIONS

A. VIOLATIONS OF ACT 388

55. In 2015 the South Carolina Education Oversight Committee arranged and the South Carolina General Assembly funded an "independent review of the efficiency" of Dorchester School District 2 by Tidwell and Associates, a Columbia-based consulting firm that provides public sector

management research, evaluation and technical assistance. DD2 volunteered to participate in this study.

56. In May, 2015, Tidwell and Associates published a report ("Tidwell Report") of the results of its review of the efficiency of DD2. See Dorchester School District 2 School District Efficiency Review FINAL REPORT, Tidwell & Associates, Inc. (May 26, 2015). In this report Tidwell and Associates recommended that DD2 take several actions to increase DD2's efficiency and save DD2 money, including especially "Tier 1" recommendations defined as those having the "Greatest Impact: The district should implement these recommendations immediately to take maximum advantage of their opportunities." Id. at 1-8 (emphasis added). Among those "Tier 1" recommendations was that DD2 "[c]onsider contracting with private security services for the School Resource Officer Program, or directly hire district security officers." Id. at 1-9, 2-15, 2-16 (emphasis added).

57. Specifically, Tidwell and Associates recommended that DD2 stop paying Dorchester County and the Town of Summerville for SROs employed by the County or Town to provide police protection in DD2 schools and, instead, that DD2 directly employ its own district security officers or contract with a private security company to provide police protection in DD2 schools, both to save money and to eliminate the current "inequitable School Resource Officer coverage across the district." Id. at 2-15, 2-16. Tidwell and Associates stated that DD2's hiring of police protection in-house would save DD2 \$194,305 per year and that, over five years, DD2 would save \$1,755,600 if it hired a private security contractor to perform this service, as do the Lancaster County School District and the Lexington County/Richland County School District #5. Id.

58. The Dorchester School District Two Board of Trustees attempted to implement, and notified Dorchester County Council and the Dorchester County Sheriff that DD2 would implement, these cost-saving, efficiency-increasing "Tier 1" Tidwell Report recommendations for DD2 by either hiring private security guards as contractors or in-house employees of DD2. These attempts by DD2 were stopped due to strong objections and threats by the Dorchester County Sheriff, who vigorously complained that all SROs should be controlled, trained and employed by, and financed within the budget of, the Dorchester County Sheriff instead of by DD2. Specifically, the Dorchester County Sheriff threatened DD2 and County officials that assistance from the Dorchester County Sheriff's office to transport prisoners or to handle an emergency at DD2 schools deliberately would be substantially delayed or withheld by the Dorchester County Sheriff if the SROs providing protection at DD2 schools no longer were hired and controlled by the Dorchester County Sheriff.

59. Public support for implementing the above-referenced cost-saving recommendations in the Tidwell Report and public opposition to double taxation, paying the Dorchester County Sheriff's Office excessive fees for SROs and the County and Town spending on SROs taxes raised on owner-occupied homes to pay for SROs in violation of Act 388 were squelched and impeded by intimidating and threatening actions and communications made by officials of Dorchester County Council, the Dorchester County Sheriff's Office and Summerville Town Council. For example, during October, 2015, Summerville Town Councilman McIntosh published on Facebook false and defamatory statements and accusations about Plaintiff Messigner and Michael Turner ("Turner"), two proponents of the recommendations in the Tidwell Report and opponents to the Council's, the Town's and the School District's unlawful expenditures for SROs, for the purpose and with the effect of undermining their credibility and influence,

detering them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs. Specifically, in October, 2015, McIntosh published the following statements publicly on Facebook to Messinger about Messinger and Turner: Mr. Messinger is just sore that the county didn't go along with his and Mike Turner's hare-brained scheme to create a taxpayer-financed private security force for washed-out enforcement officers.

Mr. Messinger is just sore that the county didn't go along with his and Mike Turner's hare-brained scheme to create a taxpayer-financed private security force for washed-out enforcement officers.

The truth is you were part of a group of unemployed and barely employed law enforcement officers and former (and with good reason former) law enforcement officers who rallied behind Mike Turner to hoo-doo District 2 into supporting the creation of private security force in our schools. It was nothing more than a full employment scheme for washed-out cops. The county saw right through it, and now you're mad at the county council chairman. You are right – I do have a sense of humor. Hopefully, your chief in Mt. Pleasant has one too.

[Messinger] spent countless hours emailing folks to support this hare-brained private security scheme for all our schools, and he is spitting nails at the county for quashing it. (Emphasis added.)

After reading these statements by McIntosh on Facebook Chinnis republished them by stating on Facebook "Nailed it Bill!"

60. In addition, Defendant After reading these statements by McIntosh on Facebook Chinnis republished them by stating on Facebook "Nailed it Bill!" McIntosh repeatedly threatened to interfere with the employment of Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding these SRO matters. Defendant McIntosh is an employee or

a member of the law firm owned, in whole or in part, by the daughter of the Sheriff, who adamantly objected to DD2's hiring its own SROs, as private contractors or as in-house employees of DD2, as recommended by the Tidwell Report. Defendant McIntosh made these statements and took these actions, and other actions, to help the Town of Summerville, the County, the Dorchester County Sheriff and other Defendants continue the illegal *status quo* methods of funding SROs advantageous to the Dorchester County Sheriff and to avoid implementing the SRO funding recommendations in the Tidwell Report.

61. Defendants McIntosh's and Chinnis' threats and personal attacks on Plaintiff Messinger described above are part of a pattern, a conspiracy and a continuation of past efforts by Dorchester County, the Town and the Dorchester County Sheriff to discredit, defame, intimidate and interfere with the Constitutional rights and with the employment of Messinger and others who criticize or oppose their actions or policies. For example, on multiple occasions McIntosh gratuitously questioned Messinger about whether Messinger's current boss at the Mt. Pleasant Police Department would disapprove of McIntosh's statements and opposition to the SRO funding scheme McIntosh supported. Similarly, Captain Tony Phinney of the Dorchester County Sheriff's Office e-mailed the then Director of the Department of Public Safety at the Medical University of South Carolina stating in part the following regarding Rowland Turner:

... [M]y supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments in an open forum on Facebook in an attempt to harm my reputation and to aid his brother in his bid as a candidate for Sheriff. . . . There are at least 4 other persons that are preparing actions against Mr. Turner also

The Facebook forum is 'Concerned Citizens for Dorchester County.' Mr. Turner is listed as the 'administrator' for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a 'cease and desist' letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervisor asked that I let you know what lay on the horizon. E-mail dated May 1, 2012, from Lt. Tony Phinney, Dorchester County Sheriff's Office, to Anthony Dunbar (emphasis added), attached as Exhibit #2.

Similarly, Captain Phinney repeatedly called the Chief ("Chief") of the Mt. Pleasant Police Department ("Department") during which conversations Phinney made statements to the Chief discrediting Messinger and trying to get the Mt. Pleasant Police Department to terminate the employment of Messinger. Captain Phinney told the Chief of the Mt. Pleasant Police Department that Captain Phinney was calling that Chief at the request of Captain Phinney's supervisors at the Dorchester County Sheriff's office, to state that the Chief and the Department should terminate the employment of Messinger because Messinger was the Administrator of the Facebook page for Concerned Citizens of Dorchester County where Messinger was claimed to have made slanderous statements. As a result, Messinger was involuntarily counseled and warned by the Chief and the Internal Affairs Sergeant of the Mt. Pleasant Police Department; Messinger was required by that Chief to cease being the Administrator of the Concerned Citizens of Dorchester County Facebook page as a condition of his continued employment with the City of Mt. Pleasant; and Messinger was intimidated and deterred from exercising his Constitutional rights of expression and assembly and to petition his government for redress of grievances.

62. The cost of an SRO employed and supervised by the Dorchester County Sheriff to provide protection at a DD2 school is about twice as expensive as would be charged if that same SRO were employed and supervised by DD2. Those costs charged for an SRO by the Dorchester

County Sheriff or by Dorchester County are unreasonably excessive and inflated, and, upon information and belief, would not be used exclusively to fund SROs but would be used for other purposes. Upon information and belief, these excessive SRO fees have contributed to the layoffs of teachers by DD2, thereby harming the quality of education received by DD2 students and increasing the workload of DD2 teachers and staff.

63. As required by contract, on or about July 20, 2015, DD2 reimbursed Dorchester County approximately \$500,000 the County previously had paid for SROs who had served at certain DD2 schools during fiscal years raised, *inter alia*, unlawfully 2012-2014. Those payments for SROs were paid by the County with property taxes years raised, *inter alia*, unlawfully on owner-occupied homes located in Dorchester County, in violation of Act 388.

64. On or about July 31, 2015 Dorchester County and Dorchester District 2 entered into a contract authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill DD2 and DD2 to reimburse Dorchester County, more than \$1 million for SROs serving at DD2 schools during FY 2015-2017. An AGREEMENT Between Dorchester County and Dorchester County School District 2 for the School Resource Office (SRO) Program, dated July 31, 2015 ("DD2 Contract") attached as Exhibit #3 and incorporated herein by reference.

65. This DD2 Contract states in part as follows:

The Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following [six] schools for the school years FY 2015-2016 through 2017-2018. [...] The Sheriff shall assign one full time supervisor to oversee the SRO program. [...] Each school shall have the number of SROs agreed upon ... to be assigned on a full-time basis, during the regular school year, as needed." *Id.* at 1 (emphasis added).

66. This DD2 Contract provides that at least 87% of the payments made pursuant to the DD2 Contract, or \$874,740, will be for the purpose of paying SRO salaries and not for capital expenses. Id. at 4.

67. This DD2 Contract states in part as follows:

Compensation

a) The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

b) The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015-2016		FY2016-2017	
Six SROs	\$360,000	Seven SROs	\$420,000
Supervis	\$47,370	Supervis	\$47,370
or		or	
Capital	\$87,616	Capital	\$43,808
Total	\$494,986	Total	\$511,178*

*Does not include CPI adjustment.

c) Each year invoices for services shall be mailed at the beginning of each quarter and payment shall be made to the County within 30 days thereafter, with the first quarter beginning July 1, 2015.

d) Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services such costs shall be billed to the School District within 30 days and payment shall be made to the County within 30 days thereafter. Id. at 4-5 (emphasis added).

68. This DD2 Contract states in part as follows:

A. "It is agreed that the designated officer(s) will remain employee(s) of Dorchester County with all rights, benefits and privileges thereto and shall be subject to the administration, supervision and control of the Sheriff's Office." Id. at 4;

B. "The School District shall provide to the SRO at each school ... materials and facilities necessary to the performance of their duties...." Id.

C. "The County Council shall impose a fee for SROs services that shall be billed by the County to the School District." Id.

D. "The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2." Id.

E. "The School District shall also pay the anticipated capital costs to equip [all] SROs required by this agreement in the amounts as set forth [as follows]." Id.

F. Six SROs @ \$360,000 per annum, one Supervisor @ pro rata \$47,370 per annum, Capital Costs @ non pro rata \$87,616, for a total of \$494,986. Id.

These above-stated costs far exceed the costs of the Office of the Sheriff for providing SRO services stated in "Motion #1" to amend County Ordinance #15-14 by, in part, increasing "...the Personnel line items in the Sheriff's Office by \$310,999 to fully cover the costs of the SRO Program..." and increasing "...the Operating line items in the Sheriff's Office by \$104,594." See id.

69. Payments required by the DD2 contract must be paid both by DD2 and Dorchester County and are for the purpose of paying DD2's school operating expenses. Under this DD2 contract DD2 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." Id. at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD2 operating expenses for SROs working at DD2 schools.

70. Similarly, on or about July 29, 2015, Dorchester County and Dorchester County School District #4 entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill DD4 and DD4 to reimburse Dorchester County, \$120,000 for SROs serving at DD4 schools during FY 2015-2017. AN AGREEMENT Between Dorchester County and Dorchester County School District 4 For the School Resource Officer (SRO) Program, dated July 29, 2015 ("DD4 contract"), attached as Exhibit #4 and incorporated herein by reference. None of those monies reimbursed are designated as capital expenses; they are for the purpose of paying SRO salaries. See *id.* at 4.

71. Payments required by the DD4 contract must be paid both by DD4 and Dorchester County and are for the purpose of paying DD4's school operating expenses. Under this DD4 contract DD4 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." *Id.* at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD4 operating expenses for SROs working at DD4 schools.

72. Similarly, on or about August 6, 2015, Dorchester County and the Dorchester County Career and Technology Center entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill the DCCTC and the DCCTC to reimburse the County, \$67,895 for SROs serving at DCCTC schools during FY 2015-201. AN AGREEMENT Between Dorchester County and Dorchester County Career and Technology Center for the School Resource Officer

(SRO) Program, dated August 6, 2015 ("DCCTC contract"), attached as Exhibit #5 and incorporated herein by reference.. None of those reimbursements are designated as capital expenses but are for the purpose of paying SRO salaries. Id., at 1, 4.

73. Payments required by the DCCTC contract must be paid both by DCCTC and Dorchester County and are for the purpose of paying DCCTC's school operating expenses. Under this DCCTC contract DCCTC is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." Id. at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DCCTC operating expenses for SROs working at DCCTC schools.

74. Upon information and belief, SROs have been furnished and will be furnished to one or more of the School Districts and funded with taxes on owner-occupied homes by the Town and by the County, pursuant to contracts between, respectively, the Town and the School Districts and between the County and the School Districts. The terms of all contracts referenced herein, and of all payments for SROs referenced herein, have been authorized respectively by Dorchester County, Dorchester County Council, the Town, Summerville Town Council, the School Districts and the governing body of each of the School Districts.

75. Upon information and belief, additional property taxes have been paid or are obligated to be paid and will be paid (a) by one or more of these School Districts to reimburse Dorchester County and/or the Town of Summerville for monies Dorchester County or the Town

paid or will pay for SROs at one or more of these School Districts and (b) by Dorchester County and/or the Town of Summerville to fund SROs at one or more of these School Districts.

76. At all times pertinent all monies paid and obligated to be paid by Dorchester County or the Town of Summerville to any of the School Districts for SROs have been paid or will be paid with property taxes raised, inter alia, on owner-occupied homes in the County and/or the Town, in violation of Act 388, pursuant to ordinances, resolutions, motions and contracts by the governmental Defendants.

77. Upon information and belief, property taxes have been paid or are obligated to be paid (a) by one or more of these School Districts to reimburse the Town for monies the Town has paid for SROs at one or more of these School Districts and (b) by the Town to fund SROs at one or more of these School Districts, pursuant to ordinances, resolutions, motions and contracts by the Town and the respective School Districts.

78. At a Special Called Meeting on July 27, 2015 Dorchester County Council passed "3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, 'An Ordinance to Make Appropriations . . . for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County,' to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriffs Office Personnel and to serve as School Resource Officers.'" Memorandum, dated July 23, 2015, re Special Called Council Meeting (" . . . increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as [SROs]. This additional funding will provide for six SROs in [DD2] and provide an SRO supervisor, who will oversee the SRO program in School District 2,

School District 4, and the Career School."), attached as Exhibit #6 and incorporated herein by reference. Passage of this Amendment allowed Dorchester County to add an additional mil of taxation of 4% properties, including owner-occupied homes, 6% properties and personal property, to fund SROs to be used, pursuant to a reimbursement contract, by DD 2, DD 4 and the DCCTC to provide police protection at their respective schools.

79. Also at a Special Called Meeting on July 27, 2015 Dorchester County Council passed motions to approve the DD2 Contract, the DD4 Contract and the DCCTC Contract, referenced above.

80. Dorchester County and the Town of Summerville have been and will continue to spend taxes on "owner-occupied residential property" "for school operating purposes" to finance police protection and other services with SROs at DD2, DD4 and/or DCCTC schools, in violation of Act 388, pursuant to ordinances, resolutions, motions and contracts by, between and among these governmental Defendants. SROs and the police protection and other services SROs provide at the School Districts are a "school operating purpose" within the meaning of Act 388. By contract the School Districts must reimburse Dorchester County and/or the Town, respectively, for those taxes used by Dorchester County and/or the Town to finance SROs.

81. If Dorchester County, the Town and these School Districts can finance school police protection and SROs in the manner described above, by that precedent Dorchester County and the Town can spend taxes raised on owner-occupied homes on salaries, electricity, gasoline for school buses and all other operation expenses of these School Districts, thereby having Dorchester County and the Town spend taxes raised on owner-occupied residential homes for all those School Districts' operating expenses.

**B. DOUBLE TAXATION BY COUNTY OR
TOWN, AND SCHOOL DISTRICTS**

82. Property owners who live in Dorchester County and in a School District but not in the Town are being taxed twice -- once by Dorchester County and once by a School District -- to pay the same salaries and other operating expenses for the same SROs in the same schools. Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County, as required by contract, the monies Dorchester County raised and paid or will raise and pay for the salaries and other operating expenses of the same SROs.

83. Property owners who live in the Town and in a School District are being taxed twice -- once by the Town and once by a School District -- to pay the same salaries and other operating expenses for the same SROs. The Town taxes all properties within the Town, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay the Town, as required by contract, the monies the Town raised and paid or will raise and pay for the salaries and other operating expenses of the same SROs.

84. This double-taxation of the same properties to pay the same operating expenses of the same SROs already has occurred for SROs at DD2 for FY 2013-2014, 2014-2015 and perhaps other years, and will continue in the future.

85. Additional proof of this double taxation is provided by the County's published explanation of the purposes of the Amendment to Dorchester County Ordinance # 15-14 authorizing the County to tax property owners for SROs. See Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-

2016, attached as Exhibit #7 and incorporated herein by reference. That explanation states that the Amendment would increase by \$461,000 the tax revenue "to reflect an additional county operating mill for the SRO Program;" increases the Personnel line items in the Sheriff's Office by \$310,999 "to fully cover the costs of the SRO Program;" and otherwise require that monies from this one mill County tax increase be given to the Sheriff's Office for this SRO Program. Id. (emphasis added). According to this Amendment, these monies will be given by Dorchester County directly to the Dorchester County Sheriff's Office, not to DD 2, to pay the costs of DD 2's SROs. See Ordinance to Amend Dorchester County Ordinance # 15-14, An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1 , 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County.

86. The Amendment to Dorchester County Ordinance # 15-14 also requires that DD 2 reimburse the County for the costs expended by the County for SROs. For example, the Amendment requires an increase in the "charges for services revenue line item by \$49,776 to reflect additional funds [DD2] will pay the County in FY 2016 for the SRO Program." (Emphasis added.) In addition, the Amendment to Dorchester County Ordinance # 15-14 mandates that the "County Council shall impose a fee for SRO services that shall be billed by the County to the School District;" the "County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated [sic] share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2;" and the "School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts set forth below: (1) FY 2015-2016 : Six SROs \$360,000; Supervisor \$47,370; Capital \$87,616; Total \$494,986;

2) FY 2016-2017 Seven SROs \$420,000; Supervisor \$47,370; Capital \$43,808 Total \$511,178." Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016, attached as Exhibit #7. (Emphasis added.)

87. The Agreement "between Dorchester County and [DD2] for the School Resource Officer (SRO) Program" imposes on DD2 exactly the same requirements for DD2 to reimburse Dorchester County for SROs as is stated in the Amendment to Dorchester County Ordinance # 15-14 described in the paragraph immediately above. AN AGREEMENT Between Dorchester County and Dorchester School District 2 For the School Resource Officer (SRO) Program, dated 31, 2015, attached as Exhibit #3.

88. If Dorchester County, the Town and these School Districts can finance school police protection in the manner described above, by that precedent multiple governmental entities can expend funds for, reimburse and contract for payments to each other for precisely the same things.

89. This illegal double taxation and these illegal violations of Act 388 would be avoided completely if the School Districts simply spent their tax revenues for the expenses of SROs in accordance with Act 388, and Dorchester County and the Town refrained from spending any of its tax revenues for the same expenses of the same SROs in violation of Act 388. This financing scheme of having Dorchester County and the Town of Summerville spend its tax revenues to fund the expenses of SROs and in turn be reimbursed by a School District that spends its tax revenues to fund the same expenses for the same SROs in the same schools is unnecessary, illegal double taxation in violation of the South Carolina Constitution and in violation of Act 388.

C. TAXING WEATHERSTONE PROPERTY FOR SROs IN UNRELATED SCHOOL DISTRICTS

90. The Town of Summerville has spent, and will continue to spend, taxes it obtained on the property of the Weatherstone POA, the Weatherstone POA members and other residents of Berkeley County to provide SROs for protection in schools not located in any school district that serves any of those property owners or any other resident of Berkeley County, pursuant to ordinances, resolutions, motions and contracts by the Town of Summerville. These ordinances, resolutions, motions and contracts are unconstitutional and otherwise illegal because they cause the Town to spend its taxes from those Berkeley County properties and property owners to provide SRO services solely in school districts where those property owners do not reside and where those properties and property owners therefore cannot benefit from the taxes they paid to the Town.

D. INCREASING TWO GOVERNMENT ENTITIES' MILLAGE BASES

91. Moreover, the harms to taxpayers caused by the SRO funding arrangement described above and as specified by the Amendment and the Agreements described above extend beyond double taxation and violating Act 388. State law requires that each school district's budget increase annually above the previous year's budget by a specified amount in accordance with a formula, and allows Dorchester County's and the Town's budgets also to be increased each year by a specified amount in accordance with a formula. By two entities - a school district and the County or the Town -- taxing the same property for exactly the same purpose, i.e., to fund the same SROs at the same schools at the same time, both DD2 and the County or Town, instead of only one of them, are causing or allowing compounded annual increases to each of their budgets. If that financing scheme by both Dorchester County and the School Districts and by the Town and the School Districts for the same SROs at the same schools at the same time is legal, all other school operating expenses lawfully could be paid

by both a School District and Dorchester County or by a School District and the Town taxing the same property for the same items for use at the same time and location and thereby cause a huge exponential annual increase of the budget and taxing authority of both entities.

E. Act No. 98 of 2009

92. With one exception, Dorchester District 2 has failed and refused to comply with any of the requirements of Act No. 98 of 2009 quoted above by, inter alia, completely failing to submit any of the required annual reports. The one exception is that DD2 did file a partial but incomplete report in the year 2010.

F. THWARTED CITIZEN ATTEMPTS TO CORRECT ILLEGALITIES

93. On numerous occasions some of the Plaintiffs and other members of the public have tried to persuade Dorchester County Council, the Town of Summerville and the School Districts to cease violating Act 388 and unlawfully engaging in double taxation as described above.

94. In addition, the Dorchester County Taxpayers Association and its attorney have asked DD2 on numerous occasions to file the reports required by Act No. 98 of 2009 and to provide DCTA a copy of those reports pursuant to the Freedom of Information Act. However, DD2 continues to fail to do so.

95. Based on a request by South Carolina State Senator Paul Thurmond, on November 24, 2015 the South Carolina Attorney General issued an eleven-page opinion stating that the above-described method of funding SROs by the Defendant government entities violates Act 388 and constitutes illegal double taxation. See 2015 S.C. AG LEXIS 105, attached as Exhibit #1. The Attorney General Opinion states that SROs are in fact an operating expense of schools because they “serve in the operation of schools” and often develop safety policies and procedures as “an advisor and teacher,” “[w]e believe a court will determine that a school resource officer — whether

an employee of the county, school district or sheriff — falls within the meaning of a ‘school operating expense’ by the very statutory definition of a ‘school resource officer.’” *Id.* The Attorney General Opinion also states that based on Attorney General opinions from at least three different years — 1969, 1986 and 1998 — it is illegal for government entities to government to double tax the same property for the same purpose during the same taxing period. See *id.*

96. Based on another request by South Carolina State Senator Paul Thurmond, on February 24, 2016 the South Carolina Attorney General issued a seven-page opinion stating in part that:

[A] school districe could lawfully employ directly a security officer other than a School Resource Officer to provide protection at schools. Security officers licensed by SLED pursuant to § 40-18-10 et seq. could be used by the school, in our opinion. Such officers would possess the powers of a deputy sheriff on the property they are hired to protect – in this instance, a public school. 2016 S.C. AG LEXIS 10 , attached as Exhibit #8 (emphasis added).

97. Dorchester County Council and DD2 have refused to rescind their method of funding SROs that the Attorney General has opined is illegal, as stated above. Indeed, the DD2 Superintendent responded to the Attorney General opinion by stating “This is just an opinion, it’s not binding.” County Councilman Byars was reported by the Summerville Journal Scene as giving little credibility to a legal opinion by the Attorney General, stating that “[l]egal opinions are not worth the paper they’re written on until they’re adjudicated (in court),” and called any threat of litigation over these issues “vapid rhetoric.” County Councilman William Hearn stated publicly “[i]t doesn’t matter... what happens in the courts.” County Councilman Chinns expressed doubt about the credibility of a lawyer interpreting the meaning of “operating expense” given his belief that the phrase is an accounting term, and stated that “[i]f they want to take it to court, take it to court.”

G. Remedies

98. Due to the nature of the illegal actions of the Defendants the Plaintiffs have suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Further, irreparable harm and the inadequacy of a remedy at law is presumed and is not required to be proved to obtain injunctive relief to stop illegal expenditures of taxpayer monies and violations of Constitutional rights under the color of state law.

V. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION VIOLATIONS OF ACT 388

99. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

100. The expenditures of public funds for SROs by the County, the Town, each of the School Districts and the other Defendants, and the ordinances, resolutions, motions and contracts causing and authorizing those expenditures, described above, violate Act 388 by expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

101. As a direct and proximate result of the Defendants' violations of Act 388 described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses; and by having to incur additional harm and losses.

FOR A SECOND CAUSE OF ACTION ILLEGAL DOUBLE EXPENDITURES

102. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

103. The expenditures and reimbursements of public funds for the expenses of the same SROs at the same schools at the same time made by both the County and a School District, and by both the Town and a School District, and the ordinances, resolutions, motions and contracts causing and authorizing those double expenditures and reimbursements, as described above, constitute illegal double spending in violation of the South Carolina Constitution, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

104. As a direct and proximate result of the Defendants' violations of the South Carolina Constitution as described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate for those losses, and by having to incur additional harm and losses, as described herein.

**FOR A THIRD CAUSE OF ACTION
DD2'S FAILURE TO COMPLY WITH ACT NO. 98 of 2009**

105. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

106. The failure and refusal of DD2 to comply with Act No. 98 of 2009 is unlawful.

107. As a direct and proximate result of DD2's continued failure and refusal to comply with Act No. 98 of 2009, the Plaintiffs, those similarly situated and schools in and residents of Dorchester County have been harmed and will continue to be harmed by decisions being made by Dorchester County Council, the Town Council of Summerville and other municipalities in Dorchester County without the information required to be provided to them by Act No. 98 of 2009; by permits and approvals for residential and commercial development being allowed without having provided adequately for sufficient roads, schools, water, drainage and sewer infrastructure; and by having to incur additional harm and losses, as described above.

**FOR A FOURTH CAUSE OF ACTION
VIOLATIONS OF FREEDOM OF EXPRESSION, ASSOCIATION AND
PETITION TO REDRESS GRIEVANCES RIGHTS UNDER ARTICLE I, SECTION 2
OF THE SOUTH CAROLINA CONSTITUTION
(By Messinger Only Against Defendants McIntosh, Chinnis, Phinney, County, Town and
Sheriff Only)**

108. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

109. Actions by Defendants McIntosh, Chinnis, Phinney, the County, the Town of Summerville and the Dorchester County Sheriff deprived, and will continue to deprive, Plaintiff Messinger of his rights of free association, to petition for redress of grievances and of speech and expression protected by Article I, Section 2 of the South Carolina Constitution, in numerous respects, including but not limited to, doing, conspiring to engage and engaging in a pattern of doing, *inter alia*, the following actions, maliciously, wantonly, recklessly, willfully, in bad faith, for corrupt purposes and with the intent to harm Messinger and to interfere with his Constitutional rights, as alleged herein:

- A. Contacting and trying to persuade Defendant Messinger's employers to terminate the employment of Messinger;
- B. Repeatedly suggesting, stating and threatening Messinger that Messinger's employer might be notified by said Defendants of Messinger's protected advocacy and actions and that Messinger might lose his employment or have his protected speech, advocacy and actions restricted as a condition of Messinger's employment, if Messinger did not cease his protected speech, advocacy and actions; and
- C. McIntosh, without justification, repeatedly making, and Chinnis republishing, on Facebook and elsewhere false and defamatory statements about the positions, views, character, motives and professional history, employment background and abilities of Messinger and another police officer with whom Messinger was exercising his rights of association and free speech and expression, and petitioning for redress of grievances.

110. As a direct and proximate result of the above-named Defendants' violations described above, Plaintiff Messinger was forced to cease administering and to limit his

communications on his public website, and to otherwise restrict his communications; has been deterred, and will continue to be deterred, from exercising his Constitutional rights by being deprived of his rights of free association, to petition for redress of grievances, and to engage in free speech and expression protected by the South Carolina Constitution; has suffered fear of the loss of his job as a police officer; and has suffered emotional distress, humiliation, embarrassment, injury to his reputation and other damages, for which he is entitled to nominal, actual, compensatory and punitive damages and reasonable attorney fees and costs.

**FOR A FIFTH CAUSE OF ACTION
VIOLATIONS OF FIRST AND FOURTEENTH
AMENDMENT RIGHTS UNDER THE UNITED
STATES CONSTITUTION AND 42 U.S.C. § 1983**

(By Messinger Only Against Defendants McIntosh, Chinnis, Phinney, County, Town and Sheriff Only)

111. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

112. Actions by Defendants McIntosh, Chinnis, Phinney, the County, the Town of Summerville and the Dorchester County Sheriff deprived, and will continue to deprive, Plaintiff Messinger of his rights of free association, to petition for redress of grievances and of speech and expression protected by the United States Constitution, in numerous respects, including but not limited to, doing, conspiring to do and engaging in a pattern of doing, *inter alia*, the following actions, maliciously, recklessly, willfully, in bad faith, and with the intent to harm Messinger and to interfere with his Constitutional rights, as alleged herein:

- A. Contacting and trying to persuade Defendant Messinger's employers to terminate the employment of Messinger;
- B. Repeatedly suggesting, stating and threatening Messinger that Messinger's employer might be notified by said Defendants of Messinger's protected advocacy and actions and that Messinger might lose his employment or have his protected advocacy and actions restricted as a condition of Messinger's employment, if Messinger did not cease his protected advocacy and actions; and

- C. McIntosh, gratuitously and without justification, repeatedly making, Chinnis republishing, on Facebook and elsewhere false defamatory statements about the positions, views, character, motives and professional history, employment background and abilities of Messinger and another police officer with whom Messinger was exercising his rights of association and free speech and expression, and petitioning for redress of grievances.

113. As a direct and proximate result of the above-named Defendants' and violations described above, Plaintiff Messinger was forced to cease administering and to restrict his communications on his public website, and to otherwise limit his communications; has been deterred, and will continue to be deterred, from exercising his Constitutional rights by being deprived of his rights of free association, to petition for redress of grievances, and to engage in free speech and expression protected by the United States Constitution; has suffered fear of the loss of his job as a police officer; and has suffered emotional distress, humiliation, embarrassment, injury to his reputation and other damages, for which he is entitled to nominal, actual, compensatory and punitive damages and reasonable attorney fees and costs.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

- A. Grant a Declaratory Judgment declaring that:

- (1) The expenditure by the Town of Summerville of public funds obtained by its taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts, and the ordinances, resolutions, motions and contracts by the Town of Summerville causing or allowing those expenditures, violate Act 388 and the South Carolina Constitution;
- (2) The expenditure by Dorchester County of public funds obtained by its taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts, and the ordinances, resolutions, motions and contracts by Dorchester causing or allowing those expenditures, violate Act 388 and the South Carolina Constitution;

- (3) The expenditure by both the Town of Summerville and by a School District of public funds to pay the same operating expenses for the same work by the same SROs at the same schools at the same time, and the ordinances, resolutions, motions and contracts by the Town of Summerville and the School Districts allowing or causing those expenditures, violate the United States and the South Carolina Constitutions;
- (4) The expenditure by both Dorchester County and by a School District of public funds to pay the same operating expenses for the same work by the same SROs at the same schools at the same time, and the ordinances, resolutions, motions and contracts by Dorchester County and the School Districts allowing or causing those expenditures, violate the United States and the South Carolina Constitutions;
- (5) Dorchester School District 2 has violated Act No. 98 of 2009;
- (6) Defendants McIntosh, Chinnis, Phinney, the County, the Town and the Sheriff have violated the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution and Section 1983; and
- (7) Defendants McIntosh, Chinnis, Phinney, the County, the Town and the Sheriff have violated the Plaintiffs' rights under Article I, Section 2 of the the South Carolina Constitution.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Expending public funds obtained by taxing owner-occupied homes to fund the operating expenses of SROs;
- (2) Expending public funds to fund the operating expenses of SROs in a School District and receiving reimbursement of those public funds with other public funds of that School District for the same operating expenses for the same work by the same SROs at the same location and time;
- (3) Expending funds in a manner that constitutes illegal double taxation;
- (4) Creating, entering into or implementing any ordinance, resolution, motion or contract that causes to occur what is stated in (1), (2) or (3) above;
- (5) Violating Act No. 98 of 2009;

- (6) Violating the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution;
- (7) Violating the Plaintiffs' rights under Article I, Section 2 the South Carolina Constitution; and
- (8) Engaging in any and all other illegal acts as this Court deems appropriate for injunctive relief.

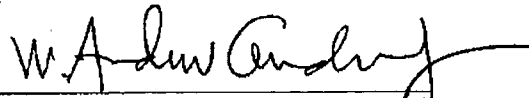
C. Grant a writ of mandamus requiring that Dorchester District 2 comply fully with Act No. 98 of 2009, by performing now acts required Act No. 98 of 2009 to have been done in the past that have not been done, and by performing in the future all actions required to be performed in the future by Act No. 98 of 2009;

D. Nominal, actual, compensatory and punitive damages and reasonable attorney fees and costs for Plaintiff Messinger only for violations of his civil rights under Section 1983, the United States Constitution and the South Carolina Constitution, as described above;

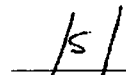
E. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300ff, 42 U.S.C. § 1983 and any other applicable law; and

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.



Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483

Phone: 843-871-1821
Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

JURY TRIAL DEMANDED

Certificate of Service

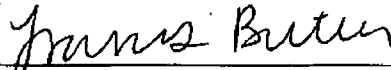
The undersigned hereby certifies that a true copy of the Second Amended Complaint has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 8th day of December, 2016 to:

Drew Hamilton Butler
Anthony E. Rebollo
Richardson, Plowden, Carpenter &
Robinson, PA
P.O. Box 7788
Columbia, SC 29202

David L. Morrison
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, SC 29212

Erik P. Doerring
McNair Law Firm, PA
P.O. Box 11390
Columbia, SC 29211

LED-RECORDED
2016 DEC 12 PM 3:38
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY



Frances Butler
Assistant to W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

✓ Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated; Weatherstone Property
Owners Association, individually, and on
behalf of all others similarly situated, George
Resnick; William A. Harbeson; James Stephen
Greene, Jr.; Homer P. Gonzalez; Gerald E.
Ziegler; David Messinger; and South Carolina
Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry
Hargett and William R. Hearn, Jr., in their
official capacities as members of Dorchester
County Council; Town of Summerville;
Summerville Town Council; William E.
McIntosh III, in his official capacity;
Dorchester County Sheriff; Luther C. Knight,
in his official capacity; Dorchester School
District Two; Dorchester School District Two
Board of Trustees; Joseph R. Pye, Justin
Farnsworth, Gail Hughes, Brian Mitchum,
Tanya Robinson, Sam Clark, Barbara Crosby
and Lisa Tupper, in their official capacities;
Dorchester County School District Four;
Dorchester County School District Four Board
of Trustees; Dorchester County Career and
Technology Center; and Dorchester County
Career and Technology Center Board of
Trustees,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

Civil Action No.: 2016-CP-18-838

FILED-RECORDED

5/6/2016

Cheryl Graham
Clerk of Court
Dorchester County

AMENDED SUMMONS

JURY TRIAL DEMANDED

YOU ARE HEREBY SUMMONED and required to answer the amended complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the amended complaint upon the subscribers at their offices at 16 Charlotte Street, Charleston, South Carolina 29403, within (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the amended complaint within the time aforesaid, the Plaintiffs in this action will apply to the court for the relief demanded in the complaint and judgment by default will be rendered against you.

Respectfully submitted,



W. Andrew Gwader, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.

/s/

Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

May 6, 2016
Charleston, South Carolina

RECORDED

STATE OF SOUTH CAROLINA MAY -6 PM 2:58 IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER CHERYL S. ALLEN
CLERK OF COURT

Dorchester County Taxpayers Association,) Civil Action No.: 2016-CP-18-838
individually, and on behalf of all others)
similarly situated; Weatherstone Property)
Owners Association, individually, and on)
behalf of all others similarly situated; George)
Resnick; William A. Harbeson; James Stephen)
Greene, Jr.; Homer P. Gonzalez; Gerald E.)
Ziegler; David Messinger; and South Carolina)
Public Interest Foundation;)

Plaintiffs,

v.

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey, Jay)
Byars, Willie Davis, Carroll S. Duncan, Larry)
Hargett and William R. Hearn, Jr., in their)
official capacities as members of Dorchester)
County Council; Town of Summerville;)
Summerville Town Council; William E.)
McIntosh III, in his official capacity;)
Dorchester County Sheriff; Luther C. Knight,)
in his official capacity; Dorchester School)
District Two; Dorchester School District Two)
Board of Trustees; Joseph R. Pye, Justin)
Farnsworth, Gail Hughes, Brian Mitchum,)
Tanya Robinson, Sam Clark, Barbara Crosby)
and Lisa Tupper, in their official capacities;)
Dorchester County School District Four;)
Dorchester County School District Four Board)
of Trustees; Dorchester County Career and)
Technology Center; and Dorchester County)
Career and Technology Center Board of)
Trustees,)

Defendants.

Each of the above-named Plaintiffs brings the following actions seeking declaratory, mandamus, injunctive, monetary and other legal relief. For their Amended Complaint, the Plaintiffs state as follows:

1. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, mandamus, injunctive and/or monetary relief brought for violations and threatened violations of, and to enforce the requirements of, inter alia, the First, Fourteenth and Fifth Amendments to the United States Constitution; the South Carolina Constitution; S.C. Code Ann. §12-37-220(B)(47) ("Act 388"); Act No. 98 of 2009; S.C. Code Ann. § 30-4-10 *et. seq.*; the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members, to (1) obtain a declaration from the Court that the South Carolina Constitution and South Carolina statutes are being violated by certain ordinances, resolutions, motions and contracts promulgated, passed or entered into by Defendants Dorchester County ("County") and Dorchester County Council ("Council"); the Town of Summerville ("Town") and Summerville Town Council ("Town Council"); and Dorchester School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center (collectively "School District" or "School Districts"); (2) obtain a declaration from the Court that Dorchester School District Two unlawfully has failed and refused to comply with Act No. 98 of 2009; (3) obtain from the Court injunctions preventing the continued violations of law alleged herein; (4) obtain a writ of mandamus to require governmental Defendants to perform non-discretionary duties required by law, including compliance by Dorchester School District Two

with Act No. 98 of 2009; and (5) otherwise obtain from the Court remedies to violations of various federal and state-protected rights afforded to each of the Plaintiffs by the Constitution of the United States and by the Constitution and statutes of the State of South Carolina, as alleged herein.

3. The allegations against the Defendants, except as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all relevant times were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this Court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 et seq., known as the Uniform Declaratory Judgment Act; 42 U.S.C. § 1983; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Cl. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Cl. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

II. PARTIES

A. The Plaintiffs

5. The Weatherstone Property Owners Association ("Weatherstone POA") is a non-profit corporation formed in 2003 under the laws of the State of South Carolina; and has its principal place of business and owns real property in Berkeley County and the Town of Summerville, South Carolina. The mission of the Weatherstone POA is to preserve and to protect the property and liberty interests of homeowners and residents of the Weatherstone area and subdivision, all or nearly all of whom reside in and pay property taxes to the Town, County, and/or one or more of the School Districts. The Weatherstone POA is suing as a representative of itself and of its members who reside in and are citizens, qualified electors and taxpayers in the Town, County and/or one or more of the School Districts. The Weatherstone POA brings this action individually on its behalf and its members and on behalf of all others similarly situated.

6. George Resnick ("Resnick") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Resnick has standing as a Plaintiff in this action as a taxpayer. Resnick has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

7. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town and County, and owns property, including an owner-occupied residence, located and being taxed in the Town and County. Harbeson has standing as a Plaintiff in this action as a taxpayer. Harbeson has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

8. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of the Town and County, and owns property, including an owner-occupied residence, located and being taxed in the Town and County. Greene has standing as a Plaintiff in this action as a taxpayer. Greene has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

9. Homer P. Gonzalez ("Gonzalez") is a citizen, resident and taxpayer of Berkeley County and of the Town, and owns property, including an owner-occupied residence, located and being taxed in the Town. Gonzalez has standing as a Plaintiff in this action as a taxpayer. Gonzalez has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town, and brings this action individually on his behalf and on behalf of all others similarly situated.

10. Gerard E. Ziegler ("Ziegler") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Ziegler has standing as a Plaintiff in this action as a taxpayer. Ziegler has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. David Messinger ("Messinger") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Messinger has standing as a Plaintiff in this action as a taxpayer. Messinger has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of itself and its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts. DCTA brings this action individually on its behalf, its members and on behalf of all others similarly situated.

13. The South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. The SCPIF brings this action individually, on its behalf and on behalf of all others similarly situated, as a representative of taxpayers and because of the great public importance of the issues that this civil action raises that are capable of being repeated and that require judicial guidance. The SCPIF seeks declaratory, injunctive and mandamus relief, but not money damages.

14. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who have contributed to the funds at issue and as residents in Dorchester County and/or the Town of Summerville; who are adversely affected by residential and commercial development within Dorchester County and the Town of Summerville without adequate infrastructure; and who are adversely affected by the failure of Dorchester School District Two and related Defendants to comply with Act No. 98 of 2009; and because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

15. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this Amended Complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

16. Each of the above-described Plaintiffs alleging taxpayer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of their fellow taxpayers and residents regarding the proper use and allocation of tax receipts by the County and the School Districts named as Defendants in this action; regarding the failures by Dorchester School District Two and related Defendants to comply with Act No. 98 of 2009; and regarding violations by governmental officials of the constitutional rights of the Plaintiffs and others similarly situated. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interests involved are the prevention of the unlawful expenditures of money raised by taxation; avoiding residential and commercial development beyond the capacities of necessary supporting infrastructure, including water, sewer, drainage, schools and roads; and avoiding violations of citizens' constitutional rights. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the County, the Town and/or the School Districts followed the requirements and procedures set out in the state constitution, state enabling statutes and County and School District ordinances, procedures, rules, motions, resolutions, guidelines and customs specifically designed to ensure wise management of the public fisc, development not exceeding supporting infrastructure and the avoidance of

violations of citizens' rights to free expression and to petition their government for redress of grievances. .

17. Plaintiffs Weatherstone POA and DCTA have standing based on the individualized injuries that have been or will be suffered by their members as a result of the actions of the Defendants described in this Amended Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims the Weatherstone POA and DCTA asserts, nor the relief they request, requires the participation of the individual members of either of those organizations in this action.

18. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to its, his or her real or personal property or acting on behalf of organizational members, has suffered and will suffer an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

B. The Defendants

19. Dorchester County is a body corporate and a corporation of the State of South Carolina located in South Carolina.

20. Dorchester County Council ("County Council") is the elected governing body of Dorchester County created and operating under the laws of the State of South Carolina.

21. The Town of Summerville is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

22. Summerville Town Council ("Town Council") is the elected governing body of the Town of Summerville created and operating under the laws of the State of South Carolina.

23. The Dorchester County Sheriff is the elected Sheriff of Dorchester County.

24. Dorchester School District Two ("District 2" or "DD2" individually or collectively with District Two Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

25. Dorchester School District Two Board of Trustees ("District 2 Board" or "DD2 Board" individually or collectively with Dorchester School District Two) is the elected independent governing body of District 2 created and operating under the laws of the State of South Carolina.

26. Dorchester School District Four ("District 4" or "DD4" individually or collectively with District Four Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

27. Dorchester School District Four Board of Trustees ("District 4 Board" or "DD4 Board" individually or collectively with Dorchester School District Four) is the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

28. Defendant Dorchester County Career and Technology Center ("DCCTC" individually or collectively with Dorchester County Career and Technology Center Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

29. The Dorchester County Career and Technology Center Board of Trustees ("DCCTC Board" individually or collectively with the Dorchester County Career and Technology Center) is

the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

30. David Chinnis ("Chinnis") is the Chairman and a member of Dorchester County Council, and is being sued only in his official capacity.

31. George Bailey ("Bailey") is the Vice Chairman and a member of Dorchester County Council, and is being sued only in his official capacity.

32. Jay Byars ("Byars") is a member of Dorchester County Council, and is being sued only in his official capacity.

33. Carroll S. Duncan ("Duncan") is a member of Dorchester County Council, and is being sued only in her official capacity.

34. Larry Hargett ("Hargett") is a member of Dorchester County Council, and is being sued only in his official capacity.

35. Willie Davis ("Davis") is a member of Dorchester County Council, and is being sued only in his official capacity.

36. William R. Hearn, Jr. ("Hearn") is a member of Dorchester County Council, the governing body of Dorchester County, South Carolina; and is being sued only in his official capacity.

37. Luther C. Knight ("Knight") is the Sheriff of Dorchester County and, on information and belief, a former employee of Knight and Whittington, LLC, which is owned, in whole or in part, by Knight's daughter; and is being sued only in his official capacity.

38. William E. McIntosh III is employed by and/or a member of Knight and Whittington, LLC; is a member of Summerville Town Council; and is being sued only in his official capacity.

39. Joseph R. Pye ("Pye") is the Superintendent of Dorchester School District Two, and is being sued only in his official capacity.

40. Justin Farnsworth ("Farnsworth") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

41. Gail Hughes ("Hughes") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

42. Brian Mitchum ("Mitchum") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

43. Tanya Robinson ("Robinson") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

44. Barbara Crosby ("Crosby") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

45. Sam Clark ("Clark") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

46. Lisa Tupper ("Tupper") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

III. STATUTORY AND REGULATORY FRAMEWORK

A. SRO FUNDING - ACT 388 AND DOUBLE TAXATION VIOLATIONS

47. S.C. Code Ann. § 5-7-12(B) defines a School Resource Officer ("SRO") as:

[A] person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." *Id.* (emphasis added).

48. The United States Department of Labor describes the duties of an SRO as follows:

We also believe that the SRO's primary duty of providing for the safety and security of students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R § 542.201(b). Op. Fair Labor Standards Act (FLSA 2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).

49. S.C. Code Ann. § 5-7-12(A) allows, but does not require, the County and the Town to designate certain officers as SROs, but states nothing about how those SROs may be funded. Specifically, S.C. Code Ann. § 5-7-12(A) states:

The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a [SRO] and to work within the school systems of the municipality or county. The person assigned as a [SRO] shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. . . . [If an SRO] arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. . . . When acting pursuant to this section and outside of the sworn municipality or county of the [SRO], the officer shall enjoy all authority, rights, privileges, and immunities . . . he would have enjoyed if operating in his sworn jurisdiction. Id.

50. However, S.C. Code Ann. § 12-37-220(B)(47)(a),(c)("Act 388") restricts how SROs can be funded. Specifically, S.C. Code Ann. § 12-37-220 (B)(47)(a),(c) states in pertinent part:

(47)(a) Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12-37-250, one hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

(c) The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two-thirds majority of the membership of each house of the General Assembly; Id. (emphasis added).

51. The South Carolina Legislature was so adamant about its intention not to tax "owner-occupied residential property" for "school operating purposes" (emphasis added) that the Legislature made it extraordinarily difficult to do that by having Act 388 state that "[t]he exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded roll call vote of at least a two-thirds majority of the membership of each house of the General Assembly." S.C. Code Ann. §12-37-220(B)(47)(c)(emphasis added). Thus, by statute, this state exemption from taxing owner-occupied property for school operating purposes can be rescinded only by 2/3 vote of each house of the Legislature.

52. Act 388 exempts owner-occupied residential property from all property taxes imposed for "school operating purposes" with the exception of "bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State." S.C. Code Ann. §12-37-220(B)(47)(b); 2015 S.C. AG LEXIS 105, attached as Exhibit #1 and incorporated herein by reference, see also Op. S.C. Att'y Gen., 2007 WL 1302772 (April 24, 2007).

B. DD2 FAILURES TO FILE ANNUAL DEVELOPMENT REPORTS

53. The South Carolina General Assembly Act No. 98 of 2009 states as follows:

(A98, R1, S234) AN ACT TO REQUIRE THE SUPERINTENDENT OF DORCHESTER COUNTY SCHOOL DISTRICT NO. 2 TO PREPARE AND SUBMIT TO THE COUNTY AND THE MUNICIPALITIES WITHIN DORCHESTER SCHOOL DISTRICT NO. 2 AN ANNUAL REPORT DETAILING INFORMATION REGARDING THE IMPACT OF DEVELOPMENT ON SCHOOLS WITHIN THE DISTRICT, TO REQUEST FROM THE COUNTY AND ALL MUNICIPALITIES WITH LAND ENCOMPASSED BY THE DISTRICT APPLICATIONS FOR LAND DEVELOPMENT PROJECTS THAT INCLUDE RESIDENTIAL HOUSING THAT MEET CERTAIN CRITERIA, TO DETERMINE WHETHER A PARTICULAR PROJECT WILL RESULT IN A SUBSTANTIAL IMPACT ON THE DISTRICT'S ABILITY TO PROVIDE SERVICES TO THE ADDITIONAL STUDENT POPULATION, AND TO PREPARE

AND SUBMIT A REPORT TO THE COUNTY AND ALL MUNICIPALITIES WITHIN THE DISTRICT DETAILING THE IMPACT AND NEED FOR ADDITIONAL RESOURCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) At the beginning of each fiscal year of Dorchester County School District No. 2, the superintendent of the district shall prepare and submit and obtain proof of delivery to the governing body and to the land planning commission of the county and each municipality with land encompassed by the district a report describing the current and projected status and needs of the district. This report will include, but not be limited to, the following:

- (1) a list of all schools in the district with the number of classrooms, current enrollment, and the enrollment capacity of each school and of the entire district;
- (2) the district's student enrollment over the previous ten years and projected enrollment over the next ten years;
- (3) the district's capital improvement program, including all schools existing, under construction, or planned and plans for funding those schools;
- (4) current and projected construction costs for new schools and the cost of mobile classrooms, the causes of any cost increases over previous estimates, and the sources for the information;
- (5) the most recent five-year history of the audited operating and capital expenditures of the district;
- (6) the most recent five-year history of the county assessed tax base used for financing purposes in the district;
- (7) identification of federal, state, and local laws or regulations which the district recommends be repealed or relaxed to save costs and increase efficiency for the district and an explanation of how the savings and increased efficiency could occur;
- (8) a list of additional facilities, teachers, and other resources projected to be necessary to service the additional student population of the district over the next ten years; and
- (9) all other information and recommendations by the district regarding how county or municipal governments could help the district better meet its needs and the needs of its students.

(B) The superintendent shall on a quarterly basis request in writing from the governing body and from the local planning commissions of each county and municipality with land encompassed by the district a copy of all land development applications and accompanying materials involving residential housing:

- (1) that are greater than twenty-five acres in size; or
- (2) with an anticipated residential population density equal to or greater than the average residential density of all land developments within the boundaries of the district, or both. The superintendent shall request that the applications and materials be provided to the district within ten days after receipt of the applications and materials by a local planning commission or governing body.

The superintendent and the planning commissions may agree that the information is to be provided electronically or by some other suitable means and that the request is considered ongoing and the information will be provided automatically whenever any residential land development application is received that meet these criteria.

(C) The superintendent shall review all applications for land development projects described in subsection (B) and report the results of that review to the board of trustees. The superintendent and the board both will determine whether the additional anticipated increase in student population resulting from the land development project will have a substantial impact on the district's ability to provide services to the additional student population. If either determination is positive, the superintendent and the board shall prepare a report that describes the impact and details the need for additional facilities, teachers, and other resources necessary to service the additional student population, and provide in that report current updated information regarding the subjects described in subsection (A). In determining whether a particular project may result in a substantial impact, the superintendent and the board shall consider not only the impact of the particular project but also the aggregate impact of the project with other projects pending at the time the superintendent conducts his review. The report must be provided, within thirty days of the district's receipt of the application, to the applicable county or municipal governing body and local planning commission. The report must be maintained as part of the land development application and made available to the public.

SECTION 2. This act takes effect upon approval by the Governor.
Ratified the 19th day of February, 2009.

Became law without the signature of the Governor – 2/26/09. Id. (emphasis added).

IV. FACTUAL ALLEGATIONS

A. VIOLATIONS OF ACT 388

54. In 2015 the South Carolina Education Oversight Committee arranged and the South Carolina General Assembly funded an “independent review of the efficiency” of Dorchester School District 2 by Tidwell and Associates, a Columbia-based consulting firm that provides public sector management research, evaluation and technical assistance. DD2 volunteered to participate in this study.

55. In May, 2015, Tidwell and Associates published a report (“Tidwell Report”) of the results of its review of the efficiency of DD2. See Dorchester School District 2 School District Efficiency Review FINAL REPORT, Tidwell & Associates, Inc. (May 26, 2015). In this report Tidwell and Associates recommended that DD2 take several actions to increase DD2’s efficiency and save DD2 money, including especially “Tier 1” recommendations defined as those having the

"Greatest Impact: The district should implement these recommendations immediately to take maximum advantage of their opportunities." Id. at 1-8 (emphasis added). Among those "Tier 1" recommendations was that DD2 "[c]onsider contracting with private security services for the School Resource Officer Program, or directly hire district security officers." Id. at 1-9, 2-15, 2-16 (emphasis added).

56. Specifically, Tidwell and Associates recommended that DD2 stop paying Dorchester County and the Town of Summerville for SROs employed by the County or Town to provide police protection in DD2 schools and, instead, that DD2 directly employ its own district security officers or contract with a private security company to provide police protection in DD2 schools, both to save money and to eliminate the current "inequitable School Resource Officer coverage across the district." Id. at 2-15, 2-16. Tidwell and Associates stated that DD2's hiring of police protection in-house would save DD2 \$194,305 per year and that, over five years, DD2 would save \$1,755,600 if it hired a private security contractor to perform this service, as do the Lancaster County School District and the Lexington County/Richland County School District #5. Id.

57. The Dorchester School District Two Board of Trustees attempted to implement, and notified Dorchester County Council and the Dorchester County Sheriff that DD2 would implement, these cost-saving, efficiency-increasing "Tier 1" Tidwell Report recommendations for DD2 by either hiring private security guards as contractors or in-house employees of DD2. These attempts by DD2 were stopped due to strong objections and threats by the Dorchester County Sheriff, who vigorously complained that all SROs should be controlled, trained and employed by, and financed within the budget of, the Dorchester County Sheriff instead of by DD2. Specifically, the Dorchester County Sheriff threatened DD2 and County officials that assistance from the

Dorchester County Sheriff's office to transport prisoners or to handle an emergency at DD2 schools deliberately would be delayed by the Dorchester County Sheriff if the SROs providing protection at DD2 schools no longer were hired and controlled by the Dorchester County Sheriff.

58. Public support for implementing the above-referenced cost-saving recommendations in the Tidwell Report and opposition to double taxation, paying the Dorchester County Sheriff's Office excessive fees for SROs and the County and Town collecting taxes on owner-occupied homes to pay for SROs in violation of Act 388 was squelched and impeded by intimidating and threatening actions and communications made by officials of Dorchester County Council, the Dorchester County Sheriff's Office and Summerville Town Council. For example, Summerville Town Councilman McIntosh and Dorchester County Councilman Chinnis made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of the recommendations in the Tidwell Report and opponents to the Council's and Town's unlawful methods of funding SROs, for the purpose and with the effect of undermining those proponents' credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs. In addition, Defendant McIntosh repeatedly threatened to interfere with the employment of one of those proponents, Plaintiff David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding these SRO matters. Defendant McIntosh is an employee or a member of the law firm owned, in whole or in part, by the daughter of the Dorchester County Sheriff, who adamantly objected to DD2's hiring its own SROs, as private contractors or in-house employees of DD2, as recommended by the Tidwell Report. Defendant McIntosh made these statements and took these actions, and other actions, to

help the Town of Summerville, the Dorchester County Sheriff and other Defendants continue the illegal *status quo* methods of funding SROs advantageous to the Dorchester County Sheriff and to avoid implementing the SRO funding recommendations in the Tidwell Report.

59. Defendants McIntosh's and Chinnis' threats and personal attacks on Plaintiff Messinger described above are a continuation of past efforts by Dorchester County and the Dorchester County Sheriff to discredit, defame, intimidate and interfere with the Constitutional rights of Messinger and others and the employment of Messinger and others. For example, then Lieutenant Tony Phinney ("Phinney") of the Dorchester County Sheriff's Office e-mailed the then Director of the Department of Public Safety at the Medical University of South Carolina stating in part the following:

... [M]y supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments in an open forum on Facebook in an attempt to harm my reputation and to aid his brother in his bid as a candidate for Sheriff. . . . There are at least 4 other persons that are preparing actions against Mr. Turner also

The Facebook forum is 'Concerned Citizens for Dorchester County.' Mr. Turner is listed as the 'administrator' for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a 'cease and desist' letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervisor asked that I let you know what lay on the horizon. E-mail dated May 1, 2012, from Lt. Tony Phinney, Dorchester County Sheriff's Office, to Anthony Dunbar (emphasis added), attached as Exhibit #2.

Similarly, Lt. Phinney e-mailed and called the then Chief ("Chief") of the Mt. Pleasant Police Department ("Department") to discredit Messinger and try to get the Mt. Pleasant Police

Department to terminate the employment of Messinger. Lt. Phinney told the then Chief of the Mt. Pleasant Police Department that Lt. Phinney was calling that Chief at the request of Lt. Phinney's supervisors at the Dorchester County Sheriff's office, to state that the Chief and the Department should rethink their recent hiring of Messinger because Messinger was the Administrator of the Facebook page for Concerned Citizens of Dorchester County. As a result, Messinger was involuntarily counseled and warned by the Chief; Messinger had to remove his name as being the Administrator of the Concerned Citizens of Dorchester County Facebook page; and Messinger was deterred from exercising his Constitutional rights of expression and assembly and to petition his government for redress of grievances.

60. The cost of an SRO employed and supervised by the Dorchester County Sheriff to provide protection at a DD2 school is about twice as expensive as would be charged if that same SRO were employed and supervised by DD2. Those costs charged for an SRO by the Dorchester County Sheriff or by Dorchester County are unreasonably excessive and inflated, and, upon information and belief, would not be used exclusively to fund SROs but would be used for other purposes. These excessive SRO fees have contributed to the layoffs of teachers by DD2, thereby harming the quality of education received by DD2 students.

61. As required by contract, on or about July 20, 2015, DD 2 reimbursed Dorchester County approximately \$500,000 the County previously had paid for SROs who had served at certain DD2 schools during fiscal years 2012-2014. Those payments for SROs were paid by the County with property taxes collected, *inter alia*, on owner-occupied homes located in Dorchester County, in violation of Act 388.

62. On or about July 31, 2015 Dorchester County and Dorchester District 2 entered into a contract authorizing and requiring Dorchester County to appropriate, and requiring

Dorchester County to bill DD2 and DD2 to reimburse Dorchester County, more than \$1 million for SROs serving at DD2 schools during FY 2015-2017. An AGREEMENT Between Dorchester County and Dorchester County School District 2 for the School Resource Office (SRO) Program, dated July 31, 2015 ("DD2 Contract") attached as Exhibit #3 and incorporated herein by reference.

63. This DD2 Contract states in part as follows:

The Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following [six] schools for the school years FY 2015-2016 through 2017-2018. [...] The Sheriff shall assign one full time supervisor to oversee the SRO program. [...] Each school shall have the number of SROs agreed upon ... to be assigned on a full-time basis, during the regular school year, as needed." Id. at 1 (emphasis added).

64. This DD2 Contract provides that at least 87% of the payments made pursuant to the DD2 Contract, or \$874,740, will be for the purpose of paying SRO salaries and not for capital expenses. Id. at 4.

65. This DD2 Contract states in part as follows:

Compensation

a) The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

b) The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015-2016		FY2016-2017	
Six SROs	\$360,000	Seven SROs	\$420,000
	0		

Supervis	\$47,370	Supervis	\$47,370
or		or	
Capital	\$87,616	Capital	\$43,808
Total	\$494,98	Total	\$511,178
	6		*

*Does not include CPI adjustment.

c) Each year invoices for services shall be mailed at the beginning of each quarter and payment shall be made to the County within 30 days thereafter, with the first quarter beginning July 1, 2015.

d) Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services such costs shall be billed to the School District within 30 days and payment shall be made to the County within 30 days thereafter. Id. at 4-5 (emphasis added).

66. This DD2 Contract states in part as follows:

A. "It is agreed that the designated officer(s) will remain employee(s) of Dorchester County with all rights, benefits and privileges thereto and shall be subject to the administration, supervision and control of the Sheriff's Office." Id. at 4;

B. "The School District shall provide to the SRO at each school ... materials and facilities necessary to the performance of their duties...." Id.

C. "The County Council shall impose a fee for SROs services that shall be billed by the County to the School District." Id.

D. "The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2." Id.

E. "The School District shall also pay the anticipated capital costs to equip [all] SROs required by this agreement in the amounts as set forth [as follows]." Id.

F. Six SROs @ \$360,000 per annum, one Supervisor @ pro rata \$47,370 per annum, Capital Costs @ non pro rata \$87,616, for a total of \$494,986. Id.

These above-stated costs far exceed the costs of the Office of the Sheriff for providing SRO services stated in "Motion #1" to amend County Ordinance #15-14 by, in part, increasing "...the Personnel line items in the Sheriff's Office by \$310,999 to fully cover the costs of the SRO

Program..." and increasing "...the Operating line items in the Sheriff's Office by \$104,594." See id.

67. Payments required by the DD2 contract must be paid both by DD2 and Dorchester County and are for the purpose of paying DD2's school operating expenses. Under this DD2 contract DD2 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." Id. at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD2 operating expenses for SROs working at DD2 schools.

68. Similarly, on or about July 29, 2015, Dorchester County and Dorchester County School District #4 entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill DD4 and DD4 to reimburse Dorchester County, \$120,000 for SROs serving at DD4 schools during FY 2015-2017. AN AGREEMENT Between Dorchester County and Dorchester County School District 4 For the School Resource Officer (SRO) Program, dated July 29, 2015 ("DD4 contract"), attached as Exhibit #4 and incorporated herein by reference. None of those monies reimbursed are designated as capital expenses; they are for the purpose of paying SRO salaries. See id. at 4.

69. Payments required by the DD4 contract must be paid both by DD4 and Dorchester County and are for the purpose of paying DD4's school operating expenses. Under this DD4 contract DD4 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are

"reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." *Id.* at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD4 operating expenses for SROs working at DD4 schools.

70. Similarly, on or about August 6, 2015, Dorchester County and the Dorchester County Career and Technology Center entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill the DCCTC and the DCCTC to reimburse the County, \$67,895 for SROs serving at DCCTC schools during FY 2015-201. AN AGREEMENT Between Dorchester County and Dorchester County Career and Technology Center for the School Resource Officer (SRO) Program, dated August 6, 2015 ("DCCTC contract"), attached as Exhibit #5 and incorporated herein by reference.. None of those reimbursements are designated as capital expenses but are for the purpose of paying SRO salaries. *Id.*, at 1, 4.

71. Payments required by the DCCTC contract must be paid both by DCCTC and Dorchester County and are for the purpose of paying DCCTC's school operating expenses. Under this DCCTC contract DCCTC is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." *Id.* at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DCCTC operating expenses for SROs working at DCCTC schools.

72. The terms of all contracts referenced herein, and of all payments for SROs referenced herein, have been authorized respectively by Dorchester County Council, Summerville Town Council, and the respective governing body of these three School Districts.

73. Upon information and belief, additional property taxes have been paid or are obligated to be paid and will be paid (a) by one or more of these School Districts to reimburse Dorchester County and/or the Town of Summerville for monies Dorchester County or the Town paid or will pay for SROs at one or more of these School Districts and (b) by Dorchester County and/or the Town of Summerville to fund SROs at one or more of these School Districts.

74. At all times pertinent all monies paid and obligated to be paid by Dorchester County or the Town of Summerville to any of the School Districts for SROs have been paid or will be paid with property taxes collected, inter alia, on owner-occupied homes in the County and/or the Town, in violation of Act 388, pursuant to ordinances, resolutions, motions and contracts by the governmental Defendants.

75. Upon information and belief, property taxes have been paid or are obligated to be paid (a) by one or more of these School Districts to reimburse the Town for monies the Town has paid for SROs at one or more of these School Districts, and (b) by the Town to fund SROs at one or more of these School Districts, pursuant to ordinances, resolutions, motions and contracts by the governmental Defendants.

76. At a Special Called Meeting on July 27, 2015 Dorchester County Council passed "3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, 'An Ordinance to Make Appropriations . . . for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County,' to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures

in the county general fund and county capital fund in order to hire and equip additional Sheriffs Office Personnel and to serve as School Resource Officers." Memorandum, dated July 23, 2015, re Special Called Council Meeting (" . . . increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as [SROs]. This additional funding will provide for six SROs in [DD2] and provide an SRO supervisor, who will oversee the SRO program in School District 2, School District 4, and the Career School."), attached as Exhibit #6 and incorporated herein by reference. Passage of this Amendment allowed Dorchester County to add an additional mil of taxation of 4% properties, including owner-occupied homes, 6% properties and personal property, to fund SROs to be used, pursuant to a reimbursement contract, by DD 2, DD 4 and the DCCTC to provide police protection at their respective schools.

77. Also at a Special Called Meeting on July 27, 2015 Dorchester County Council passed motions to approve the DD2 Contract, the DD4 Contract and the DCCTC Contract, referenced above.

78. Dorchester County and the Town of Summerville have been and will continue taxing "owner-occupied residential property" "for school operating purposes" to finance police protection with SROs at DD2, DD4 and/or DCCTC schools, in violation of Act 388, pursuant to ordinances, resolutions, motions and contracts by these governmental Defendants. The purpose of Dorchester County's and the Town's collecting and using those taxes is to finance SROs for police protections at schools. School police protection is a "school operating purpose" within the meaning of Act 388. Although by contract the School Districts must reimburse Dorchester County and/or the Town for those taxes collected and used by Dorchester County and/or the Town to finance SROs, those reimbursements may never be collected and paid to Dorchester County.

79. If Dorchester County, the Town and these School Districts can finance school police protection in the manner described above, by that precedent Dorchester County and the Town could finance salaries, electricity, gasoline for school buses and all other operating expenses of these School Districts by taxing owner-occupied homes, thereby having Dorchester County's and the Town's tax owner-occupied residential homes pay for all those School Districts' operating expenses.

B. DOUBLE TAXATION BY COUNTY OR TOWN, AND SCHOOL DISTRICTS

80. Property owners who live in Dorchester County and in a School District but not in the Town are being taxed twice -- once by Dorchester County and once by a School District -- to pay salaries and other operating expenses for the same SROs. Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County, as required by contract, the monies Dorchester County collected and paid or will collect and pay for the salaries and other operating expenses of the same SROs.

81. Property owners who live in the Town and in a School District are being taxed twice -- once by the Town and once by a School District -- to pay salaries and other operating expenses for the same SROs. The Town taxes all properties within the Town, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay the Town the monies the Town collected and paid or will collect and pay for the salaries and other operating expenses of the same SROs.

82. This double-taxation of the same properties to pay the operating expenses of the same SROs already has occurred for SROs at DD2 for FY 2013-2014, 2014- 2015 and perhaps other years, and will continue in the future.

83. Additional proof of this double taxation is provided by the County's published explanation of the purposes of the Amendment to Dorchester County Ordinance # 15-14 authorizing the County to tax property owners for SROs. See Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016, attached as Exhibit #7 and incorporated herein by reference. That explanation states that the Amendment would increase by \$461,000 the tax revenue "to reflect an additional county operating mill for the SRO Program;" increases the Personnel line items in the Sheriff's Office by \$310,999 "to fully cover the costs of the SRO Program;" and otherwise require that monies from this one mill County tax increase be given to the Sheriff's Office for this SRO Program. Id. (emphasis added). According to this Amendment, these monies will be given by Dorchester County directly to the Dorchester County Sheriff's Office, not to DD 2, to pay the costs of DD 2's SROs. See Ordinance to Amend Dorchester County Ordinance # 15-14, An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1 , 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County.

84. The Amendment to Dorchester County Ordinance # 15-14 also requires that DD 2 reimburse the County for the costs expended by the County for SROs. For example, the Amendment requires an increase in the "charges for services revenue line item by \$49,776 to reflect additional funds [DD2] will pay the County in FY 2016 for the SRO Program." (Emphasis added.)

In addition, the Amendment to Dorchester County Ordinance # 15-14 mandates that the "County Council shall impose a fee for SRO services that shall be billed by the County to the School District;" the "County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated [sic] share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2 . . . ;" and the "School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts set forth below: (1) FY 2015-2016 : Six SROs \$360,000; Supervisor \$47,370; Capital \$87,616; Total \$494,986; 2) FY 2016-2017 Seven SROs \$420,000; Supervisor \$47,370; Capital \$43,808 Total \$511,178." Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016, attached as Exhibit #7. (Emphasis added.)

85. The Agreement "between Dorchester County and [DD2] for the School Resource Officer (SRO) Program" imposes on DD2 exactly the same requirements for DD2 to reimburse Dorchester County for SROs as is stated in the Amendment to Dorchester County Ordinance # 15-14 described in the paragraph immediately above. AN AGREEMENT Between Dorchester County and Dorchester County School District 2 For the School Resource Officer (SRO) Program, dated July 31, 2015, attached as Exhibit #3 .

86. If Dorchester County, the Town and these School Districts can finance school police protection in the manner described above, by that precedent multiple governmental entities could tax, reimburse and contract for payments to each other for precisely the same things.

87. This illegal double taxation and these illegal violations of Act 388 would be avoided completely if the School Districts simply taxed property owners for SROs in accordance with Act 388, and Dorchester County and the Town refrained from taxing any property owners

for SROs. This financing scheme of having Dorchester County and the Town of Summerville tax property owners and pay for SROs and in turn be reimbursed by a School District that taxes property owners for the same SROs is unnecessary, illegal double taxation and a violation of Act 388.

C. TAXING WEATHERSTONE PROPERTY FOR SROs IN UNRELATED SCHOOL DISTRICTS

88. The Town of Summerville taxes the property of Weatherstone POA members and other residents of Berkeley County to provide SROs for protection in schools not located in any school district that serves any of those property owners or any other resident of Berkeley County, pursuant to ordinances, resolutions, motions and contracts by the Town of Summerville. These ordinances, resolutions, motions and contracts are unconstitutional and otherwise illegal because they cause the Town to tax those properties to provide SRO services solely in jurisdictions that cannot benefit and are unrelated to the property owners paying those property taxes.

D. INCREASING TWO GOVERNMENT ENTITIES' MILLAGE BASES

89. Moreover, the harms to taxpayers caused by the SRO funding arrangement specified by the Amendment and the Agreements described above extend beyond double taxation and violating Act 388. State law requires that each school district's budget increase annually above the previous year's budget by a specified amount in accordance with a formula, and allows Dorchester County's and the Town's budgets also to be increased each year by a specified amount in accordance with a formula. By two entities -- a school district and the County or the Town -- taxing the same property for exactly the same purpose, i.e., to fund the same SROs, both DD2 and the County or Town, instead of only one of them, are causing or

allowing compounded annual increases to their budgets. If that financing scheme by both Dorchester County and the School Districts and by the Town and the School Districts for the same SROs is legal, all other school operating expenses lawfully could be paid by both a School District and Dorchester County or the a School District and the Town taxing the same property for the same items and thereby cause a huge exponential annual increase of the budget and taxing authority of both entities.

E. Act No. 98 of 2009

90. With one exception, Dorchester District 2 has failed and refused to comply with any of the requirements of Act No. 98 of 2009 quoted above by, inter alia, completely failing to submit any of the required annual reports. The one exception is that DD2 did file a partial but incomplete report in the year 2010.

E. THWARTED CITIZEN ATTEMPTS TO CORRECT ILLEGALITIES

91. On numerous occasions some of the Plaintiffs and members of the public have tried to persuade Dorchester County Council, the Town of Summerville and the School Districts to cease violating Act 388 and unlawfully engaging in double taxation as described above.

92. In addition, the Dorchester County Taxpayers Association and its attorney have asked DD2 on numerous occasions to file the reports required by Act No. 98 of 2009 and to provide DCTA a copy of those reports pursuant to the Freedom of Information Act. However, DD2 continues to fail to do so.

93. On July 27, 2015, a statement was submitted and read to Dorchester County Council objecting to violations of Act 388 and double taxation referenced above. See Statement by Michael T. Rose Public Hearing Re Dorchester County Tax Increase for SROs and Attachment to Statement, attached as Exhibit #8 and incorporated herein by reference.

94. Based on a request by South Carolina State Senator Paul Thurmond, on November 24, 2015 the South Carolina Attorney General issued an eleven-page opinion stating that the above-described method of funding SROs by the Defendant government entities violates Act 388 and constitutes illegal double taxation. See 2015 S.C. AG LEXIS 105, attached as Exhibit #1. The Attorney General Opinion states that SROs are in fact an operating expense of schools because they "serve in the operation of schools" and often develop safety policies and procedures as "an advisor and teacher," and that "[w]e believe a court will determine that a school resource officer — whether an employee of the county, school district or sheriff — falls within the meaning of a 'school operating expense' by the very statutory definition of a 'school resource officer.'" *Id.* The Attorney General Opinion also states that based on Attorney General opinions from at least three different years — 1969, 1986 and 1998 — it is illegal for a government to double tax the same property for the same purpose during the same taxing period. See *id.*

95. Based on another request by South Carolina State Senator Paul Thurmond, on February 24, 2016 the South Carolina Attorney General issued a seven-page opinion stating in part that:

"[A] school district could lawfully employ directly a security officer other than a School Resource Officer to provide protection at schools. Security officers licensed by SLED pursuant to § 40-18-10 *et seq.* could be used by the school, in our opinion. Such officers would possess the powers of a deputy sheriff on the property they are hired to protect — in this instance, a public school. 2016 S.C. AG LEXIS 10, attached as Exhibit #9.

96. Dorchester County Council and DD2 have refused to rescind their method of funding SROs that the Attorney General has opined is illegal, as stated above. Indeed, the DD2 Superintendent responded to the Attorney General opinion by stating "This is just an opinion, it's not binding." County Councilman Byars was reported by the Summerville Journal Scene as giving little credibility to a legal opinion by the Attorney General, stating that "[l]egal opinions are not

worth the paper they're written on until they're adjudicated (in court)," and called any threat of litigation over these issues "vapid rhetoric." County Councilman William Hearn stated publicly "[i]t doesn't matter... what happens in the courts." County Councilman Chinns expressed doubt about the credibility of a lawyer interpreting the meaning of "operating expense" given his belief that the phrase is an accounting term, and stated that [i]f they want to take it to court, take it to court."

V. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION VIOLATIONS OF ACT 388

97. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

98. The ordinances, resolutions, motions and contracts causing the methods of financing SROs described above violate Act 388 by taxing owner-occupied residences for the purpose of a school operating expense, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

99. As a direct and proximate result of the Defendants violations of Act 388 described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by having had to pay and by having to pay in the future additional and unlawful taxes; and by having to incur additional harm and losses, as described herein.

FOR A SECOND CAUSE OF ACTION ILLEGAL DOUBLE TAXATION

100. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

101. The ordinances, resolutions, motions and contracts causing the methods of financing SROs described above constitute illegal double taxation in violation of the South Carolina Constitution by taxing twice the same property for the same specific purpose at the same

time, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

102. As a direct and proximate result of the Defendants' illegal double taxation described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by having had to pay and by having to pay in the future additional and unlawful taxes; and by having to incur additional harm and losses, as described herein.

**FOR A THIRD CAUSE OF ACTION
DD2'S FAILURE TO COMPLY WITH ACT NO. 98 of 2009**

103. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

104. The failure and refusal of DD2 to comply with Act No. 98 of 2009 is unlawful.

105. As a direct and proximate result of DD2's continued failure and refusal to comply with Act No. 98 of 2009, the Plaintiffs, those similarly situated and schools in and residents of Dorchester County have been harmed and will continue to be harmed by decisions being made by Dorchester County Council, the Town Council of Summerville and other municipalities in Dorchester County without the information required to be provided to them by Act No. 98 of 2009; by permits and approvals for residential and commercial development being allowed without having provided adequately for sufficient roads, schools, water, drainage and sewer infrastructure; and by having to incur additional harm and losses, as described above.

**FOR A FOURTH CAUSE OF ACTION
VIOLATIONS OF EXPRESSION AND ASSOCIATION
RIGHTS UNDER SOUTH CAROLINA CONSTITUTION**

106. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

107. Actions by Defendants McIntosh, Chinnis, Dorchester County Council, Summerville Town Council, the Dorchester County Sheriff and others deprived, and will continue to deprive, Plaintiff Messinger, other Plaintiffs and other taxpayers and members of the public, of their rights of free association, petition for redress of grievances, speech and expression protected by the South Carolina Constitution, in numerous respects, including but not limited to, the following:

- A. Repeatedly suggesting that an employer might be dissatisfied if the employer knew the nature of what the employee was advocating, threateningly implying that they might notify those employers about their advocacy and thereby jeopardize continuation of their employment;
- B. Contacting and trying to persuade Defendant Messinger's employer to terminate the employment of Messinger; and/or
- C. Repeatedly making and/or endorsing on Facebook and in other communications false defamatory statements about the positions, views and professional history and abilities of David Messinger and another police officer.

108. As a direct and proximate result of the Defendants' violations described above, Plaintiffs Messinger and others similarly situated have been damaged and will continue to be damaged by having been deprived, and in the future continuing to be deprived, of their rights of free association, petition for redress of grievances, speech and expression protected by the South Carolina Constitution.

**FOR A FIFTH CAUSE OF ACTION
VIOLATIONS OF FIRST AMENDMENT RIGHTS
UNDER THE UNITED STATES CONSTITUTION**

109. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

110. Actions by Defendants McIntosh, Chinnis, Dorchester County Council, Summerville Town Council and the Dorchester County Sheriff described above deprived, and will

continue to deprive, Plaintiffs Messenger, other Plaintiffs and other taxpayers and members of the public, of their rights of free association, petition for redress of grievances, speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Repeatedly suggesting that their employers might be dissatisfied with them if they knew the nature of what they were advocating, implying that they might notify those employers about their advocacy and thereby jeopardize continuation of their employment;
- B. Contacting and trying to persuade Defendant Messenger's employer to terminate the employment of Messenger; and/or
- C. Repeatedly making and/or endorsing on Facebook and in other communications false defamatory statements about the positions, views and professional history and abilities of David Messenger and another police officer.

111. As a direct and proximate result of the Defendants' violations described above, Plaintiffs Messenger, other Plaintiffs and others similarly situated have been damaged and will continue to be damaged by their having been deprived, and in the future continuing to be deprived, of their rights of free association, petition for redress of grievances, speech and expression protected by the South Carolina Constitution.

**FOR A SIXTH CAUSE OF ACTION
VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS
RIGHTS UNDER THE FOURTEENTH AMENDMENT**

112. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

113. Plaintiffs have liberty interests and property interests in the properties they own located in Dorchester County, the Town of Summerville and the School Districts. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs, and other taxpayers and members of the public, of their rights to substantive and

procedural due process under the Fifth and Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Taxing the property of the Plaintiffs in violation of Act 388;
- B. Double taxing the property of the Plaintiffs for the same items at the same time;
- C. Publishing or allowing their agents to publish false, defamatory statements about, and to threaten, some of the Plaintiffs; and
- D. Violating federal and state Constitutional provisions, and statutes, as stated herein.

114. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs, and others, and other actions described herein, those Plaintiffs have had their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and have incurred additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes unlawfully; by suffering a reduction in the value of their properties and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described herein.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

- A. Grant a Declaratory Judgment declaring that:
 - (1) Ordinances, resolutions, motions and contracts by the Town of Summerville are invalid because they have violated Act 388 and the South Carolina Constitution by taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts;
 - (2) Ordinances, resolutions, motions and contracts by Dorchester County are invalid because they have violated Act 388 and the South Carolina

Constitution by taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts;

- (3) Ordinances, resolutions, motions and contracts by the Town of Summerville and the School Districts are invalid because they have violated the federal and South Carolina Constitutions by each taxing the same properties twice at the same time for the same SRO expenses;
- (4) Ordinances, resolutions, motions and contracts by Dorchester County and the School Districts are invalid because they have violated the federal and South Carolina Constitutions by each taxing the same properties twice at the same time for the same SRO expenses;
- (5) Dorchester School District 2 has violated Act No. 98 of 2009;
- (6) Defendants have violated the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution; and
- (7) Defendants have violated the Plaintiffs' rights under the South Carolina Constitution.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Implementing ordinances, resolutions, motions and contracts that cause owner-occupied homes to be taxed to pay for SROs or any other police protection for schools;
- (2) Implementing ordinances, resolutions, motions and contracts that cause the same properties to be taxed twice at the same time for the same SROs expenses;
- (3) Violating Act No. 98 of 2009;
- (4) Violating the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution;
- (5) Violating the Plaintiffs' rights under the South Carolina Constitution; and
- (6) Engaging in any and all other such illegal acts as this Court deems appropriate for injunctive relief.

C. Grant a writ of mandamus requiring that Dorchester District 2 comply fully with Act No. 98 of 2009, by performing now acts required to have been done in the past that have not been done, and by performing in the future all actions required to be performed in the future by Act No. 98 of 2009;

D. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, 42 U.S.C. § 1983 and any other applicable law; and

E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.

5/6/16

15/

Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

JURY TRIAL DEMANDED

RECORDED

2013 MAY -6 PM 2: 56

CHERYL G. ADAMS
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 1



RECORD

2016 MAY -6 PM 2:56

CHERYL CLARK
CLERK OF COURT
DORCHESTER COUNTY

ALAN WILSON
ATTORNEY GENERAL

November 24, 2015

The Honorable Paul Thurmond, Member
South Carolina Senate, District No. 41
P.O. Box 142
Columbia, SC 29211

Dear Senator Thurmond:

Attorney General Alan Wilson has referred your letter dated September 17, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issues (as quoted from your letter):

I have been contacted by a constituent that would like me to ask you to provide an Attorney General Opinion advising (1) about the legality of certain property taxes that have been imposed and/or that will be imposed by Dorchester County Council ("Council") and by each of these school districts in Dorchester County to finance School Resource Officers ("SRO") or "SROs" for the purpose of providing police protection at schools in those districts; (2) what are the differences, if any, between the authority and powers of an SRO employed by one of those school districts versus employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and (3) whether, to what extent and with what effect, an SRO lawfully could be employed by one or all of those school districts but supervised by the Dorchester County Sheriff's Office.

In particular, please advise whether those property taxes violate the South Carolina Constitution, S.C. Code Ann. §12-37-220(B)(4)-(7), Act 388, and/or any other provision of law; to what extent an SRO employed by a school district does or does not have the same powers to detain, arrest, investigate or remove an individual from school property as an SRO employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and whether, and to what extent, the Dorchester County Sheriff can hire, fire, train and supervise an SRO even though that SRO is an employee of one of the school districts and has his compensation paid by one of those school districts.

To recap, due to the concerns above, please provide me answers to the following questions described above:

- 1. Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?*
- 2. If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*
- 3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?*
- 4. Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?*
- 5. What are the specific differences, if any, between the powers and authority of an*

SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

6. What are the specific differences, if any, between the powers and authority of an SRO employed by a school district and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

Law/Analysis:

First, we will presume by referring to a "school resource officer" that you are referring to the statutory definition found in South Carolina Code Section 5-7-12(B) where a School Resource Officer is defined as "a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." S.C. Code § 5-7-12(B) (1976 Code, as amended). Please note for purposes of this opinion this Office has not reviewed any property tax bills for residents of Dorchester County or any contracts regarding School Resource Officers. This Office does not make factual determinations in an opinion such as this, but is only reviewing the law. See, e.g., Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).

1. Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?

Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47) clearly exempt owner-occupied residential property from all property taxes imposed for "school operating purposes" with the exception of "bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State." See also Op. S.C. Atty. Gen., 2007 WL 1302772 (April 24, 2007). The answer to your first question depends on whether financing School Resource Officers at schools is a "school operating purpose" in violation of Act No. 388 and South Carolina Code Section 12-37-220(B)(47). In Berkeley County School Dist. v. S.C. Dep't of Revenue, 383 S.C. 334, 679 S.E.2d 913 (2009), our State Supreme Court debated what was encompassed within the meaning of "school operating purposes." Quoting from that case, the Court stated:

Relying on a 1979 definition of "operating expenses" the Department [of Revenue] contends that "school operating purposes" encompasses "[t]hose expenses required to keep the business running, e.g. rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity." *Black's Law Dictionary* 984 (5th ed. 1979). More recently, however, *Black's Law Dictionary* has expanded the term and defined it as "[a]n expense incurred in running a business and producing output." *Black's Law Dictionary* 599 (7th ed. 1999).

...
In terms of specifics, we find payments for the lease/installment/purchase agreements should come within the definition of "school operating purposes." Clearly, a school would not be operational without an infrastructure which necessarily includes school buildings. Thus, the continued operation of a school district is dependent upon the renovation and purchase of school buildings.

Because the lease/installment-purchase payments or requisite "rent payments" effectuate this goal, these payments are essential for "school operating purposes." Significantly, in the business realm, the phrase "operating expenses" has been defined to "include payroll, sales commissions, employee benefits and pension contributions, transportation and travel, amortization and depreciation, rent, repairs, and taxes, etc." (emphasis added). Furthermore, to link the definition of "school operating purposes" to only expenses incurred for the administration of a school district would be myopic. Logically, a school district cannot operate without all of its component parts, which include school administration expenses, day-to-day expenses, and most importantly the actual facilities which are funded through lease/installmentpurchase payments. Thus, we find the payments for lease/installmentpurchase agreements would be exempt under section 12-37-220(B)(47)(a) and reimbursable under section 11-11-156(A)(1).

Berkeley County School Dist. v. South Carolina Dept of Revenue, 383 S.C. 334, 345-46, 679 S.E.2d 913, 919 (2009). Based on the Court's interpretation in Berkeley and a plain reading of the statute, if a School Resource Officer is a part of a school, the costs thereof will likely be considered an operating expense of the school. This will especially be the case where the School Resource Officer is an "advisor, and teacher" for the school district, S.C. Code § 5-7-12. If the School Resource Officer's costs are an operating expense of a school, then Dorchester County's taxation of owner-occupied residences to pay for them would be in violation of Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47).

The South Carolina Department of Revenue has issued a few Revenue Rulings regarding the interpretation of what is or is not a "school operating purpose." One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code §§ 59-1-10, 59-1-20. It defines a school district as "...any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Code § 59-1-160 (1976 Code, as amended).

We believe a court will determine that a School Resource Officer- whether an employee of the county, school district, or sheriff- falls within the meaning of a "school operating purpose" by the very statutory definition of a School Resource Officer, S.C. Code § 5-7-12(B). Since the statute appears clear and unambiguous, this Office will not look further to determine the meaning of the language in the statute. This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. South Carolina Board of Physical Therapy Exam'rs, 370 S.C. 452, 636 S.E.2d 598 (2006). Moreover, as we have noted in prior opinions of this Office, "the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Atty Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). The title "School Resource Officer" clearly denotes a legislative intent for the officer to serve in the operation of schools. Therefore, we believe a court would determine taxation by a county for a School Resource Officer is unlawful because it evades the prohibition against taxation of primary

The Honorable Paul Thurmond
Page 4
November 24, 2015

residences for school operating purposes. Furthermore, the United States Department of Labor opined on School Resource Officers and their duties by stating:

We also believe that the SROs' primary duty of providing for the safety and security of the students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R. § 541.201(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).¹ While the terms of employment may vary among School Resource Officers, the duties in the FLSA opinion appear to fit within the meaning of the operations of a school and offer a good standard of what a "school operating purpose" could be. *Id.*

Moreover, as you are likely aware, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. *Op. S.C. Att'y Gen.*, 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing *State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526 (1940); *Lurey v. City of Laurens*, 265 S.C. 217, 217 S.E.2d 226 (1975); *Westbrook v. Hayes*, 253 S.C. 244, 169 S.E.2d 775 (1969)). The State Supreme Court has cautioned the same in *Richardson v. Blalock*, 118 S.C. 438, 110 S.E. 678 (1922), stating "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." *Op. S.C. Att'y Gen.*, 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows that taxing them indirectly for school purposes is prohibited also.

2. *If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*

Even if a court determines Dorchester County's taxation of owner-occupied residences to finance School Resource Officers at schools is legal, pursuant to Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47), the County may not tax owner-occupied homes to furnish goods or services to a school district as a part of a "school operating purpose." As stated above, the South Carolina Department of Revenue has issued Revenue Rulings regarding what is or is not a "school operating purpose."² One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment,

¹ Please note that we do not know the background or this particular state's requirements for School Resource Officers.

² However, these Revenue Rulings were based on portions of S.C. Code § 12-37-251 that are not used anymore. We presume these rulings would apply today to S.C. Code § 12-37-220.

organization, operation, and support of such State system." *Id.*; S.C. Code §§ 59-1-10, 59-1-20. It defined a school district as "any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Rev. Rul. 95-22 (November 7, 1995); S.C. Code § 59-1-160 (1976 Code, as amended). Revenue Ruling No. 95-23 and 96-6 were consistent with the determinations in Ruling No. 95-22. S.C. Rev. Rul. 95-23 (November 13, 1995); 96-6 (June 12, 1996). *See also Op. S.C. Att'y Gen.*, 2007 WL 4284627 (November 27, 2007). By examining the plain meaning of the words as outlined above in our response to Question 1, any expense that would be part of a "school operating purpose" would be prohibited, including goods or services used for a "school operating purpose."

Moreover, as we stated above, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. *See S.C. Att'y Gen.*, 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing *State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526 (1940); *Lurey v. City of Laurens*, 265 S.C. 217, 217 S.E.2d 226 (1975); *Westbrook v. Hayes*, 253 S.C. 244, 169 S.E.2d 775 (1969)). As the State Supreme Court cautioned in *Richardson v. Blalock*, 118 S.C. 438, 110 S.E. 678 (1922), "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." *See S.C. Att'y Gen.*, 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows taxing them indirectly for good or services for school purposes is prohibited.

3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?

Before we examine whether charging for the same School Resource Officers by both the school district and the county would constitute double taxation, let us review some applicable South Carolina tax law.³ The South Carolina Constitution grants the General Assembly authority to "vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including special purpose districts, public service districts, and school districts" S.C. Const. art. X, § 6. The South Carolina Constitution outlines that school districts must prepare an annual budget, and if funds are insufficient, the governing body is to levy an additional tax the next year. S.C. Const. art. X, § 7(b). South Carolina Code § 12-43-210 requires uniform assessment throughout the State. *See also* S.C. Const. art. VIII, § 14; S.C. Const. art. X, § 1 (regarding uniform assessment and taxation). As the South Carolina Supreme Court stated in *Watson v. City of Orangeburg*, 729 S.C. 367, 375, 93 S.E.2d 20, 24 (1956), "[t]he power of taxation being an attribute of sovereignty vested in the legislature subject to constitutional restrictions, taxes can be assessed and collected only under statutory authority." It is well established the South Carolina General Assembly has chosen to grant counties the authority to assess and levy taxes pursuant to South Carolina Code § 4-9-30(5)(a), permitting county government the authority:

...
(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county....

³ Though we note while there are many relevant statutes and cases, we list some of them in this opinion and acknowledge there are many others not mentioned here.

The Honorable Paul thummond
Page 6
November 24, 2015

S.C. Code § 4-9-30 (5)(a) (1976 Code, as amended).

While there are numerous statutes and cases regarding taxation and schools, we are not able to address all of them in this opinion. See, e.g., S.C. Code § 59-73-60 (if the electorate votes for such a levy, the auditor shall add it to the tax duplicates and the county treasurer is authorized to collect the additional county taxes for school purposes the same as State and county taxes); § 59-73-10 (electorate must vote to approve any additional tax in any county for school purposes); § 59-73-70 (a levy by the county is a lien on the property subject to default); § 4-9-70 (unless otherwise provided by law, county council sets the school tax millage). We noted in a previous opinion that "[o]ne county administrator stated that forty-six of South Carolina's school districts report to a 'higher body (legislative delegation, county council, or county board) to get their budgets approved, or to raise the millage beyond a certain point,' whereas twenty-three school districts maintain their ability to set their own budgets." Op. S.C. Att'y Gen., 2014 WL 3414950 (July 3, 2014) (citing Burris v. Anderson County Bd. Of Educ., 369 S.C. 443, 446, 633 S.E.2d 482, 484 (2006); S.C. Code § 4-9-70)). Thus, even within the same laws, school districts in South Carolina handle funding differently.

Regarding double taxation, this Office has previously opined on the subject. In a 1969 opinion this Office stated:

"To constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same state or government (emphasis added), (3) during the same taxing period, and (4) for the same purpose." Cooley Taxation 4th Ed. Vol. One, § 223 at 475. Cooley goes further to say: "There is no double taxation where one tax is for state or county purposes, imposed by the state or county, and the other tax is one imposed by a city. A state license tax and a county license tax is not double taxation. There is not double taxation where there is a tax levied and collected by and for a local school district and also a tax levied and collected for state purposes, although a part of the state taxes so collected are afterwards distributed by the state to school districts." Cooley on Taxation 4th Ed. Vol. One, § 230 at 492.

Op. S.C. Att'y Gen., 1969 WL 15197 (March 25, 1969). In a 1986 opinion, we also stated:

Double or dual taxation results when any kind or class of property is subjected to more than one tax by a particular statute or ordinance. Alderman v. Wells, 85 S.C. 507, 67 S.E.78 (1910); Windfield v. South Carolina Tax Commission, 147 S.C. 116, 144 S.E.846 (1928). Stated another way,

[i]n order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject matter, for the same purpose, by the same state, government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax. Also the taxes must not be uniform or there must be discrimination, one tax must have been imposed on part only, not all, of the property in the taxing

The Honorable Paul Thurmond
Page 7
November 24, 2015

district; and the tax burden must be one imposed by the state and not one voluntarily assumed by agreement.
84 C.J.S. Taxation § 39.

Op. S.C. Att'y Gen., 1986 WL 289839 (September 18, 1986). In the 1986 opinion this Office concluded that there was no double taxation where a taxpayer paid both an ad valorem property tax to the county and an income tax to the State, even though some of the proceeds from both taxes went to the same fund. *Id.* This Office also opined in a 1998 opinion that:

There is no per se prohibition on double taxation. Greystone Catering Co., Inc. v. S.C. Dept. of Revenue & Taxation, [326] S.C. [551], 486 S.E.2d 7 (1997). Double taxation in the prohibited sense can exist only in the subject of both taxes is the same, if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period. Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

Op. S.C. Att'y Gen., 1998 WL 115502 (February 6, 1998). Moreover, our State courts have been clear in stating that:

Nonetheless there is a strong presumption against double taxation, and we will not construe a statute as imposing a double tax unless the legislative intention or its necessary implication is clear from the terms of a statute.

Greystone Catering Co. v. S. Carolina Dept of Revenue & Taxation, 326 S.C. 551, 555-56, 486 S.E.2d 7, 9 (Cl.App. 1997) (quoting Winfield v. South Carolina Tax Comm'n, 147 S.C. 116, 144 S.E. 846 (1928)).

Thus, having reviewed this information, we are of the opinion that taxing for the same School Resource Officers approaches double taxation such that a court could make that determination. We recognize that generally two different entities can tax for the same thing without constituting double taxation. However, the simple principle is this: where two entities collect the full amount to cover the cost of School Resource Officers, the taxpayers would be paying twice for the same thing. That is the very principle double taxation violates. The same principle would apply to any amount both entities are collecting duplicate taxes for.

4. *Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?*
Please see our response to Question 3 above.

5. *What are the specific differences, if any, between the powers and authority of an SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?*

A School Resource Officer should have equivalent statutory authority and powers in regards to arrest power and jurisdiction while acting within the scope of his employment as a School Resource Officer, regardless of his employer. As we mentioned above, a School Resource Officer is defined by statute as "a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or

recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." S.C. Code § 5-7-12(B). By virtue of the statutory definition of a School Resource Officer, regardless of who employs them, they must:

- 1) be a sworn law enforcement officer within South Carolina (see, e.g., S.C. Code § 23-13-20 requiring an oath to be a Sheriff's deputy);
- 2) complete a School Resource Officer's instruction; and
- 3) be assigned to a school district in South Carolina as a law enforcement officer, advisor, and teacher.

S.C. Code § 5-7-12. For purposes of this opinion, this Office will presume compliance with requirements could be verified through the South Carolina Criminal Justice Academy. ⁴ A School Resource Officer's jurisdiction is granted by statute as:

The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrate's court within twenty-four hours of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

S.C. Code § 5-7-12(A) (emphasis added). Therefore, those duties and powers of a School Resource Officer acting within the scope of his authority set by statute cannot change and will be consistent as statutorily set, regardless of who employs the School Resource Officer. However, this Office believes the statute's requirement for School Resource Officers to be a sworn law enforcement officer within South Carolina would prevent a school district from directly employing a School Resource Officer. S.C. Code § 5-7-12. Moreover, law enforcement officers have other statutory duties and powers. See, e.g., S.C. Code § 23-13-70 ("deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff"). The powers and duties of law enforcement officers outlined by statute must be complied with and cannot be altered by agreement and vary based on the type of law enforcement officer.⁴

In regards to a School Resource Officer's employment contracts and duties, they will vary based on the terms of employment. For instance, a school district could contract with a Sheriff's department for a School Resource Officer who also serves as a teacher. Or a Sheriff or police chief supervising a School Resource Officer may require the officer to perform other duties outside of the school. For specific questions on differences between power and authority, we would need to read the employment contract

⁴ Please note that while this Office has previously opined concerning the authority of private security guards to protect a school, that issue is not addressed in this opinion.

The Honorable Paul Thurmond
Page 9
November 24, 2015

and identify the employer. See S.C. Code § 23-24-10 (use of official uniforms and weapons by officers on private job), § 23-24-20 (duties of employing agencies), § 23-24-30 (liability of public employer for off-duty acts), etc. However, each state may vary in the employment of School Resource Officers. For example, the United States Department of Labor opined concerning School Resource Officers employed by schools and school districts in one state:

As noted, the SROs' employers [in the state addressed herein] are public educational entities rather than police departments or security companies whose primary operations are law enforcement and security, and as a result, the SROs' activities could not be categorized as production operations for their employers. Therefore, the SROs' primary duty involves the "performance of office or non-manual work directly related to the management or general business operations of the employer." *Id.* § 541.200(a)(2).

Moreover, we believe that the SROs' primary duty "includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). As described above, the SRO is minimally supervised. The SRO has an annual discretionary budget of \$15,000 to \$20,000 for purchasing safety/security related items. Such duties as providing the extensive recommendations and advice noted above to faculty and staff that are usually implemented satisfy one of the regulatory factors in 29 C.F.R. § 541.202(b) for determining whether an employee exercises discretion and independent judgment with respect to matters of significance, specifically, that the "employee provide[s] consultation or expert advice to management." See *Bondy v. City of Dallas*, No. 03-10112, 2003 WL 22316855 (5th Cir. 2003) (making recommendations to management on policies and procedures). In addition, by serving as a liaison/facilitator between the school system and local law enforcement agencies to coordinate the law enforcement efforts of the local jurisdiction relative to the schools, and to develop a communication network between administration, staff, students, and parents within the cluster schools, the SRO "formulate[s] . . . [and] implement[s] management policies or operating practices." See 29 C.F.R. § 541.202(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 341651 (February 15, 2007).⁵ While we do not know all the details of the employment contract and the laws of School Resources Officers in that state, it is clear that the duties and powers of a School Resource Officer can vary greatly depending on the state's laws and the terms of the officer's employment. This Office previously issued an opinion regarding School Resource Officers where the officers were employees for a local police department and worked pursuant to a contract with the school. See *Op. S.C. Atty Gen.*, 2014 WL 1398597 (January 15, 2014). South Carolina law requires certain contractual provisions for agreements for law enforcement services between law enforcement agencies and could serve as guidance in any other agreements involving law enforcement officers. S.C. Code § 23-20-40.

In regards to your question as to what powers a School Resource Officer would hold, our United States Supreme Court makes the determination as to the power and authority in regards to searches, seizures and

⁵ Please note that we do not know the background or this particular state's requirements for School Resource Officers.

The Honorable Paul Thurmond
Page 10
November 24, 2015

other Constitutional issues in connection with schools. As you may be aware and as the South Carolina Court of Appeals quoted the United States Supreme Court regarding searches in schools:

The Supreme Court concluded that the Fourth Amendment applies to searches conducted by school authorities. (*New Jersey v. T.L.O.*,] 469 U.S. at 333, 105 S.Ct. at 738. Nonetheless, the Court concluded that the warrant requirement "is unsuited to the school environment" because it would "unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." *Id.* at 340, 105 S.Ct. at 742. Thus, the Court held that school officials need not obtain a warrant before searching a student so long as the school official has reasonable grounds to suspect that the search will yield evidence of a violation of the law or school rules. 469 U.S. at 340-43, 105 S.Ct. at 742-44. However, the Court was careful to point out that this exception only applied to searches conducted by "school authorities acting alone and on their own authority.[]" This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question." *T.L.O.*, 469 U.S. at 341, n. 7, 105 S.Ct. at 743, n. 7.

Clearly, the search of Thomas D. was not carried out by school officials. The police were not acting on behalf of or as agents for the school when they searched Thomas D. Instead, the search was conducted by police in furtherance of a law enforcement objective—that is, the removal of Thomas D. from a surrounding detrimental to his welfare and his relocation to the parentally-approved and societally-mandated school environment. While Thomas D. was a student and the search apparently took place on school property, the search was not conducted by a school official.

The State argues the cigarettes were "contraband" and that Thomas D. was prohibited by school policy from possessing cigarettes on school property. If Thomas D. had been searched by a school official on school property based upon a reasonable suspicion of a violation of school rules, the situation might be different. However, the fact remains the warrantless search of Thomas D. was conducted by law enforcement officers who were not connected with the school. Because the police were acting on their own authority and cannot be considered agents of the school, the reasonable suspicion standard set forth in *T.L.O.* is simply inapplicable to the case at bar. Thus, the question becomes whether the warrantless search of Thomas D. violated the Fourth Amendment's prohibition against unreasonable searches and seizures. We conclude it did not.

In Interest of Thomas B.D., 326 S.C. 614, 618-19, 486 S.E.2d 498, 500 (Ct. App. 1997). We suggest your constituent look to the courts and follow the most recent case law in regards to a School Resource Officer's power and authority versus Constitutional rights, as the law is subject to change, in addition to any applicable employment agreements and South Carolina Code Section 5-7-12.

The Honorable Phil Thurmond

Page 11

November 24, 2015

6. What are the specific differences, if any, between the powers and authority of an SRCO employed by a school district and supervised by the Sheriff of a County versus of an SRCO employed by a school district and supervised by the school district?

Please see our response to Question 5 above.

Conclusion:

As the need and funding for School Resource Officers changes, the case law and statutes will change too. Thus, the answers to your questions may change in time. However, we hope this legal opinion based on the current law at this time is helpful to you and your constituents. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the manner. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair

Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook

Solicitor General

Exhibit 2

RECORD

2015 MAY -6 PM 2:56

CHERYL B. BROWN
CLERK OF COURT
DORCHESTER COUNTY

From: Tony Phinney (mailto:tpin911@ymail.com)
Sent: Tuesday, May 01, 2012 8:35 PM
To: Dunbar, Anthony
Subject: Rowland Turner

RECORDED
2012 MAY -6 PM 2:56

CHERYL L. LAMAR
CLERK OF COURT
DORCHESTER COUNTY

Director Dunbar,

My name is Tony Phinney and I am a Lieutenant with the "Dorchester County Sheriff's Office"

Although awkward, my supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments on an open forum on Facebook in an attempt harm my reputation and to aid his brother in his bid as a candidate for Sheriff. The comments are not only an attack on me, but are an attack on my 19 yr old son, who made the mistake of having an underage beer party at my home while I was out of town. He is facing those consequences and for anyone to embellish the facts surrounding this incident for political gain, is wrong and illegal. There are at least 4 other persons that are preparing actions against Mr. Turner also, but I cannot speak for them.

This Facebook forum is "Concerned Citizens for Dorchester County". Mr. Turner is listed as the "administrator" for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a "cease and desist" letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervision asked that I let you know what lay on the horizon.

Thank you for your time and if you have any questions, feel free to ask.

Tony Phinney

Exhibit 3

RECORDED
2015 MAY -6 PM 2:57

CHERYL GRADY
CLERK OF COURT
DORCHESTER COUNTY

RECORDED

2016 MAY -6 PM 2:57

AN AGREEMENT

Between

Dorchester County

And

Dorchester County School District 2
For the School Resource Officer (SRO) Program

SHERIFF CHARLES
CLERK OF COURT
DORCHESTER COUNTY

Goals and Evaluation

These goals shall be in line with Dorchester County School District 2's ("School District") action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) The Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following schools for the school years 2016-2016 through 2017-2018.
 - (a) Dubose Middle School/William Reeves Elementary (1 School Resource Officer)
 - (b) Givhens Alternative Program (1 School Resource Officer)
 - (c) Ashley Ridge High School (2 School Resource Officers)
 - (d) Knightsville Elementary (1 School Resource Officer)
 - (e) Beech Hill Elementary (1 School Resource Officer)
 - (f) Sandhill Elementary/Rollings Middle School (1 School Resource Officer) (Beginning school year 2016-2017 through 2017-2018)
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) Each school listed above shall have the number of SROs agreed upon by the Sheriff and School District to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.

- b) The SROs who are assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) School Resource Officers shall serve as law-related educators, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) SROs shall serve as law-related counselors, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) SROs shall serve as law enforcement officers, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) SROs shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) SROs shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, SROs shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) SROs shall make themselves available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) SROs shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SROs shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SROs and the principals shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) SROs shall inform the principal or his designee in a timely manner, should it be necessary to conduct formal interviews with students. SROs shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) SROs shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. SROs shall, as soon as practicable, notify the Principal and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.

- m) SROs shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Superintendent, Principal, Sheriff, County Administrator, or their designee.
- n) SROs shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the principal shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) SROs shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) SROs shall, upon request, accompany the Principal or designee to deliver expulsion documents if the principal or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, SROs may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Principal of the school to which the SRO is assigned feels the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall articulate their concerns in writing to the superintendent and Sheriff. If the Sheriff so desires, he shall meet with the Principal and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the school and a replacement shall be obtained.

Rights and Duties of the School District

- A. **Cooperation**
 - a) The School District shall require the Principal to endeavor to develop a close working relationship with the SRO and, understand the SROs responsibilities, purpose, and limitations.

B. Facilities

- a) The School District shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:
1. Access to an air conditioned, properly lighted, lockable & secure, private office.
 2. A telephone to be used for business purposes
 3. A lockable and secure reports storage cabinet
 4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

- a) The Principal and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security.

Good Faith

The School Board, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the Superintendent. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Superintendent or their designees and, any recommendations to the agreement will be submitted in writing.

Liability Insurance

It is agreed that the designated officer(s) will remain employee(s) of Dorchester County with all rights, benefits and privileges thereto and shall be subject to the administration, supervision and control of the Sheriff's Office. Dorchester County shall purchase and maintain in full force and effect during the term of this agreement a general comprehensive liability insurance policy with coverage for any acts or omissions of its employees that occur or claims that are made during the term of the agreement.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

The County shall charge \$80,000 annually for each School Resource Officer assigned and a pro-rata share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2016-2016

Six SROs	\$360,000
Supervisor	\$ 47,370
Capital	<u>\$ 87,616</u>
Total	\$494,986

FY2016-2017

Seven SROs	\$420,000
Supervisor	\$ 47,370
Capital	<u>\$ 43,808</u>
Total	\$511,178*

*Does not include CPI adjustment.

Each year invoices for services shall be mailed at the beginning of each quarter and payment shall be made to the County within 30 days thereafter, with the first quarter beginning July 1, 2015.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for BRO services such costs shall be billed to the School District within 30 days and payment shall be made to the County within 30 days thereafter.

Term

This agreement between Dorchester County and Dorchester County School District 2 shall be in full force and effect for school years 2015-2016 through 2017-2018. Either party may terminate this agreement at any time by giving written notice of said termination should the other party fail to substantially perform its obligations under the agreement. The notice required under this clause shall be sent by registered mail.

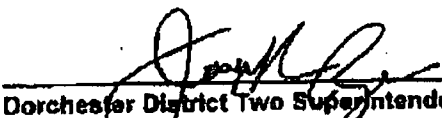
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

Signed sealed and delivered in the presence of:


Dorchester District Two Superintendent

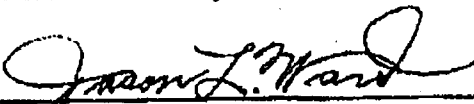
7-31-15
Date


Dorchester District Two School Board Chairperson

7-31-15
Date


Dorchester County Sheriff

7-31-15
Date


Dorchester County Administrator

7/29/15
Date

Exhibit 4

RECORD

2016 MAY -6 PM 2:57

CHERYL GRADY
CLERK OF COURT
DORCHESTER COUNTY

RECORDED
2016 MAY -6 PM 2:57

CHERYL DRAKE
CLERK OF COURT
DORCHESTER COUNTY

AN AGREEMENT

Between

Dorchester County

And

Dorchester County School District 4
For the School Resource Officer (SRO) Program

Goals and Evaluation

These goals shall be in line with Dorchester District 4's action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) In the school year 2015-2016, the Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following schools:
 - (a) Woodland High School (1 School Resource Officer)
 - (b) Odyssey Education Center/Harleyville-Ridgeville Middle School (1 School Resource Officer)
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) Each school listed above shall have the number of SROs agreed upon by the Sheriff and School District to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.
- b) The SROs who are assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) School Resource Officers shall serve as law-related educators, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) SROs shall serve as law-related counselors, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) SROs shall serve as law enforcement officers, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) SROs shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) SROs shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, SROs shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) SROs shall make themselves available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) SROs shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SROs shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SROs and the principals shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) SROs shall inform the principal or his designee in a timely manner, should it be necessary to conduct formal interviews with students. SROs shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) SROs shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. SROs shall, as soon as practicable, notify the Principal and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.
- m) SROs shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Superintendent, Principal, Sheriff, County Administrator, or their designee.

- n) SROs shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the principal shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) SROs shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) SROs shall, upon request, accompany the Principal or designee to deliver expulsion documents if the principal or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, SROs may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Principal of the school to which the SRO is assigned feels the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall articulate their concerns in writing to the superintendent and Sheriff. If the Sheriff so desires, he shall meet with the Principal and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the school and a replacement shall be obtained.

Rights and Duties of the School District

- A. **Cooperation**
 - a) The School District shall require the Principal to endeavor to develop a close working relationship with the SRO and, understand the SRO's responsibilities, purpose, and limitations.

B. Facilities

a) The School District shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:

1. Access to an air conditioned, properly lighted, lockable & secure, private office.
2. A telephone to be used for business purposes
3. A lockable and secure records storage cabinet
4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

a) The Principal and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security

Good Faith

The School Board, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the superintendent. The terms of this agreement are subject to change at the end of the school year or no later than July 1st of the calendar year. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Superintendent or their designees and, any recommendations to the agreement will be submitted in writing.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

In school year 2015-2016, the County shall charge \$60,000 annually for each School Resource Officer assigned.

Two School Resource Officers	<u>\$120,000</u>
Total	\$120,000

Invoices for services shall be mailed on or about June 1st. Payment shall be remitted by June 30th.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services.

In the event the School District fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the School District the amount due plus 10%.

Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

Signed sealed and delivered in the presence of:

M. Russell (D. S. D.)
Dorchester District Four Superintendent

7/29/15
Date

Kenneth J. Marino
Dorchester District Four School Board Chairperson

7-28-15
Date

J. C. Knight
Dorchester County Sheriff

7-9-15
Date

James R. [Signature]
Dorchester County Administrator

7/1/15
Date

RECORD

2516 MAY -6 PM 2:57

Exhibit 5

CHERYL SAHON
CLERK OF COURT
DORCHESTER COUNTY

RECOP.

2015 MAY -6 PM 2:57

CHERYL B. SMITH
CLERK OF COURT
DORCHESTER COUNTY

AN AGREEMENT

Between

Dorchester County

And

Dorchester County Career and Technology Center
For the School Resource Officer (SRO) Program

Goals and Evaluation

These goals shall be in line with Dorchester County Career and Technology Center's action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) The Sheriff shall assign regularly employed full-time armed deputies, appointed to serve as an SRO to the Dorchester County Career and Technology Center in school year 2015-2018.
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) The school listed above shall have one SRO as agreed upon by the Sheriff and Dorchester County Career and Technology Center to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.
- b) The SRO who is assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) The SRO shall serve as a law-related educator, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) The SRO shall serve as a law-related counselor, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) The SRO shall serve as a law enforcement officer, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) The SRO shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) The SRO shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, the SRO shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) The SRO shall be available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) The SRO shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SRO shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SRO and the Director of the Career and Technology Center shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) The SRO shall inform the Director of the Career and Technology Center or his designee in a timely manner, should it be necessary to conduct formal interviews with students. The SRO shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) The SRO shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. The SRO shall, as soon as practicable, notify the Director of the Career and Technology Center and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.
- m) The SRO shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Director of the Career and Technology Center, Sheriff, County Administrator, or their designee.

- n) The SRO shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the Director of the Career and Technology Center shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) The SRO shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) The SRO shall, upon request, accompany the Director of the Career and Technology Center or designee to deliver expulsion documents if the Director or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, the SRO may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Director of the Career and Technology Center feels the particular SRO is not effectively performing his or her duties and responsibilities, the director shall articulate their concerns in writing to the Sheriff. If the Sheriff so desires, he shall meet with the Director of the Career and Technology Center and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the Career and Technology Center and a replacement shall be obtained.

Rights and Duties of the Career and Technology Center

- A. Cooperation
 - a) The Career and Technology Center shall require the Director of the Career and Technology Center to endeavor to develop a close working relationship with the SRO and, understand the SRO's responsibilities, purpose, and limitations.

B. Facilities

- a) The Career and Technology Center shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:
1. Access to an air conditioned, properly lighted, lockable & secure, private office.
 2. A telephone to be used for business purposes
 3. A lockable and secure records storage cabinet
 4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

- a) The Director of the Career and Technology Center and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security.

Good Faith

The Dorchester County Career and Technology Center, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the Director of the Career and Technology Center. The terms of this agreement are subject to change at the end of the school year or no later than July 1st of the calendar year. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Director of the Career and Technology Center or their designees and, any recommendations to the agreement will be submitted in writing.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the Dorchester County Career and Technology Center.

In school year 2015-2016, the County shall charge \$80,000 annually for each School Resource Officer assigned and a pro-rata share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4 and the Career School SRO based upon the number of SROs assigned to each.

One School Resource Officer	\$50,000
SRO Supervisor	\$ 7,895
Total	\$57,895

Invoices for services shall be mailed on or about June 1st. Payment shall be remitted by June 30th.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services.

In the event the Dorchester County Career and Technology Center fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the Career and Technology Center the amount due plus 10%.

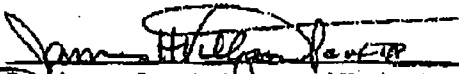
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

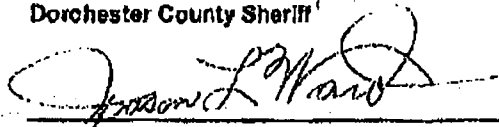
Signed sealed and delivered in the presence of:


Dorchester County Career and Technology Center
Director

7-9-15
Date


Dorchester County Sheriff

7-9-15
Date


Dorchester County Administrator

7/7/15
Date

In the event the Dorchester County Career and Technology Center fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the Career and Technology Center the amount due plus 10%.

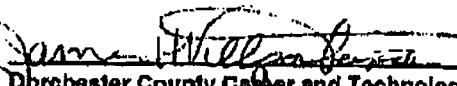
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

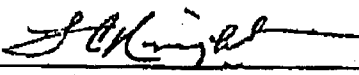
Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

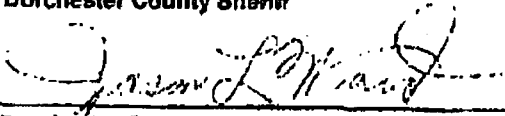
Signed sealed and delivered in the presence of:


Dorchester County Career and Technology Center
Director

8-6-15
Date


Dorchester County Sheriff

7-9-15
Date


Dorchester County Administrator

7/7/15
Date

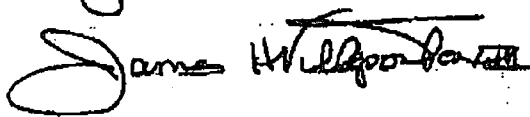
Signed in the presence
of Jessica Shuler &
Tommi Lynn Gerrick on
August 6th, 2015


Exhibit 6

RECORDED
2016 MAY -6 PM 2:57

DEERY, BRANCO
CLERK OF COURT
DORCHESTER COUNTY

RECORDED

2016 MAY -6 PM 2:57

St. George (843) 563-0100
St. George Fax: 563-0137
Summerville (843) 832-0100
Summerville Fax: 832-0137



James L. Ward
Deputy Administrator

OFFICE OF THE DORCHESTER COUNTY ADMINISTRATOR
201 JOHNSTON STREET
ST. GEORGE, SOUTH CAROLINA 29477

MEMORANDUM

TO: DORCHESTER COUNTY COUNCIL
FROM: DEPUTY COUNTY ADMINISTRATOR
DATE: July 23, 2015
SUBJECT: SPECIAL CALLED COUNCIL MEETING, July 27, 2015 – Summerville
Council Chambers
1:00 PM County Council

COUNTY COUNCIL

Call to Order, Invocation, and Pledge of Allegiance

The Chairman will call the meeting to order and ask everyone to stand for the invocation followed by the Pledge of Allegiance.

Public Hearing for an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming to the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers – The Chairman will open the public hearing for County Council to receive public comment.

Executive Session

Legal Advice – The County Attorney will provide legal advice related to Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and

CC MEMO July 23, 2015

Page 1

Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers.

Contractual Matter, Potential Sale of a Portion of the Pine Trace Tract to Mungo Homes - The County Attorney will provide legal advice on the contract with Mungo Homes.

Contractual Matter, Disposal of Recyclables - The County was informed on Thursday, July 23, 2015 that Charleston County will not renew its contract with Sonoco for recyclables, and will be contracting with Horry County. Our contract with Charleston County ends next Friday, July 31, 2015. The Public Works Director, Jason Carraher, will share with Council the options available to the County.

3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to Increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers—The Chairman will ask County Council to give third reading of this ordinance to amend the county budget to increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as School Resource Officers. This additional funding will provide for six SROs in School District 2 and provide an SRO supervisor, who will oversee the SRO program in School District 2, School District 4, and the Career School.

Approval of SRO Agreement between Dorchester County and Dorchester School District Two - The Chairman will entertain a motion to approve the agreement with School District Two. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester School District Four - The Chairman will entertain a motion to approve the agreement with School District Four. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester County Career and Technology Center - The Chairman will entertain a motion to approve the agreement with the Career and Technology Center. (Item)

RECORD.

24 MAY -6 PM 2:57

CHERYL BARNES
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 7

1 - RECORD

2016 MAY -6 PM 2:57

CHERYL L. BROWN
CLERK OF COURT

AMENDMENTS TO THE DORCHESTER COUNTY BUDGET ORDINANCE

Motion #1

Mr. Chairman, I move to amend Ordinance #15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016 as follows:

The General Fund shall include the following adjustments:

Increase the tax revenue line item by \$461,000 to reflect an additional county operating mill for the SRO Program.

Increase the charges for services revenue line item by \$49,776 to reflect additional funds the Dorchester School District 2 will pay the County in FY2016 for the SRO Program.

Increase the charges for services revenue line item by \$7,895 to reflect additional funds the Dorchester County Career & Technology Center will pay the County in FY2016 for an SRO Supervisor.

Increase the transfer line item to show a transfer from the General Fund to the Capital Fund in the amount of \$103,078 for the capital purchases associated with two new positions.

Increase the Personnel line items in the Sheriff's Office by \$310,999 to fully cover the costs of the SRO Program. Increase the Operating line items in the Sheriff's Office by \$104,594.

The total expenditures for the General Fund shall increase from \$48,904,528 to \$49,423,199.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorata share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015-2016	FY2016-2017
Six SROs \$360,000	Seven SROs \$420,000
Supervisor \$ 47,370	Supervisor \$ 47,370
Capital \$ 87,616	Capital \$ 43,808

RECORDED

2015 MAY -6 PM 2:58

CHERYL D. BROWN
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 8

STATEMENT BY MICHAEL T. ROSE
PUBLIC HEARING RE DORCHESTER COUNTY TAX INCREASE FOR SROs

2015 MAY -6 PM 2:58

RECORDED
CHERYL J. BROWN
CLERK OF COURT
DORCHESTER COUNTY

To: Members, Dorchester County Council

Subject: Public Hearing -- Opposition to Double Taxation and Taxation of Owner Occupied
Residences for DD2 Operating Expenses for SROs in Violation of Act 388

Date: July 27, 2015

Members of Dorchester County Council:

I am unable to attend this public hearing today because I am traveling out-of-state.

In my absence, please allow this statement to be read to Council on behalf of myself and taxpayers whom I represent, and make it and its attachment¹ part of the public record.

We propose a method of funding DD2 SROs that would avoid the issues of both double taxation and the taxation of owner occupied residences in violation of Act 388. Specifically, we propose that even if SROs for DD2 are employed and controlled by the County, that the County not tax anyone for those SROs but, instead, that only DD2 tax its property owners to pay for DD2 SROs and that DD2 reimburse the County for DD2's SROs.

To accomplish that, Council should vote NOT to have the County raise taxes to pay for DD2's SROs and should vote to approve a future request by DD2 to raise its millage to pay the cost of those SROs. DD2's Board can simply submit to Council an amended budget request in the near future to pay for its SROs, and Council can approve that request.

In the alternative, if you are going to vote to allow the County to tax owner occupied residences for DD2 SROs while having an agreement that DD2 will reimburse the County for those SROs with taxes DD2 collects from its property owners, please explain to us citizens in detail how and why you justify doing that. Please provide us all facts, legal authorities and rationale that Council members and its attorney have that you think justifies your voting for Council to tax owner occupied homes for DD2 police protection, while agreeing that DD2 also will tax some of the same property owners (including me) for those same SROs.

We taxpayers ask you to obtain and provide us a written opinion from the County Attorney explaining the complete factual and legal basis for his advice that your vote to raise County millage for DD2 SROs is legal under these circumstances. We ask that you provide the public all agreements, signed and proposed, and all other information about this County millage increase for DD2 SROs, so that will have the information we need to ensure transparency and accountability by Council. None of this requested information needs to be withheld from the public. Thank you for your consideration.

¹ I sent each member of Council a letter address to Chairman David Chinous dated July 13, 2015. That letter is attached and part of this statement.

**ATTACHMENT TO STATEMENT
BY MICHAEL T. ROSE**

To: David Chinmis
Chairman, Dorchester County Council

From: Michael T. Rose

Subject: Request for Rescheduling of Public Hearing and Disapproval of One Mill County Tax Increase by Dorchester County Council for SRO Program

Date: July 13, 2015

Dear David,

On behalf of myself and a coalition of concerned taxpayers, please consider this an emergency request that you consider, seriously, open-mindedly and without prejudgment, our facts, analysis and requests below, for the purpose of getting Dorchester County Council ("Council") and Dorchester School District 2 ("DD2") to cease violating state laws and implementing policies wrongfully and unnecessarily harming taxpayers.

As you know, on July 6, 2015, Council passed first reading of an amendment ("Amendment") to Council's previously approved 2015-2016 Budget Ordinance 15-14 to allow the County to add an additional mill of taxation of all property (including owner-occupied residences) in Dorchester County to fund School Resource Officers ("SROs") to be used, pursuant to a reimbursement contract, by DD2 at some of its schools. We object to this Amendment as being illegal and bad policy and to Council's process of passing this Amendment, for several reasons, including the following:

- I. **DOUBLE TAXATION:** Property owners in the County and DD2, including me, have been and, under the Amendment, would be **TAXED TWICE** - once by the County and once by DD2 - to pay for the SAME SROs. Here is proof that this is true:

The Amendment increases by \$461,000 the tax revenue "to reflect an additional county operating mill for the SRO Program," increases the Personnel line items in the Sheriff's Office by \$110,999 "to fully cover the costs of the SRO Program," and otherwise requires that monies from this one-mill County tax increase be given to the Sheriff's Office for this SRO Program. (Emphasis added.) (Note that according to this Amendment these monies would be given by the County directly to the Sheriff's Office, not to DD2, to pay the costs of DD2's SROs.)

The Amendment also requires that DD2 reimburse the County for the costs expended by the County for SROs. For example, the Amendment requires an increase in "charges for services revenue line item by \$49,776 to reflect additional funds [DD2] will pay the County in FY 2016 for the SRO Program." In addition, the Amendment mandates that the "County Council shall impose a fee for SRO services that shall be billed by the County to the School District," the "County shall charge \$60,000 annually for each School Resource

Officer assigned and a prorata [sic] share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2" and the "School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts set forth below:" (1) FY 2015-2016: Six SROs \$360,000; Supervisor \$47,370; Capital \$87,616; Total \$494,986; (2) FY 2016-2017 Seven SROs \$420,000; Supervisor \$47,370; Capital \$43,808 Total \$511,178. (Emphasis added)

In addition, a proposed or existing agreement ("Agreement") between Dorchester County and DD2 "for the School Resource Officer (SRO) Program" imposes on DD2 exactly the same requirements that DD2 reimburse the County for SROs as stated in the sentence above.

Indeed, DD2 stated in the written Power Point presentation it made in support of its first budget request this year to County Council that at least \$386,000 of DD2's requested millage increase would be spent on "SRO costs." Another power point presentation by DD2 in support of its revised, four-mill tax increase recently approved by County Council specifically states that at least \$260,000 would be used to finance SROs.

Thus, there is absolutely no doubt that if the Amendment becomes law and the Agreement is signed County taxpayers who live within DD2, including me, will pay property taxes twice for the same SROs - once to the County and once to DD2.

Moreover, as the record shows, despite DD2 having funds already specifically appropriated to it to reimburse the County for SRO costs and DD2 having over \$21 million in cash reserves, DD2 already owes, repeatedly has been billed by the County for but has failed to pay about \$500,000 to reimburse costs expended by the County for SROs used by DD2 during 1 Y 2013-2014 and 2014-2015. Thus, not only has DD2 taxed property owners for the SROs that the County also has taxed property owners, but DD2 deliberately has failed, and refuses, to pay the monies for SROs it has collected and owes. Further, the County has failed to require DD2 to repay the monies owed by DD2 to the County, which it could do simply by refusing to approve DD2's budget until the monies owed by DD2 are paid.

A. TAXING RESIDENTIAL PROPERTY OWNERS = VIOLATING ACT 388.

In addition to taxpayers being taxed by both DD2 and the County for the same SROs, by passing the Amendment and signing the Agreement the County would continue taxing property in violation Act 388. While S.C. Code Ann. § 5-7-12 allows the county and the Town of Summerville to designate certain officers as SROs, it says nothing about how those SROs are to be funded. However, Act 388 does.

Specifically, S.C. Code Ann. §12-37-220 (B)(47)(a) states: "Effective for property tax years beginning after 2006 . . . one hundred percent of the fair market value of owner-occupied residential property . . . is exempt from all property taxes imposed for school

operating purposes . . ." (Emphasis added.) The Legislature was so adamant in its intention to not tax "owner occupied residential property" for "school operating purposes" that the Legislature made it almost impossible to do that by having Act 388 state that "[t]he exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded roll call vote of at least a two-thirds majority of the membership of each house of the General Assembly." (Emphasis added.) Thus, this state exemption from taxing owner-occupied property for school operating purposes can be rescinded only by 2/3 recorded vote of each house of the Legislature.

Despite the clarity of these requirements, Dorchester County has been and proposes to continue taxing "owner-occupied residential property," including mine, "for school operating purposes" by taxing owner-occupied residential property in the County to finance police protection with SROs at DD2 schools. Regardless of the fact that the County collects and uses the taxes for SROs, nevertheless the purpose of collecting and using the taxes is for police protection at schools, which clearly is for a school operating purpose. Thus, the County has been and proposes to continue to impose "scofflaw millage" to subsidize DD2 SROs indirectly by manipulation to circumvent and violate the spirit and the letter of Act 388.

Moreover, if the County and DD2 can finance DD2 police protection in this manner, that precedent would allow the County to finance salaries, electricity and all other operating expenses of DD2 and afterwards obtain reimbursement from DD2, thereby double taxing property owners and taxing their owner-occupied homes illegally for all DD2 operating expenses.

Dorchester County needs to not only stop double taxing its property owners for SROs, but should refund to property owners all the monies it illegally has collected from property owners in the past, just as you and I got the Town of Summerville to refund property owners taxes illegally collected for fire protection from property owners newly-annexed into the Town of Summerville.

B. INCREASING TWO MILLAGE BASES ILLEGALLY:

The harm to taxpayers caused by the SRO funding arrangement specified by the Amendment and the Agreement extends beyond double taxation. State law requires DD2's budget to increase annually by a percentage of its previous year's budget, based on factors like inflation and population increases, and allows the County's budget to do so. By taxing two entities, DD2 and the County, for the same purpose -- funding SROs -- both DD2 and the County, instead of only one of them, enable compounded annual increases to their budgets forever. Again, if this financing scheme by the County and DD2 for SROs is legal, the County and DD2 can finance all other DD2 operating expenses by taxing both DD2 and County property owners for those same expenses, and thereby cause a huge exponential annual increase of the budget and taxing authority of both entities forever.

C. TAXING DISTRICT 4 TO PAY DD2 SROs:

The proposed Agreement does not mention Dorchester School District 4 ("DD4"). Therefore, there is no requirement being officially considered to enable DD4 taxpayers to derive any benefit from taxes paid by DD4 property owners used to pay for SROs in DD2. Further, because no contract to pay DD4 was on the agenda of the Executive Session at Council's last meeting, DD4's tax issues should not have been discussed in that Executive Session. Doing so violated the Freedom of Information Act.

D. COMPEL PAYMENTS OWED BY DD2

The County long ago should have compelled DD2 to pay the monies DD2 owed the County for DD2 SROs, and should require payment now, instead of the County taxing property owners to make up the monies DD2 has failed to pay. That easily could be accomplished by refusing to approve DD2's budget, as allowed by law, until DD2 pays its debts. Given DD2's failure for years to pay the reimbursements it owes to the County, there is no reason to believe the Agreement for DD2 to repay the County for SROs would be honored, and the County should not trust DD2 would do so. Given the County's failure for years to obtain from DD2 the reimbursements DD2 owes the County, there is no reason to believe the County will enforce any requirement in the Agreement for DD2 to reimburse the County, and taxpayers should not trust the County to do so.

II. TIDWELL REPORT

Admirably, DD2 volunteered to be the subject of a study sponsored and paid by the South Carolina General Assembly about how to improve DD2. In May, 2015, the Tidwell and Associates consulting firm recommended that DD2 stop paying Dorchester County and the Town of Summerville for police protection in schools and, instead, that DD2 directly hire its own district security officers or a private security company to provide that protection, both to save money and to eliminate the current "inequitable School Resource Officer coverage across the district." This was identified by Tidwell and Associates as a "Tier 1" recommendation, which it defined as "Greatest Impact." The district should implement these recommendations immediately." (Emphasis added.)

Tidwell and Associates stated that DD2's hiring of police protection in-house would save the District \$194,305 per year and that, over five years, the District would save \$1,755,600 if it hired a private security contractor to perform this service, as do Lancaster County School District and Lexington County/Richland County School District #5.

By hiring police protection in-house or from a private security firm, DD2 would totally eliminate the double taxation, illegal taxation of owner-occupied residences and excessive cost problems described above.

There is no valid reason for DD2 not to follow this money-saving and equity-increasing recommendation from Tidwell and Associates for the benefit of DD2 and taxpayers. Contrary to some claims, no Attorney General's Opinion (including the one erroneously

relied on by the DD2 Board at the DD2 Board's last meeting) or other authority limits the power of a security officer hired directly by DD2 to protect DD2's students or prevents them from making arrests on school property. Contrary to what DD2 Board Chairman Gail Hughes is quoted in today's Post and Courier as stating, SROs hired in-house by DD2 would be able to make arrests while on school property. This is shown by S.C. Code Ann. § 40-18-140, which exempts DD2 from having to obtain a SLED license, and by S.C. Code Ann. § 40-18-110, which states as follows:

"SECTION 40-18-110. Authority and arrest powers of those licensed or registered under chapter.

A person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State but possesses the powers of arrest only on the property on which he is employed."

Even if it is true that an SRO who is an in-house employee of DD2 could not transport an individual the SRO arrested away from a school to a jail, that would not be a good reason for DD2 not to hire its own SROs. That is true because DD2 should not want its SROs being absent from school grounds to transport arrestees to a jail, and because other law enforcement officers from the County or a municipality can transport arrestees to jail when needed, just as they currently do throughout the County.

III. TRANSPARENCY AND ACCOUNTABILITY BY COUNCIL

Council has scheduled Second Reading of its Amendment to occur on July 20, 2015, without allowing a prior public hearing that would enable Council to hear all the facts before voting for Second Reading. For most required hearing on proposed ordinances, public hearings are held on Second Reading. Council's treating this Second Reading vote differently by not allowing a public hearing before the Second Reading vote has the effect and, perhaps, the purpose of shielding Council from the pressure of facts and public input before the Second Reading vote.

Further, Council has scheduled a final reading of this Amendment preceded by a public hearing on the Amendment at 9 am (purportedly changed to 1 pm) on July 27, 2015. This has the effect and, perhaps the purpose, of Council minimizing public input, as obviously few citizens can take off from their work and attend a public hearing at 9:00 A.M. on a Monday morning or at 1 pm on a Monday afternoon.

IV. CONCLUSION

Given the numerous legal, factual and policy issues regarding the Amendment and the Agreement, including those stated above, Council should slow down the process of

evaluating and voting on these issues, cancel the "quickie" Second and Third Reading dates scheduled and not take any additional vote on this Amendment until these issues are thoroughly vetted and resolved after receiving public input and verifying the accuracy of alleged facts. There is no reason Second and Third readings have to be voted on regarding this Amendment on the dates scheduled. If there is a legitimate danger of SROs being without their salaries in the near future, Council can simply pass a resolution continuing short-term the current payment arrangement for SROs, or making another suitable arrangement, for, for example, ninety days. Council absolutely should not obligate itself and the public to a contract for five years until all these issues are thoroughly vetted and publicly and accurately resolved. If Council does obligate itself to a long term agreement that is illegal or bad policy, taxpayers will suffer long term consequences for which Council and DD2 are to blame.

We ask that DD2 and Council follow the recommendations of the Tidwell Report by having DD2 hire its SROs in-house or from a private security company. If DD2 and Council do not implement these recommendations, we ask that DD2 Board members and Council members explain publicly why they think taxpayers should pay hundreds of thousands of dollars unnecessarily by not implementing the Tidwell Report recommendations. We ask that these reasons for rejecting the Tidwell Report recommendations be stated in writing, and that the public be given a reasonable opportunity to rebut those stated reasons with facts to overcome any erroneous beliefs and assumptions on which DD2 and Council make their decisions.

Further, we ask that Council's decisions be based on facts verified independently by each Councilman and reasoning, rather than emotions. The issue at hand is not whether DD2 will have SROs, but how to pay for them and who will hire and control them. Therefore, emotional appeals about the need to avoid in DD2 another "Sandy Hook" massacre have no bearing on the decisions to be made because, again, the issue is not whether DD2 will have SROs but how to fund them and who will hire and control them. We ask that Council voluntarily discuss, as they are entitled, how to fund the SROs and who should hire and control them in public sessions and not in Executive Sessions, so that we taxpayers can observe and make our own conclusions about the wisdom and propriety of Council's actions. This SRO issue is not a secret economic development project and therefore there is absolutely no reason why the SRO funding, hiring and control issues need to be discussed in a secret Executive Session.

For all the reasons stated above, we ask that Council cease double taxing property owners for SROs and cease taxing owner-occupied homes for SROs in violation of Act 388, and refund to County taxpayers the monies for SROs the County already has raised by taxing owner-occupied homes.

Finally, we citizens acknowledge that we may not have all the facts that Council and DD2 Board members know and keep to themselves. We therefore ask that you provide promptly any information that shows that any of the statements above are inaccurate.

Thank you for your consideration of these matters and for your service.

Respectfully,

s/Michael T. Rose

RECORD
2016 MAY -6 PM 2:58
CHERYL BRADSHAW
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 9



RECORDED
2016 MAY -6 PM 2:58

CHESTER L. GUNDEL
CLERK OF COURT
DORCHESTER COUNTY

ALAN WILSON
ATTORNEY GENERAL

February 24, 2016

The Honorable Paul Thurmond, Member
South Carolina Senate, District No. 41
P.O. Box 142
Columbia, SC 29211

Dear Senator Thurmond:

You have asked for a follow-up opinion to the November 24, 2015 opinion regarding School Resource Officers ("SRO's"). You request our opinion as to whether "a school district could employ directly a security officer other than a School Resource Officer to provide protection at schools and, if so, by what authority and with what powers. For example, could a school district directly employ individuals to provide security protection for its schools under Section 40-18-60 (proprietary security business license)?"

LAW/ANALYSIS:

Our opinions, over the course of almost forty years, have concluded that licensed security officers do not possess arrest powers on public property. Only recently, in Op. S.C. Att'y Gen., 2015 WL 4497733 (July 13, 2015), we reviewed these opinions as follows:

... our prior opinions reflect that private security guards possess only the same authority as that of a private citizen to protect public property and do not possess the additional powers of arrest granted licensed private security guards in Section 40-18-110 of the Code. ... See Op. S.C. Att'y Gen., 2010 WL 928439 (February 1, 2010) ("[A] private security guard is not authorized ... to exercise the power of arrest on public property."); Op. S.C. Att'y Gen., 2009 WL 1649235 (May 8, 2009) (same); Op. S.C. Att'y Gen., 2008 WL 5476548 (December 16, 2008) (same); Op. S.C. Att'y Gen., 2006 WL 2849806 (September 29, 2006) (same); Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980) (same).

In 1977, this Office found private security guards employed at Presbyterian College, despite being authorized to make arrests on the private school's campus, possessed only the same power of a private citizen to arrest individuals on the adjacent city streets and public roads going into and out of the campus. Op. S.C. Att'y Gen., 1977 WL 24545 (June 29, 1977). In so concluding we explained "[s]ecurity officers working for a private security agency falling within the purview of Section 56-646.1 et seq. [the then existing version of the Private Detective and Private Security Agencies Act] have no authority to exercise police powers except on the private property

The Honorable Paul Thurmond
Page 2
February 24, 2016

they were hired to protect." Op. S.C. Att'y Gen., 1977 WL 24545 (June 29, 1977).

In 1980, we were again asked whether properly licensed private security guards may exercise the power of arrest granted under the Private Detective and Private Security Agencies Act ("the Act") on public property and again, citing to our 1977 opinion, we said they cannot. There we stated, "a private security guard is not authorized [under the Act] . . . to exercise the power of arrest on public property." Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980). As a result, we concluded, consistent with our prior opinion, that a properly licensed private security guard only has the same powers as that of a private citizen on public property. Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980).

The 2015 opinion noted that "[w]e have repeatedly cited, and in fact quoted that position in subsequent opinions and reaffirm that position today." In addition, the 2015 opinion stated that "it remains the position of this Office that when a properly licensed private security guard is protecting public property, he or she does not possess the additional powers of arrest discussed in Section 40-18-110 of the Code, but instead has only the authority of a private citizen."

In essence, you ask us to revisit that conclusion, stated and restated in numerous opinions over the years. As you probably are aware, "we have long recognized that we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed." Op. S.C. Att'y Gen., 2005 WL 2250210 (September 8, 2005). Thus, employing that standard, we review our prior opinions which have concluded that on public property, a licensed private security guard possesses only the same arrest powers as a private citizen.

Section 40-18-10 et seq. deals with the licensure of security officers in South Carolina. Security officers are licensed and regulated by SLED. See § 40-18-30. As we have stated previously, in Op. S.C. Att'y Gen., 2006 WL 2593075 (August 3, 2006):

[p]rivate security guards are licensed by SLED. See S.C. Code Ann. § 40-18-80. SLED is also authorized to promulgate regulations regarding private security guards. See S.C. Code Ann. 40-18-30.

The powers of a licensed security officer are set forth in § 40-18-110. That provision states as follows:

(a) person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of

The Honorable Paul Thurmond

Page 3

February 24, 2016

this State but possesses the powers of arrest only on the property on which he is employed. (emphasis added).

As indicated above, our opinions regarding the issue of a licensed security officer's authority or lack thereof to enforce state laws on public property appear to have had their origin with the June 29, 1977 opinion. There, the question involved the authority of licensed security officers employed by Presbyterian College to exercise police powers on city streets and public roadways running through or adjacent to the campus. We noted that the statutes relating to security officers limited the authority of these officers to the "property" for which they were hired to protect. Therefore, we concluded that:

[g]iven the wording of the Act itself plus the legislative intent manifested thereby, it appears that the authority of your officers to make arrests and perform other police duties would be strictly confined to the property of Presbyterian College. The authority of your officers to pursue and/or arrest offenders outside that property would be no greater or less than that of private citizens.

(emphasis added). Thus, the 1977 opinion was limited to the question of whether licensed security officers possess police powers on city streets and roadways. We concluded that they do not. While the particular property involved there was that of Presbyterian College, a private institution, there was no suggestion in that opinion that licensed security officers lacked enforcement powers if the particular property for which they were hired to protect is "public property."

The April 2, 1980 opinion, however, swept much broader in its conclusions than our 1977 opinion. The issue in 1980 related to the authority of security officers to enforce the law on "public property," as opposed to city streets and roadways. We enclosed a copy of an opinion dated March 6, 1980, noting that, pursuant to that opinion "a municipality [Arcadia Lakes] is not authorized to contract with a private security guard to provide the personnel of the private agency the power of arrest on public streets and public property." (emphasis added). There, we quoted from the March 6, 1980 opinion as follows:

... no municipality may by contract part with the authority delegated it by the State to exercise the police power. ... (T)he State has delegated the power of law enforcement to its municipalities and the municipality may not part with the power by contract with a private security agency.

Then, the April, 1980 opinion referenced our earlier 1977 opinion as follows:

... in a previous opinion, 1977 Op. Att'y Gen. No. 77-203, pp. 154-155, [this office] addressed the question of whether private security officers hired by a college in this State could exercise police powers on city streets and public

roadways that ran through or were adjacent to the campus. The opinion stated that such private security guards as private guards '... had no authority to exercise police powers except on the private property they were hired to protect.' The opinion further stated that '... the authority of ... (such) ... officers to pursue and/or arrest offenders outside that ... (private) ... property would be no greater or less than that of private citizens.' This opinion appears to be consistent with the opinion issued by this Office earlier this month referenced above. Thus, in specific response to your first question, a private security officer is not authorized pursuant to Section 40-17-130, supra [now § 40-18-110] to exercise the power of arrest on public property.

(emphasis added).

As noted above, this opinion has been reaffirmed on numerous occasions since its issuance in 1980. Importantly, that 1980 opinion appears to be based primarily upon the lack of authority of a "municipality ... by contract [to] part with the authority delegated it by the State to exercise the police power. ...". By contrast, the 1980 opinion did not address the fact that what is now § 40-18-110 does not provide any express exception for "public" property, but simply references "property" generally. At the time the 1980 opinion was written, current § 40-18-110 (then, § 40-17-130 or Section 13 of Act No. 387 of 1973) read as follows:

[a]ny person covered by the provisions of Section 9 or properly registered or licensed under this Act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and power which sheriffs have to make arrest of any persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property.

Thus, it can be readily seen that, just as § 40-18-110 does not distinguish between "public" and "private" property, neither did the predecessor Act upon which the 1980 opinion was based.

Significantly, however, there have been a number of legal developments since our April, 1980 opinion was rendered. These developments signal that our 1980 opinion may have been misplaced. For example, we have issued an opinion, Op. S.C. Att'y Gen., 1985 WL 166051 (No. 85-81) (August 8, 1985). There, we addressed the issue of whether the Board of Corrections could contract with a private corporation to assist in the operation of a prison facility. While we emphasized that in the operation of a prison facility, the State must maintain supervision and control, nevertheless, case authorities "support the idea that historically, governmental entities have often contracted with private entities to assist in the operation and maintenance of penal institutions." In that instance, we noted, the maintenance of supervision and control could be by contract. In such event, we saw no unlawful delegation of the police power.

The Honorable Paul Thurmond

Page 5

February 24, 2016

In addition, our Supreme Court has also concluded that, since the 1980 opinion was issued, a licensed security officer is a "law enforcement officer" for purposes of the offense of resisting arrest. In State v. Brant, 278 S.C. 188, 190, 293 S.E.2d 703, 704 (1982), the Court stated:

[t]he State Law Enforcement Division (SLED) has the authority to license and regulate private security agencies under § 40-17-10, S.C., et seq. Security guards licensed by SLED, as was the security guard in this case, are granted powers identical to those of a sheriff on the property he is hired to protect. See S.C. Code of Laws (1976) § 40-17-130.

The Brant Court thus concluded that "... a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on the property he is hired to protect." 278 S.C. at 191, 293 S.E.2d at 704.

Also instructive is Farley v. Carlee, 309 S.C. 420, 424 S.E.2d 491 (1992). In that case, the Supreme Court concluded that a licensed security officer could serve as a prosecutor in Magistrate's Court because as a "law enforcement officer," he or she is authorized to prosecute in summary court. See In the Matter of Richland County Magistrate's Court, 389 S.C. 408, 413, 699 S.E.2d 161, 164 (2010) [law enforcement officers, including licensed security officers, in prosecuting cases in summary court, "act on behalf of the State."] The Court in Carlee explained as follows:

[w]e have approved the practice of allowing law enforcement officers to prosecute misdemeanor cases in Magistrate's and Municipal Court. State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 (1972). The City asserts that licensed security officers have the same authority as law enforcement officers to prosecute misdemeanor cases in Magistrate's Court. We agree.

The legislature has granted licensed security officers the authority and power of sheriffs to arrest any person violating the criminal statutes of this State. See S.C. Code Ann. 40-17-130 (1986). The power is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect. Id. Thus, like the police, licensed security officers perform a law enforcement function and act in an official capacity when making an arrest. Cf. State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982) (security guard is a law enforcement officer for purpose of resisting arrest prosecution); Chiles v. Crooks, 708 F.Supp. 127, 131 (D.S.C. 1989) (arrest of security guard on licensed premises is action under color of state law within scope of 42 U.S.C. § 1983). Therefore, in light of the legislature's extension of law enforcement authority to licensed security officers, we hold that licensed security officers may prosecute misdemeanor cases in Magistrate's or Municipal Court....

309 S.C. at 421-422, 424 S.E.2d at 492 (emphasis added).

Thus, it can be seen that the Court in Cartee emphasized that the "power" bestowed by the licensed security statute "is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect." (emphasis added). The Court did not enunciate any other limitation such as that the enforcement action taken by the security officer must be on private property, not public property. Nor, seemingly, was the Court troubled by the fact that the delegation of authority to prosecute constituted an unlawful delegation of the police power, a major concern expressed in the April 4, 1980 opinion.

To summarize, when we wrote the April, 1980 opinion, distinguishing between "public" and "private" property for purposes of enforcement by a licensed security officer, we did not have the benefit of our August 8, 1985 opinion. Nor had Brant and Cartee yet been decided by our Supreme Court. Particularly important here is the Supreme Court's language used in Brant that a "... a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on property he is hired to protect." (emphasis added). Clearly, the Court's strong statement regarding a security guard's authority clearly suggests that such an officer possesses power to enforce the criminal laws "on the property he is hired to protect" whether that property be private or public. Thus, we believe that these subsequent decisions strongly support the conclusion that our earlier April, 1980 opinion is now out of step with the legal reasoning articulated in those subsequent decisions. Accordingly, we must reluctantly overrule our prior opinions to the extent that they conclude that a security officer may not enforce the criminal laws on "public property." The statute (§ 40-18-110) states expressly that a security officer possesses the power of arrest "on the property on which he is employed" whether that be public or private property. Of course, we continue to adhere to the position that city streets and highways do not constitute the "property on which" the security officer is employed for purposes of the arrest power of a security officer. Thus, such officers possess no power of arrest on public streets or roadways.

CONCLUSION:

It is our opinion that a court would likely conclude that a licensed security officer possesses the authority to arrest on public property including public schools. Pursuant to § 40-18-110, a licensed security officer is given the power of a deputy sheriff and the power of arrest "on the property on which he is employed." The statute does not mention "public property" as an exception, nor does the statute suggest that "public property" is not included. A deputy sheriff, of course, possesses the power to enforce the criminal law on public as well as private property. Thus, in our opinion, the licensed security officer statute authorizes licensed security officers to enforce laws on public property.

Since our April, 1980 opinion was written (and upon which we have since relied and reaffirmed), our Supreme Court has issued the Brant and Cartee decisions, both affirming the fact that § 40-18-10 et seq. deems a security officer a "law enforcement officer" for all purposes

The Honorable Paul Thurmond

Page 7

February 24, 2016

(including prosecuting in summary court) on the "property on which he is employed." Indeed, in Brum, the Court stated clearly that "a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on the property he is licensed to protect." And in Carter, the Court upheld the security officer's serving as prosecutor in summary court. In neither of these decisions did the Court note any exception if the particular property is public property. Given these intervening developments since our 1980 opinion was issued, we believe the law has sufficiently evolved that our opinions must now be modified.

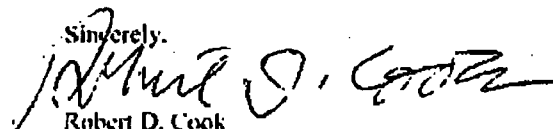
Thus, to answer your specific question, it is our opinion that a school district could lawfully employ directly a security officer other than a School Resource Officer to provide protection at schools. Security officers licensed by SLED pursuant to § 40-18-10 et seq., could be used by the school, in our opinion. Such officers would possess the powers of a deputy sheriff on the property they are hired to protect - in this instance, a public school. Any opinion of this Office to the contrary is now superseded.

Such authority, we emphasize, does not give security officers general police powers on public streets and roadways. Streets and roadways generally cannot reasonably be deemed the "property on which [the security officer] is employed" under the statute.

We caution, however, that the functions of a licensed security officer and that of a School Resource Officer ("SRO") are not one and the same. A security officer is licensed to protect the property for which he or she is employed to protect, including school property, with the full authority of a deputy sheriff to enforce the criminal laws, but only on that property. A School Resource Officer possesses much broader statutory powers, however, including "statewide jurisdiction to arrest persons committing crimes in connection with school activity or school-sponsored event." See § 5-7-12. In addition, an SRO is "a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts in this State to have as a primary duty to act as a law enforcement officer, advisor and teacher for that school district." (emphasis added). Id.

In short, while a licensed security officer may be employed by a school district to provide security protection on school property, as set forth above, such security officer is not authorized to function as a School Resource Officer, or with the broad powers thereof, as defined by § 5-7-12.

Sincerely,


Robert D. Cook
Solicitor General

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

WEATHERSTONE PROPOERTY OWNERS
ASSOCIATION, ET AL

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) 2015 MAY -6 PM 2:55

vs.

2016-CP - 18- 838
CLERK OF COURT
DORCHESTER COUNTY

DORCHESTER COUNTY, ET AL,

Defendant(s)

Submitted By: W. Andrew Gowder, Jr.
Address: 16 Charlotte Street
Charleston, SC 29403

SC Bar #: 7895
Telephone #: 843-727-2229
Fax #: 843-727-2238
Other:
E-mail: wag@p-fw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order ☐ Other (899)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Let Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☒ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		
☐ Local Government			

Submitting Party Signature:

W. Andrew Gowder

Date:

5.6.16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (04/2012)

Page 1 of 2

Exhibit 6

RECORDED
2015 MAY -6 PM 2:57
CHERYL BRANTON
CLERK OF COURT
DORCHESTER COUNTY

RECORDED

2016 MAY -6 PM 2:57

St. George (843) 563-0100
St. George Fax: 563-0137
Summerville (843) 832-0100
Summerville Fax: 832-0137



DEPUTY CLERK OF COURT
Jaxon L. Ward
County Administrator

OFFICE OF THE DORCHESTER COUNTY ADMINISTRATOR
201 JOHNSTON STREET
ST. GEORGE, SOUTH CAROLINA 29477

MEMORANDUM

TO: DORCHESTER COUNTY COUNCIL
FROM: DEPUTY COUNTY ADMINISTRATOR
DATE: July 23, 2015
SUBJECT: SPECIAL CALLED COUNCIL MEETING, July 27, 2015 – Summerville
Council Chambers
1:00 PM County Council

COUNTY COUNCIL

Call to Order, Invocation, and Pledge of Allegiance

The Chairman will call the meeting to order and ask everyone to stand for the invocation followed by the Pledge of Allegiance.

Public Hearing for an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers - The Chairman will open the public hearing for County Council to receive public comment.

Executive Session

Legal Advice - The County Attorney will provide legal advice related to Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and

CC MEMO July 23, 2015

Page 1

Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers.

Contractual Matter, Potential Sale of a Portion of the Pine Trace Tract to Mungo Homes - The County Attorney will provide legal advice on the contract with Mungo Homes.

Contractual Matter, Disposal of Recyclables - The County was informed on Thursday, July 23, 2015 that Charleston County will not renew its contract with Sonoco for recyclables, and will be contracting with Horry County. Our contract with Charleston County ends next Friday, July 31, 2015. The Public Works Director, Jason Curraher, will share with Council the options available to the County.

3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers - The Chairman will ask County Council to give third reading of this ordinance to amend the county budget to increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as School Resource Officers. This additional funding will provide for six SROs in School District 2 and provide an SRO supervisor, who will oversee the SRO program in School District 2, School District 4, and the Career School.

Approval of SRO Agreement between Dorchester County and Dorchester School District Two - The Chairman will entertain a motion to approve the agreement with School District Two. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester School District Four - The Chairman will entertain a motion to approve the agreement with School District Four. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester County Career and Technology Center - The Chairman will entertain a motion to approve the agreement with the Career and Technology Center. (Item)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

~~Dorchester County~~; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

RECORDED

2016 MAY -2 PM 3:50

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CHERYL BRIDGES
CLERK OF COURT
DORCHESTER COUNTY

Civil Action No.:

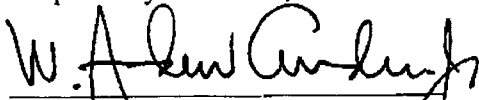
2016 CP-16-838

SUMMONS

JURY TRIAL DEMANDED

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the complaint upon the subscribers at their offices at 16 Charlotte Street, Charleston, South Carolina 29403, within (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, the Plaintiffs in this action will apply to the court for the relief demanded in the complaint and judgment by default will be rendered against you.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.



Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

May 2 2016
Charleston, South Carolina

MAY -2 PM 3:52

COUNTY OF DORCHESTER
CHERYL GRADINGS
CLERK OF COURT
DORCHESTER COUNTY

Civil Action No.: **2016-CP-18-858**

v.

JURY TRIAL DEMANDED

Defendants.

Each of the above-named Plaintiffs brings the following actions seeking declaratory, mandamus, injunctive, monetary and other legal relief. For their complaint, the Plaintiffs state as follows:

I. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, mandamus, monetary and injunctive relief brought for violations and threatened violations of, and to enforce the requirements of, inter alia, the First, Fourteenth and Fifth Amendments to the United States Constitution; the South Carolina Constitution; S.C. Code Ann. §12-37-220(B)(47) ("Act 388"); Act No. 98 of 2009; S.C. Code Ann. § 30-4-10 *et. seq.*; the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10; and 42 U.S.C. § 1983 ("Section 1983").

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members, to (1) obtain a declaration from the Court that certain property taxes have been imposed and/or will be imposed illegally by Defendants Dorchester County ("County") and Dorchester County Council ("Council"), the Town of Summerville ("Town") and Summerville Town Council ("Town Council"); and Dorchester School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center (collectively "School District" or "School Districts"), to finance School Resource Officers ("SRO" or "SROs"), or other police officers, for the purpose of providing police protection at schools in those School Districts; (2) obtain a declaration from the Court that Dorchester School District Two unlawfully has failed and refused to comply with Act No. 98 of 2009; (3) obtain from the Court injunctions preventing the continued violations of law alleged herein and requiring that certain governmental Defendants refund to taxpayers taxes illegally collected, as alleged herein; (4) obtain a writ of mandamus to require governmental Defendants to perform non-discretionary duties

required by law, including compliance by Dorchester School District Two with Act No. 98 of 2009; and (5) otherwise obtain from the Court remedies to violations of various federal and state-protected rights afforded to each of the Plaintiffs by the Constitution of the United States and by the Constitution and statutes of the State of South Carolina, as alleged herein.

3. The allegations against the Defendants, except as further described herein, are made as to those Defendants in their official capacities. All actions by all Defendants at all relevant times were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this Court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 et seq., known as the Uniform Declaratory Judgment Act; 42 U.S.C. § 1983; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

II. PARTIES

A. The Plaintiffs

5. The Weatherstone Property Owners Association ("Weatherstone POA") is a non-profit corporation formed in 2003 under the laws of the State of South Carolina. The mission of the Weatherstone POA is to preserve and to protect the property and liberty interests of homeowners and residents of the Weatherstone area and subdivision, all or nearly all of whom reside in and pay property taxes to the Town, County, and/or one or more of the School Districts. The Weatherstone POA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the Town, County and/or one or more of the School Districts. The Weatherstone POA brings this action individually on its behalf and its members and on behalf of all others similarly situated.

6. George Resnick ("Resnick") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Resnick has standing as a Plaintiff in this action as a taxpayer. Resnick has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

7. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the Town and County, and owns property, including an owner-occupied residence, located and being taxed in the Town and County. Harbeson has standing as a Plaintiff in this action as a taxpayer. Harbeson has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

8. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of the Town and County, and owns property, including an owner-occupied residence, located and being taxed in the Town and County. Greene has standing as a Plaintiff in this action as a taxpayer. Greene has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town and County, and brings this action individually on his behalf and on behalf of all others similarly situated.

9. Homer P. Gonzalez ("Gonzalez") is a citizen, resident and taxpayer of Berkeley County and of the Town, and owns property, including an owner-occupied residence, located and being taxed in the Town. Gonzalez has standing as a Plaintiff in this action as a taxpayer. Gonzalez has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the Town, and brings this action individually on his behalf and on behalf of all others similarly situated.

10. Gerard E. Ziegler ("Ziegler") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Ziegler has standing as a Plaintiff in this action as a taxpayer. Ziegler has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

11. David Messinger ("Messinger") is a citizen, resident and taxpayer of the County, and owns property, including an owner-occupied residence, located and being taxed in the County. Messinger has standing as a Plaintiff in this action as a taxpayer. Messinger has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County, and brings this action individually on his behalf and on behalf of all others similarly situated.

12. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts. DCTA brings this action individually on its behalf, its members and on behalf of all others similarly situated.

13. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who have contributed to the funds at issue, and because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

14. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

15. Each of the above-described Plaintiffs alleging taxpayer standing has as an overriding public purpose or concern as the basis for his, her or its suit on behalf of their fellow taxpayers regarding the proper use and allocation of tax receipts by the County and the School Districts named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditures of money raised by taxation. Each

taxpayer Plaintiff has a real, material, and substantial interest in whether the County and the School Districts followed the requirements and procedures set out in the state constitution, state enabling statutes and County and School District ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

16. Plaintiffs Weatherstone POA and DCTA have standing based on the individualized injuries that have been or will be suffered by their members as a result of the actions of the Defendants described in this Complaint. Members of these organizations would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims the Weatherstone POA and DCTA asserts, nor the relief they request, requires the participation of the individual members of either of those organizations in this action.

17. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to its, his or her real or personal property or acting on behalf of organizational members, has suffered and will suffer an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

B. The Defendants

18. Dorchester County is a body corporate and a corporation of the State of South Carolina located in South Carolina.

19. Dorchester County Council ("County Council") is the elected governing body of Dorchester County created and operating under the laws of the State of South Carolina.

20. The Town of Summerville is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.

21. Summerville Town Council ("Town Council") is the elected governing body of the Town of Summerville created and operating under the laws of the State of South Carolina.

22. The Dorchester County Sheriff is the elected Sheriff of Dorchester County.

23. Dorchester School District Two ("District 2" or "DD2" individually or collectively with District Two Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

24. Dorchester School District Two Board of Trustees ("District 2 Board" or "DD2 Board" individually or collectively with Dorchester School District Two) is the elected independent governing body of District 2 created and operating under the laws of the State of South Carolina.

25. Dorchester School District Four ("District 4" or "DD4" individually or collectively with District Four Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

26. Dorchester School District Four Board of Trustees ("District 4 Board" or "DD4 Board" individually or collectively with Dorchester School District Four) is the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

27. Defendant Dorchester County Career and Technology Center ("DCCTC" individually or collectively with Dorchester County Career and Technology Center Board of Trustees) is a subdivision and an independent school district of the State of South Carolina located in Dorchester County, South Carolina, and created and operating under the laws of the State of South Carolina.

28. The Dorchester County Career and Technology Center Board of Trustees ("DCCTC Board" individually or collectively with the Dorchester County Career and Technology Center) is the elected independent governing body of District 4 created and operating under the laws of the State of South Carolina.

29. David Chinnis ("Chinnis") is the Chairman and a member of Dorchester County Council, and is being sued only in his official capacity.

30. George Bailey ("Bailey") is the Vice Chairman and a member of Dorchester County Council, and is being sued only in his official capacity.

31. Jay Byars ("Byars") is a member of Dorchester County Council, and is being sued only in his official capacity.

32. Carroll S. Duncan ("Duncan") is a member of Dorchester County Council, and is being sued only in her official capacity.

33. Larry Hargett ("Hargett") is a member of Dorchester County Council, and is being sued only in his official capacity.

34. Willie Davis ("Davis") is a member of Dorchester County Council, and is being sued only in his official capacity.

35. William R. Hearn, Jr. ("Hearn") is a member of Dorchester County Council, the governing body of Dorchester County, South Carolina; and is being sued only in his official capacity.

36. Luther C. Knight ("Knight") is the Sheriff of Dorchester County and, on information and belief, a former employee of Knight and Whittington, LLC, which is owned, in whole or in part, by Knight's daughter; and is being sued only in his official capacity.

37. William E. McIntosh III is employed by and/or a member of Knight and Whittington, LLC; is a member of Summerville Town Council; and is being sued only in his official capacity.

38. Joseph R. Pye ("Pye") is the Superintendent of Dorchester School District Two, and is being sued only in his official capacity.

39. Justin Farnsworth ("Farnsworth") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

40. Gail Hughes ("Hughes") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

41. Brian Mitchum ("Mitchum") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

42. Tanya Robinson ("Robinson") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

43. Barbara Crosby ("Crosby") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

44. Sam Clark ("Clark") is a member of Dorchester School District Two Board of Trustees, and is being sued only in his official capacity.

45. Lisa Tupper ("Tupper") is a member of Dorchester School District Two Board of Trustees, and is being sued only in her official capacity.

III. STATUTORY AND REGULATORY FRAMEWORK

A. SRO FUNDING - ACT 388 AND DOUBLE TAXATION VIOLATIONS

46. S.C. Code Ann. § 5-7-12(B) defines a School Resource Officer ("SRO") as:

[A] person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction

for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." *Id.* (emphasis added).

47. The United States Department of Labor describes the duties of an SRO as follows:

We also believe that the SRO's primary duty of providing for the safety and security of students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R. § 542.201(b). *Op. Fair Labor Standards Act (FLSA 2007-8)*, U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).

48. S.C. Code Ann. § 5-7-12(A) allows, but does not require, the County and the Town to designate certain officers as SROs, but states nothing about how those SROs may be funded. Specifically, S.C. Code Ann. § 5-7-12(A) states:

The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a [SRO] and to work within the school systems of the municipality or county. The person assigned as a [SRO] shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. . . . [If an SRO] arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. . . . When acting pursuant to this section and outside of the sworn municipality or county of the [SRO], the officer shall enjoy all authority, rights, privileges, and immunities . . . he would have enjoyed if operating in his sworn jurisdiction. (Emphasis added).

49. However, S.C. Code Ann. § 12-37-220(B)(47)(a),(c) ("Act 388") restricts how SROs can be funded. Specifically, S.C. Code Ann. § 12-37-220 (B)(47)(a),(c) states in pertinent part:

(47)(a) Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12-37-250, one hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

(c) The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two-thirds majority of the membership of each house of the General Assembly; Id. (emphasis added).

50. The South Carolina Legislature was so adamant about its intention not to tax "owner-occupied residential property" for "school operating purposes" (emphasis added) that the Legislature made it extraordinarily difficult to do that by having Act 388 state that "[t]he exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded roll call vote of at least a two-thirds majority of the membership of each house of the General Assembly." S.C. Code Ann. §12-37-220(B)(47)(c)(emphasis added). Thus, by statute, this state exemption from taxing owner-occupied property for school operating purposes can be rescinded only by 2/3 vote of each house of the Legislature.

51. Act 388 exempts owner-occupied residential property from all property taxes imposed for "school operating purposes" with the exception of "bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State." S.C. Code Ann. §12-37-220(B)(47)(b); 2015 S.C. AG LEXIS 105, attached as Exhibit #1 and incorporated herein by reference, see also Op. S.C. Att'y Gen., 2007 WL 1302772 (April 24, 2007).

B. DD2 FAILURES TO FILE ANNUAL DEVELOPMENT REPORTS

52. The South Carolina General Assembly Act No. 98 of 2009 states as follows:

(A98, R1, S234) AN ACT TO REQUIRE THE SUPERINTENDENT OF DORCHESTER COUNTY SCHOOL DISTRICT NO. 2 TO PREPARE AND SUBMIT TO THE COUNTY AND THE MUNICIPALITIES WITHIN DORCHESTER SCHOOL

DISTRICT NO. 2 AN ANNUAL REPORT DETAILING INFORMATION REGARDING THE IMPACT OF DEVELOPMENT ON SCHOOLS WITHIN THE DISTRICT, TO REQUEST FROM THE COUNTY AND ALL MUNICIPALITIES WITH LAND ENCOMPASSED BY THE DISTRICT APPLICATIONS FOR LAND DEVELOPMENT PROJECTS THAT INCLUDE RESIDENTIAL HOUSING THAT MEET CERTAIN CRITERIA, TO DETERMINE WHETHER A PARTICULAR PROJECT WILL RESULT IN A SUBSTANTIAL IMPACT ON THE DISTRICT'S ABILITY TO PROVIDE SERVICES TO THE ADDITIONAL STUDENT POPULATION, AND TO PREPARE AND SUBMIT A REPORT TO THE COUNTY AND ALL MUNICIPALITIES WITHIN THE DISTRICT DETAILING THE IMPACT AND NEED FOR ADDITIONAL RESOURCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) At the beginning of each fiscal year of Dorchester County School District No. 2, the superintendent of the district shall prepare and submit and obtain proof of delivery to the governing body and to the land planning commission of the county and each municipality with land encompassed by the district a report describing the current and projected status and needs of the district. This report will include, but not be limited to, the following:

- (1) a list of all schools in the district with the number of classrooms, current enrollment, and the enrollment capacity of each school and of the entire district;
- (2) the district's student enrollment over the previous ten years and projected enrollment over the next ten years;
- (3) the district's capital improvement program, including all schools existing, under construction, or planned and plans for funding those schools;
- (4) current and projected construction costs for new schools and the cost of mobile classrooms, the causes of any cost increases over previous estimates, and the sources for the information;
- (5) the most recent five-year history of the audited operating and capital expenditures of the district;
- (6) the most recent five-year history of the county assessed tax base used for financing purposes in the district;
- (7) identification of federal, state, and local laws or regulations which the district recommends be repealed or relaxed to save costs and increase efficiency for the district and an explanation of how the savings and increased efficiency could occur;
- (8) a list of additional facilities, teachers, and other resources projected to be necessary to service the additional student population of the district over the next ten years; and
- (9) all other information and recommendations by the district regarding how county or municipal governments could help the district better meet its needs and the needs of its students.

(B) The superintendent shall on a quarterly basis request in writing from the governing body and from the local planning commissions of each county and municipality with land encompassed by the district a copy of all land development applications and accompanying materials involving residential housing:

- (1) that are greater than twenty-five acres in size; or
- (2) with an anticipated residential population density equal to or greater than the average residential density of all land developments within the boundaries of the district, or both. The superintendent shall request that the applications and materials be

provided to the district within ten days after receipt of the applications and materials by a local planning commission or governing body.

The superintendent and the planning commissions may agree that the information is to be provided electronically or by some other suitable means and that the request is considered ongoing and the information will be provided automatically whenever any residential land development application is received that meet these criteria.

(C) The superintendent shall review all applications for land development projects described in subsection (B) and report the results of that review to the board of trustees. The superintendent and the board both will determine whether the additional anticipated increase in student population resulting from the land development project will have a substantial impact on the district's ability to provide services to the additional student population. If either determination is positive, the superintendent and the board shall prepare a report that describes the impact and details the need for additional facilities, teachers, and other resources necessary to service the additional student population, and provide in that report current updated information regarding the subjects described in subsection (A). In determining whether a particular project may result in a substantial impact, the superintendent and the board shall consider not only the impact of the particular project but also the aggregate impact of the project with other projects pending at the time the superintendent conducts his review. The report must be provided, within thirty days of the district's receipt of the application, to the applicable county or municipal governing body and local planning commission. The report must be maintained as part of the land development application and made available to the public.

SECTION 2. This act takes effect upon approval by the Governor.
Ratified the 19th day of February, 2009.

Became law without the signature of the Governor – 2/26/09. Id. (emphasis added).

IV. FACTUAL ALLEGATIONS

A. VIOLATIONS OF ACT 388

53. In 2015 the South Carolina Education Oversight Committee arranged and the South Carolina General Assembly funded an "independent review of the efficiency" of Dorchester School District 2 by Tidwell and Associates, a Columbia-based consulting firm that provides public sector management research, evaluation and technical assistance. DD2 volunteered to participate in this study.

54. In May, 2015, Tidwell and Associates published a report ("Tidwell Report") of the results of its review of the efficiency of DD2. See Dorchester School District 2 School District Efficiency Review FINAL REPORT, Tidwell & Associates, Inc. (May 26, 2015). In this report Tidwell and Associates recommended that DD2 take several actions to increase DD2's efficiency and save DD2 money, including especially "Tier 1" recommendations defined as those having the "Greatest Impact: The district should implement these recommendations immediately to take maximum advantage of their opportunities." *Id.* at 1-8 (emphasis added). Among those "Tier 1" recommendations was that DD2 "[c]onsider contracting with private security services for the School Resource Officer Program, or directly hire district security officers." *Id.* at 1-9, 2-15, 2-16 (emphasis added).

55. Specifically, Tidwell and Associates recommended that DD2 stop paying Dorchester County and the Town of Summerville for SROs employed by the County or Town to provide police protection in DD2 schools and, instead, that DD2 directly employ its own district security officers or contract with a private security company to provide police protection in DD2 schools, both to save money and to eliminate the current "inequitable School Resource Officer coverage across the district." *Id.* at 2-15, 2-16. Tidwell and Associates stated that DD2's hiring of police protection in-house would save DD2 \$194,305 per year and that, over five years, DD2 would save \$1,755,600 if it hired a private security contractor to perform this service, as do the Lancaster County School District and the Lexington County/Richland County School District #5. *Id.*

56. The Dorchester School District Two Board of Trustees attempted to implement, and notified Dorchester County Council and the Dorchester County Sheriff that DD2 would implement, these cost-saving, efficiency-increasing "Tier 1" Tidwell Report recommendations for

DD2 by either hiring private security guards as contractors or in-house employees of DD2. These attempts by DD2 were stopped due to strong objections and threats by the Dorchester County Sheriff, who vigorously complained that all SROs should be controlled, trained and employed by, and financed within the budget of, the Dorchester County Sheriff instead of by DD2. Specifically, the Dorchester County Sheriff threatened DD2 and County officials that assistance from the Dorchester County Sheriff's office to transport prisoners or to handle an emergency at DD2 schools deliberately would be delayed by the Dorchester County Sheriff if the SROs providing protection at DD2 schools no longer were hired and controlled by the Dorchester County Sheriff.

57. Public support for implementing the above-referenced cost-saving recommendations in the Tidwell Report and opposition to double taxation, paying the Dorchester County Sheriff's Office excessive fees for SROs and the County and Town collecting taxes on owner-occupied homes to pay for SROs in violation of Act 388 was squelched and impeded by intimidating and threatening actions and communications made by officials of Dorchester County Council, the Dorchester County Sheriff's Office and Summerville Town Council. For example, Summerville Town Councilman McIntosh and Dorchester County Councilman Chinnis made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of the recommendations in the Tidwell Report and opponents to the Council's and Town's unlawful methods of funding SROs, for the purpose and with the effect of undermining those proponents' credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs. In addition, Defendant McIntosh repeatedly threatened to interfere with the employment of one of those proponents, Plaintiff David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose

and with the effect of making Messinger afraid to express his views regarding these SRO matters. Defendant McIntosh is an employee or a member of the law firm owned, in whole or in part, by the daughter of the Dorchester County Sheriff, who adamantly objected to DD2's hiring its own SROs, as private contractors or in-house employees of DD2, as recommended by the Tidwell Report. Defendant McIntosh made these statements and took these actions, and other actions, to help the Town of Summerville, the Dorchester County Sheriff and other Defendants continue the illegal *status quo* methods of funding SROs advantageous to the Dorchester County Sheriff and to avoid implementing the SRO funding recommendations in the Tidwell Report.

58. Defendants McIntosh's and Chinnis' threats and personal attacks on Plaintiff Messinger described above are a continuation of past efforts by Dorchester County and the Dorchester County Sheriff to discredit, defame, intimidate and interfere with the Constitutional rights of Messinger and others and the employment of Messinger and others. For example, then Lieutenant Tony Phinney ("Phinney") of the Dorchester County Sheriff's Office e-mailed the then Director of the Department of Public Safety at the Medical University of South Carolina stating in part the following:

... [M]y supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments in an open forum on Facebook in an attempt to harm my reputation and to aid his brother in his bid as a candidate for Sheriff. . . . There are at least 4 other persons that are preparing actions against Mr. Turner also

The Facebook forum is 'Concerned Citizens for Dorchester County.' Mr. Turner is listed as the 'administrator' for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a 'cease and desist' letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my

attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervisor asked that I let you know what lay on the horizon. E-mail dated May 1, 2012, from Lt. Tony Phinney, Dorchester County Sheriff's Office, to Anthony Dunbar (emphasis added), attached as Exhibit #2.

Similarly, Lt. Phinney e-mailed and called the then Chief ("Chief") of the Mt. Pleasant Police Department ("Department") to discredit Messinger and try to get the Mt. Pleasant Police Department to terminate the employment of Messinger. Lt. Phinney told the then Chief of the Mt. Pleasant Police Department that Lt. Phinney was calling that Chief at the request of Lt. Phinney's supervisors at the Dorchester County Sheriff's office, to state that the Chief and the Department should rethink their recent hiring of Messinger because Messinger was the Administrator of the Facebook page for Concerned Citizens of Dorchester County. As a result, Messinger was involuntarily counseled and warned by the Chief; Messinger had to remove his name as being the Administrator of the Concerned Citizens of Dorchester County Facebook page; and Messinger was deterred from exercising his Constitutional rights of expression and assembly and to petition his government for redress of grievances.

59. The cost of an SRO employed and supervised by the Dorchester County Sheriff to provide protection at a DD2 school is about twice as expensive as would be charged if that same SRO were employed and supervised by DD2. Those costs charged for an SRO by the Dorchester County Sheriff or by Dorchester County are unreasonably excessive and inflated, and, upon information and belief, would not be used exclusively to fund SROs but would be used for other purposes. These excessive SRO fees have contributed to the layoffs of teachers by DD2, thereby harming the quality of education received by DD2 students.

60. As required by contract, on or about July 20, 2015, DD 2 reimbursed Dorchester County approximately \$500,000 the County previously had paid for SROs who had served at

certain DD2 schools during fiscal years 2012-2014. Those payments for SROs were paid by the County with property taxes collected, *inter alia*, on owner-occupied homes located in Dorchester County, in violation of Act 388.

61. On or about July 31, 2015 Dorchester County and Dorchester District 2 entered into a contract authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill DD2 and DD2 to reimburse Dorchester County, more than \$1 million for SROs serving at DD2 schools during FY 2015-2017. An AGREEMENT Between Dorchester County and Dorchester County School District 2 for the School Resource Office (SRO) Program, dated July 31, 2015 ("DD2 Contract") attached as Exhibit #3 and incorporated herein by reference.

62. This DD2 Contract states in part as follows:

The Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following [six] schools for the school years FY 2015-2016 through 2017-2018. [...] The Sheriff shall assign one full time supervisor to oversee the SRO program. [...] Each school shall have the number of SROs agreed upon ... to be assigned on a full-time basis, during the regular school year, as needed." *Id.* at 1 (emphasis added).

63. This DD2 Contract provides that at least 87% of the payments made pursuant to the DD2 Contract, or \$874,740, will be for the purpose of paying SRO salaries and not for capital expenses. *Id.* at 4.

64. This DD2 Contract states in part as follows:

Compensation

a) The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

b) The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be

adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015- 2016		FY2016- 2017	
Six SROs	\$360,000	Seven SROs	\$420,000
Supervisor	\$47,370	Supervisor	\$47,370
Capital	\$87,616	Capital	\$43,808
Total	\$494,986	Total	\$511,178*

*Does not include CPI adjustment.

c) Each year invoices for services shall be mailed at the beginning of each quarter and payment shall be made to the County within 30 days thereafter, with the first quarter beginning July 1, 2015.

d) Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services such costs shall be billed to the School District within 30 days and payment shall be made to the County within 30 days thereafter. Id. at 4-5 (emphasis added).

65. This DD2 Contract states in part as follows:

A. "It is agreed that the designated officer(s) will remain employee(s) of Dorchester County with all rights, benefits and privileges thereto and shall be subject to the administration, supervision and control of the Sheriff's Office." Id. at 4;

B. "The School District shall provide to the SRO at each school ... materials and facilities necessary to the performance of their duties...." Id.

C. "The County Council shall impose a fee for SROs services that shall be billed by the County to the School District." Id.

D. "The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2." Id.

E. "The School District shall also pay the anticipated capital costs to equip [all] SROs required by this agreement in the amounts as set forth [as follows]." Id.

F. Six SROs @ \$360,000 per annum, one Supervisor @ pro rata \$47,370 per annum, Capital Costs @ non pro rata \$87,616, for a total of \$494,986. Id.

These above-stated costs far exceed the costs of the Office of the Sheriff for providing SRO services stated in "Motion #1" to amend County Ordinance #15-14 by, in part, increasing "...the Personnel line items in the Sheriff's Office by \$310,999 to fully cover the costs of the SRO Program..." and increasing "...the Operating line items in the Sheriff's Office by \$104,594." See id.

66. Payments required by the DD2 contract must be paid both by DD2 and Dorchester County and are for the purpose of paying DD2's school operating expenses. Under this DD2 contract DD2 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." Id. at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD2 operating expenses for SROs working at DD2 schools.

67. Similarly, on or about July 29, 2015, Dorchester County and Dorchester County School District #4 entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill DD4 and DD4 to reimburse Dorchester County, \$120,000 for SROs serving at DD4 schools during FY 2015-2017. AN AGREEMENT Between Dorchester County and Dorchester County School District 4 For the School Resource Officer (SRO) Program, dated July 29, 2015 ("DD4 contract"), attached as Exhibit #4 and incorporated herein by reference. None of those monies reimbursed are designated as capital expenses; they are for the purpose of paying SRO salaries. See id. at 4.

68. Payments required by the DD4 contract must be paid both by DD4 and Dorchester County and are for the purpose of paying DD4's school operating expenses. Under this DD4 contract DD4 is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." *Id.* at 1. In addition, under this contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DD4 operating expenses for SROs working at DD4 schools.

69. Similarly, on or about August 6, 2015, Dorchester County and the Dorchester County Career and Technology Center entered into a contract with terms substantially similar to the DD2 Contract and authorizing and requiring Dorchester County to appropriate, and requiring Dorchester County to bill the DCCTC and the DCCTC to reimburse the County, \$67,895 for SROs serving at DCCTC schools during FY 2015-201. AN AGREEMENT Between Dorchester County and Dorchester County Career and Technology Center for the School Resource Officer (SRO) Program, dated August 6, 2015 ("DCCTC contract"), attached as Exhibit #5 and incorporated herein by reference.. None of those reimbursements are designated as capital expenses but are for the purpose of paying SRO salaries. *Id.*, at 1, 4.

70. Payments required by the DCCTC contract must be paid both by DCCTC and Dorchester County and are for the purpose of paying DCCTC's school operating expenses. Under this DCCTC contract DCCTC is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity." *Id.* at 1. In addition, under this

contract Dorchester County is required to tax all property owners, including owners of owner-occupied homes, to subsidize the salaries and other DCCTC operating expenses for SROs working at DCCTC schools.

71. The terms of all contracts referenced herein, and of all payments for SROs referenced herein, have been authorized respectively by Dorchester County Council, Summerville Town Council, and the respective governing body of these three School Districts.

72. Upon information and belief, additional property taxes have been paid or are obligated to be paid and will be paid (a) by one or more of these School Districts to reimburse Dorchester County and/or the Town of Summerville for monies Dorchester County or the Town paid or will pay for SROs at one or more of these School Districts and (b) by Dorchester County and/or the Town of Summerville to fund SROs at one or more of these School Districts.

73. At all times pertinent all monies paid and obligated to be paid by Dorchester County or the Town of Summerville to any of the School Districts for SROs have been paid or will be paid with property taxes collected, inter alia, on owner-occupied homes in the County and/or the Town, in violation of Act 388.

74. Upon information and belief, property taxes have been paid or are obligated to be paid (a) by one or more of these School Districts to reimburse the Town for monies the Town has paid for SROs at one or more of these School Districts and (b) by the Town to fund SROs at one or more of these School Districts.

75. At a Special Called Meeting on July 27, 2015 Dorchester County Council passed "3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, 'An Ordinance to Make Appropriations . . . for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County,' to increase the county general fund revenues

by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriffs Office Personnel and to serve as School Resource Officers." Memorandum, dated July 23, 2015, re Special Called Council Meeting (" . . . increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as [SROs]. This additional funding will provide for six SROs in [DD2] and provide an SRO supervisor, who will oversee the SRO program in School District 2, School District 4, and the Career School."), attached as Exhibit #6 and incorporated herein by reference. Passage of this Amendment allowed Dorchester County to add an additional mil of taxation of 4% properties, including owner-occupied homes, 6% properties and personal property, to fund SROs to be used, pursuant to a reimbursement contract, by DD 2, DD 4 and the DCCTC to provide police protection at their respective schools.

76. Also at a Special Called Meeting on July 27, 2015 Dorchester County Council passed motions to approve the DD2 Contract, the DD4 Contract and the DCCTC Contract, referenced above.

77. Dorchester County and the Town of Summerville have been and will continue taxing "owner-occupied residential property" "for school operating purposes" to finance police protection with SROs at DD2, DD4 and/or DCCTC schools, in violation of Act 388. The purpose of Dorchester County's and the Town's collecting and using those taxes is to finance SROs for police protections at schools. School police protection is a "school operating purpose" within the meaning of Act 388. Although by contract the School Districts must reimburse Dorchester County and/or the Town for those taxes collected and used by Dorchester County and/or the Town to finance SROs, those reimbursements may never be collected and paid to Dorchester County.

78. If Dorchester County, the Town and these School Districts can finance school police protection in the manner described above, by that precedent Dorchester County and the Town could finance salaries, electricity, gasoline for school buses and all other operating expenses of these School Districts by taxing owner-occupied homes, thereby having Dorchester County's and the Town's tax owner-occupied residential homes pay for all those School Districts' operating expenses.

**B. DOUBLE TAXATION BY COUNTY OR
TOWN, AND SCHOOL DISTRICTS**

79. Property owners who live in Dorchester County and in a School District but not in the Town are being taxed twice -- once by Dorchester County and once by a School District -- to pay salaries and other operating expenses for the same SROs. Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County, as required by contract, the monies Dorchester County collected and paid or will collect and pay for the salaries and other operating expenses of the same SROs.

80. Property owners who live in the Town and in a School District are being taxed twice -- once by the Town and once by a School District -- to pay salaries and other operating expenses for the same SROs. The Town taxes all properties within the Town, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay the Town the monies the Town collected and paid or will collect and pay for the salaries and other operating expenses of the same SROs.

81. This double-taxation of the same properties to pay the operating expenses of the same SROs already has occurred for SROs at DD2 for FY 2013-2014, 2014- 2015 and perhaps other years, and will continue in the future.

82. Additional proof of this double taxation is provided by the County's published explanation of the purposes of the Amendment to Dorchester County Ordinance # 15-14 authorizing the County to tax property owners for SROs. See Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016, attached as Exhibit #7 and incorporated herein by reference. That explanation states that the Amendment would increase by \$461,000 the tax revenue "to reflect an additional county operating mill for the SRO Program;" increases the Personnel line items in the Sheriff's Office by \$310,999 "to fully cover the costs of the SRO Program;" and otherwise require that monies from this one mill County tax increase be given to the Sheriff's Office for this SRO Program. Id. (emphasis added). According to this Amendment, these monies will be given by Dorchester County directly to the Dorchester County Sheriff's Office, not to DD 2, to pay the costs of DD 2's SROs. See Ordinance to Amend Dorchester County Ordinance # 15-14, An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1 , 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County.

83. The Amendment to Dorchester County Ordinance # 15-14 also requires that DD 2 , reimburse the County for the costs expended by the County for SROs. For example, the Amendment requires an increase in the "charges for services revenue line item by \$49,776 to reflect additional funds [DD2] will pay the County in FY 2016 for the SRO Program." (Emphasis added.)

In addition, the Amendment to Dorchester County Ordinance # 15-14 mandates that the "County Council shall impose a fee for SRO services that shall be billed by the County to the School District;" the "County shall charge \$60,000 annually for each School Resource Officer assigned and a prorate [sic] share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2;" and the "School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts set forth below: (1) FY 2015-2016 : Six SROs \$360,000; Supervisor \$47,370; Capital \$87,616; Total \$494,986; 2) FY 2016-2017 Seven SROs \$420,000; Supervisor \$47,370; Capital \$43,808 Total \$511,178." Motion # 1, dated July 6, 2015, to amend Ordinance # 15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016, attached as Exhibit #7. (Emphasis added.)

84. The Agreement "between Dorchester County and [DD2] for the School Resource Officer (SRO) Program" imposes on DD2 exactly the same requirements for DD2 to reimburse Dorchester County for SROs as is stated in the Amendment to Dorchester County Ordinance # 15-14 described in the paragraph immediately above. AN AGREEMENT Between Dorchester County and Dorchester County School District 2 For the School Resource Officer (SRO) Program, dated July 31, 2015, attached as Exhibit #3 .

85. If Dorchester County, the Town and these School Districts can finance school police protection in the manner described above, by that precedent multiple governmental entities could tax, reimburse and contract for payments to each other for precisely the same things.

86. This illegal double taxation and these illegal violations of Act 388 would be avoided completely if the School Districts simply taxed property owners for SROs in accordance with Act 388, and Dorchester County and the Town refrained from taxing any property owners

for SROs. This financing scheme of having Dorchester County and the Town of Summerville tax property owners and pay for SROs and in turn be reimbursed by a School District that taxes property owners for the same SROs is unnecessary, illegal double taxation and a violation of Act 388.

C. TAXING WEATHERSTONE PROPERTY FOR SROs IN UNRELATED SCHOOL DISTRICTS

87. The Town of Summerville taxes the property of Weatherstone POA members and other residents of Berkeley County to provide SROs for protection in schools not located in any school district that serves any of those property owners or any other resident of Berkeley County. Therefore, the Town is taxing those properties to provide SRO services solely in jurisdictions that cannot benefit and are unrelated to the property owners paying those property taxes.

D. INCREASING TWO GOVERNMENT ENTITIES' MILLAGE BASES

88. Moreover, the harms to taxpayers caused by the SRO funding arrangement specified by the Amendment and the Agreements described above extend beyond double taxation and violating Act 388. State law requires that each school district's budget increase annually above the previous year's budget by a specified amount in accordance with a formula, and allows Dorchester County's and the Town's budgets also to be increased each year by a specified amount in accordance with a formula. By two entities -- a school district and the County or the Town -- taxing the same property for exactly the same purpose, i.e., to fund the same SROs, both DD2 and the County or Town, instead of only one of them, are causing or allowing compounded annual increases to their budgets. If that financing scheme by both Dorchester County and the School Districts and by the Town and the School Districts for the

same SROs is legal, all other school operating expenses lawfully could be paid by both a School District and Dorchester County or the a School District and the Town taxing the same property for the same items and thereby cause a huge exponential annual increase of the budget and taxing authority of both entities.

E. Act No. 98 of 2009

89. With one exception, Dorchester District 2 has failed and refused to comply with any of the requirements of Act No. 98 of 2009 quoted above by, inter alia, completely failing to submit any of the required annual reports. The one exception is that DD2 did file a partial but incomplete report in the year 2010.

E. THWARTED CITIZEN ATTEMPTS TO CORRECT ILLEGALITIES

90. On numerous occasions some of the Plaintiffs and members of the public have tried to persuade Dorchester County Council, the Town of Summerville and the School Districts to cease violating Act 388 and unlawfully engaging in double taxation as described above.

91. For example, the Dorchester County Taxpayers Association and its attorney have asked DD2 on numerous occasions to file the reports required by Act No. 98 of 2009 and to provide DCTA a copy of those reports pursuant to the Freedom of Information Act. However, DD2 continues to fail to do so.

92. Moreover, on July 27, 2015, a statement was submitted and read to Dorchester County Council objecting to violations of Act 388 and double taxation referenced above. See Statement by Michael T. Rose Public Hearing Re Dorchester County Tax Increase for SROs and Attachment to Statement, attached as Exhibit #8 and incorporated herein by reference.

93. Based on a request by South Carolina State Senator Paul Thurmond, on November 24, 2015 the South Carolina Attorney General issued an eleven-page opinion stating that the

above-described method of funding SROs by the Defendant government entities violates Act 388 and constitutes illegal double taxation. See 2015 S.C. AG LEXIS 105, attached as Exhibit #1. The Attorney General Opinion states that SROs are in fact an operating expense of schools because they “serve in the operation of schools” and often develop safety policies and procedures as “an advisor and teacher,” and that “[w]e believe a court will determine that a school resource officer — whether an employee of the county, school district or sheriff — falls within the meaning of a ‘school operating expense’ by the very statutory definition of a ‘school resource officer.’” *Id.* The Attorney General Opinion also states that based on Attorney General opinions from at least three different years — 1969, 1986 and 1998 — it is illegal for a government to double tax the same property for the same purpose during the same taxing period. See *id.*

94. Dorchester County Council and DD2 have refused to rescind their method of funding SROs that the Attorney General has opined is illegal, as stated above. Indeed, the DD2 Superintendent responded to the Attorney General opinion by stating “This is just an opinion, it’s not binding.” County Councilman Byars was reported by the Summerville Journal Scenc as giving little credibility to a legal opinion by the Attorney General, stating that “[l]egal opinions are not worth the paper they’re written on until they’re adjudicated (in court),” and called any threat of litigation over these issues “vapid rhetoric.” County Councilman William Hearn stated publicly “[i]t doesn’t matter... what happens in the courts.” County Councilman Chinns expressed doubt about the credibility of a lawyer interpreting the meaning of “operating expense” given his belief that the phrase is an accounting term, and stated that [i]f they want to take it to court, take it to court.”

V. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

VIOLATIONS OF ACT 388

95. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

96. The methods of financing SROs described above violate Act 388 by taxing owner-occupied residences for the purpose of a school operating expense, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

97. As a direct and proximate result of the Defendants violations of Act 388 described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by having had to pay and having to pay in the future additional and unlawful taxes; by suffering nominal and actual damages, including the wrongful payment of taxes, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A SECOND CAUSE OF ACTION ILLEGAL DOUBLE TAXATION

98. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

99. The methods of financing SROs described above constitute illegal double taxation by taxing the twice the same property for the same purpose, as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit #1.

100. As a direct and proximate result of the Defendants' illegal double taxation described above, the Plaintiffs and those similarly situated have been damaged and will continue to be damaged by having had to pay and having to pay in the future additional and unlawful taxes; by suffering nominal and actual damages, including the wrongful payment of taxes, as proven at trial; and by having to incur additional harm and losses, as described above.

FOR A THIRD CAUSE OF ACTION DD2'S FAILURE TO COMPLY WITH ACT NO. 98 of 2009

101. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.
102. The failure and refusal of DD2 to comply with Act No. 98 of 2009 is unlawful.
103. As a direct and proximate result of DD2's continued failure and refusal to comply with Act No. 98 of 2009, the Plaintiffs, those similarly situated and schools in Dorchester County have been damaged and will continue to be damaged by decisions being made by Dorchester County Council, the Town Council of Summerville and other municipalities in Dorchester County without the information required to be provided to them by Act No. 98 of 2009; by suffering nominal and actual damages, including the wrongful payment of taxes, as proven at trial; and by having to incur additional harm and losses, as described above.

**FOR A FOURTH CAUSE OF ACTION
VIOLATIONS OF EXPRESSION AND ASSOCIATION
RIGHTS UNDER SOUTH CAROLINA CONSTITUTION**

104. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.
105. Actions by Defendants McIntosh, Chinnis, Dorchester County Council, Summerville Town Council, the Dorchester County Sheriff and others deprived, and will continue to deprive, Plaintiff Messinger, other Plaintiffs and other taxpayers and members of the public, of their rights of free association, petition for redress of grievances, speech and expression protected by the South Carolina Constitution, in numerous respects, including but not limited to, the following:
- A. Repeatedly suggesting that an employer might be dissatisfied if the employer knew the nature of what the employee was advocating, threateningly implying that they might notify those employers about their advocacy and thereby jeopardize continuation of their employment;
 - B. Contacting and trying to persuade Defendant Messinger's employer to terminate the employment of Messinger; and/or

- C. Repeatedly making and/or endorsing on Facebook and in other communications false defamatory statements about the positions, views and professional history and abilities of David Messinger and another police officer.

106. As a direct and proximate result of the Defendants' violations described above, Plaintiffs Messinger and others similarly situated, have been damaged and will continue to be damaged by their having been deprived, and in the future continuing to be deprived, of their rights of free association, petition for redress of grievances, speech and expression protected by the South Carolina Constitution.

**FOR A FIFTH CAUSE OF ACTION
VIOLATIONS OF FIRST AMENDMENT RIGHTS
UNDER THE UNITED STATES CONSTITUTION**

107. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

108. Actions by Defendants McIntosh, Chinnis, Dorchester County Council, Summerville Town Council and the Dorchester County Sheriff described above deprived, and will continue to deprive, Plaintiffs Messinger, other Plaintiffs and other taxpayers and members of the public, of their rights of free association, petition for redress of grievances, speech and expression protected by the First Amendment of the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Repeatedly suggesting that their employers might be dissatisfied with them if they knew the nature of what they were advocating, implying that they might notify those employers about their advocacy and thereby jeopardize continuation of their employment;
- B. Contacting and trying to persuade Defendant Messinger's employer to terminate the employment of Messinger; and/or
- C. Repeatedly making and/or endorsing on Facebook and in other communications false defamatory statements about the positions, views and professional history and abilities of David Messinger and another police officer.

109. As a direct and proximate result of the Defendants' violations described above, Plaintiffs Messinger, other Plaintiffs and others similarly situated, have been damaged and will continue to be damaged by their having been deprived, and in the future continuing to be deprived, of their rights of free association, petition for redress of grievances, speech and expression protected by the First Amendment of the United States Constitution.

**FOR A SIXTH CAUSE OF ACTION
VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS
RIGHTS UNDER THE FOURTEENTH AMENDMENT**

110. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

111. Plaintiffs have liberty interests and property interests in the properties they own located in Dorchester County, the Town of Summerville and the School Districts. Actions by certain governmental Defendants referenced herein have deprived, and will continue to deprive, Plaintiffs, and other taxpayers and members of the public, of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendment to the United States Constitution, in numerous respects, including but not limited to, the following:

- A. Taxing the property of the Plaintiffs in violation of Act 388;
- B. Double taxing the property of the Plaintiffs for the same items at the same time;
- C. Publishing or allowing their agents to publish false, defamatory statements about, and to threaten, some of the Plaintiffs; and
- D. Violating federal and state Constitutional provisions, and statutes, as stated herein.

112. As a direct and proximate result of the Defendants' violations of the substantive and procedural due process rights of Plaintiffs, and others, and other actions described herein,

those Plaintiffs have been damaged and will continue to be damaged by having their Fifth and Fourteenth Amendment property and liberty rights infringed and threatened; and by having to incur additional harm and losses, as described above, including, but not limited to, by having to pay and risking having to pay taxes unlawfully; and by suffering a reduction in the value of their properties and other impairments to the use of property; by suffering nominal and actual damages, as proven at trial; and by having to incur additional harm and losses, as described herein.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) The Town of Summerville has violated Act 388 by taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts;
- (2) Dorchester County has violated Act 388 by taxing owner-occupied homes to pay for SROs at schools in one or more of the School Districts;
- (3) The Town of Summerville and the School Districts have violated the federal and South Carolina Constitutions by each taxing the same properties twice at the same time for the same SRO expenses;
- (4) Dorchester County and the School Districts have violated the federal and South Carolina Constitutions by each taxing the same properties twice at the same time for the same SRO expenses;
- (5) Dorchester School District 2 has violated Act No. 98 of 2009;
- (6) Defendants have violated the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution; and
- (7) Defendants have violated the Plaintiffs' rights under the South Carolina Constitution.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Taxing owner-occupied homes to pay for SROs or any other police protection for schools;
- (2) Taxing the same properties twice at the same time for the same SROs expenses;
- (3) Violating Act No. 98 of 2009;
- (4) Violating the First, Fifth and Fourteenth Amendment rights of the Plaintiffs under the United States Constitution;
- (5) Violating the Plaintiffs' rights under the South Carolina Constitution; and
- (6) Engaging in any and all other such illegal acts as this Court deems appropriate for injunctive relief.

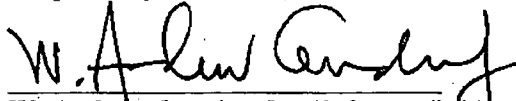
C. Grant a Permanent Injunction Order immediately requiring the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, to return to taxpayers all monies illegally collected from them, as described herein;

D. Grant a writ of mandamus requiring:

- (1) That Dorchester District 2 comply fully with Act No. 98 of 2009, by performing now acts required to have been done in the past that have not been done, and by performing in the future all actions required to be performed in the future by Act No. 98 of 2009;
- (2) All Defendants to fund SROs and other police protection at schools with taxes not collected on owner-occupied homes in violation of Act 388; and
- (3) The Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, to return to taxpayers all monies illegally collected from them, as described herein.

- E. Grant Plaintiffs all damages to which they may be entitled under 42 U.S.C. § 1983 for violations of the constitutional rights of the Plaintiffs.
- F. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff and any other applicable law; and
- G. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.



Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

JURY TRIAL DEMANDED

Exhibit 1

FILED - RECORD...
2016 MAY -2 PM 3: 52

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY



2015 MAY -2 PM 3:52

2015 MAY -2 PM 3:52

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ALAN WILSON
ATTORNEY GENERAL

November 24, 2015

The Honorable Paul Thurmond, Member
South Carolina Senate, District No. 41
P.O. Box 142
Columbia, SC 29211

Dear Senator Thurmond:

Attorney General Alan Wilson has referred your letter dated September 17, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issues (as quoted from your letter):

I have been contacted by a constituent that would like me to ask you to provide an Attorney General Opinion advising (1) about the legality of certain property taxes that have been imposed and/or that will be imposed by Dorchester County Council ("Council") and by each of three school districts' in Dorchester County to finance School Resource Officers ("SRO" or "SROs") for the purpose of providing police protection at schools in those districts; (2) what are the differences, if any, between the authority and powers of an SRO employed by one of those school districts versus employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and (3) whether, to what extent and with what effect, an SRO lawfully could be employed by one or all of those school districts but supervised by the Dorchester County Sheriff's Office.

In particular, please advise whether those property taxes violate the South Carolina Constitution, S.C. Code Ann. §12-37-220(B)(47) ("Act 388") and/or any other provision of law; to what extent an SRO employed by a school district does or does not have the same powers to detain, arrest, investigate or remove an individual from school property as an SRO employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and whether, and to what extent, the Dorchester County Sheriff can hire, fire, train and supervise an SRO even though that SRO is an employee of one of the school districts and has his compensation paid by one of those school districts.

To recap, due to the concerns above, please provide me answers to the following questions described above:

- 1. Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?*
- 2. If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*
- 3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?*
- 4. Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?*
- 5. What are the specific differences, if any, between the powers and authority of an*

SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

6. What are the specific differences, if any, between the powers and authority of an SRO employed by a school district and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

Law/Analysis:

First, we will presume by referring to a "school resource officer" that you are referring to the statutory definition found in South Carolina Code Section 5-7-12(B) where a School Resource Officer is defined as "a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." S.C. Code § 5-7-12(B) (1976 Code, as amended). Please note for purposes of this opinion this Office has not reviewed any property tax bills for residents of Dorchester County or any contracts regarding School Resource Officers. This Office does not make factual determinations in an opinion such as this, but is only reviewing the law. *See, e.g., Op. S.C. Atty. Gen.*, 1996 WL 599391 (September 6, 1996) (citing *Op. S.C. Atty. Gen.*, 1983 WL 182076 (December 12, 1983)).

1. Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?

Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47) clearly exempt owner-occupied residential property from all property taxes imposed for "school operating purposes" with the exception of "bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State." *See also Op. S.C. Atty. Gen.*, 2007 WL 1302772 (April 24, 2007). The answer to your first question depends on whether financing School Resource Officers at schools is a "school operating purpose" in violation of Act No. 388 and South Carolina Code Section 12-37-220(B)(47). In *Berkeley County School Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009), our State Supreme Court debated what was encompassed within the meaning of "school operating purposes." Quoting from that case, the Court stated:

Relying on a 1979 definition of "operating expenses" the Department [of Revenue] contends that "school operating purposes" encompasses "[t]hose expenses required to keep the business running, e.g. rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity." *Black's Law Dictionary* 984 (5th ed.1979). More recently, however, *Black's Law Dictionary* has expanded the term and defined it as "[a]n expense incurred in running a business and producing output." *Black's Law Dictionary* 599 (7th ed.1999).

...

In terms of specifics, we find payments for the lease/installment purchase agreements should come within the definition of "school operating purposes." Clearly, a school would not be operational without an infrastructure which necessarily includes school buildings. Thus, the continued operation of a school district is dependent upon the renovation and purchase of school buildings.

Because the lease/installment-purchase payments or requisite "rent payments" effectuate this goal, these payments are essential for "school operating purposes." Significantly, in the business realm, the phrase "operating expenses" has been defined to "include payroll, sales commissions, employee benefits and pension contributions, transportation and travel, amortization and depreciation, rent, repairs, and taxes, etc." (emphasis added). Furthermore, to limit the definition of "school operating purposes" to only expenses incurred for the administration of a school district would be myopic. Logically, a school district cannot operate without all of its component parts, which include school administration expenses, day-to-day expenses, and most importantly the actual facilities which are funded through lease/installmentpurchase payments. Thus, we find the payments for lease/installmentpurchase agreements would be exempt under section 12-37-220(B)(47)(a) and reimbursable under section 11-11-156(A)(1).

Berkeley County School Dist. v. South Carolina Dep't of Revenue, 383 S.C. 334, 345-46, 679 S.E.2d 913, 919 (2009). Based on the Court's interpretation in Berkeley and a plain reading of the statute, if a School Resource Officer is a part of a school, the costs thereof will likely be considered an operating expense of the school. This will especially be the case where the School Resource Officer is an "advisor, and teacher" for the school district. S.C. Code § 5-7-12. If the School Resource Officer's costs are an operating expense of a school, then Dorchester County's taxation of owner-occupied residences to pay for them would be in violation of Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47).

The South Carolina Department of Revenue has issued a few Revenue Rulings regarding the interpretation of what is or is not a "school operating purpose." One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code §§ 59-1-10, 59-1-20. It defines a school district as "...any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Code § 59-1-160 (1976 Code, as amended).

We believe a court will determine that a School Resource Officer- whether an employee of the county, school district, or sheriff- falls within the meaning of a "school operating purpose" by the very statutory definition of a School Resource Officer. S.C. Code § 5-7-12(B). Since the statute appears clear and unambiguous, this Office will not look further to determine the meaning of the language in the statute. This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. South Carolina Board of Physical Therapy Exam'rs, 370 S.C. 452, 636 S.E.2d 598 (2006). Moreover, as we have noted in prior opinions of this Office, "the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Att'y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). The title "School Resource Officer" clearly denotes a legislative intent for the officer to serve in the operation of schools. Therefore, we believe a court would determine taxation by a county for a School Resource Officer is unlawful because it evades the prohibition against taxation of primary

residences for school operating purposes. Furthermore, the United States Department of Labor opined on School Resource Officers and their duties by stating:

We also believe that the SROs' primary duty of providing for the safety and security of the students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R. § 541.201(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).¹ While the terms of employment may vary among School Resource Officers, the duties in the FLSA opinion appear to fit within the meaning of the operations of a school and offer a good standard of what a "school operating purpose" could be. *Id.*

Moreover, as you are likely aware, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. *Ops. S.C. Att'y Gen.*, 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing *State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526 (1940); *Lurey v. City of Laurens*, 265 S.C. 217, 217 S.E.2d 226 (1975); *Westbrook v. Hayes*, 253 S.C. 244, 169 S.E.2d 775 (1969)). The State Supreme Court has cautioned the same in *Richardson v. Blalock*, 118 S.C. 438, 110 S.E. 678 (1922), stating "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." *Op. S.C. Att'y Gen.*, 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows that taxing them indirectly for school purposes is prohibited also.

2. *If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*

Even if a court determines Dorchester County's taxation of owner-occupied residences to finance School Resource Officers at schools is legal, pursuant to Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47), the County may not tax owner-occupied homes to furnish goods or services to a school district as a part of a "school operating purpose." As stated above, the South Carolina Department of Revenue has issued Revenue Rulings regarding what is or is not a "school operating purpose."² One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment,

¹ Please note that we do not know the background or this particular state's requirements for School Resource Officers.

² However, these Revenue Rulings were based on portions of S.C. Code § 12-37-251 that are not used anymore. We presume these rulings would apply today to S.C. Code § 12-37-220.

organization, operation, and support of such State system." *Id.*; S.C. Code §§ 59-1-10, 59-1-20. It defined a school district as "any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Rev. Rul. 95-22 (November 7, 1995); S.C. Code § 59-1-160 (1976 Code, as amended). Revenue Ruling No. 95-23 and 96-6 were consistent with the determinations in Ruling No. 95-22. S.C. Rev. Rul. 95-23 (November 13, 1995); 96-6 (June 12, 1996). *See also Op. S.C. Att'y Gen.*, 2007 WL 4284627 (November 27, 2007). By examining the plain meaning of the words as outlined above in our response to Question 1, any expense that would be part of a "school operating purpose" would be prohibited, including goods or services used for a "school operating purpose."

Moreover, as we stated above, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. *Ops. S.C. Att'y Gen.*, 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing *State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526 (1940); *Lurey v. City of Laurens*, 265 S.C. 217, 217 S.E.2d 226 (1975); *Westbrook v. Hayes*, 253 S.C. 244, 169 S.E.2d 775 (1969)). As the State Supreme Court cautioned in *Richardson v. Blalock*, 118 S.C. 438, 110 S.E. 678 (1922), "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." *Op. S.C. Att'y Gen.*, 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows taxing them indirectly for good or services for school purposes is prohibited.

3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?

Before we examine whether charging for the same School Resource Officers by both the school district and the county would constitute double taxation, let us review some applicable South Carolina tax law.³ The South Carolina Constitution grants the General Assembly authority to "vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including special purpose districts, public service districts, and school districts" S.C. Const. art. X, § 6. The South Carolina Constitution outlines that school districts must prepare an annual budget, and if funds are insufficient, the governing body is to levy an additional tax the next year. S.C. Const. art. X, § 7(b). South Carolina Code § 12-43-210 requires uniform assessment throughout the State. *See also* S.C. Const. art. VIII, § 14; S.C. Const. art. X, § 1 (regarding uniform assessment and taxation). As the South Carolina Supreme Court stated in *Watson v. City of Orangeburg*, 229 S.C. 367, 375, 93 S.E.2d 20, 24 (1956), "[t]he power of taxation being an attribute of sovereignty vested in the legislature subject to constitutional restrictions, taxes can be assessed and collected only under statutory authority." It is well established the South Carolina General Assembly has chosen to grant counties the authority to assess and levy taxes pursuant to South Carolina Code § 4-9-30(5)(a), permitting county government the authority:

...
(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county....

³ Though we note while there are many relevant statutes and cases, we list some of them in this opinion and acknowledge there are many others not mentioned here.

S.C. Code § 4-9-30 (5)(a) (1976 Code, as amended).

While there are numerous statutes and cases regarding taxation and schools, we are not able to address all of them in this opinion. See, e.g., S.C. Code § 59-73-60 (if the electorate votes for such a levy, the auditor shall add it to the tax duplicates and the county treasurer is authorized to collect the additional county taxes for school purposes the same as State and county taxes); § 59-73-10 (electorate must vote to approve any additional tax in any county for school purposes); § 59-73-70 (a levy by the county is a lien on the property subject to default); § 4-9-70 (unless otherwise provided by law, county council sets the school tax millage). We noted in a previous opinion that "[o]ne county administrator stated that forty-six of South Carolina's school districts report to a 'higher body (legislative delegation, county council, or county board) to get their budgets approved, or to raise the millage beyond a certain point,' whereas twenty-three school districts maintain their ability to set their own budgets." Op. S.C. Att'y Gen., 2014 WL 3414950 (July 3, 2014) (citing Burris v. Anderson County Bd. Of Educ., 369 S.C. 443, 446, 633 S.E.2d 482, 484 (2006); S.C. Code § 4-9-70)). Thus, even within the same laws, school districts in South Carolina handle funding differently.

Regarding double taxation, this Office has previously opined on the subject. In a 1969 opinion this Office stated:

"To constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same state or government (emphasis added), (3) during the same taxing period, and (4) for the same purpose." Cooley Taxation 4th Ed. Vol. One, § 223 at 475. Cooley goes further to say: "There is no double taxation where one tax is for state or county purposes, imposed by the state or county, and the other tax is one imposed by a city. A state license tax and a county license tax is not double taxation. There is not double taxation where there is a tax levied and collected by and for a local school district and also a tax levied and collected for state purposes, although a part of the state taxes so collected are afterwards distributed by the state to school districts." Cooley on Taxation 4th Ed. Vol. One, § 230 at 492.

Op. S.C. Att'y Gen., 1969 WL 15197 (March 25, 1969). In a 1986 opinion, we also stated:

Double or dual taxation results when any kind or class of property is subjected to more than one tax by a particular statute or ordinance. Alderman v. Wells, 85 S.C. 507, 67 S.E.781 (1910); Windfield v. South Carolina Tax Commission, 147 S.C. 116, 144 S.E.846 (1928). Stated another way,

[i]n order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject matter, for the same purpose, by the same state, government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax. Also the taxes must not be uniform or there must be discrimination, one tax must have been imposed on part only, not all, of the property in the taxing

district; and the tax burden must be one imposed by the state and not one voluntarily assumed by agreement.

84 C.J.S. Taxation § 39.

Op. S.C. Att'y Gen., 1986 WL 289839 (September 18, 1986). In the 1986 opinion this Office concluded that there was no double taxation where a taxpayer paid both an ad valorem property tax to the county and an income tax to the State, even though some of the proceeds from both taxes went to the same fund. Id. This Office also opined in a 1998 opinion that:

There is no per se prohibition on double taxation. Greystone Catering Co., Inc. v. S.C. Dept. of Revenue & Taxation, [326] S.C. [551], 486 S.E.2d 7 (1997). Double taxation in the prohibited sense can exist only in the subject of both taxes is the same, if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period. Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

Op. S.C. Att'y Gen., 1998 WL 115502 (February 6, 1998). Moreover, our State courts have been clear in stating that:

Nonetheless there is a strong presumption against double taxation, and we will not construe a statute as imposing a double tax unless the legislative intention or its necessary implication is clear from the terms of a statute.

Greystone Catering Co. v. S. Carolina Dep't of Revenue & Taxation, 326 S.C. 551, 555-56, 486 S.E.2d 7, 9 (Ct.App. 1997) (quoting Wingfield v. South Carolina Tax Comm'n, 147 S.C. 116, 144 S.E. 846 (1928)).

Thus, having reviewed this information, we are of the opinion that taxing for the same School Resource Officers approaches double taxation such that a court could make that determination. We recognize that generally two different entities can tax for the same thing without constituting double taxation. However, the simple principle is this: where two entities collect the full amount to cover the cost of School Resource Officers, the taxpayers would be paying twice for the same thing. That is the very principle double taxation violates. The same principle would apply to any amount both entities are collecting duplicate taxes for.

4. Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?

Please see our response to Question 3 above.

5. What are the specific differences, if any, between the powers and authority of an SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

A School Resource Officer should have equivalent statutory authority and powers in regards to arrest power and jurisdiction while acting within the scope of his employment as a School Resource Officer, regardless of his employer. As we mentioned above, a School Resource Officer is defined by statute as "a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or

recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." S.C. Code § 5-7-12(B). By virtue of the statutory definition of a School Resource Officer, regardless of who employs them, they must:

- 1) be a sworn law enforcement officer within South Carolina (see, e.g., S.C. Code § 23-13-20 requiring an oath to be a Sheriff's deputy);
- 2) complete a School Resource Officer's instruction; and
- 3) be assigned to a school district in South Carolina as a law enforcement officer, advisor, and teacher.

S.C. Code § 5-7-12. For purposes of this opinion, this Office will presume compliance with requirements could be verified through the South Carolina Criminal Justice Academy. Id. A School Resource Officer's jurisdiction is granted by statute as:

The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

S.C. Code § 5-7-12(A) (emphasis added). Therefore, those duties and powers of a School Resource Officer acting within the scope of his authority set by statute cannot change and will be consistent as statutorily set, regardless of who employs the School Resource Officer. However, this Office believes the statute's requirement for School Resource Officers to be a sworn law enforcement officer within South Carolina would prevent a school district from directly employing a School Resource Officer. S.C. Code § 5-7-12. Moreover, law enforcement officers have other statutory duties and powers. See, e.g., S.C. Code § 23-13-70 ("deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff"). The powers and duties of law enforcement officers outlined by statute must be complied with and cannot be altered by agreement and vary based on the type of law enforcement officer.⁴

In regards to a School Resource Officer's employment contracts and duties, they will vary based on the terms of employment. For instance, a school district could contract with a Sheriff's department for a School Resource Officer who also serves as a teacher. Or a Sheriff or police chief supervising a School Resource Officer may require the officer to perform other duties outside of the school. For specific questions on differences between power and authority, we would need to read the employment contract

⁴ Please note that while this Office has previously opined concerning the authority of private security guards to protect a school, that issue is not addressed in this opinion.

and identify the employer. See S.C. Code § 23-24-10 (use of official uniforms and weapons by officers on private job), § 23-24-20 (duties of employing agencies), § 23-24-30 (liability of public employer for off-duty acts), etc. However, each state may vary in the employment of School Resource Officers. For example, the United States Department of Labor opined concerning School Resource Officers employed by schools and school districts in one state:

As noted, the SROs' employers [in the state addressed herein] are public educational entities rather than police departments or security companies whose primary operations are law enforcement and security, and as a result, the SROs' activities could not be categorized as production operations for their employers. Therefore, the SROs' primary duty involves the "performance of office or non-manual work directly related to the management or general business operations of the employer." *Id.* § 541.200(a)(2).

Moreover, we believe that the SROs' primary duty "includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). As described above, the SRO is minimally supervised. The SRO has an annual discretionary budget of \$15,000 to \$20,000 for purchasing safety/security related items. Such duties as providing the extensive recommendations and advice noted above to faculty and staff that are usually implemented satisfy one of the regulatory factors in 29 C.F.R. § 541.202(b) for determining whether an employee exercises discretion and independent judgment with respect to matters of significance, specifically, that the "employee provide[] consultation or expert advice to management." See *Bondy v. City of Dallas*, No. 03-10112, 2003 WL 22316855 (5th Cir. 2003) (making recommendations to management on policies and procedures). In addition, by serving as a liaison/facilitator between the school system and local law enforcement agencies to coordinate the law enforcement efforts of the local jurisdiction relative to the schools, and to develop a communication network between administration, staff, students, and parents within the cluster schools, the SRO "formulate[s] . . . [and] implement[s] management policies or operating practices." See 29 C.F.R. § 541.202(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).⁵ While we do not know all the details of the employment contract and the laws of School Resources Officers in that state, it is clear that the duties and powers of a School Resource Officer can vary greatly depending on the state's laws and the terms of the officer's employment. This Office previously issued an opinion regarding School Resource Officers where the officers were employees for a local police department and worked pursuant to a contract with the school. See *Op. S.C. Att'y Gen.*, 2014 WL 1398597 (January 15, 2014). South Carolina law requires certain contractual provisions for agreements for law enforcement services between law enforcement agencies and could serve as guidance in any other agreements involving law enforcement officers. S.C. Code § 23-20-40.

In regards to your question as to what powers a School Resource Officer would hold, our United States Supreme Court makes the determination as to the power and authority in regards to searches, seizures and

⁵ Please note that we do not know the background or this particular state's requirements for School Resource Officers.

other Constitutional issues in connection with schools. As you may be aware and as the South Carolina Court of Appeals quoted the United States Supreme Court regarding searches in schools:

The Supreme Court concluded that the Fourth Amendment applies to searches conducted by school authorities. [*New Jersey v. T.L.O.*,] 469 U.S. at 333, 105 S.Ct. at 738. Nonetheless, the Court concluded that the warrant requirement "is unsuited to the school environment" because it would "unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." *Id.* at 340, 105 S.Ct. at 742. Thus, the Court held that school officials need not obtain a warrant before searching a student so long as the school official has reasonable grounds to suspect that the search will yield evidence of a violation of the law or school rules. 469 U.S. at 340-43, 105 S.Ct. at 742-44. However, the Court was careful to point out that this exception only applied to searches conducted by "school authorities acting alone and on their own authority.[]" This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question." *T.L.O.*, 469 U.S. at 341, n. 7, 105 S.Ct. at 743, n. 7.

Clearly, the search of Thomas D. was not carried out by school officials. The police were not acting on behalf of or as agents for the school when they searched Thomas D. Instead, the search was conducted by police in furtherance of a law enforcement objective—that is, the removal of Thomas D. from a surrounding detrimental to his welfare and his relocation to the parentally-approved and societally-mandated school environment. While Thomas D. was a student and the search apparently took place on school property, the search was not conducted by a school official.

The State argues the cigarettes were "contraband" and that Thomas D. was prohibited by school policy from possessing cigarettes on school property. If Thomas D. had been searched by a school official on school property based upon a reasonable suspicion of a violation of school rules, the situation might be different. However, the fact remains the warrantless search of Thomas D. was conducted by law enforcement officers who were not connected with the school. Because the police were acting on their own authority and cannot be considered agents of the school, the reasonable suspicion standard set forth in *T.L.O.* is simply inapplicable to the case at bar. Thus, the question becomes whether the warrantless search of Thomas D. violated the Fourth Amendment's prohibition against unreasonable searches and seizures. We conclude it did not.

In Interest of Thomas B.D., 326 S.C. 614, 618-19, 486 S.E.2d 498, 500 (Ct. App. 1997). We suggest your constituent look to the courts and follow the most recent case law in regards to a School Resource Officer's power and authority versus Constitutional rights, as the law is subject to change, in addition to any applicable employment agreements and South Carolina Code Section 5-7-12.

The Honorable Paul thurmond

Page 11

November 24, 2015

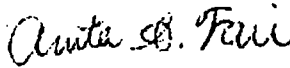
6. What are the specific differences, if any, between the powers and authority of an SRO employed by a school district and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?

Please see our response to Question 5 above.

Conclusion:

As the need and funding for School Resource Officers changes, the case law and statutes will change too. Thus, the answers to your questions may change in time. However, we hope this legal opinion based on the current law at this time is helpful to you and your constituents. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

FILED - RECORDS

2015 MAY -2 PM 3:52

Exhibit 2

CHERYL GARRITY
CLERK OF COURT
DORCHESTER COUNTY

From: Tony Phinney (mailto:tphin911@ymail.com)
Sent: Tuesday, May 01, 2012 8:35 PM
To: Dunbar, Anthony
Subject: Rowland Turner

2016 MAY -2 PM 3: 52

CHERYL SAHAW
CLERK OF COURT
DORCHESTER COUNTY

Director Dunbar,

My name is Tony Phinney and I am a Lieutenant with the Dorchester County Sheriff's Office.

Although awkward, my supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments on an open forum on Facebook in an attempt harm my reputation and to aid his brother in his bid as a candidate for Sheriff. The comments are not only an attack on me, but are an attack on my 19 yr old son, who made the mistake of having an underage beer party at my home while I was out of town. He is facing those consequences and for anyone to embellish the facts surrounding this incident for political gain, is wrong and illegal. There are at least 4 other persons that are preparing actions against Mr. Turner also, but I cannot speak for them.

This Facebook forum is "Concerned Citizens for Dorchester County". Mr. Turner is listed as the "administrator" for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a "cease and desist" letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervision asked that I let you know what lay on the horizon.

Thank you for your time and if you have any questions, feel free to ask.

Tony Phinney

CLERK OF COURT - RECORD

2016 MAY -2 PM 3: 52

Exhibit 3

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

AN AGREEMENT

Between

Dorchester County

And

Dorchester County School District 2
For the School Resource Officer (SRO) Program

RECORDED
2016 MAY -2 PM 3:52
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Goals and Evaluation

These goals shall be in line with Dorchester County School District 2's ("School District") action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) The Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following schools for the school years 2016-2017 through 2017-2018.
 - (a) Dubose Middle School/William Reeves Elementary (1 School Resource Officer)
 - (b) Givhans Alternative Program (1 School Resource Officer)
 - (c) Ashley Ridge High School (2 School Resource Officers)
 - (d) Knightsville Elementary (1 School Resource Officer)
 - (e) Beech Hill Elementary (1 School Resource Officer)
 - (f) Sandhill Elementary/Rollings Middle School (1 School Resource Officer) (Beginning school year 2016-2017 through 2017-2018)
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) Each school listed above shall have the number of SROs agreed upon by the Sheriff and School District to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.

- b) The SROs who are assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) School Resource Officers shall serve as law-related educators, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) SROs shall serve as law-related counselors, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) SROs shall serve as law enforcement officers, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) SROs shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) SROs shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, SROs shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) SROs shall make themselves available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) SROs shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SROs shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SROs and the principals shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) SROs shall inform the principal or his designee in a timely manner, should it be necessary to conduct formal interviews with students. SROs shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) SROs shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. SROs shall, as soon as practicable, notify the Principal and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.

- m) SROs shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Superintendent, Principal, Sheriff, County Administrator, or their designee.
- n) SROs shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the principal shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) SROs shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) SROs shall, upon request, accompany the Principal or designee to deliver expulsion documents if the principal or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, SROs may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Principal of the school to which the SRO is assigned feels the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall articulate their concerns in writing to the superintendent and Sheriff. If the Sheriff so desires, he shall meet with the Principal and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the school and a replacement shall be obtained.

Rights and Duties of the School District

- A. **Cooperation**
 - a) The School District shall require the Principal to endeavor to develop a close working relationship with the SRO and, understand the SROs responsibilities, purpose, and limitations.

B. Facilities

- a) The School District shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:

1. Access to an air conditioned, properly lighted, lockable & secure, private office.
2. A telephone to be used for business purposes
3. A lockable and secure records storage cabinet
4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

- a) The Principal and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security.

Good Faith

The School Board, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the Superintendent. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Superintendent or their designees and, any recommendations to the agreement will be submitted in writing.

Liability Insurance

It is agreed that the designated officer(s) will remain employee(s) of Dorchester County with all rights, benefits and privileges thereto and shall be subject to the administration, supervision and control of the Sheriff's Office. Dorchester County shall purchase and maintain in full force and effect during the term of this agreement a general comprehensive liability insurance policy with coverage for any acts or omissions of its employees that occur or claims that are made during the term of the agreement.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

The County shall charge \$60,000 annually for each School Resource Officer assigned and a pro-rata share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015-2016		FY2016-2017	
Six SROs	\$360,000	Seven SROs	\$420,000
Supervisor	\$ 47,370	Supervisor	\$ 47,370
Capital	<u>\$ 87,616</u>	Capital	<u>\$ 43,808</u>
Total	\$494,986	Total	\$511,178*

*Does not include CPI adjustment.

Each year invoices for services shall be mailed at the beginning of each quarter and payment shall be made to the County within 30 days thereafter, with the first quarter beginning July 1, 2015.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services such costs shall be billed to the School District within 30 days and payment shall be made to the County within 30 days thereafter.

Term

This agreement between Dorchester County and Dorchester County School District 2 shall be in full force and effect for school years 2015-2016 through 2017-2018. Either party may terminate this agreement at any time by giving written notice of said termination should the other party fail to substantially perform its obligations under the agreement. The notice required under this clause shall be sent by registered mail.

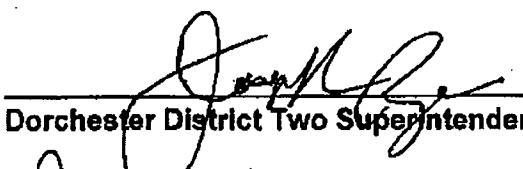
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

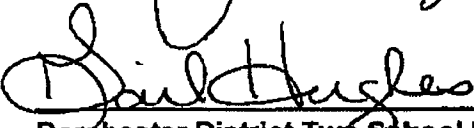
Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

Signed sealed and delivered in the presence of:


Dorchester District Two Superintendent

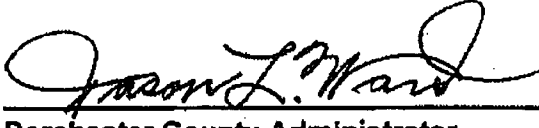
7-31-15
Date


Dorchester District Two School Board Chairperson

7-31-15
Date


Dorchester County Sheriff

7-31-15
Date


Dorchester County Administrator

7/29/15
Date

Exhibit 4

REC - RECORDS

2015 MAY -2 PM 3:52

CHERYL STARLING
CLERK OF COURT
DORCHESTER COUNTY

RECORDED
2016 MAY -2 PH 3: 52

CHERYL E. WALSH
CLERK OF COURT
DORCHESTER COUNTY

AN AGREEMENT

Between

Dorchester County

And

Dorchester County School District 4
For the School Resource Officer (SRO) Program

Goals and Evaluation

These goals shall be in line with Dorchester District 4's action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) In the school year 2015-2016, the Sheriff shall assign regularly employed full-time armed deputies, to serve as an SRO, to one of each of the following schools:
 - (a) Woodland High School (1 School Resource Officer)
 - (b) Odyssey Education Center/Harleyville-Ridgeville Middle School (1 School Resource Officer)
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) Each school listed above shall have the number of SROs agreed upon by the Sheriff and School District to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.
- b) The SROs who are assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) School Resource Officers shall serve as law-related educators, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) SROs shall serve as law-related counselors, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) SROs shall serve as law enforcement officers, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) SROs shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) SROs shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, SROs shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) SROs shall make themselves available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) SROs shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SROs shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SROs and the principals shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) SROs shall inform the principal or his designee in a timely manner, should it be necessary to conduct formal interviews with students. SROs shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) SROs shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. SROs shall, as soon as practicable, notify the Principal and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.
- m) SROs shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Superintendent, Principal, Sheriff, County Administrator, or their designee.

- n) SROs shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the principal shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) SROs shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) SROs shall, upon request, accompany the Principal or designee to deliver expulsion documents if the principal or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, SROs may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Principal of the school to which the SRO is assigned feels the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall articulate their concerns in writing to the superintendent and Sheriff. If the Sheriff so desires, he shall meet with the Principal and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the school and a replacement shall be obtained.

Rights and Duties of the School District

- A. **Cooperation**
 - a) The School District shall require the Principal to endeavor to develop a close working relationship with the SRO and, understand the SROs responsibilities, purpose, and limitations.

B. Facilities

- a) The School District shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:
1. Access to an air conditioned, properly lighted, lockable & secure, private office.
 2. A telephone to be used for business purposes
 3. A lockable and secure records storage cabinet
 4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

- a) The Principal and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security.

Good Faith

The School Board, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the superintendent. The terms of this agreement are subject to change at the end of the school year or no later than July 1st of the calendar year. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Superintendent or their designees and, any recommendations to the agreement will be submitted in writing.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.

In school year 2015-2016, the County shall charge \$60,000 annually for each School Resource Officer assigned.

Two School Resource Officers	<u>\$120,000</u>
Total	\$120,000

Invoices for services shall be mailed on or about June 1st. Payment shall be remitted by June 30th.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services.

In the event the School District fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the School District the amount due plus 10%.

Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

Signed sealed and delivered in the presence of:

Morris Ravenel Ed.D.
Dorchester District Four Superintendent

7/29/15
Date

Kenneth Jenkins
Dorchester District Four School Board Chairperson

7-28-15
Date

J. Knight
Dorchester County Sheriff

7-9-15
Date

Jason Leonard
Dorchester County Administrator

7/7/15
Date

Exhibit 5

RECORD

2016 MAY -2 PM 3:53

CHERYL GRAYSON
CLERK OF COURT
DORCHESTER COUNTY

2016 MAY -2 PM 3: 53

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

AN AGREEMENT

Between

Dorchester County

And

**Dorchester County Career and Technology Center
For the School Resource Officer (SRO) Program**

Goals and Evaluation

These goals shall be in line with Dorchester County Career and Technology Center's action plan for a safe school climate. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives were obtained. The Dorchester County Sheriff's Office shall evaluate the SRO program annually.

Rights and Duties of the Sheriff's Office

The Sheriff will be responsible for recruiting, interviewing, and evaluating SROs who will, by law, serve at the pleasure of the Sheriff, and are employees of the Dorchester County Sheriff's Office.

A. Number of School Resource Officers (SROs)

- a) The Sheriff shall assign regularly employed full-time armed deputies, appointed to serve as an SRO to the Dorchester County Career and Technology Center in school year 2015-2016.
- b) The Sheriff shall assign one full time supervisor to oversee the SRO program. The supervisor will perform periodic visits and communicate with the respective principals.
- c) The SRO supervisor or his designee shall provide information or material, upon request, to assist in the completion of scheduled quarterly or yearly reports.

B. Regular Assignment of School Resource Officers

- a) The school listed above shall have one SRO as agreed upon by the Sheriff and Dorchester County Career and Technology Center to be assigned on a full time basis, during the regular school year, as needed. Any SRO may be reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies, or other necessity.
- b) The SRO who is assigned will be permitted to travel to off-campus school based programs at the request of the principal or his designee, and with the consent of the Sheriff or his designee, for educational, law enforcement, and emergency purposes.

C. Duties of School Resource Officers

- a) The SRO shall serve as a law-related educator, when practicable, assisting students and faculty with law related issues as well as conducting periodic law-related education instruction in the classroom.
- b) The SRO shall serve as a law-related counselor, providing information and assistance to students, parents, and staff in matters related to state and local law.
- c) The SRO shall serve as a law enforcement officer, taking appropriate enforcement action, when needed, to ensure the physical security of the students and staff, as well as to maintain order. The SRO shall have sole discretion in matters of enforcement but are encouraged to work closely with the school officials.
- d) The SRO shall develop expertise in the presentation of various law related subjects to students and staff, with particular emphasis on juvenile law, child law, and the role of the law enforcement officer.
- e) The SRO shall encourage individual and small group discussions, of law-related matters, to further establish a relationship with the students and staff.
- f) Upon request, the SRO shall attend parent/staff meetings to solicit support and understanding of the SRO Program as well as to provide law related assistance.
- g) The SRO shall be available, upon request, for individual parent/teacher conferences to assist with problems as it relates to law or prevention. Laws and etiquette regarding confidentiality shall be observed.
- h) The SRO shall be familiar with community agencies and resources which offer assistance to youths and their families, such as mental health clinics, child service agencies, drug treatment centers, behavioral centers, etc. The SRO shall make referrals when needed, acting as a resource for students, parents and staff.
- i) The SRO and the Director of the Career and Technology Center shall work closely to develop plans and strategies to prevent and/or minimize potentially dangerous situations.
- j) The SRO shall inform the Director of the Career and Technology Center or his designee in a timely manner, should it be necessary to conduct formal interviews with students. The SRO shall adhere to Sheriff's Office policy as well as law in regards to such interviews.
- k) The SRO shall take appropriate law enforcement action, when required, against unlawful intruders, unwanted guests, unruly students or staff, on campus or during school related activities or functions, under authority of law. The SRO shall, as soon as practicable, notify the Director of the Career and Technology Center and Sheriff of such action.
- l) The SRO shall render assistance to other officers, and agencies, concerning matters related to the school whenever necessary.
- m) The SRO shall maintain detailed and accurate records of enforcement activity and shall make the information available to the Director of the Career and Technology Center, Sheriff, County Administrator, or their designee.

- n) The SRO shall not act as school disciplinarians, enforcing school policies or rules, as this is a school responsibility. However, in matters which may be a violation of law, the Director of the Career and Technology Center shall contact the SRO immediately, and the SRO shall determine whether enforcement is appropriate or necessary.
- o) The SRO shall not be utilized or scheduled for regular cafeteria duties, hall monitoring, test monitoring, or other scheduled duties. However, if a problem area exists, the SRO shall assist until the problem is resolved.
- p) In cases of contested expulsions or unusual circumstances, the SRO shall provide case information and/or testimony to assist the school district in the matter.
- q) The SRO shall, upon request, accompany the Director of the Career and Technology Center or designee to deliver expulsion documents if the Director or designee feels their safety may be in jeopardy.
- r) Upon request, and approved by the Sheriff, the SRO may accompany students and staff to school sponsored events or locations outside of Dorchester County, as per state law, for the purpose of providing security. The SRO shall be compensated based on the hourly rate determined by the Sheriff's Office policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services.

Reassignment / Resignation / Dismissal of SRO

- A. The Sheriff may dismiss or reassign an SRO, at his pleasure, based upon state law, Sheriff's Office policy, or when in the best interest of the citizens of Dorchester County.
- B. In the event of the resignation, reassignment, dismissal, or in the case of an extended absence of the SRO, the Sheriff shall assign the SRO supervisor to fill in for the SRO and if needed, a permanent replacement will be assigned.
- C. In the event the Director of the Career and Technology Center feels the particular SRO is not effectively performing his or her duties and responsibilities, the director shall articulate their concerns in writing to the Sheriff. If the Sheriff so desires, he shall meet with the Director of the Career and Technology Center and the SRO to mediate or resolve any problems or concerns which may exist. If, within a reasonable amount of time after commencement of such mediation, the problems or concerns cannot be resolved, or in the event mediation is not sought by the Sheriff, the SRO shall be reassigned from the Career and Technology Center and a replacement shall be obtained.

Rights and Duties of the Career and Technology Center

- A. Cooperation
 - a) The Career and Technology Center shall require the Director of the Career and Technology Center to endeavor to develop a close working relationship with the SRO and, understand the SRO's responsibilities, purpose, and limitations.

B. Facilities

- a) The Career and Technology Center shall provide to the SRO at each school the following materials and facilities necessary to the performance of their duties:
1. Access to an air conditioned, properly lighted, lockable & secure, private office.
 2. A telephone to be used for business purposes
 3. A lockable and secure records storage cabinet
 4. A desk with drawers, office chair, filing cabinet, office supplies, and computer with printer.

C. Communication

- a) The Director of the Career and Technology Center and the SRO shall make every effort to communicate with each other concerning potential problems, threats, criminal incidents and breaches of security.

Good Faith

The Dorchester County Career and Technology Center, the Sheriff, the County Administrator, their agents and employees, agree to cooperate in good faith in fulfilling the terms of this agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Sheriff and the Director of the Career and Technology Center. The terms of this agreement are subject to change at the end of the school year or no later than July 1st of the calendar year. Any recommended changes or modifications will be reviewed by the Sheriff, the County Administrator and the Director of the Career and Technology Center or their designees and, any recommendations to the agreement will be submitted in writing.

Compensation

The County Council retains the authority to appropriate funds for SROs. The County Council shall impose a fee for SROs services that shall be billed by the County to the Dorchester County Career and Technology Center.

In school year 2015-2016, the County shall charge \$60,000 annually for each School Resource Officer assigned and a pro-rata share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4 and the Career School SRO based upon the number of SROs assigned to each.

One School Resource Officer	\$60,000
SRO Supervisor	<u>\$ 7,895</u>
Total	\$67,895

Invoices for services shall be mailed on or about June 1st. Payment shall be remitted by June 30th.

Should an additional officer be required during the course of the agreement term, the above rates shall determine compensation for SRO services.

In the event the Dorchester County Career and Technology Center fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the Career and Technology Center the amount due plus 10%.

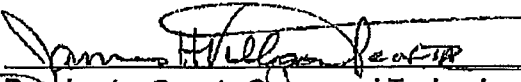
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

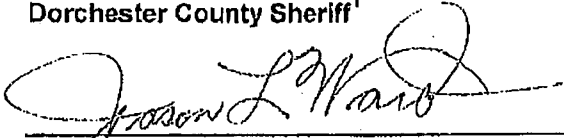
Signed sealed and delivered in the presence of:


Dorchester County Career and Technology Center
Director

7-9-15
Date


Dorchester County Sheriff

7-9-15
Date


Dorchester County Administrator

7/7/15
Date

In the event the Dorchester County Career and Technology Center fails to pay the County for services rendered, the County Treasurer's Office is authorized to withhold from its subsequent distribution of operating millage to the Career and Technology Center the amount due plus 10%.

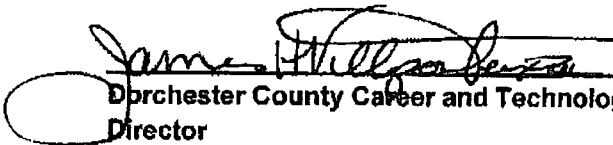
Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parties to be changed.

Merger

This agreement constitutes a final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms.

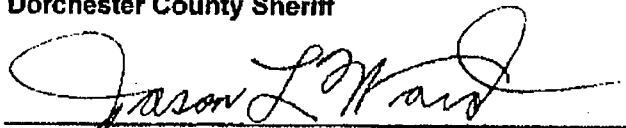
Signed sealed and delivered in the presence of:


Dorchester County Career and Technology Center
Director

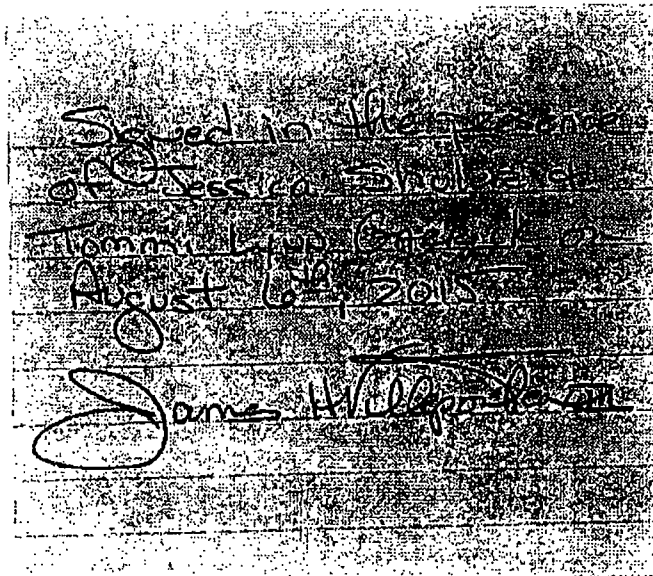
8-6-15
Date


Dorchester County Sheriff

7-9-15
Date


Dorchester County Administrator

7/7/15
Date



FILED RECORDS

2016 MAY -2 PM 3:53

Exhibit 6

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

St. George (843) 563-0100
St. George Fax: 563-0137
Summerville (843) 832-0100
Summerville Fax: 832-0137



REC - RECORDED
2016 MAY -2 PM 3:53
Jason L. Ward
County Administrator
CLERK OF COURT
DORCHESTER COUNTY

**OFFICE OF THE DORCHESTER COUNTY ADMINISTRATOR
201 JOHNSTON STREET
ST. GEORGE, SOUTH CAROLINA 29477**

MEMORANDUM

TO: DORCHESTER COUNTY COUNCIL
FROM: DEPUTY COUNTY ADMINISTRATOR
DATE: July 23, 2015
**SUBJECT: SPECIAL CALLED COUNCIL MEETING, July 27, 2015 – Summerville
Council Chambers
1:00 PM County Council**

COUNTY COUNCIL

Call to Order, Invocation, and Pledge of Allegiance

The Chairman will call the meeting to order and ask everyone to stand for the invocation followed by the Pledge of Allegiance.

Public Hearing for an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers – The Chairman will open the public hearing for County Council to receive public comment.

Executive Session

Legal Advice – The County Attorney will provide legal advice related to Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and

Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers.

Contractual Matter, Potential Sale of a Portion of the Pine Trace Tract to Mungo Homes – The County Attorney will provide legal advice on the contract with Mungo Homes.

Contractual Matter, Disposal of Recyclables – The County was informed on Thursday, July 23, 2015 that Charleston County will not renew its contract with Sonoco for recyclables, and will be contracting with Horry County. Our contract with Charleston County ends next Friday, July 31, 2015. The Public Works Director, Jason Carraher, will share with Council the options available to the County.

3rd Reading of an Ordinance to Amend Dorchester County Ordinance #15-14, "An Ordinance to Make Appropriations for County Government, Educational, and Fire Protection Purposes for Dorchester County for the Fiscal Year Beginning July 1, 2015, and Ending June 30, 2016; To Levy Taxes for the Payment Thereof; and to Provide for the Expenditure of Said Taxes and Other Revenues Coming into the County," to increase the county general fund revenues by \$518,671 and county capital fund revenues by \$103,078 and authorize additional expenditures in the county general fund and county capital fund in order to hire and equip additional Sheriff's Office Personnel to serve as School Resource Officers—The Chairman will ask County Council to give third reading of this ordinance to amend the county budget to increase county general fund revenues and authorize additional expenditures in the county general fund and county capital fund in order to provide additional deputies to serve as School Resource Officers. This additional funding will provide for six SROs in School District 2 and provide an SRO supervisor, who will oversee the SRO program in School District 2, School District 4, and the Career School.

Approval of SRO Agreement between Dorchester County and Dorchester School District Two – The Chairman will entertain a motion to approve the agreement with School District Two. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester School District Four - The Chairman will entertain a motion to approve the agreement with School District Four. (Item)

Approval of SRO Agreement between Dorchester County and Dorchester County Career and Technology Center - The Chairman will entertain a motion to approve the agreement with the Career and Technology Center. (Item)

LED - RECORD

2016 MAY -2 PM 3:53

Exhibit 7

CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

2016 MAY -2 PM 3: 53

AMENDMENTS TO THE DORCHESTER COUNTY BUDGET ORDINANCE July 6, 2015
DORCHESTER COUNTY

Motion #1

Mr. Chairman, I move to amend Ordinance #15-14, the Dorchester County Budget Ordinance for Fiscal Year 2015-2016 as follows:

The General Fund shall include the following adjustments:

Increase the tax revenue line item by \$461,000 to reflect an additional county operating mill for the SRO Program.

Increase the charges for services revenue line item by \$49,776 to reflect additional funds the Dorchester School District 2 will pay the County in FY2016 for the SRO Program.

Increase the charges for services revenue line item by \$7,895 to reflect additional funds the Dorchester County Career & Technology Center will pay the County in FY2016 for an SRO Supervisor.

Increase the transfer line item to show a transfer from the General Fund to the Capital Fund in the amount of \$103,078 for the capital purchases associated with two new positions.

Increase the Personnel line items in the Sheriff's Office by \$310,999 to fully cover the costs of the SRO Program. Increase the Operating line items in the Sheriff's Office by \$104,594. The total expenditures for the General Fund shall increase from \$48,904,528 to \$49,423,199.

Compensation

The County Council retains the authority to appropriate funds for SROs. **The County Council shall impose a fee for SROs services that shall be billed by the County to the School District.**

The County shall charge \$60,000 annually for each School Resource Officer assigned and a prorated share of the SRO Supervisor at \$71,055, who will be supervising SROs in School District 2, SROs in School District 4, and the Career School SRO based upon the number of SROs assigned to each, all of which will be adjusted for CPI annually but not to exceed 2% any given year. The School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts as set forth below.

FY2015-2016	FY2016-2017
Six SROs \$360,000	Seven SROs \$420,000
Supervisor \$ 47,370	Supervisor \$ 47,370
Capital \$ 87,616	Capital \$ 43,808

RECORDED

2016 MAY -2 PM 3:53

Exhibit 8

CHERYL BRADY
CLERK OF COURT
DORCHESTER COUNTY

RECORDED
JUL 29 2015 3:53 PM

STATEMENT BY MICHAEL T. ROSE
PUBLIC HEARING RE DORCHESTER COUNTY TAX INCREASE FOR SROs

To: Members, Dorchester County Council

Subject: Public Hearing -- Opposition to Double Taxation and Taxation of Owner Occupied Residences for DD2 Operating Expenses for SROs in Violation of Act 388

CHERYL GRADY
CLERK OF COURT
DORCHESTER COUNTY

Date: July 27, 2015

Members of Dorchester County Council:

I am unable to attend this public hearing today because I am traveling out-of-state.

In my absence, please allow this statement to be read to Council on behalf of myself and taxpayers whom I represent, and make it and its attachment¹ part of the public record.

We propose a method of funding DD2 SROs that would avoid the issues of both double taxation and the taxation of owner occupied residences in violation of Act 388. Specifically, we propose that even if SROs for DD2 are employed and controlled by the County, that the County not tax anyone for those SROs but, instead, that only DD2 tax its property owners to pay for DD2 SROs and that DD2 reimburse the County for DD2's SROs.

To accomplish that, Council should vote NOT to have the County raise taxes to pay for DD2's SROs and should vote to approve a future request by DD2 to raise its millage to pay the cost of those SROs. DD2's Board can simply submit to Council an amended budget request in the near future to pay for its SROs, and Council can approve that request.

In the alternative, if you are going to vote to allow the County to tax owner occupied residences for DD2 SROs while having an agreement that DD2 will reimburse the County for those SROs with taxes DD2 collects from its property owners, please explain to us citizens in detail how and why you justify doing that. Please provide us all facts, legal authorities and rationale that Council members and its attorney have that you think justifies your voting for Council to tax owner occupied homes for DD2 police protection, while agreeing that DD2 also will tax some of the same property owners (including me) for those same SROs.

We taxpayers ask you to obtain and provide us a written opinion from the County Attorney explaining the complete factual and legal basis for his advice that your vote to raise County millage for DD2 SROs is legal under these circumstances. We ask that you provide the public all agreements, signed and proposed, and all other information about this County millage increase for DD2 SROs, so that will have the information we need to ensure transparency and accountability by Council. None of this requested information needs to be withheld from the public. Thank you for your consideration.

¹ I sent each member of Council a letter address to Chairman David Chinnis dated July 13, 2015. That letter is attached and part of this statement.

**ATTACHMENT TO STATEMENT
BY MICHAEL T. ROSE**

To: David Chinnis
Chairman, Dorchester County Council

From: Michael T. Rose

Subject: Request for Rescheduling of Public Hearing and Disapproval of One Mill County Tax Increase by Dorchester County Council for SRO Program

Date: July 13, 2015

Dear David,

On behalf of myself and a coalition of concerned taxpayers, please consider this an emergency request that you consider, seriously, open-mindedly and without prejudgment, our facts, analysis and requests below, for the purpose of getting Dorchester County Council ("Council") and Dorchester School District 2 ("DD2") to cease violating state laws and implementing policies wrongfully and unnecessarily harming taxpayers.

As you know, on July 6, 2015, Council passed first reading of an amendment ("Amendment") to Council's previously approved 2015-2016 Budget Ordinance 15-14 to allow the County to add an additional mill of taxation of all property (including owner-occupied residences) in Dorchester County to fund School Resource Officers ("SROs") to be used, pursuant to a reimbursement contract, by DD2 at some of its schools. We object to this Amendment as being illegal and bad policy and to Council's process of passing this Amendment, for several reasons, including the following:

- I. **DOUBLE TAXATION:** Property owners in the County and DD2, including me, have been and, under the Amendment, would be TAXED TWICE – once by the County and once by DD2 – to pay for the SAME SROs. Here is proof that this is true:

The Amendment increases by \$461,000 the tax revenue "to reflect an additional county operating mill for the SRO Program," increases the Personnel line items in the Sheriff's Office by \$310,999 "to fully cover the costs of the SRO Program," and otherwise requires that monies from this one-mill County tax increase be given to the Sheriff's Office for this SRO Program. (Emphasis added.) (Note that according to this Amendment these monies would be given by the County directly to the Sheriff's Office, not to DD2, to pay the costs of DD2's SROs.)

The Amendment also requires that DD2 reimburse the County for the costs expended by the County for SROs. For example, the Amendment requires an increase in "charges for services revenue line item by \$49,776 to reflect additional funds [DD2] will pay the County in FY 2016 for the SRO Program." In addition, the Amendment mandates that the "County Council shall impose a fee for SRO services that shall be billed by the County to the School District:" the "County shall charge \$60,000 annually for each School Resource

Officer assigned and a prorated [sic] share of the SRO Supervisor at \$71,055. who will be supervising SROs in School District 2," and the "School District shall also pay the anticipated capital costs to equip the SROs required by this agreement in the amounts set forth below:" (1) FY 2015-2016: Six SROs \$360,000; Supervisor \$47,370; Capital \$87,616; Total \$494,986; (2) FY 2016-2017 Seven SROs \$420,000; Supervisor \$47,370; Capital \$43,808 Total \$511,178. (Emphasis added.)

In addition, a proposed or existing agreement ("Agreement") between Dorchester County and DD2 "for the School Resource Officer (SRO) Program" imposes on DD2 exactly the same requirements that DD2 reimburse the County for SROs as stated in the sentence above.

Indeed, DD2 stated in the written Power Point presentation it made in support of its first budget request this year to County Council that at least \$386,000 of DD2's requested millage increase would be spent on "SRO costs." Another power point presentation by DD2 in support of its revised, four-mill tax increase recently approved by County Council specifically states that at least \$260,000 would be used to finance SROs.

Thus, there is absolutely no doubt that if the Amendment becomes law and the Agreement is signed County taxpayers who live within DD2, including me, will pay property taxes twice for the same SROs – once to the County and once to DD2.

Moreover, as the record shows, despite DD2 having funds already specifically appropriated to it to reimburse the County for SRO costs and DD2 having over \$21 million in cash reserves, DD2 already owes, repeatedly has been billed by the County for but has failed to pay about \$500,000 to reimburse costs expended by the County for SROs used by DD2 during FY 2013-2014 and 2014-2015. Thus, not only has DD2 taxed property owners for the SROs that the County also has taxed property owners, but DD2 deliberately has failed, and refuses, to pay the monies for SROs it has collected and owes. Further, the County has failed to require DD2 to repay the monies owed by DD2 to the County, which it could do simply by refusing to approve DD2's budget until the monies owed by DD2 are paid.

A. TAXING RESIDENTIAL PROPERTY OWNERS = VIOLATING ACT 388:

In addition to taxpayers being taxed by both DD2 and the County for the same SROs, by passing the Amendment and signing the Agreement the County would continue taxing property in violation Act 388. While S.C. Code Ann. § 5-7-12 allows the county and the Town of Summerville to designate certain officers as SROs, it says nothing about how those SROs are to be funded. However, Act 388 does.

Specifically, S.C. Code Ann. §12-37-220 (B)(47)(a) states: "Effective for property tax years beginning after 2006 . . . one hundred percent of the fair market value of owner-occupied residential property . . . is exempt from all property taxes imposed for school

operating purposes" (Emphasis added.) The Legislature was so adamant in its intention to not tax "owner occupied residential property" for "school operating purposes" that the Legislature made it almost impossible to do that by having Act 388 state that "[t]he exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded roll call vote of at least a two-thirds majority of the membership of each house of the General Assembly." (Emphasis added.) Thus, this state exemption from taxing owner-occupied property for school operating purposes can be rescinded only by 2/3 recorded vote of each house of the Legislature.

Despite the clarity of these requirements, Dorchester County has been and proposes to continue taxing "owner-occupied residential property," including mine, "for school operating purposes" by taxing owner-occupied residential property in the County to finance police protection with SROs at DD2 schools. Regardless of the fact that the County collects and uses the taxes for SROs, nevertheless the purpose of collecting and using the taxes is for police protection at schools, which clearly is for a school operating purpose. Thus, the County has been and proposes to continue to impose "scofflaw millage" to subsidize DD2 SROs indirectly by manipulation to circumvent and violate the spirit and the letter of Act 388.

Moreover, if the County and DD2 can finance DD2 police protection in this manner, that precedent would allow the County to finance salaries, electricity and all other operating expenses of DD2 and afterwards obtain reimbursement from DD2, thereby double taxing property owners and taxing their owner-occupied homes illegally for all DD2 operating expenses.

Dorchester County needs to not only stop double taxing its property owners for SROs, but should refund to property owners all the monies it illegally has collected from property owners in the past, just as you and I got the Town of Summerville to refund property owners taxes illegally collected for fire protection from property owners newly-annexed into the Town of Summerville.

B. INCREASING TWO MILLAGE BASES ILLEGALLY:

The harm to taxpayers caused by the SRO funding arrangement specified by the Amendment and the Agreement extends beyond double taxation. State law requires DD2's budget to increase annually by a percentage of its previous year's budget, based on factors like inflation and population increases, and allows the County's budget to do so. By taxing two entities, DD2 and the County, for the same purpose -- funding SROs -- both DD2 and the County, instead of only one of them, enable compounded annual increases to their budgets forever. Again, if this financing scheme by the County and DD2 for SROs is legal, the County and DD2 can finance all other DD2 operating expenses by taxing both DD2 and County property owners for those same expenses, and thereby cause a huge exponential annual increase of the budget and taxing authority of both entities forever.

C. TAXING DISTRICT 4 TO PAY DD2 SROs:

The proposed Agreement does not mention Dorchester School District 4 ("DD4"). Therefore, there is no requirement being officially considered to enable DD4 taxpayers to derive any benefit from taxes paid by DD4 property owners used to pay for SROs in DD2. Further, because no contract to pay DD4 was on the agenda of the Executive Session at Council's last meeting, DD4's tax issues should not have been discussed in that Executive Session. Doing so violated the Freedom of Information Act.

D. COMPEL PAYMENTS OWED BY DD2

The County long ago should have compelled DD2 to pay the monies DD2 owed the County for DD2 SROs, and should require payment now, instead of the County taxing property owners to make up the monies DD2 has failed to pay. That easily could be accomplished by refusing to approve DD2's budget, as allowed by law, until DD2 pays its debts. Given DD2's failure for years to pay the reimbursements it owes to the County, there is no reason to believe the Agreement for DD2 to repay the County for SROs would be honored, and the County should not trust DD2 would do so. Given the County's failure for years to obtain from DD2 the reimbursements DD2 owes the County, there is no reason to believe the County will enforce any requirement in the Agreement for DD2 to reimburse the County, and taxpayers should not trust the County to do so.

II. TIDWELL REPORT

Admirably, DD2 volunteered to be the subject of a study sponsored and paid by the South Carolina General Assembly about how to improve DD2. In May, 2015, the Tidwell and Associates consulting firm recommended that DD2 stop paying Dorchester County and the Town of Summerville for police protection in schools and, instead, that DD2 directly hire its own district security officers or a private security company to provide that protection, both to save money and to eliminate the current "inequitable School Resource Officer coverage across the district." This was identified by Tidwell and Associates as a "Tier 1" recommendation, which it defined as "Greatest Impact: The district should implement these recommendations immediately." (Emphasis added.)

Tidwell and Associates stated that DD2's hiring of police protection in-house would save the District \$194,305 per year and that, over five years, the District would save \$1,755,600 if it hired a private security contractor to perform this service, as do Lancaster County School District and Lexington County/Richland County School District #5.

By hiring police protection in-house or from a private security firm, DD2 would totally eliminate the double taxation, illegal taxation of owner-occupied residences and excessive cost problems described above.

There is no valid reason for DD2 not to follow this money-saving and equity-increasing recommendation from Tidwell and Associates for the benefit of DD2 and taxpayers. Contrary to some claims, no Attorney General's Opinion (including the one erroneously

relied on by the DD2 Board at the DD2 Board's last meeting) or other authority limits the power of a security officer hired directly by DD2 to protect DD2's students or prevents them from making arrests on school property. Contrary to what DD2 Board Chairman Gail Hughes is quoted in today's Post and Courier as stating, SROs hired in-house by DD2 would be able to make arrests while on school property. This is shown by S.C. Code Ann. § 40-18-140, which exempts DD2 from having to obtain a SLED license, and by S.C. Code Ann. § 40-18-110, which states as follows:

"SECTION 40-18-110. Authority and arrest powers of those licensed or registered under chapter.

A person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State but possesses the powers of arrest only on the property on which he is employed."

Even if it is true that an SRO who is an in-house employee of DD2 could not transport an individual the SRO arrested away from a school to a jail, that would not be a good reason for DD2 not to hire its own SROs. That is true because DD2 should not want its SROs being absent from school grounds to transport arrestees to a jail, and because other law enforcement officers from the County or a municipality can transport arrestees to jail when needed, just as they currently do throughout the County.

III. TRANSPARENCY AND ACCOUNTABILITY BY COUNCIL

Council has scheduled Second Reading of its Amendment to occur on July 20, 2015, without allowing a prior public hearing that would enable Council to hear all the facts before voting for Second Reading. For most required hearing on proposed ordinances, public hearings are held on Second Reading. Council's treating this Second Reading vote differently by not allowing a public hearing before the Second Reading vote has the effect and, perhaps, the purpose of shielding Council from the pressure of facts and public input before the Second Reading vote.

Further, Council has scheduled a final reading of this Amendment preceded by a public hearing on the Amendment at 9 am (purportedly changed to 1 pm) on July 27, 2015. This has the effect and, perhaps the purpose, of Council minimizing public input, as obviously few citizens can take off from their work and attend a public hearing at 9:00 A.M. on a Monday morning or at 1 pm on a Monday afternoon.

IV. CONCLUSION

Given the numerous legal, factual and policy issues regarding the Amendment and the Agreement, including those stated above, Council should slow down the process of

evaluating and voting on these issues, cancel the "quickie" Second and Third Reading dates scheduled and not take any additional vote on this Amendment until these issues are thoroughly vetted and resolved after receiving public input and verifying the accuracy of alleged facts. There is no reason Second and Third readings have to be voted on regarding this Amendment on the dates scheduled. If there is a legitimate danger of SROs being without their salaries in the near future, Council can simply pass a resolution continuing short-term the current payment arrangement for SROs, or making another suitable arrangement, for, for example, ninety days. Council absolutely should not obligate itself and the public to a contract for five years until all these issues are thoroughly vetted and publicly and accurately resolved. If Council does obligate itself to a long term agreement that is illegal or bad policy, taxpayers will suffer long term consequences for which Council and DD2 are to blame.

We ask that DD2 and Council follow the recommendations of the Tidwell Report by having DD2 hire its SROs in-house or from a private security company. If DD2 and Council do not implement these recommendations, we ask that DD2 Board members and Council members explain publicly why they think taxpayers should pay hundreds of thousands of dollars unnecessarily by not implementing the Tidwell Report recommendations. We ask that these reasons for rejecting the Tidwell Report recommendations be stated in writing, and that the public be given a reasonable opportunity to rebut those stated reasons with facts to overcome any erroneous beliefs and assumptions on which DD2 and Council make their decisions.

Further, we ask that Council's decisions be based on facts verified independently by each Councilman and reasoning, rather than emotions. The issue at hand is not whether DD2 will have SROs, but how to pay for them and who will hire and control them. Therefore, emotional appeals about the need to avoid in DD2 another "Sandy Hook" massacre have no bearing on the decisions to be made because, again, the issue is not whether DD2 will have SROs but how to fund them and who will hire and control them. We ask that Council voluntarily discuss, as they are entitled, how to fund the SROs and who should hire and control them in public sessions and not in Executive Sessions, so that we taxpayers can observe and make our own conclusions about the wisdom and propriety of Council's actions. This SRO issue is not a secret economic development project and therefore there is absolutely no reason why the SRO funding, hiring and control issues need to be discussed in a secret Executive Session.

For all the reasons stated above, we ask that Council cease double taxing property owners for SROs and cease taxing owner-occupied homes for SROs in violation of Act 388, and refund to County taxpayers the monies for SROs the County already has raised by taxing owner-occupied homes.

Finally, we citizens acknowledge that we may not have all the facts that Council and DD2 Board members know and keep to themselves. We therefore ask that you provide promptly any information that shows that any of the statements above are inaccurate.

Thank you for your consideration of these matters and for your service.

Respectfully,

s/Michael T. Rose

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

WEATHERSTONE PROPERTY OWNERS
ASSOCIATION, ET AL.

CIVIL ACTION COVERSHEET

2016 MAY -2 PM 3:50
Plaintiff(s)

vs.

CHERYL L. LAMAR
CLERK OF COURT
DORCHESTER COUNTY

2016 -CP - 18- 838

DORCHESTER COUNTY; ET AL.

Defendant(s)

Submitted By: W. Andrew Gowder, Jr.
Address: P.O. Drawer 22247
Charleston, SC 29413-2247

SC Bar #: 7895
Telephone #: 843-727-2229
Fax #: 843-727-2238
Other:
E-mail: wag@p-tw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699) Local Government
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature:

W. Andrew Gowder, Jr.

5/2/16
Date

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF DORCHESTER) CASE NO. 2016-CP-18-0838
 3 DORCHESTER COUNTY)
 4 TAXPAYERS ASSOCIATION,)
 5 ET. AL.) Transcript of Record
 6 APPELLANTS,)
 7 vs.) Date: December 12, 2017
 8 DORCHESTER COUNTY,)
 9 ET., AL.,)

Respondents.

* * * * *

B E F O R E:

The Honorable Kristi Harrington

* * * * *

Denise J. Lauder, RPR

Ninth Judicial Circuit

1 A P P E A R A N C E S

2 REPRESENTING THE APPELLANT:

3 W. ANDREW GOWDER, JR., ESQUIRE

4 Austen & Gowder, LLC

5 1629 Meeting Street, Suite A

6 Charleston, SC 29464

7 MIKE ROSE, ESQUIRE

8 409 Central Avenue

9 Summerville, SC 29483

10 REPRESENTING THE RESPONDENTS DORCHESTER COUNTY,
11 DORCHESTER COUNTY COUNCIL AND DORCHESTER COUNTY
12 SHERIFF:

13 DREW HAMILTON BUTLER, ESQUIRE

14 ANTHONY E. REBOLLO, ESQUIRE

15 Richardson, Plowden Law Firm

16 P. O. Box 7788

17 Columbia, SC 29201

18 REPRESENTING THE RESPONDENTS DORCHESTER COUNTY
19 CAREER AND TECHNOLOGY CENTER AND ITS BOARD OF
20 TRUSTEES:

21 DAVID L. MORRISON, ESQUIRE

22 Morrison Law Firm

23 7453 Irmo Drive, Suite B

24 Columbia, SC 29212

25

1 REPRESENTING THE RESPONDENTS TOWN OF SUMMERVILLE
2 AND SUMMERVILLE TOWN COUNCIL AND WILLIAM E.
3 MCINTOSH, III:

4 ERIK P. DOERRING, ESQUIRE

5 McNair Law Firm, PA

6 P. O. Box 11390

7 Columbia, SC 29211

8 WILLIAM H. DAVIDSON, II, ESQUIRE

9 Davidson & Lindemann, PA

10 P. O. Box 8568

11 Columbia, SC 29202

12 REPRESENTING THE RESPONDENTS DORCHESTER SCHOOL
13 DISTRICT TWO, DORCHESTER SCHOOL DISTRICT TWO BOARD
14 OF TRUSTEES AND INDIVIDUAL TRUSTEES:

15 THOMAS K. BARLOW, ESQUIRE

16 Halligan, Mahoney & Williams

17 P. O. Box 11367

18 Columbia, SC 29211

19 REPRESENTING FOR RESPONDENTS DORCHESTER COUNTY
20 SCHOOL DISTRICT FOUR AND ITS BOARD OF TRUSTEES:

21 ADAM JORDAN MANDELL, ESQUIRE

22 CHRISTOPHER S. ELLIOTT, ESQUIRE

23 Boykin & Davis, LLC

24 P. O. Box 11844

25 Columbia, SC 29211

1 I N D E X

2 Page No.

3 PROCEEDINGS..... 5

4 CERTIFICATE OF REPORTER 63

5

6

7

8

9 E X H I B I T S

10 Page/Line

11 DFT. EXH. 1, Motion to dismiss 15 14

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The following proceedings were held
2 12/12/17, Dorchester County Common Pleas, 10:05
3 a.m.)

4 MR. BUTLER: Your Honor, my name is
5 Drew Butler. We met before. I practice out of
6 Charleston. I work at Richardson Plowden law firm.

7 THE COURT: All right.

8 MR. BUTLER: There are several
9 defendants in the case and several lawyers in the
10 courtroom.

11 Do you have a caption in front of you,
12 or would you like me to --

13 THE COURT: I do, but if you could just
14 be helpful to my court reporter.

15 MR. BUTLER: I did that before you
16 walked in, so we've got a little bit of that
17 started.

18 Your Honor, again, I'm Drew Butler. I
19 represent -- as you start on the defense side, this
20 is a defendants' motion to dismiss. I represent
21 Dorchester County, Dorchester County Council,
22 several of the individual council members including
23 Mr. Chinnis, Mr. Bailey, Mr. Byars, Mr. Davis,
24 Mr. Duncan, Mr. Hargett, Mr. Hearn, Junior.

25 I also represent the Dorchester County

1 Sheriff's Office, Luther Knight and Tony Finney who
2 are a part of that office.

3 There are other lawyers here as well;
4 I'll let them introduce themselves. With me here
5 today is Tony Rebollo. Tony is out of our Columbia
6 office.

7 MR. REBOLLO: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. BUTLER: He is co-counsel with me.
10 Tony is a tax lawyer by trade. If you can tell
11 from the caption, Your Honor, this involves a
12 Dorchester County Tax Association and a tax case.

13 There are several tax lawyers in the
14 room today, and we're going to make tax law
15 interesting today.

16 Would you like to introduce yourself?

17 MR. MANDELL: Your Honor, my name is
18 Adam Mandell, I'm joined by Chris Elliott from
19 Boykin & Davis. We represent Dorchester County
20 School District 4, also named as the Dorchester
21 County School District 4 Board in this matter.

22 THE COURT: All right.

23 MR. DOERRING: Good morning, Your
24 Honor. Erik Doerring from the McNair Law Firm from
25 Columbia. I represent the Town of Summerville and

1 William McIntosh, a town councilman. And I'd like
2 to introduce my co-counsel, William Davidson.

3 MR. DAVIDSON: How do you do, Your
4 Honor?

5 MR. BARLOW: Your Honor, I'm Tom Barlow
6 from Halligan Mahoney & Williams, and we represent
7 Dorchester School District 2 and the Dorchester 2
8 Board of Trustees. We do not have a motion
9 pending.

10 THE COURT: Just here to observe?

11 MR. BARLOW: Correct.

12 THE COURT: All right.

13 MR. MORRISON: My name is David
14 Morrison, and I represent the Dorchester County
15 Career and Technology Center.

16 THE COURT: Thank you.

17 MR. GOWDER: Your Honor.

18 THE COURT: Good morning.

19 MR. GOWDER: Good morning. How are
20 you? My name is Andy Gowder with Mike Rose. We
21 represent the plaintiffs.

22 THE COURT: All right. Gentlemen, do
23 we have one motion to dismiss; is that correct,
24 Mr. Butler?

25 MR. BUTLER: As I understand it, Your

1 Honor, what you have is a motion to dismiss filed
2 on behalf of the Dorchester County entities; you
3 have Mr. Doerring's motion to dismiss on behalf of
4 the Town of Summerville; and then you have
5 Dorchester County School District 4's motion to
6 dismiss there in front of you.

7 All of those have an alternative, which
8 is a motion to just strike the plaintiffs' request
9 for a jury demand as an alternative, there in front
10 of the Court.

11 There is one other entity, Your Honor,
12 and that was represented by Mr. Barlow. He
13 represents Dorchester County 2. Am I right?

14 MR. BARLOW: Yes.

15 MR. BUTLER: He does not have a motion
16 in front of you, although he is a party in this
17 case.

18 THE COURT: All right.

19 MR. BUTLER: And I see Will in the
20 background as well.

21 Will, do you want --

22 MR. DAVIDSON: Joining in with the
23 motion by the Town of Summerville.

24 THE COURT: All right. Thank you.

25 MR. BUTLER: Your Honor, when it

1 pleases the Court, I would be happy to begin.

2 THE COURT: All right.

3 Mr. Gowder, are you ready on all four
4 motions?

5 MR. GOWDER: We are ready on all
6 motions, Your Honor.

7 THE COURT: Let's just -- we kind of
8 need to talk about the elephant in the room.

9 So how far are we going with this case?
10 Because I don't want to get started and then I'm
11 going to -- I'm going to be Chief Admin in
12 Charleston. Happy to keep this case as long as --
13 up until June 30th. So we all are very aware that
14 that is my retirement date.

15 MR. BUTLER: Yes, ma'am.

16 THE COURT: And so what -- I just don't
17 want us to get started in this matter and there's
18 going to be something that we can't resolve. So
19 let's -- I just need to know where we are. I'm
20 happy to hang onto it, happy to accommodate what I
21 can today.

22 MR. BUTLER: Okay.

23 THE COURT: Happy to just give it to
24 Judge Jefferson, who would be the Chief Admin for
25 Berkeley County starting January 1st.

1 MR. GOWDER: I'm happy to address it.
2 And so, Your Honor, we have -- we agreed earlier to
3 stay discovery pending these motions, and so not a
4 lot has happened in the case. The good news is
5 there's not a lot of discovery that needs to
6 happen. We need to do some, probably take some
7 depositions.

8 So after today, assuming, you know,
9 we're going forward as normal, there will need to
10 be at least probably six months, I would say, of
11 discovery.

12 But we would be pleased for you to keep
13 it as long as you are able to do, and then,
14 perhaps, if we don't resolve it by then, to
15 transfer it to someone else.

16 MR. BUTLER: I can comment on that.
17 We're dealing with a tax case where we're -- we're
18 filing a motion today to try to move this case to
19 the Administrative Law Court. We're saying this
20 court doesn't have proper jurisdiction.

21 THE COURT: Okay.

22 MR. BUTLER: So if you grant that
23 today, it's going to move to another court anyway.
24 To the extent, though, that you decide that you
25 don't want to do that, I can see how we would work

1 through you to resolve discovery issues; but this
2 is a case that I think could go with another judge
3 if we needed to down the road. I don't think
4 that's really a problem.

5 THE COURT: I'm -- I tend to be very
6 practical and I want to make sure that if I get
7 started that everybody in this room -- it's not
8 going to hurt my feelings -- if you decided that
9 you don't want me to be the judge hearing this
10 case.

11 I'm very happy to do it and will work
12 with you and accommodate. I'm -- after this week,
13 I'm only in Charleston until June 30th; and so I'm
14 happy to schedule time out for you during that
15 time.

16 If you-all wanted to come to Charleston
17 -- and, again, I haven't heard the motions, but I'm
18 also -- now would be the appropriate time for me to
19 pass it to somebody else.

20 So everybody on this side is happy with
21 me staying?

22 MR. BARLOW: Certainly.

23 MR. BUTLER: Yes, Your Honor.

24 THE COURT: Thank you.

25 MR. GOWDER: We would be pleased to

1 have you hear it, Your Honor.

2 THE COURT: Thank you. I appreciate
3 that.

4 Mr. Butler, happy to hear from you.

5 MR. BUTLER: May it please the Court.
6 Your Honor, again, I'm Drew Butler. I'm here on
7 behalf of the Dorchester County entities.

8 Before you here today are -- begins a
9 series of motions that can all be encapsulated into
10 two general ideas. The parties, that is,
11 Dorchester County, Town of Summerville, and School
12 District 4 are alleging a motion to dismiss causes
13 of actions 1 through 3. There are five causes of
14 action in front of you.

15 Those causes of action we believe are
16 not -- we're alleging that this is not the proper
17 jurisdiction for those to be heard and that those
18 should be more appropriately in front of the
19 Administrative Law Court.

20 There are two other causes of actions;
21 that is causes of action 4 and 5. Those have been
22 filed by one of the plaintiffs that they are
23 representing, a gentleman -- an individual by the
24 name of Messinger.

25 Mr. Messinger is alleging that some

1 Facebook posts and some e-mails from 2012 and a few
2 phone calls have defamed him, and he is looking for
3 money damages. All right? So those -- we're
4 alleging that those should be dismissed because
5 they're just not proper under 12(b)(6).

6 So, essentially, what you've got in
7 front of you today is a 12(b)(1) motion, that it's
8 not proper jurisdiction, and a 12(b)(6) motion.

9 Let me begin by saying that I've been
10 appointed to make this argument because I've got
11 contact with the court, with the clerk of court,
12 but I am, by no means, a tax lawyer. There are
13 Tony Rebollo and Erik Doerring here today. This is
14 what they do for a living.

15 They are both two of the best tax
16 lawyers in the State of South Carolina. So from
17 time to time today, you and I may need to consult
18 with them on a particular question, just because
19 this is out of my, what I would say, area of
20 expertise.

21 And I want to make sure that we and the
22 plaintiffs, Mr. Gowder and Mr. Rose, give you the
23 information that you need.

24 THE COURT: Counsel, sounds like you
25 went to law school for the same reason I did; to

1 stay away from money.

2 MR. BUTLER: Yes, ma'am. I may consult
3 with them, and we may need to as we go through
4 today's argument if you need some additional
5 information.

6 Your Honor, I do want to point out as I
7 -- as we start through here, cause of action number
8 3 appears to be against Dorchester County School
9 District 2. All right.

10 Dorchester County School District 2 has
11 not filed a motion in this case. All right? So as
12 I understand it, Dorchester County School District
13 2 has filed an answer. So for purposes of today --
14 no one here is arguing about cause of action number
15 3. I think what we will focus on, I am clarifying
16 this, are causes of action 1 and 2 and 4 and 5.

17 And so regardless of what happens here
18 today, the plaintiffs will be pursuing a case
19 against the Dorchester County School District 2.
20 They have filed an answer, and they're okay with
21 that, and that's cause of action number 3.

22 I've tried to get as organized as I can
23 here, Your Honor, to move it forward.

24 THE COURT: Appreciate it, Mr. Butler.
25 You know how I like to run my courtroom.

1 MR. BUTLER: I do, yes, ma'am.

2 THE COURT: You've been paying
3 attention.

4 MR BUTLER: Yes, ma'am.

5 What I do have today is a memo that I'd
6 like to hand up to the Court.

7 THE COURT: Thank you.

8 MR. BUTLER: I've previously filed it.
9 May I approach?

10 THE COURT: You may.

11 MR. BUTLER: Yes, ma'am.

12 What I would like to do, if you don't
13 mind, is mark one as Exhibit No. 1.

14 (DFT. EXH. 1, Motion to dismiss, was
15 marked for identification.)

16 THE COURT: Mr. Gowder, have you
17 received a copy?

18 MR. GOWDER: I have, Your Honor.

19 MR. BUTLER: To give the Court
20 additional background: What I have found is when
21 you're dealing with 90 pages of briefs, Your Honor,
22 and this much case law, from time to time the Court
23 may have a question about a particular citation.

24 What I like to do is to mark my memo as
25 an exhibit and incorporate that memo into the

1 record. So to the extent that you or your clerk
2 need to look up something in particular, you've got
3 that right in front of you; it's attached to the
4 record.

5 THE COURT: Thank you.

6 And, Mr. Gowder, any objection to
7 making Defendant's 1 part of the record?

8 MR. GOWDER: It's unusual, but I don't
9 know that I object to it. I think it's fine. I
10 would ask the same of mine, then, if that's the
11 case.

12 THE COURT: All right.

13 MR. BUTLER: No objection to that, Your
14 Honor.

15 THE COURT: Great.

16 MR. BUTLER: Your Honor, the way I have
17 this organized is to talk about the context of the
18 case. I'm going to introduce the parties and the
19 general causes of action in more detail and then
20 talk you to about the law.

21 With that in mind, Your Honor, in
22 short, the plaintiffs here are alleging that
23 property taxes here in Dorchester County are being
24 used inappropriately to pay for school resource
25 officers.

1 Let me say that again to make sure I've
2 got that. So property taxes here are being used to
3 pay for school resource officers, and they take
4 issue with that under a particular tax code that
5 we'll talk about.

6 The second amended complaint alleges
7 that the defendants have been using these
8 residential property taxes to pay for the school
9 resource officers in violation of what they call
10 Act 388.

11 Now, Act 388 has actually been codified
12 into Section 12 of the South Carolina Code, and so
13 that code is Code Section 12-37-220. And,
14 essentially, that argues that that particular tax
15 code says that you can't use property tax to pay
16 for school purposes. Right?

17 And so they are alleging that these
18 taxes right now are being used for school purposes
19 because they're being used to pay for school
20 officers.

21 So I'm going to you a little more
22 context so maybe it rings a little clearer. A few
23 years ago in 2015, Dorchester County Schools
24 commissioned an independent study to find ways to
25 save money for the county. And during that process

1 a study was issued that recommended a variety of
2 different ways for the county to save money
3 including striking, or cutting, the cost of paying
4 deputy sheriffs and town officers to be used as
5 school resource officers for the local schools.

6 In lieu of that, what the study said
7 was, perhaps the county could save money if they
8 didn't pay for these deputy sheriffs and instead
9 used a private security firm. They believed that
10 might be able to save the county some money.

11 There are 46 counties here in South
12 Carolina and 81 different school districts. Just
13 about all of them across the state of South
14 Carolina are considering this one way or another.

15 Our elected officials in each county
16 have to decide for themselves whether they want to
17 save the money or whether they want trained
18 officers that are in the community to be in their
19 children's schools. So that's really what we're
20 weighing.

21 Here in this case, local officials here
22 in Dorchester County made the decision that they
23 wanted to stick with the sheriff's office and with
24 the local town officers that had connections to the
25 school rather than saving that cost. And it is

1 apparent here today that the plaintiffs in this
2 case are dissatisfied with that opinion.

3 They are a group of tax payers that
4 don't like that decision, and they have filed suit
5 here in this case in an effort to end run, if you
6 will, that -- those elected officials' decision.

7 They're now claiming that this idea of
8 paying school resource officers is inappropriate
9 according to the tax code, and they're trying to go
10 at it by way of getting you, this Court, to get rid
11 of that particular provision.

12 Typically, you could use the election
13 process and the polls to just put new people in if
14 you had enough of a majority; but I assume the
15 plaintiffs don't have the majority. And so they're
16 now taking the court system as their way of
17 attacking this decision.

18 Does that make sense in terms of
19 context?

20 THE COURT: Yes.

21 MR. BUTLER: Your Honor, this is a tax
22 case in front of you today, or a tax controversy.
23 And tax controversies are required to be heard by
24 the Administrative Law Court per the provisions of
25 the Revenue Procedures Act. Right?

1 The plaintiffs' job here today,
2 Mr. Gowder and Mr. Rose, who I have a good bit of
3 respect for -- and we have cases both with them and
4 against them -- their job is to convince you it is
5 not a tax case. Your Honor, I believe that will be
6 difficult here today because Mr. Gowder represents
7 the Dorchester County Taxpayers Association.

8 His second cause of action deals with
9 an allegation of double taxation. His complaint is
10 replete with the word taxation. He is alleging
11 that 4 percent of the property taxes here in
12 Dorchester County are being inappropriately used
13 for school resource officers.

14 Essentially, he's alleging that this
15 Court should interpret the tax code to figure out
16 whether these officers should be paid by resources.

17 That, Your Honor, is a tax decision
18 which our Supreme Court has said should be more
19 properly in front of the Administrative Law Court.
20 In other words, the circuit court is not the proper
21 jurisdiction for this argument, and that's under
22 the Revenue Procedures Act.

23 I will quote it for you a little later,
24 but I wanted to, again, sort of capture it for you
25 here.

1 My best argument is that, candidly,
2 I've got Tony Rebollo and Erik Doerring sitting
3 with me, who are tax lawyers who know more about
4 this than anything and believe it's appropriate to
5 hand me a 40-page brief for arguments and expect us
6 to read and digest it because that's what tax
7 lawyers do.

8 The causes of action in this case are
9 five-fold with nine different plaintiffs. And let
10 me talk to you about those if you feel like you
11 understand those as well.

12 The nine plaintiffs in this case, six
13 of them are individual members of the community
14 that pay taxes. Three of the nine -- so you've got
15 six that are individuals -- three of them are
16 groups. One of them is the Dorchester County
17 Taxpayers Association, one of them is the South
18 Carolina Interest -- Public Interest Fund, and one
19 of them is the Weatherstone Property Owners
20 Association.

21 It is my belief that those are groups
22 that are alleging that their members are paying
23 taxes. Their members are not defined, but we can
24 assume that they are upset because they are paying
25 taxes for school resource officers and that they'd

1 rather not do that and save money.

2 The five causes of action are, first,
3 that this property tax that we are using here in
4 Dorchester County is in violation of Act 388.
5 That's the one we talked about that said can --
6 Your Honor, that's the one that said: Can you use
7 property taxes to pay for school purpose?
8 Basically, the plaintiffs in cause of action 1 say
9 you can't do that under Act 388.

10 The second cause of action is that
11 these property taxes that we are levying here today
12 are a double tax; in other words, that there are
13 multiple entities taxing the community.

14 The third cause of action is not at
15 issue here today, so I'm going to skip over that.

16 The fourth cause of action is that one
17 that Mr. Messinger was talking about, the one where
18 the individual plaintiff claims that he was
19 defamed. He alleges that certain statements,
20 e-mails, Facebook posts were -- defamed him. He's
21 looking for money damages. He claims that that's a
22 South Carolina constitutional deprivation; that's
23 cause of action 4.

24 And cause of action 5 is essentially
25 alleging the same thing, but couching it under the

1 federal constitutional deprivation under Section
2 1983. So essentially they're alleging the same
3 thing.

4 Again, Your Honor, the Messinger
5 claims, they are sort of independent disputes,
6 personal disputes, and they muddy the water for the
7 purposes of me arguing the tax issue. So I'm going
8 to save those until the end and just address for
9 you the law with respect to the taxation issue
10 that's in front of you here today and whether this
11 should be in front of the Administrative Law Court.

12 Your Honor, our General Assembly, if
13 you look at our brief, has made it clear that the
14 South Carolina Revenue Procedures Act shall be used
15 to interpret disputes arising from property taxes.
16 Shall is the word. To that end, the South Carolina
17 Revenue Procedures Act says that the disputes
18 concerning property taxes should be reviewed by the
19 Administrative Law Court, and that's not just
20 statutory.

21 We're able to show there is case law
22 that actually deals with this, Your Honor. Again,
23 the complaint is wanting this Court to interpret a
24 tax code to figure out whether it's applicable.
25 The South Carolina Code Section 12-60-3390 says

1 that if a taxpayer brings an action covered by this
2 chapter in circuit court, which they have done,
3 that circuit court shall dismiss the case without
4 prejudice.

5 So I want to, again, emphasize that for
6 the Court because it's pretty rare that I'm able to
7 come in front of a judge and say, Judge, we have a
8 specific statute that tells us what to do. If you
9 bring a tax dispute in circuit court, there is a
10 specific statute that our legislature has given us
11 that says if that happens, it is the Court's job to
12 dismiss that case without prejudice and send it to
13 the Administrative Law Court.

14 Even better than that, there is a South
15 Carolina Supreme Court case on point so that you
16 and I don't have to interpret what that means. We
17 actually have a case that I have cited in my brief
18 on page 9. It's BA Development case v. Georgetown.
19

20 I'll give you the citation just for
21 purposes of the record, but, again, it's on page 9
22 of my brief. The citation is 641 S.C. 2nd 888.

23 In that case, a group of taxpayers
24 filed suit in circuit court -- this will sound
25 familiar -- seeking declaratory judgment against

1 the county, county council, school district, and
2 individual officers.

3 All of that was filed in circuit court
4 concerning the assessment of county property taxes
5 and the funding of schools. The South Carolina
6 Supreme Court looked at that and said that the
7 Revenue Procedures Act was the exclusive remedy,
8 and that this circuit court should dismiss the case
9 without prejudice and send it to the Administrative
10 Law Court.

11 We already have someone that has
12 considered the exact case and taken it all the way
13 to the Supreme Court and given us direction on what
14 to do.

15 I have sat in the plaintiff's chair
16 before. I have handled plaintiff's cases before,
17 and I understand what a motion to dismiss means to
18 my client. And to that end, I wanted to also
19 emphasize to the Court that I'm not asking you to
20 get rid of the plaintiffs' case. That's not the
21 purposes of this today. I'm not asking you to
22 decide the merits of this today.

23 All I'm asking you to do is to put it
24 in a court that does this every day; that decides
25 tax controversies and weighs whether these tax

1 codes are applicable or not. And that is the
2 Administrative Law Court, rather than this court
3 with a jury, who's going to have to interpret that.

4 Your Honor, with that in mind, I
5 thought I might be able to talk to you a little bit
6 about the other issues that were raised by
7 Mr. Messinger if the Court is interested in those.
8 I think for purposes of what our argument is here
9 today is that with respect to cause of actions 1
10 and 2, that those are more appropriate for the
11 Administrative Law Court and that this Court should
12 dismiss those causes of action without prejudice.

13 Your Honor, if it pleases the Court, I
14 would be happy to move on to causes of actions 4
15 and 5.

16 THE COURT: Please.

17 MR. BUTLER: Your Honor, causes of
18 action 4 and 5 in the second amended complaint are
19 filed by an individual plaintiff named David
20 Messinger. He's the only one to bring these causes
21 of actions. He alleges that the county,
22 Mr. Chinnis, who is a county council member, and
23 the sheriffs violated his state and federal
24 constitutional rights, and that he should be
25 awarded money damages. Again, it's a little

1 separate from this taxation issue, and so that's
2 why I separated it.

3 Having said that, though, as I got into
4 the meat of this, just looking at the four corners
5 of the complaint, which I know is what we're bound
6 to here on a motion to dismiss, it is our position
7 as a defense that there's really not much to the
8 allegations of defamation as they don't arise to a
9 cause of action; and, therefore, they should be
10 dismissed under 12(b)(6), and I'll tell you why.

11 First of all, I would like to note
12 there aren't any real factual allegations against
13 the county or county council in the second amended
14 complaint. So regardless of whether this goes --
15 it's difficult to really grasp exactly what
16 Mr. Messinger is trying to say.

17 He references the county, he references
18 the county council, but not with any specific
19 allegation; so it's our position that county
20 council and county should be dismissed outright
21 because there's no real no factual allegations that
22 they participated in this defamation.

23 There are three parts to this
24 defamation, and I will walk through it quickly.
25 The first is that Mr. Messinger alleges in his

1 fourth cause of action that a co-defendant, Mr.
2 McIntosh -- who I believe is with the town; is that
3 right?

4 MR. DOERRIING: Correct.

5 MR. BUTLER: Mr. McIntosh, with the
6 town, posted on Facebook that Mr. Messinger had
7 unsuccessfully advocated a harebrained private
8 security scheme designed to benefit washed up cops
9 and that Mr. Chinnis, who is on county council, had
10 seen right through it. That's the allegation that
11 was a Facebook post on that.

12 Mr. Chinnis, my client, put something
13 in the comments on Facebook that said, nailed it.
14 So Mr. Messinger is suing Mr. McIntosh for the
15 Facebook post claiming that that defamed him, and
16 it's essentially alleging that my client saying
17 nailed it -- Mr. Chinnis saying, nailed it, that
18 they have, I guess, republished that event.

19 The next part of this argument is that
20 the sheriff allegedly made objections and threats
21 to undefined people who were trying to back the
22 private officers being used as SROs. All of this
23 is in paragraphs 58 and 59 of the.

24 And you'll see when you look through
25 it, it's just generally alleged, sort of a

1 throwaway complaint as I look at it; but you have
2 these allegations that the sheriff made objections
3 and threats, although it doesn't tell you who he
4 made threats to, it doesn't give any specific
5 allegations of what the threats were. It's just
6 this idea that the sheriff made threats to someone.
7 It doesn't even tell you what happened.

8 Part 3 of Mr. Messinger's claim is that
9 Captain Finney, who was at the sheriff's office,
10 sent an e-mail in 2012 to a non-party in this case
11 about another non-party in this case and that
12 somehow that caused him defamation.

13 Let me walk through each of those, and
14 I'm hoping the Court has gathered this because
15 they're all sort of thrown together as one. Again,
16 Mr. Messinger is upset about a Facebook post posted
17 by a government official and then seconded, if you
18 will, by another government official that the
19 sheriff made undefined objections and threats at
20 some period of time that we cannot seem to specify
21 one way or another, and that the captain sent an
22 e-mail in 2012 about someone named Roland Turner,
23 who is not a party to this case.

24 Let's start with the e-mail in 2012.
25 Quickly, Your Honor, I would say that an e-mail in

1 2012 falls outside of the statute of limitations;
2 that's pretty easy. It also relates to someone
3 named Roland Turner, who is not Mr. Messinger; so
4 I'm not sure how that e-mail would, in any way,
5 rise to a cause of action for Mr. Messinger.

6 Number two, we're dealing with
7 statements made by government officials, all who
8 have been sued in their official capacity. As Your
9 Honor knows, when we're dealing with government
10 officials in their official capacity we deal with
11 the Tort Claims Act; and the Tort Claims Act
12 provides certain immunities to those government
13 officials.

14 The officials have not been sued in
15 their individual capacity, only in their official
16 capacity; and, therefore, they are provided certain
17 immunities in this case.

18 Your Honor, I would also like to point
19 out to the extent that they're alleging that my
20 officer -- or my county council member, Mr.
21 Chinnis, by saying nailed it, is defaming
22 Mr. Messinger, but I think -- number one, I don't
23 think nailed it is a definite defaming statement;
24 number two, I think that certain individuals are
25 provided with legislative immunity, and that's a

1 bigger concept here that I think is worth noting.

2 Our government officials do have
3 license under our law to make statements about how
4 they feel about a particular piece of legislation,
5 and our courts have actually said they should be
6 able to do that without threat of being sued.
7 We're allowed to do that here under our law. And
8 that's all this really is, is people squabbling
9 over a political dispute of whether we're going to
10 pay for school resource officers through our local
11 police department or through an outside source.

12 Lastly, Your Honor, with respect to the
13 1983 claim -- remember, I was telling you that
14 Mr. Messinger had said that his federal
15 constitutional rights were violated. As you know,
16 Your Honor, when you're suing a government official
17 in his official capacity in federal court, you've
18 got certain immunity; right?

19 Also, I would note under Section 1983
20 that statements of defamation are not actionable as
21 a constitutional violation under Section 1983.
22 I've got case law citations that tell you that,
23 that you can't actually sue for defamation under
24 1983.

25 All of this is to say, Your Honor,

1 we've got a lot that I'm trying to pack into this
2 argument. We've got a lot that we are trying to do
3 here. My goal is to give you the overall picture;
4 and to the extent that you have specific questions,
5 we can answer those at a later time. With that in
6 mind, I am happy to sit down and take any questions
7 from the Court. Whatever you prefer.

8 THE COURT: Does anyone else wish to
9 address the Court?

10 MR. DOERRING: Please.

11 Yes, Your Honor. Erik Doerring, for
12 the Town of Summerville. We represent the town of
13 Summerville with my co-counsel, Will Davidson.

14 As Mr. Butler indicated, I'm a tax
15 lawyer. I don't do this a lot. Mr. Rebollo and I
16 are tax lawyers; right? Both of us, interestingly,
17 are in an interesting alumni association. We're
18 both former United States Department of Justice Tax
19 Division lawyers. That's what we've done; our
20 lives deal with taxes.

21 This is a tax case. I won't reiterate
22 everything that Mr. Butler said. I have eight
23 pages of notes; I'm going to cut this to one page.
24 I think he ably argued all the points we have made.

25 This is a property tax case, Your

1 Honor, governed by the Revenue Procedures Act in
2 our state; and, unfortunately, this court does not
3 have jurisdiction over the tax-related claims,
4 which are in the nature of a property tax dispute.

5 Interestingly, property taxes in our
6 state, as we all know, are kind of bottom up
7 determined, meaning all the constituent levels of
8 government, the school, the city, the county, all
9 budget annually their expenditures. Those budgeted
10 amounts become the millage rate.

11 We don't budget -- hopefully, our
12 county constituent government entities don't budget
13 for a profit. I think this is all non-profit
14 budgeting, but these budget up to a millage rate.
15 The county assesses a millage rate every year. It
16 applies that millage rate to something called an
17 assessment ratio.

18 The assessment ratio goes to the value
19 of a property. Every year that goes to every
20 taxpayer in this county and every other county, all
21 46 of them. If a taxpayer is aggrieved by that
22 assessment, doesn't like any aspect of it -- the
23 millage rate, the evaluation, how the money is
24 spent -- the taxpayer has two options.

25 One, they can file a protest with the

1 assessor. They don't have to pay any tax; they
2 just file a protest. If the assessor disagrees
3 with them, they go to the Board of Assessment
4 Appeals. If they are aggrieved by the Board of
5 Assessment Appeals, they go to the Administrative
6 Law Court, our tax court. Our tax court.

7 Now, interestingly, our -- they can
8 choose to go through that route, or they can pay
9 the money in advance and file a claim for refunds
10 and go the same route. One involves the collection
11 of tax; the other doesn't.

12 The assessment -- we call it a
13 prepayment assessment route where you protest is a
14 non-collection based way of challenging your
15 property tax. You can pay it and protest -- I
16 mean, protest or pay it in refund. Your choice.
17 One involves the collection of tax; the other does
18 not involve the collection of tax.

19 The RPA, Your Honor, is designed to
20 cover all property tax disputes, not just those
21 limited to the collection of taxes. If that were
22 so, it would gut the entire procedure.

23 There is a provision in the RPA, Your
24 Honor, dealing with an admonition that not only
25 does the RPA cover all property tax disputes, it

1 specifically applies to any attempt to -- the
2 illegal or wrongful collection of taxes. It's an
3 admonition in the RPA, Your Honor, not a limitation
4 on jurisdiction.

5 The only limitation on jurisdiction for
6 our Administrative Law Court, Your Honor, in
7 property tax disputes is where someone challenges
8 the constitutionality of a property tax statute on
9 the face of it.

10 The exception is if the challenge is to
11 the constitutionality of the property tax statute
12 as applied, the RPA does apply, which is what the
13 plaintiffs have done here. So the RPA applies.
14 The plaintiffs can either file a claim for refund
15 or pay through the property tax protest appeals and
16 go up just like every other taxpayer in the state.
17 And as Mr. Butler indicated, there is a B&A
18 Development and Brackenbrook, two seminal cases
19 that our Supreme Court has already voiced their
20 opinion on and has already settled this issue.

21 Now the plaintiffs seek to distinguish
22 both of those cases arguing they are refund cases
23 involving the collection of tax. Well, that's just
24 simply misplaced. They apply regardless of whether
25 it deals with the collection of tax or any property

1 tax dispute.

2 And I would like to point out that if
3 we didn't have a centralized process, a centralized
4 court, all of these cases would be adjudicated
5 throughout our 46 different circuit courts across
6 the state. And that's what the RPA was designed as
7 to avoid, Your Honor.

8 Thank you. Appreciate the opportunity
9 here. I would like to introduce my co-counsel,
10 Will Davidson, who is going to speak on the
11 independent claims the plaintiffs have made against
12 the Town of Summerville; David Messinger against
13 the Town of Summerville; and our city councilman,
14 Willie McIntosh.

15 MR. DAVIDSON: Thank you.

16 (Off-the-record conference.)

17 MR. DAVIDSON: In regard to
18 Mr. Messinger's defamation case, Mr. Butler was
19 right; it deals with a Facebook post on -- and it's
20 pretty much if you look in the pleadings, I believe
21 it's paragraph -- let's see if I can find it.

22 MR. BUTLER: Fifty-eight? Somewhere in
23 there.

24 MR. DAVIDSON: Yeah. The Facebook
25 post, which is on page 19, I think it's paragraph

1 59, they outlined what he said. And in this day of
2 social media, as much as people are using Twitter
3 as well as Facebook to post things, it's become
4 kind of the new fertile area for questions about
5 whether or not it is or is not defamation.

6 But here he talks about -- he says,
7 Mr. Messinger is just sore that the county did not
8 go along with his and Mike Turner's harebrained
9 scheme to create a taxpayer-financed private
10 security force for washed-out police officers.

11 And then he goes through and he talks
12 about, the truth is, you are part of a group of
13 unemployed, barely employed law enforcement
14 officers and former officers, and with good reason,
15 law enforcement officers who rally behind Mike
16 Turner to who do District 2 and support the
17 creation of a private security force in our
18 schools.

19 It has nothing -- it is nothing more
20 than a full employment scheme for washed-out cops.
21 The county saw right through it, and now you are
22 mad at the county council chair. You are right; I
23 do have a sense of humor. Hopefully your chief in
24 Mount Pleasant has one too.

25 And then he goes on and says -- calls

1 it a harebrained scheme again.

2 Mr. Messinger, as a member of the group
3 of individuals opposing this scheme, has entered
4 into the public discourse in regard to a political
5 issue in Dorchester County; and, therefore, in
6 involving himself in that discourse, you have to
7 look at this a little different than you would on
8 Joe Blow saying something bad about somebody else.

9 Because what Mr. McIntosh has done is
10 expressed his opinion about what he views as a
11 political issue and, therefore, his comments are,
12 in fact, protected by the First Amendment.

13 Now, if you look at some of the case
14 law -- and most of the case law in South Carolina,
15 as well as in other states, have gone to the United
16 States Supreme Court to look at these issues.

17 One of the seminal cases is called
18 Gertz v. Robert Welch. And I can get your law
19 clerk a cite for that after. And it basically
20 says: It is federal law that expression of
21 opinions on matters of public concern are immune
22 from liability from defamation. And the Supreme
23 Court declared that in the Gertz case.

24 What you have here and what
25 Mr. McIntosh has done, expressed his opinions

1 regarding the political issue that is, obviously,
2 pretty hot in Dorchester County because we're all
3 sitting in a courtroom litigating the issue of
4 whether or not the school districts ought to chose
5 one method of providing security to the schools
6 versus another method and whether or not taxes
7 should or should not be paid for it.

8 It is, in fact, a matter, as the
9 Supreme Court said, of public concern. And,
10 therefore, public expression of opinion, calling
11 somebody a harebrain, saying that what the purpose
12 of it is -- the fact that it may be for hiring old
13 lawyer -- old law enforcement officers.

14 I've always said that mediation is kind
15 of the creation of lawyers who don't want to try
16 cases anymore; they become mediators rather than
17 try cases anymore. But essentially, that's what he
18 said.

19 He's expressed his opinion about a
20 matter of public concern within Dorchester County
21 and, therefore, it would not be considered
22 defamation. It would be an immune expression.

23 Now, for the Court -- the Court has to
24 view these things in a little different light
25 because the Court has to be somewhat of a

1 gatekeeper. The cases have said that, in response
2 to this motion and the motion for dismiss, the
3 plaintiff must demonstrate here and now that they
4 can overcome the constitutional defenses, that this
5 is an opinion, with clear and convincing evidence.

6 And that comes out of a case of
7 Anderson v. Liberty Lobby, which is also a United
8 States Supreme Court.

9 The Court also said in Bose Corporation
10 v. Consumer Unions, judges and expositors --
11 E-X-P-O-S-I-T-O-R-S -- of the Constitution must
12 independently decide whether the evidence in the
13 record is sufficient to cross the constitutional
14 threshold.

15 You, as the arbitrator of the law, have
16 to view the statements and determine: Are they
17 expressions of opinion of matters of public
18 concern? And if they are, then, in fact, those are
19 protected by the First Amendment.

20 The plaintiff has also raised a 14th
21 Amendment claim. And there's a case called Paul v.
22 Davis, also a United States Supreme Court case 424
23 U.S. 693. And in that it says, reputation alone --
24 and that's what he sued over, his defamation claim
25 -- does not implicate any property or liberty

1 interest which is under -- protected under the 14th
2 Amendment.

3 So his 14th Amendment claim fails
4 because he's alleged that a 14th Amendment
5 violation has occurred. And under Paul v. Davis,
6 that right -- the reputation alone does not give
7 right to a property or liberty interest which would
8 be protected by the 14th Amendment.

9 So the Supreme Court in these cases, we
10 believe, has dealt with Mr. McIntosh and the city's
11 interest in whether or not the expression of
12 opinion by Mr. McIntosh, in regard to
13 Mr. Messinger's thoughts being harebrained and
14 whether or not his opinion, Mr. McIntosh's opinion,
15 that such matters are harebrained in the public
16 discourse of a hot political issue in Dorchester
17 County.

18 In my opinion, Your Honor -- you will
19 have to look at all the cases -- is in fact
20 protected under the United States Constitution and
21 under the First Amendment. It's a right of
22 political individuals to express their opinions in
23 regard to matters of public concern. And it
24 happens every day.

25 Maybe it shouldn't every day, but it

1 does. And it's protected because the Court has
2 recognized -- the U.S. Supreme Court has recognized
3 that without the ability to discuss these things in
4 public, without the fear of lawsuits and chilling
5 effects of lawsuits, the idea of the First
6 Amendment will wither and die; and the idea of
7 political discourse where individuals in the public
8 can make decisions about matters of public concern,
9 whether to hire private security company or whether
10 to hire deputy sheriffs, cannot be vetted in the
11 public for decision.

12 And that's our position on Mr. McIntosh
13 and the Town of Summerville. I appreciate your
14 time. Thank you.

15 THE COURT: Thank you.

16 MR. MANDELL: Your Honor, good morning
17 again. Adam Mandell for Dorchester County School
18 District 4 and Dorchester County School District 4
19 Board of Trustees.

20 If I may, to follow Mr. Butler's lead,
21 I would also like to submit our memorandum as part
22 of our motion to dismiss so it's part of the record
23 if there is no objection.

24 MR. BUTLER: No objection.

25 MR. MANDELL: I believe we had

1 previously filed it Thursday of last week.

2 THE COURT: If it's already filed, it's
3 part of the record already.

4 MR. GOWDER: That was my, sort of,
5 question earlier.

6 THE COURT: I thought I heard
7 Mr. Butler say he hadn't filed it yet.

8 MR. BUTLER: I have. I just --
9 occasionally, I would do this as a way to make sure
10 if you were taking all the exhibits back, that you
11 have something in hand that's there -- it's a way
12 -- it follows the record.

13 THE COURT: I'm sorry. I heard --
14 that's why I allowed you to mark it. I heard that
15 -- what happens -- and I don't know if you all know
16 what happens when you mark it, it goes in a
17 completely different -- I don't get it.

18 My court reporter is responsible for
19 marking the exhibits, so that's why I thought it
20 was that would be marked for the record for
21 appellate purposes. If it's marked and filed, it
22 is part of the record; so I'm sorry. I
23 misunderstood.

24 MR. BUTLER: Sure.

25 THE COURT: And so that's why I was

1 allowing it to be marked, because you gave me a
2 copy so that it would be part of the record. I
3 misunderstood and so I apologize for that. If you
4 have already filed it and it's part of the record,
5 I'm happy to take a copy.

6 Here's often what happens: I don't --
7 they're wonderful in the clerk's office, but
8 sometimes I've already gotten the file and then it
9 won't make the file. So I'm happy to take a copy,
10 but we don't really need to mark it as part of the
11 exhibit because I'm not going to see it anyway if
12 it's marked as an exhibit.

13 MR. MANDELL: I understand.

14 May I approach?

15 THE COURT: Yes.

16 You all just got a lesson on court
17 reporters and exhibits.

18 MR. BUTLER: We just did that to try to
19 help the Court.

20 THE COURT: I appreciate that and -- we
21 don't need -- I will allow you because I told you
22 I'd allow you to mark. My apologies.

23 MR. GOWDER: No need to do it then.

24 THE COURT: Okay.

25 MR. GOWDER: I understand.

1 THE COURT: I thought that you said you
2 hadn't filed it, and so thank you.

3 MR. GOWDER: Now that I understand that
4 these are memos that I've already seen, no problem.

5 THE COURT: Perfect. All right. Thank
6 you.

7 MR. MANDELL: Thank you, Your Honor.
8 At the risk of being duplicative, I will try to be
9 brief.

10 The Dorchester 4 School District
11 Defendants in this matter are facing causes of
12 actions 1 and 2, the alleged violation of Act 388,
13 and the alleged double taxation both causes of
14 actions concern the imposition in collection of a
15 tax. And in that spirit, I'm here to say that not
16 all school districts are created equally and School
17 District 4 is unique.

18 In 1986, the school districts came
19 together to form Dorchester 4, and specifically in
20 the legislation creating Dorchester 4, the
21 financial autonomy, including taxing authority, was
22 withheld from the district dependant on local and
23 state dollars for its operation.

24 If the Court would like, I could hand
25 up the legislation creating the district which is

1 referenced in our memorandum.

2 THE COURT: If it's in the memorandum,
3 I'm fine. Thank you.

4 MR. MANDELL: So in that sense, two
5 causes of action predicated on the unlawful
6 collection of a tax cannot lie against an entity
7 that cannot impose such a tax, and so it's
8 primarily the school district's position as to
9 those causes of actions.

10 Additionally, our memorandum references
11 the funding mechanism behind Act 388 where exempt
12 property is not taxed for its operating purposes,
13 but the school district actually receives a
14 reimbursement from the State for the initial 1
15 percent sales tax under the homestead exemption
16 fund.

17 And for the purpose of the argument, we
18 request the Court to take judicial notice of the
19 budget that's referenced in paragraph 68 of the
20 second amended complaint, which indicates that the
21 \$120,000 under the Dorchester 4 SRO Agreement is a
22 charge for services and not under the line item for
23 property tax collection under the county budget.

24 Your Honor, it is under these arguments
25 that we rest, and we are happy to answer any

1 questions that you may have.

2 THE COURT: Thank you.

3 I think that's it, Mr. Butler, isn't
4 it?

5 MR. BUTLER: It is. I would like to
6 note that there is one other item in front of you
7 and that's whether this should be -- whether -- in
8 the alternative, that we should strike the
9 plaintiffs' request for a jury demand. I will
10 reserve that until after I've heard from the
11 plaintiffs' counsel; but, essentially, what we're
12 arguing, if the Court wants to move forward in this
13 jurisdiction, circuit court, this is really a
14 declaratory judgment type action, where we don't
15 need a jury.

16 We're just asking the Court to
17 determine how to interpret the tax code and whether
18 or not property taxes are being used to pay for
19 school resources. We don't necessarily need a jury
20 for that. We just need a judge to tell us how to
21 interpret that particular statute. And to that
22 end, we're alleging that a jury is not needed for
23 that.

24 But that's our secondary argument.
25 We're alleging, of course, here today that the

1 Administrative Law Court is designed to handled
2 this exact thing which is why we're asking the
3 Court for a dismissal without prejudice and that it
4 be moved to the Administrative Law Court.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Gowder?

8 MR. GOWDER: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. GOWDER: May it please the Court.

11 Your Honor, we can start there, first,
12 with the jury question. If this were just the
13 question of declaratory judgment and injunction on
14 the challenge to expenditure under Act 388, we
15 think it could be a bench trial for the Court; but
16 we do have Mr. Messinger's case.

17 And so that -- Mr. Messinger's clearly
18 entitled to a jury trial. So --

19 THE COURT: Mr. Gowder, could I
20 separate those causes of action and have the
21 defamation cause of action separate in front of a
22 jury trial?

23 MR. GOWDER: Well, what I would -- I
24 think you could. What I would suggest is perhaps
25 they be tried together, but that the trial judge

1 would submit the Messinger causes of action to the
2 jury and keep the challenge to the statute --
3 challenge under the statute.

4 But, you know, we're not here saying
5 that we are absolutely insisting on a jury trial
6 for the first three causes of action, but certainly
7 for the second two -- I mean, for the last two.

8 THE COURT: What do you think of the
9 arguments that this must go before the
10 Administrative Law judge?

11 MR. GOWDER: Well, I've got a lot to
12 say about that, Your Honor, and I will get to that
13 now. Your Honor, this is -- contrary to everything
14 you're heard over here; this is not a tax appeal.
15 This is a local government case. Not one taxpayer
16 in this case is seeking a refund, is complaining
17 about the amount of their taxes.

18 As far as we know, every taxpayer has
19 paid their taxes and aren't complaining about how
20 it was calculated.

21 Rather, what this case is about is a
22 group of concerned citizens who see expenditures
23 and government action by Dorchester County and by
24 the Town of Summerville, and they're saying that
25 that's against the law, against a statute. And

1 they're challenging that, and they're asking the
2 Court to declare it against the law and enjoining
3 them from continuing that practice. That's what
4 this case is.

5 So it's like every other challenge to
6 local government action that has been filed, and
7 it's replete in our reported decisions, and unlike
8 cases in which I would believe that I'm getting
9 taxed inappropriately and would either file my tax
10 under protest, or not, and appeal to the
11 Administrative Law Court to challenge that
12 calculation of my tax. That's not what this case
13 is about.

14 Rather, it's about challenging local
15 government action. Specifically, Your Honor, the
16 Court challenges the county and the town's payment
17 for school resource officers out of what I will
18 call 4 percent money, which are the taxes on owner
19 occupied homes rather than other taxes; 6 percent
20 money on commercial and other residential
21 properties.

22 That violates -- and I'm going to call
23 it Act 388 just because it's a lot easier to say
24 than the full code citation. But that act
25 prohibits owner occupied residential property tax

1 revenues to be used to pay for school operating
2 expenses. My clients, again, are asserting that
3 such a practice is not allowed under Act 388.

4 I won't go through it, Your Honor, but
5 as you know, this is a Rule 12 motion. It's to be
6 construed against the movements and liberally for
7 the plaintiffs. We're to look only at whether or
8 not causes of action are being stated under the
9 complaint.

10 And here the defendants are arguing
11 mainly that the Court doesn't have jurisdiction
12 because this case is controlled by the RPA, the
13 Revenue Procedures Act, and must be decided through
14 administrative procedures under that act by the
15 Administrative Law Court.

16 Your Honor, the review of the RPA, you
17 know, shows that it is a streamlined process for
18 tax collection appeals, so that the tax collection
19 appeals can go through the administrative process
20 and they don't have to come to court. And that
21 makes perfect sense.

22 It does not control challenges though,
23 Your Honor, to state and local government laws who
24 are spending public funds in a way that's not
25 supported either by the State statutes or by the

1 state constitution. Clearly, the RPA is not
2 intended to deal with those cases.

3 If it were otherwise, every challenge
4 to local government action is going to involve some
5 public expenditure, and so every challenged local
6 government action would end up in the
7 Administrative Law Court. And that's clearly not
8 the intent of what that statute is. In fact, the
9 intent is stated in the statute; it's cited in our
10 memo.

11 The intent is -- the legislative intent
12 of the RPA is to provide the people of the State
13 with a straightforward procedure to determine a
14 dispute with the Department of Revenue and a
15 dispute concerning property taxes. The South
16 Carolina Revenue Procedures Act must be interpreted
17 and construed in accordance with and in furtherance
18 of that intent.

19 And as I said, none of these plaintiffs
20 are challenging the amount of the taxes collected
21 against them or anybody else, and none of them are
22 seeking a refund. Rather. They're seeking to have
23 this practice which violates Act 388 stopped.

24 Your Honor, this argument that we've
25 had here this morning is a little reminiscent of

1 one that Mr. Butler and Mr. Rebollo and I had six
2 months ago, because there is another case in which
3 Mr. Rose and I represent other citizens who
4 challenged an act of the Dorchester County
5 government called the Greene case. And I have
6 actually attached a decision from the Greene case
7 to this one.

8 In that case, our clients were
9 challenging the practice of Dorchester County of
10 essentially making cash payments to their county
11 council members in lieu of offering them the
12 opportunity to enroll in the health care system.
13 The attorney general opined that that was illegal
14 and -- but they proceeded anyway in saying that
15 that was just his opinion.

16 And so we challenged that in court.
17 And Mr. Rebollo and Mr. Butler argued in that case
18 the very same argument they're making this morning.
19 And in that case, Judge Mullen, who heard that
20 motion, decided consistent with our argument this
21 morning, that, no, that was challenging a local
22 government action. It had nothing to do with the
23 amount of the taxes or the -- you know, the whole
24 -- the taxing process on the individuals. So it
25 was not under the RPA and they -- she denied their

1 motion to dismiss.

2 We think that this is a very similar
3 situation, and we have attached that opinion for
4 your reading and your background.

5 Your Honor, there were other arguments
6 made in the memos by the defendant, but since they
7 weren't argued this morning, I'm not going to
8 emphasize them except to say that paying for an SRO
9 is clearly a school operating purpose. And so we
10 think that paying for SROs under homeowner occupied
11 taxes violates the statute.

12 We're not arguing whether the town or
13 the county or school districts made the right
14 decision on following the Tidwell report
15 recommendations or not. That's not what this case
16 is about. It's not about either who the SROs are
17 or the decisions made by the Dorchester County
18 sheriff. It's really about how they're being paid
19 for. That's our sole challenge.

20 THE COURT: Who do you think should pay
21 for them?

22 MR. GOWDER: It should be paid through
23 other taxes. Not the 4 percent money, but through
24 the 6 percent.

25 Your Honor, under the Messinger claims,

1 you know, these are being challenged under Rule
2 12(b)(6). And so under 12(b)(6), if the complaint
3 states a cause of action, then the motion should be
4 denied.

5 One thing that -- just as in the prior
6 argument the lawyers for the defendants were
7 calling this -- well this is a tax case; it's not a
8 tax case. Well, they're saying this is a
9 defamation case; this is not a defamation case.

10 We haven't pled defamation in our
11 complaint. What we pled is that Mr. Messinger
12 stepped forward to become an advocate for his
13 position, and as a result of that, those who
14 opposed his position in positions of authority --
15 county councilmen, those with the sheriff's office
16 -- threatened him and threatened his employment.

17 And, in fact, we pled that someone
18 contacted Mr. -- Deputy Finney contacted his
19 employer, the Mount Pleasant Police Department, and
20 told them that he needed to stop being involved in
21 this Facebook group that he was in, Concerned
22 Citizens in Dorchester County.

23 And as a result, Mr. Messinger was
24 brought in before his employers and warned -- and
25 given a warning and, in fact, did withdraw as

1 administrator from that Facebook post.

2 And so what we're alleging is
3 deprivation of his rights under the First Amendment
4 under 1983. That's what the causes of action are;
5 it's not for defamation. So all of the arguments
6 that were made about defamation cases and those
7 standards we think are inappropriate, Your Honor.
8 It really is.

9 We argued that those in authority who
10 didn't like his position threatened and intimidated
11 him and sought to have him be quiet through
12 threatening his employment; and that was a
13 violation of his First Amendment rights under 1983
14 and the South Carolina Constitution.

15 Your Honor, I think that's all I have,
16 unless the Court has any further questions.

17 THE COURT: I don't.

18 MR. GOWDER: Thank you very much.

19 MR. BUTLER: I feel the need to respond
20 briefly, but it sounds like the Court's got plenty
21 in front of her.

22 Do you want to hear from me, or do you
23 feel like you've got it?

24 THE COURT: If you would like to
25 address me, I'm happy to hear from you; but I have

1 received some information and my typical practice
2 is to review everything that's been submitted. I'm
3 going to allow you to submit proposed orders, and
4 I'm planning on taking the matter under advisement.

5 I like to -- I will probably not be
6 able to do it this week. I, typically, like to
7 complete my matters by the end of the week, but I'm
8 presenting a CLE on Friday, and so I would not have
9 the additional time.

10 So with the holidays coming up, how
11 much time do you feel -- and you've got more people
12 to coordinate to get a proposed order together to
13 submit to the Court.

14 MR. BUTLER: I've got a team of people.
15 What's easier on you? I'm okay.

16 MR. GOWDER: Your Honor, ten days would
17 work for me if that would suit the Court.

18 THE COURT: That's fine. I'm -- again,
19 with the holidays coming up and the end of the
20 year, I'm wrapping up my chief admin duties in
21 Berkeley and starting chief admin duties in
22 Charleston beginning January 1st, so I'm happy to
23 accommodate whatever it is that you need. If
24 you're good with ten days --

25 MR. GOWDER: Your Honor, my co-counsel

1 here, Mr. Rose, is whispering 30 days to me; so
2 perhaps he's wiser than I.

3 THE COURT: The issue becomes the -- on
4 December 22nd, which is ten days from today, then
5 we start getting into the holiday time.

6 MR. GOWDER: I think that's what he was
7 thinking.

8 THE COURT: Why don't we do this. I
9 would like proposed orders exchanged in ten days
10 from the 22nd. Then ten days from that puts us at
11 -- and so then submitted to me January 3rd. So
12 that puts the baby a little bit, Mr. Rose. It's a
13 little more than 20 days, but more than ten.

14 MR. ROSE: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. WILLIAMSON: Your Honor, I have one
17 thing I need to bring up, and it's in response to
18 plaintiffs' counsel argument about this not being a
19 defamation case.

20 If you look at paragraph 109 of the
21 complaint, which is the specific allegations that
22 are claimed against Mr. McIntosh, which is both
23 under the state constitution and then the same
24 thing that's raised under the federal -- and I
25 don't believe there's a counterpart for 1983 for

1 the state constitutions, I don't think there is a
2 mechanism to bring that claim -- but under C, which
3 deals solely with Mr. McIntosh.

4 Mr. McIntosh, without justification,
5 repeatedly making, and Chinnis republishing on
6 Facebook and elsewhere, false and defamatory
7 statements about his position.

8 Again, his counsel argued this is a
9 matter of public concern, the opinions that were
10 referenced in the Facebook page. Again, in Gertz
11 v. Robert Welch, U.S. Supreme Court case, we begin
12 with common ground under the First Amendment.

13 There is no such thing as a false idea. However
14 precocious an opinion may seem, we depend for its
15 correction not on the conscience of judges and
16 juries, but on the competition of other ideas.

17 That's what this is. This idea that
18 what Mr. McIntosh did -- his rights, First
19 Amendment rights -- Mr. McIntosh's First Amendment
20 rights, they both come into play -- shouldn't be
21 decided in this room. It should be decided
22 ultimately at the ballot box.

23 Thank you, ma'am.

24 THE COURT: Thank you.

25 So December 22nd at 5:00 p.m. for the

1 exchange of your proposed orders. And then that
2 would give you some time over the holidays without
3 having to do it before your holiday. January 3rd
4 at 5:00 p.m.

5 And again, gentlemen, I understand
6 we've got a lot of people and holidays coming up.
7 If you need any additional time, just please let me
8 know. And probably what would have to happen is if
9 there are other motions or discovery issues that
10 arise in between, if you all would come to
11 Charleston. I don't think that would be a problem
12 to work -- to give you some time.

13 Is there anything else I can do for you
14 as spokesperson, Mr. Butler?

15 MR. BUTLER: Would you mind giving me
16 your clerk's name so I can call her down the road?

17 THE COURT: Her name is Elizabeth
18 Wiles, W-I-L-E-S. And her e-mail is
19 kharringtonlc@sccourts.org. And her direct line is
20 843-719-4480. I am not going to give you her cell
21 number.

22 MR. BUTLER: Thank you.

23 Thank you, Ms. Wiles.

24 THE COURT: Again, I'll be in Berkeley
25 for the remainder of this year, and then we'll be

1 in Charleston only until June 30th.

2 MR. REBOLLO: Your Honor, Tony Rebollo.
3 I'm with Drew Butler here today on behalf of the
4 county defendants.

5 Just a point of clarification. We
6 filed a motion to dismiss on behalf of all of the
7 county defendants that Mr. Butler mentioned at the
8 beginning, but one of them was served a little bit
9 later.

10 So he's actually got a separate motion
11 to dismiss, which adopts the motions -- the
12 arguments in the first motion that we filed, plus
13 it adds some additional arguments. That's for
14 Captain Finney, but in the docket it's labeled as
15 filed by the county. So I just wanted to mention
16 that if there was any confusion.

17 THE COURT: Okay. If you would just
18 make sure that is articulated in the proposed
19 order, I think that would be fine.

20 ATTORNEY WHO: I think for Ms. Stevens'
21 purposes, we've resolved all motions that are
22 pending on that case.

23 THE COURT: Okay. And I know she's
24 delighted.

25 Mr. Gowder, I gave some courtesies. Is

1 there anything else that I need to hear as far as
2 the defamation?

3 MR. GOWDER: Your Honor, I don't think
4 so. Except to say, just in response, that the
5 point is that we didn't plead defamation. We pled
6 the First Amendment and, you know, the allegation
7 is that through defamatory comments, there was
8 coercion. But that was the reason for the mention.

9 THE COURT: Thank you.

10 Anything else I can do regarding this
11 case, or anything else before you all leave here
12 today?

13 MR. BUTLER: That's it, Your Honor.

14 THE COURT: All right. Thank you.
15 Happy holidays.

16 MR. BUTLER: Thank you very much.
17 Happy holidays.

18 THE COURT: Mr. Gowder, Mr. Rose,
19 anything that I can do for you, for this case, or
20 anything else today?

21 MR. GOWDER: No, ma'am.

22 MS. ROSE: No, ma'am.

23 THE COURT: Happy holidays.

24 (These proceedings were concluded at
25 11:14 a.m.)

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 11th day of August, 2018 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Carol Denise Lauder _____
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
My Commission expires
February 27, 2028

21

22

23

24

25

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiff(s)

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

**DEFENDANTS DORCHESTER COUNTY
SCHOOL DISTRICT FOUR AND
DORCHESTER COUNTY SCHOOL
DISTRICT FOUR BOARD'S
MEMORANDUM OF LAW IN
OPPOSITION TO
PLAINTIFFS' MOTION TO
RECONSIDER, ALTER OR AMEND
JUDGMENT**

2018 APR 16 PM 12:54
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

Defendants Dorchester County School District Four and Dorchester County School District Four Board (hereinafter "Defendants"), by and through their undersigned counsel,

hereby submit this Memorandum of Law in Opposition to Plaintiffs' Motion for Reconsideration. Plaintiffs fail to allege grounds which entitle them to relief pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. Accordingly, Defendants respectfully request that this Court deny Plaintiffs' Motion and affirm its Order granting Defendants Motion to Dismiss.

STANDARD OF REVIEW

1. Rule 52

Rule 52(a), SCRPC, provides, in pertinent part, "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon;" however, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." The requirements of rule 52(a) are merely directory and provide no basis for invalidating a judgment. Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010); see also Borg Warner Acceptance Corp. v. Darby, 372 S.E.2d 99, 101-102 (S.C. Ct. App. 1988). Under this directive, this Court's prior ruling should not be disturbed for lack of a specific factual finding where its order "substantially complies with Rule 52(a) and adequately states the basis for the result" reached. Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 123-24 (1991).

2. Rule 59

Although the state law of South Carolina does not provide a standard under which a court may grant a motion made pursuant to Rule 59, SCRPC, the notes to Rule 59(e) state that "Rule 59 is substantially the Federal Rule." SCRPC 59, Notes. As such, federal courts interpreting Rule 59(e) have recognized three grounds for granting a Rule 59, FRCP, motion: "(1) to accommodate

an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Bogart v. Chapell, et al., 396 F.3d 548, 555 (4th Cir. 2005) (quoting United States v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002)).

Granting a Rule 59(e) motion is an extraordinary remedy which should be used sparingly. See Pacific Ins. Co. v. American Nat’l. Fire Assoc., 148 F.3d 396, 403 (4th Cir. 1998). Motion under Rule 59(e) “may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” Id.; see also Hickman v. Hickman, 392 S.E.2d 481 (S.C. Ct. App. 1990). A party may not raise a matter in its Rule 59(e) motion without any argument or authority demonstrating that the Court’s previous ruling on that matter was erroneous. See Wogan v. Kunze, 366 S.C. 583, 608, 623 S.E.2d 107, 120 (Ct. App. 2005).

ARGUMENT

1. Plaintiffs cannot use Rule 52, SCRPC, to seek an amendment of this Court’s ruling on Defendants’ Motion to Dismiss.

Rule 52(a), provides in pertinent part, “[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).” Rule 52(a), SCRPC. Thus, Rule 52 is inapplicable in the instant matter as the decision in this action was made pursuant to Defendants’ motion under Rules 12(b)(1) and 12(b)(6), SCRPC, to dismiss the above-captioned case.

To the extent that Rule 52 applies to this Court’s ruling on Defendants’ Motion to Dismiss, Rule 52(a) provides no basis for invalidating the Court’s Order. The Court’s Order dismissing the above-captioned case against Defendants specifically sets forth the facts at issue

and explicitly states its conclusions of law with regard to such facts. Thus, because the Court's Order substantially complies with Rule 52(a) and adequately states the basis for dismissal, this Order should not be disturbed.

Accordingly, Defendants respectfully request that this Court deny Plaintiffs' motion and affirm its Order granting Defendants' Motion to Dismiss the above-referenced case.

2. **Plaintiffs cannot raise arguments under Rule 59(e), SCRPC, which could have been raised prior to the issuance of the Court's Order.**

In the present case, Plaintiffs raise several arguments which could have been raised prior to the issuance of the Court's Order. Specifically, these arguments are: (1) whether Defendants are necessary and appropriate parties to Plaintiffs' tax-based claims; (2) whether Act 388 prohibits Defendants, specifically, from participating in the particular arrangement; (3) whether Defendants, in fact, do use revenue from exempt property to fund the particular arrangement; and (4) whether the particular arrangement increases the tax base of both Dorchester County and Defendants. Because Plaintiffs failed to assert these four (4) arguments, which could have been raised in opposition to Defendants' Motion to Dismiss and prior to the Court's ruling thereon, Plaintiffs may not use Rule 59(e) to advance new legal theories not previously before this Court.

To the extent that this Court finds that these four (4) arguments are properly before it, Plaintiffs fail to provide any authority demonstrating that the Court's previous ruling on these matters was erroneous. Specifically, Plaintiffs summarily contend that Defendants "are necessary and appropriate parties to this lawsuit" which seeks declaratory and injunctive relief as to tax-based claims even if Defendants have not and cannot impose the particular tax. However, Plaintiffs fail to assert any authority or plausible argument that Defendants are indispensable parties. Pursuant to Rule 19, SCRPC, a party is indispensable if "in his absence complete relief cannot be accorded among those already parties." In the instant action, Plaintiffs seek declaratory

and injunctive relief for alleged unlawful taxation; however, Plaintiffs cannot establish as a matter of law that Defendants have the authority to impose a tax or even exercised any such authority *ultra vires* in the present case. Thus, because a determination as to the propriety of the particular tax challenged by Plaintiffs simply requires the joinder of the parties who have the authority to and, in fact, did impose the tax, Defendants are not a necessary party to Plaintiffs' tax-based claims.

As to the arguments challenging the agreement between Dorchester County and Defendants to fund the school resource officer ("SRO") program, the Court concluded in its Order dated March 9, 2018, that Defendants did not use Act 388 revenue to fund the program. Specifically, the Court determined that Dorchester County's Budget Ordinance 15-14, which Plaintiffs incorporated by reference in Paragraph Seventy-Eight (78) of Plaintiffs' Second Amended Complaint, expressly reflected that the payments from Defendants to fund the program were "Charges for Services" and not "Current – Real Estate Taxes." Plaintiffs challenge this conclusion by asserting that the Court misinterpreted the meaning of these designations. However, it strains credulity to exclude from the meaning of "Current – Real Estate Taxes" the revenue from taxes imposed on "owner-occupied residential property" and collected pursuant to Act 388.

Additionally, the Court concluded that Defendants have not funded the school resource officer program with exempt property tax revenue as a matter of law but rather reimbursements from the State through the Homestead Exemption Fund. To reimburse school districts for the amounts exempt under Act 388, the State collects an additional one percent sales tax which it credits to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to -1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts

in “an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed by the district on owner-occupied residential property for that fiscal year as if no reimbursed exemptions applied.” S.C. Code Ann. § 11-11-156(A)(1).

Here, Defendants cannot and have not funded the SRO agreements with revenue collected by the County from exempt owner-occupied residential property as a matter of law. Under the exemption-reimbursement funding mechanism set forth above, the State reimburses Defendants in an amount equal to the revenue that would have been collected from the tax-exempt property, and Defendants in turn apply that reimbursement to fund the SRO agreements. Therefore, the alleged expenditures do not violate Act 388 as a matter of law, and Plaintiffs have provided no authority challenging the Court’s conclusion as to the operation of the State’s exemption-reimbursement funding mechanism. Consequently, there are no factual issues to be developed on the record regarding this issue.

Accordingly, Defendants respectfully request that this Court deny Plaintiffs’ Motion and affirm its Order granting Defendants’ Motion to Dismiss.

3. **Plaintiffs fail to establish an intervening change in controlling law, new evidence not available at trial, a clear error of law or to prevent manifest injustice as required by Rule 59(e), SCRPC.**

For all of the arguments Plaintiffs raise in their Motion for Reconsideration, Plaintiffs fail to satisfy the standard under Rule 59(e) to warrant such an extraordinary remedy. In addition to the arguments that Plaintiffs raise for the first time in their Motion, Plaintiffs also repeat their original arguments advanced in opposition to Defendants’ Motion to Dismiss. Specifically, these arguments are: (1) whether the Administrative Law Court has exclusive subject matter jurisdiction over Plaintiffs’ tax-based claims, (2) whether the arrangement financing the school

resource officer program amounts to double taxation; and (3) whether Plaintiffs have standing to assert their tax-based claims. However, Plaintiffs may not support their Motion with such arguments that were thoroughly briefed by the parties and addressed at the hearing where both parties had an opportunity to present oral arguments on their respective theories for the case.

Moreover, for all of Plaintiffs' arguments, Plaintiffs do not request this Court to accommodate an intervening change in controlling law, account for new evidence not previously presented, correct a clear error of law, or prevent manifest injustice. Therefore, Plaintiffs have not set forth any basis for which relief may be granted pursuant to Rule 59(e), and this Court should deny Plaintiffs' Motion for Reconsideration.

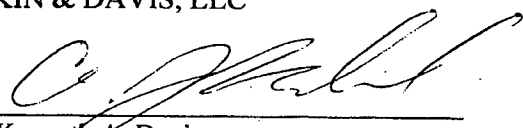
Accordingly, Defendants respectfully request that this Court deny Plaintiffs' Motion and affirm its Order granting Defendants' Motion to Dismiss.

CONCLUSION

For the aforementioned reasons, Defendants respectfully request that this Court deny Plaintiffs' Motion for Reconsideration and affirm its Order granting Defendants' Motion to Dismiss as to all claims against Defendants.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: 

Kenneth A. Davis
Christopher S. Elliot
Adam J. Mandell

P.O. Box 11844
Columbia, South Carolina 29211
Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Defendants Dorchester County
School District Four & Dorchester County
School District Four Board

April 13, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

CERTIFICATE OF SERVICE

2018 APR 16 PM 12:54
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

The undersigned of Boykin & Davis, LLC, hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANTS DORCHESTER COUNTY SCHOOL DISTRICT FOUR AND DORCHESTER COUNTY SCHOOL DISTRICT FOUR BOARD'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION**

TO RECONSIDER, ALTER OR AMEND JUDGMENT, in the above-captioned action by mailing a copy of the same, postage prepaid and return address clearly indicated, to the following on this 13th day of April 2018:

W. Andrew Gowder, Jr., Esq.
Pratt-Thomas Walker, P.A.
P. O. Drawer 22247
Charleston, South Carolina 29413-2247

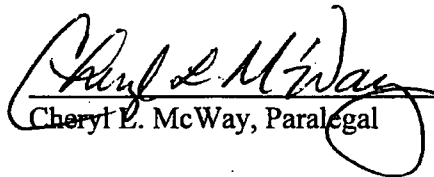
Michael T. Rose, Esq.
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

David L. Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212

Drew Hamilton Butler, Esq.
Anthony E. Rebollo, Esq.
Richardson, Plowden, Carpenter & Robinson, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202

Erik P. Doerring, Esq.
McNair Law firm, P.A.
P.O. Box 11390
Columbia, SC 29211

William H. Davidson, Esq.
Davidson & Lindemann PA
P.O. Box 8568
Columbia, SC 29202


Cheryl E. McWay, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

✓
Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated; Weatherstone Property
Owners Association, individually, and on
behalf of all others similarly situated, George
Resnick; William A. Harbeson; James Stephen
Greene, Jr.; Homer P. Gonzalez; Gerald E.
Ziegler; David Messinger; and South Carolina
Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry
Hargett and William R. Hearn, Jr., in their
official capacities as members of Dorchester
County Council; Town of Summerville;
Summerville Town Council; William E.
McIntosh III, individually and in his official
capacity as a member of Summerville Town
Council; Dorchester County Sheriff; Luther C.
Knight, in his official capacity; Captain Tony
Phinney, individually and in his official
capacity as an employee of the Dorchester
County Sheriff; Dorchester School District
Two; Dorchester School District Two Board of
Trustees; Joseph R. Pye, Justin Farnsworth,
Gail Hughes, Brian Mitchum, Tanya Robinson,
Evan Guthrie, Barbara Crosby and Lisa

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

Civil Action No.: 2016-CP-18-838

**PLAINTIFFS' MOTION TO
RECONSIDER, ALTER OR AMEND
JUDGMENT, AND FOR A
HEARING**

FILED - RECORDED
2018 APR -3 PM 12:53
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Tupper, in their official capacities; Dorchester)
County School District Four; Dorchester)
County School District Four Board of Trustees;)
Dorchester County Career and Technology)
Center; and Dorchester County Career and)
Technology Center Board of Trustees,)
Defendants.)
_____)

TO: KENNETH A DAVIS, CHRIS S. ELLIOT, ADAM J. MANDELL, DREW HAMILTON
BUTLER, ANTHONY E. REBOLLO, ERIK P. DOERRING, DAVID L. MORRISON,
COUNSEL FOR DEFENDANTS

The Plaintiffs, by and through their undersigned counsel, hereby move this Court to reconsider, alter or amend, and to grant a rehearing regarding, the Order On Motion to Dismiss Filed By Defendants Dorchester County School District Four and Dorchester County School District Four Board (“Order”) entered by the Court on March 15, 2018 on the following issues pursuant to Rules 59(e) and 52(b), SCRPC. The Plaintiffs and their Counsel received written notice of entry of this “Order of Dismissal” on March 20, 2018. **A copy of the Order is attached as Exhibit A.**

Plaintiffs move the Court to reconsider, alter or amend its Order, to grant a rehearing, and to allow the case to proceed. Plaintiffs ask that the Court reconsider, alter or amend its ruling on the following issues. As grounds in support of its Motion to Reconsider, Alter or Amend, and for a Rehearing, Plaintiffs rely on the totality of the record in this case, including all memoranda, pleadings and other documents, evidence and arguments previously submitted, and the Motion to Reconsider the Order Granting Defendants’ Motions to Dismiss Plaintiffs’ Second Amended Complaint entered by the Court on March 15, 2018, and incorporate them herein, and state as follows:

1. Standard of Review

When making a determination on a Motion to Dismiss under 12(b), SCRPC, the Court must only consider the facts as “set forth on the face of the plaintiff’s complaint.” *Pyle v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Under Rule 12(b)(6), “a [respondent] may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the [petitioner], would entitle the [petitioner] to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824, 826 (2009). The Court must view the case in a light most favorable to the non-moving party and considering every statement made in their pleading with deference to the non-moving party. *Toussaing v. Ham*, 292 S.C. 415, 357 S.E.2d 8, 9 (1987). Then, the court must look at that same information and decide if the non-moving party has stated a claim for which relief could be granted. *Id.* “Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Id.*

FIRST AND SECOND CAUSES OF ACTION **VIOLATIONS OF ACT 388** **ILLEGAL DOUBLE EXPENDITURES**

2. **The District 4 Defendants are necessary and appropriate parties to this lawsuit seeking declaratory and injunctive relief regarding their illegal expenditures of money. That is not changed by the fact that Dorchester County, not the District 4 Defendants, requires the illegal expenditures by District 4 Defendants.**

The Second Amended Complaint clearly seeks only a declaratory judgment and an injunction to stop the illegal expenditure of tax monies collected by or for the District 4 Defendants. The fact that only Defendant Dorchester County has the authority to require, and requires, those unlawful expenditures of tax monies collected by or for the District 4 Defendants does not change the fact that illegal expenditures of tax monies are being made by or for the District

4 Defendants. Plaintiffs should be allowed to obtain declaratory and injunctive relief and discovery regarding the District 4 Defendants' as a necessary or permissive party to this lawsuit, regardless of who authorizes or requires the District 4 Defendants to engage in the wrongful expenditures.

3. Act 388 prohibits the use of taxes collected on owner-occupied residential property "for school operating purposes."

Act 388 does not prohibit the collection of taxes on owner-occupied residential property. Rather, Act 388 prohibits the use of taxes collected on owner-occupied residential property. This lawsuit challenges the use of taxes but not the collection of taxes on owner-occupied property and should be permitted to proceed.

4. Unlawful double-taxation occurs because there is an identity of taxing authority, taxing period, taxing purpose, and person and property taxed.

Assuming that, as the Court ruled, only Dorchester County is the taxing authority, then there is an "identity of taxing authority" regarding the taxes collected and spent by the District 4 Defendants. That taxing authority is Dorchester County. There also is an identical taxing period, taxing purpose and person and property taxed by Dorchester County **TWICE**, once for the County to pay for SROs and once for the District 4 Defendants to pay for SROs. The same property and property owners are being taxed for the same purpose and period. Those allegations are clear and must be accepted as true, but if the Court believes they are not clear, amendments should be allowed to clarify those allegations.

5. The District 4 Defendants do use revenue taxed to property exempt under Act 388 to fund the school resource officer program.

The Second Amended Complaint clearly complains that the County and the District 4 Defendants both use property exempt under Act 388 to fund the school resource officer program. The Court holds that the appearance of the words "Charges for Services" rather than "Current – Real Estate Taxes" means that the "District 4 Defendants have not funded the school resource officer program with exempt property tax revenue but rather from reimbursement from the State." There is no evidence on the record that those phrases mean what the Court interprets they mean. The Court should not dismiss Plaintiff's claims that the District 4 Defendants violate Act 388 because (a) Plaintiffs' allegations must be accepted as true at this stage of considering a Motion to Dismiss under 12(b), SCRCP; (b) there is no evidence on the record showing what the phrases "Charges for Services" and "Current – Real Estate Taxes" mean, in theory or in actual practice; and (c) the Court's dismissal of this lawsuit based on its interpretation of what those phrases mean, in theory and in actual practice, in effect grants the District 4 Defendants a Motion for Summary Judgment, even though a Motion for Summary Judgment is not before the Court.

6. Defendants' unlawful scheme increases annually the tax base of both Dorchester County and the District 4 Defendants.

The Second Amended Complaint alleges that both the tax base of the District 4 Defendants and of Dorchester County are increased simultaneously and annually by those Defendants' unlawful expenditures for the same purpose at the same time. Plaintiffs' allegations should be assumed to be true and this case allowed to proceed to discovery to prove they are true.

7. Taxpayers may seek and obtain in Circuit Court declaratory and prospective injunctive relief regarding the illegal expenditure of taxes by their state and local governments. The Plaintiffs clearly seek only declaratory and prospective injunctive relief in their First and Second Causes of Action and must be allowed to seek that relief in Circuit Court.

This Court should follow the precedent of numerous cases that clearly hold taxpayers can challenge in Circuit Court the **expenditures** of taxes. See e.g., *Mauldin vs. City Council of Greenville*, 33 S.C. 1. 11 S.E. 434 (1890); *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000).

As stated by the South Carolina Court of Appeals in *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) (emphasis added):

In this case, the public interest involved is the **prevention of the unlawful expenditure of money raised by taxation**. “Public policy demands a **system of checks and balances** whereby **taxpayers can hold public officials accountable** for their acts **Taxpayers must have some mechanism of enforcing the law**. *Eastern Missouri Laborers Dist. Council*, 781 S.W.2d at 47. *Id.* (emphasis added).

Id.; accord, Second Amended Complaint § 4, citing:

South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep’t. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

Equally applicable to this case is the following quote above from the South Carolina Court of Appeals case *Sloan, supra*: “In this case, the public interest involved is the **prevention of the unlawful expenditure of money raised by taxation**.” 342 S.C. at 523, 537 S.E.2d at 303. It is difficult to understand why this Court thinks its failure to follow this Court of Appeals precedent is justified.

8. The South Carolina Revenue Procedures Act (“RPA”) does not preclude plaintiffs from seeking declaratory and prospective injunctive relief regarding the expenditures of taxes, as sought in Plaintiffs’ First and Second Causes of Action. Those Causes of Action should not be dismissed because Plaintiffs seek only declaratory and

prospective relief, and this “action is not brought to challenge the collection of or to request a refund of any tax.” Second Amended Complaint § 2 (emphasis added).

The right of a taxpayer to seek and obtain declaratory and prospective injunctive relief regarding the expenditure of tax money by a government entity is not precluded by the intent of Section 12-60-20 to provide the RPA as “a procedure to determine . . . a dispute concerning property taxes (emphasis added).” Rather, the RPA provides “a” procedure, id., meaning it is an option, but not an exclusive option except when involving the collection of taxes.

Nothing in the RPA indicates that the RPA is the exclusive procedure for determining a dispute “concerning” a property tax, except in the one narrow instance stated in Section 12-60-80(A) involving the collection of taxes, as follows:

Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes. *Id.* (Emphasis added.)

The exception provided in Section 12-60-80(B) to Section 12-60-80(A) quoted above states that:

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

Thus, the RPA is meant to be used when a taxpayer challenges the collection of a tax or seeks a refund of a tax collected, neither of which is sought in the Second Amended Complaint.

Nothing in the RPA repeals or expresses an intent to repeal the long line of appellate cases in South Carolina that clearly give taxpayers the option of seeking declaratory and prospective injunctive relief from the illegal expenditure of taxes. Indeed, relying on these principles and precedents regarding the same RPA issue in this case, recently the Honorable Carmen T. Mullen recently denied, in a lawsuit similar to this case seeking declaratory and injunctive relief to stop

illegal tax expenditures, a motion to dismiss by some of the same County Defendants of a complaint by some of the same plaintiffs for the same reasons the County Defendants filed a motion to dismiss in this lawsuit. See Order Denying Defendant's Motion to Dismiss, Judge Carmen T. Mullen, *Greene v Dorchester County*, C.A. No. 2016-CP-18-1414, attached as Exhibit #2. Notably, the defendants did not appeal or file a motion for reconsideration of this decision by Judge Mullen denying that motion to dismiss.

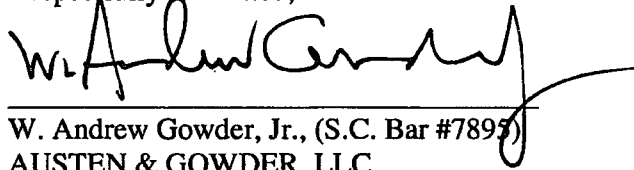
9. The RPA does not authorize bringing a lawsuit seeking declaratory and injunctive relief to stop illegal expenditures of tax monies.

Ironically, the RPA does not authorize challenging in the Administrative Law Court illegal expenditures by a government entity and does not authorize declaratory or injunctive relief. If the RPA were intended to be used for any of those purposes, the RPA would have said so, but does not. Instead, as worded the RPA states only that the RPA is available to challenge the illegal collection of taxes and to obtain a refund of the same.

CONCLUSION

For the reasons stated above, no Cause of Action should be dismissed, and the Court should reconsider, alter or amend its Order, grant a rehearing, deny the Motions to Dismiss and allow this case to proceed through discovery.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)

AUSTEN & GOWDER, LLC

Charleston, South Carolina 29405

Phone: 843/727-2229

andy@austengowder.com

Counsel for Plaintiffs.

\$1

Michael T. Rose, Esquire (S.C. Bar #4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595
mike@mikeroselawfirm.com
Counsel for Plaintiffs

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER

)

Dorchester County Taxpayers Association,
individually, and on behalf of all others
similarly situated; Weatherstone Property
Owners Association, individually, and on
behalf of all others similarly situated, George
Resnick; William A. Harbeson; James Stephen
Greene, Jr.; Homer P. Gonzalez; Gerald E.
Ziegler; David Messinger; and South Carolina
Public Interest Foundation;

)

)

)

)

)

)

)

)

)

Plaintiffs,

)

)

)

**PLAINTIFFS' MOTION TO
RECONSIDER, ALTER OR AMEND
JUDGMENT, AND FOR A HEARING**

v.

)

)

Dorchester County; Dorchester County
Council; David Chinnis, George Bailey, Jay
Byars, Willie Davis, Carroll S. Duncan, Larry
Hargett and William R. Hearn, Jr., in their
official capacities as members of Dorchester
County Council; Town of Summerville;
Summerville Town Council; William E.
McIntosh III, individually and in his official
capacity as a member of Summerville Town
Council; Dorchester County Sheriff; Luther C.
Knight, in his official capacity; Captain Tony
Phinney, individually and in his official
capacity as an employee of the Dorchester
County Sheriff; Dorchester School District
Two; Dorchester School District Two Board of
Trustees; Joseph R. Pye, Justin Farnsworth,
Gail Hughes, Brian Mitchum, Tanya Robinson,
Evan Guthrie, Barbara Crosby and Lisa
Tupper, in their official capacities; Dorchester

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

RECORDED
2018 APR -3 PM 12:21
CHERYL BRADY
CLERK OF COURT
DORCHESTER COUNTY

County School District Four; Dorchester)
County School District Four Board of Trustees;)
Dorchester County Career and Technology)
Center; and Dorchester County Career and)
Technology Center Board of Trustees,)
Defendants.)
_____)

TO: KENNETH A DAVIS, CHRIS S. ELLIOT, ADAM J. MANDELL, DREW HAMILTON
BUTLER, ANTHONY E. REBOLLO, ERIK P. DOERRING, DAVID L. MORRISON,
COUNSEL FOR DEFENDANTS

The Plaintiffs, by and through their undersigned counsel, hereby move this Court to reconsider, alter or amend, and to grant a rehearing regarding the Order Granting Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint ("Order") entered by the Court on March 15, 2018, on the following issues pursuant to Rules 59(e) and 52(b), SCRCP. The Plaintiffs and their Counsel received written notice of entry of this "Order of Dismissal" on March 20, 2018. **A copy of the Order is attached as Exhibit A.**

Plaintiffs move the Court to reconsider, alter or amend its Order, to grant a rehearing, and to allow the case to proceed. As grounds in support of its Motion to Reconsider, Alter or Amend, and for a Rehearing, Plaintiffs rely on the totality of the record in this case, including all memoranda, pleadings and other documents, evidence and arguments previously submitted, and the Motion to Reconsider the Order On Motion to Dismiss Filed by Defendants Dorchester County School District Four and Dorchester County School District Four Board entered by the Court on March 15, 2018, and incorporate them herein, and state as follows:

1. Standard of Review

When making a determination on a Motion to Dismiss under 12(b)(6), SCRCP, the Court must only consider the facts as "set forth on the face of the plaintiff's complaint." *Pyle v. Burns*,

373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Under Rule 12(b)(6), “a [respondent] may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the [petitioner], would entitle the [petitioner] to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824, 826 (2009). The Court must view the case in a light most favorable to the non-moving party and considering every statement made in their pleading with deference to the non-moving party. *Toussaing v. Ham*, 292 S.C. 415, 357 S.E.2d 8, 9 (1987). Then, the court must look at that same information and decide if the non-moving party has stated a claim for which relief could be granted. *Id.* “Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Id.*

FIRST AND SECOND CAUSES OF ACTION
VIOLATIONS OF ACT 388
ILLEGAL DOUBLE EXPENDITURES

2. **Taxpayers may seek and obtain in Circuit Court declaratory and prospective injunctive relief regarding the illegal expenditure of taxes by their state and local governments. The Plaintiffs clearly seek only declaratory and prospective injunctive relief in their First and Second Causes of Action and must be allowed to seek that relief in Circuit Court.**

This Court should follow the precedent of numerous cases that clearly hold taxpayers can challenge in Circuit Court the **expenditures** of taxes. See e.g., *Mauldin vs. City Council of Greenville*, 33 S.C. 1. 11 S.E. 434 (1890); *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000).

As stated by the South Carolina Court of Appeals in *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) (emphasis added):

In this case, the public interest involved is the **prevention of the unlawful expenditure of money raised by taxation**. “Public policy demands a **system of checks and balances** whereby **taxpayers can hold public officials accountable** for their acts **Taxpayers must have some mechanism of**

enforcing the law. *Eastern Missouri Laborers Dist. Council*, 781 S.W.2d at 47. *Id.* (emphasis added).

Id.; accord, Second Amended Complaint § 4, citing:

South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

Equally applicable to this case is the following quote above from the South Carolina Court of Appeals case, *Sloan*, *supra*: “In this case, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation.” 342 S.C. at 523, 537 S.E.2d at 303.

3. **The South Carolina Revenue Procedures Act (“RPA”) does not preclude plaintiffs from seeking declaratory and prospective injunctive relief regarding the expenditures of taxes, as sought in Plaintiffs’ First and Second Causes of Action. Those Causes of Action should not be dismissed because Plaintiffs seek only declaratory and prospective relief, and this “action is not brought to challenge the collection of or to request a refund of any tax.” Second Amended Complaint § 2 (emphasis added).**

The right of a taxpayer to seek and obtain declaratory and prospective injunctive relief regarding the expenditure of tax money by a government entity is not precluded by the intent of Section 12-60-20 to provide the RPA as “a procedure to determine . . . a dispute concerning property taxes (emphasis added).” Rather, the RPA provides “a” procedure, *id.*, meaning it is an option, but not an exclusive option except when involving the collection of taxes.

Nothing in the RPA indicates that the RPA is the exclusive procedure for determining a dispute “concerning” a property tax, except in the one narrow instance stated in Section 12-60-80(A) involving the collection of taxes, as follows:

Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes. *Id.* (Emphasis added.)

The exception provided in Section 12-60-80(B) to Section 12-60-80(A) quoted above states that:

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

Thus, the RPA is meant to be used when a taxpayer challenges the collection of a tax or seeks a refund of a tax collected, neither of which is sought in the Second Amended Complaint.

Nothing in the RPA repeals or expresses an intent to repeal the long line of appellate cases in South Carolina that clearly give taxpayers the option of seeking declaratory and prospective injunctive relief from the illegal expenditure of taxes. Indeed, relying on these principles and precedents regarding the same RPA issue in this case, the Honorable Carmen T. Mullen recently denied, in a lawsuit similar to this case seeking declaratory and injunctive relief to stop illegal tax expenditures, a motion to dismiss by some of the same County Defendants of a complaint by some of the same plaintiffs for the same reasons the County Defendants filed a motion to dismiss in this lawsuit. See Order Denying Defendant’s Motion to Dismiss, Judge Carmen T. Mullen, *Greene v Dorchester County*, C.A. No. 2016-CP-18-1414, attached as Exhibit #2. Notably, the defendants did not appeal or file a motion for reconsideration of this decision by Judge Mullen denying that motion to dismiss.

4. **The RPA does not authorize bringing a lawsuit seeking declaratory and injunctive relief to stop illegal expenditures of tax monies.**

Ironically, the RPA does not authorize challenging in the Administrative Law Court illegal expenditures by a government entity and does not authorize declaratory or injunctive relief. If the RPA were intended to be used for any of those purposes, the RPA would have said so, but does not. Instead, as worded, the RPA states only that the RPA is available to challenge the illegal collection of taxes and to obtain a refund of the same.

FOURTH CAUSE OF ACTION

VIOLATIONS OF FREEDOM OF EXPRESSION, ASSOCIATION AND PETITION TO REDRESS GRIEVANCES RIGHTS UNDER ARTICLE I, SECTION 2 OF THE SOUTH CAROLINA CONSTITUTION

5. **Contrary to the Court's Order, Plaintiff Messinger did not plead only a claim for money damages. Messinger also asked for a declaratory judgment and a prospective injunction to protect his rights under Article I, Section 2 of the South Carolina Constitution, and is entitled to have his claims decided on their merits rather than dismissed.**

In error, the Court stated in its Order that "Messinger's Fourth Cause of Action . . . alleges only a claim for money damages based on violations of his rights under South Carolina State Constitution." Order at 7 (emphasis added). That statement is mistaken, because the Second Amended Complaint clearly shows that Messinger asked for a declaratory judgment that his rights under the South Carolina Constitution had been violated. See Prayer for Relief Section A (7), which states as follows:

"IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

- A. Grant a Declaratory Judgment declaring that:

(7) Defendants McIntosh, Chinnis, Phinney, the County, the Town and the Sheriff have violated the Plaintiffs' rights under Article I, Section 2 of the South Carolina Constitution." *Id.* (Emphasis added.)

The Court's statement quoted above also is erroneous because in the Second Amended Complaint Messinger clearly asked for an injunction to prevent prospective violations of his rights under the South Carolina Constitution. See Prayer for Relief Section B (7), which states as follows:

"IV. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

(7) Violating the Plaintiffs' rights under Article I, Section 2 the South Carolina Constitution." *Id.* (Emphasis added.)

The Court's statement above also is incorrect because Messinger specifically pled in the Second Amended Complaint that he was not seeking monetary damages in this action "[w]ith the exception of Plaintiff Messinger regarding his Section 1983 claims as stated below." Second Amended Complaint § 2.

Messinger is entitled to have the Court consider on their merits Messinger's requests for a declaratory judgment and an injunction due to violations of his rights under the South Carolina Constitution, even if he is not entitled to monetary relief for those violations. The protections of Article I, Section 2 of the South Carolina Constitution would be meaningless for Messinger if he

could not seek and obtain declaratory and injunctive relief to enforce those protections and to prevent government officials from continuing to violate his state constitution rights.

- 6. Because Plaintiff Messinger did not plead or rely on 42 USC § 1983 as a basis for his state law claims, those claims should not be dismissed because state law claims are not cognizable under 42 USC § 1983.**

The Court stated in its Order that “Messinger’s Fourth Cause of Action must be dismissed because . . . (b) state law claims are not cognizable under 42 USC § 1983.” Order at 7. However, Messinger did not plead in the Second Amended Complaint that his state claims in the Fourth Cause of Action were based on 42 USC § 1983, or in any other manner rely upon 42 USC § 1983 as a basis for his state-based constitutional claims. Moreover, Section 1983 has nothing to do with alleged violations of the South Carolina Constitution, and Section 1983 is not necessary to obtain declaratory and injunctive relief regarding violations of the South Carolina Constitution. Therefore, the fact that state law claims are not cognizable under 42 USC § 1983 is irrelevant to Messinger’s Fourth Cause of Action claims and cannot serve as a basis for dismissing his Fourth Cause of Action state-based constitutional claims.

Messinger should be allowed to amend the Second Amended Complaint not to seek money relief if that is not allowed, and to add a request for declaratory and injunctive relief to § 110 in the Fourth Cause of Action, if the Court deems that necessary for Messinger’s state constitutional claims to proceed. However, amendment of the Second Amended Complaint to avoid dismissal of the Fourth Cause of Action should not be necessary, because Messinger clearly sought declaratory and injunctive relief which he is entitled to have this Court consider.

- 7. The SC Tort Claims Act does not immunize members of County Council and of Town Council from declaratory and injunctive relief regarding their violations of Messinger’s state-based Constitutional Claims.**

Messinger seeks a declaratory judgment and an injunction to protect his state constitutional rights under the SC Constitution. He does not sue in tort. The SC Tort Claims Act does not bar Messinger from obtaining the declaratory and injunctive relief sought by him for violating his state-based constitutional rights as pled in the Fourth Cause of Action and Prayer for Relief. The SC Tort Claims Act does not preclude obtaining declaratory and injunctive relief for violating rights protected by the SC Constitution. If it did, then there would be no remedy available to protect citizens against violations of their state constitutional rights.

8. Messinger's state-based constitutional claims are based on Defendants' actions to threaten and intimidate Messinger and to terminate and threaten to terminate the employment of Messinger, not on defamation.

Paragraph 109 of the Second Amended Complaint alleges that the defendants violated Messinger's rights under the South Carolina Constitution in part for doing the following:

- "A. Contacting and trying to persuade Defendant Messinger's employers to terminate the employment of Messinger;
- B. Repeatedly suggesting, stating and threatening Messinger that Messinger's employer might be notified by said Defendants of Messinger's protected advocacy and actions and that Messinger might lose his employment or have his protected speech, advocacy and actions restricted as a condition of Messinger's employment, if Messinger did not cease his protected speech, advocacy and actions." *Id.* § 109 (emphasis added).

Messinger does not plead a cause of action for defamation and does not base his state law-based constitutional claims on defamation. Rather, Messinger bases his state law-based constitutional claims on those acts of the Defendants threatening and harassing Messinger (including contacting Messinger's employer to get Messinger fired and to stop exercising his constitutional rights) and threatening to terminate and interfere with Messinger's employment described above and throughout the Second Amended Complaint. While some of the alleged threatening statements happen to be defamatory, they also are evidence of abusive threats,

intimidation and harassment of Messinger. Messinger does not base any claim on the fact that some of statements are defamatory.

The Court must assume Messinger's allegations are true for the purpose of judging whether to dismiss the Fourth Cause of Action at this stage of the case. Based on those allegations, Messinger is entitled to discovery to prove his case and the Court should allow his case to proceed to discovery rather than dismiss it.

9. Defendants' actions violating Messinger's state constitution rights are not legislative acts making Defendants immune from declaratory and injunction relief for constitutional violations.

Those acts threatening and harassing Messinger and threatening Messinger's employment described above and throughout the Second Amended Complaint (including contacting Messinger's employer to get Messinger fired and to stop exercising his constitutional rights) do not constitute legislative acts providing immunity that would bar the Court awarding Messinger a declaratory judgment and in injunction to protect his rights under the South Carolina Constitution. These actions Messinger alleges to violate the South Carolina Constitution did not take place while the Defendants were performing legislative duties. The SC Constitution exists to protect citizens from government intrusion/violations. Those protections would be rendered meaningless if elected officials could violate state constitutional rights with impunity by claiming they were immune from accountability because their actions were legislative, especially when they were not taken in a context of legislating.

The Court must assume Messinger's allegations are true for the purpose of judging whether to dismiss the Fourth Cause of Action at this stage of the case. Based on those allegations, Messinger is entitled to discovery to prove his case and the Court should allow is case to proceed to discovery rather than dismiss it.

FIFTH CAUSE OF ACTION¹

VIOLATIONS OF FIRST AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983

- 10. Messinger's federal-based constitutional claims are based on Defendants' actions to threaten and intimidate Messinger and to terminate and threaten to terminate the employment of Messinger, not on defamation.**

The Court based its ruling to dismiss the Fifth Cause of Action in part on the following:

"Messinger's Fifth Cause of Action is deficient because it is based on claimed injuries to reputation arising out of allegedly "false and defamatory" statements, which is not cognizable in an action under 42 USC § 1983. . . ." Order at 8.

It is not accurate to state that Messinger alleges his United States Constitutional rights were violated based only on claimed injuries to reputation arising out of alleged "false and defamatory statements." Contrary to that finding, Messinger's claims are clearly based on alleged interference with Messinger's First Amendment rights under the United States Constitution due to specific intimidating and hostile actions by the Defendants, including contacting and threatening to contact Messinger's employer to get him fired and to get him to stop exercising his federal-based constitutional rights; and are not based on a cause of action for defamation, which is not alleged anywhere in the Second Amended Complaint.

Messinger alleges in the Fifth Cause of Action that:

"Actions by Defendants McIntosh, Chinnis, Phinney, the County, the Town of Summerville and the Dorchester County Sheriff deprived, and will continue to deprive, Plaintiff Messinger of his **rights of free association, to petition for redress of grievances and of speech and expression protected by the United States Constitution**, in numerous respects, including but not limited to, **doing, conspiring to do and engaging in a pattern of doing, *inter alia*, the following actions, maliciously, recklessly, willfully, in bad faith, and with the intent to harm Messinger and to interfere with his Constitutional rights,** as alleged herein:

¹ All statements above regarding the Fourth Cause of Action are restated and incorporate by reference regarding the Fifth Cause of Action, to the extent applicable.

- A. **Contacting and trying to persuade Defendant Messinger's employers to terminate the employment of Messinger;**
- B. **Repeatedly suggesting, stating and threatening Messinger that Messinger's employer might be notified by said Defendants of Messinger's protected advocacy and actions and that Messinger might lose his employment or have his protected advocacy and actions restricted as a condition of Messinger's employment, if Messinger did not cease his protected advocacy and actions)." Second Amended Complaint § 112 (emphasis added).**

11. The Fifth Cause of Action is not barred by Eleventh Amendment immunity.

"Municipalities are not protected by the Eleventh Amendment," City of Oakland v. Federal Maritime Commission, 724 F.3d 224, 227 (D.C. Cir. 2013), and that "the Eleventh Amendment does not bar a § 1983 lawsuit against counties and municipalities." 2014 Handbook of Section 1983 Litigation, at 7-32, 7-33, § 7.02[D], citing Northern Insurance Company of New York v. Chatham County, 547 US. 189 (2006) (noting that only states and arms of the state possess Eleventh Amendment immunity from suits authorized by federal law; this immunity does not extend to counties); Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 123 n. 34 (1984). See also Frazar v. Gilbert, 300 F.3d 530, 543 n. 67 (5th Cir. 2002) (cities do not enjoy Eleventh Amendment immunity).

Therefore, the Eleventh Amendment does not bar Messinger's Constitutional Claims against Dorchester County and the Town of Summerville; against Chinnis, who acted as an official of Dorchester County; and against McIntosh, who acted as an official of the Town of Summerville. Those claims in the Fifth Cause of Action against those Defendants should not be dismissed and should be allowed to proceed to discovery and trial.

However, the Eleventh Amendment generally does not bar a federal-court suit so long as it (1) seeks only declaratory and injunctive relief rather than monetary damages for alleged violations of federal law; and (2) is aimed at

state officers acting in their official capacities, rather than against the state itself.

2014 Handbook of Section 1983 Litigation, *supra* at 7-36, § 7.02[D], citing *Hill v. Kemp*, 478 F.3d 1236, 1255 (10th Cir. 2007) (emphasis added).

Moreover, the Eleventh Amendment has not prevented federal suits against state officials in their *personal* capacities, since it is well-established that *personal* liability suits are not barred by the Eleventh Amendment. *Ex parte Young*, 209 US 123, 28 S Ct 441, 52 LE 714 (1908); *Scheur v. Rhodes*, 416 US 232, 94 S Ct 1683, 40 LE2d 90 (1974); *American Civil Liberties Union of Mississippi, Inc. v. Finch*, 678 F.2d 1336 (5th Cir. 1981).

As stated in Civil Actions Against State Government Its Divisions, Agencies and Officers (Shepard's/McGraw-Hill 1982):

When officials' conduct exceeds the sphere of their allocated power, or violates the constitutional rights of others, the officials will be stripped of their representative nature and, as a result, of the Eleventh Amendment shield. *Ex parte Young*, 209 US 123, 28 S Ct 441, 52 LE 714 (1908) . . . [A]n action may be instituted against a state employee who is charged with depriving others of their constitutional rights which acting under color of state law. *Scheur v. Rhodes*, 416 US 232, 94 S Ct 1683, 40 LE2d 90 (1974).

Id. at 197-198, § 4.35.

The Defendants contend that the Sheriff of Dorchester County is an agency of the State of South Carolina and, therefore, that the Eleventh Amendment bars Plaintiff Messinger's Constitutional Claims under § 1983 against the Sheriff of Dorchester County and against Lt. Phinney, the Sheriff's subordinate employee. However, as shown by the authorities cited above, although the Eleventh Amendment may bar Messinger's Constitutional Claims for damages against the Sheriff and Phinney in their official capacities, the Eleventh Amendment does not bar Messinger's § 1983 claims for damages against Phinney in his personal² capacity and does not bar

² Phinney is being sued in his personal and official capacities. See Second Amended Complaint § 38.

Messinger's § 1983 claims for declaratory and prospective injunctive relief against the Sheriff and Phinney in their official capacities. Therefore, the Fifth Cause of Action against Phinney in his personal capacity should not be dismissed. In addition, Messinger's § 1983 claims for declaratory and prospective injunctive relief against the Sheriff and Phinney in their official capacities should not be dismissed.

CONCLUSION

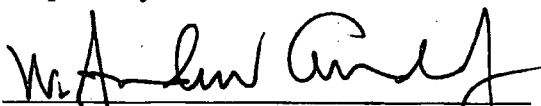
For the reasons stated above, the First and Second Causes of Action should not be dismissed.

In addition, the Fourth and Fifth Causes of Action should not be dismissed.

Messinger is entitled to a declaratory judgment and a prospective injunction regarding violations of his state and federal constitutional rights due to the Defendants' having contacted Messinger's employer and acted to intimidate and threaten Messinger and Messinger's employment and to excessively restrict Messinger's rights to free speech and expression, as alleged in the Fourth and Fifth causes of action. Obtaining those declaratory judgments and injunctions is not barred by legislative immunity, the Tort Claims Act, the Eleventh Amendment or the fact that some of the allegations in the Second Amended Complaint include that some of the threatening statements made by the Defendants also were defamatory. Any pleading deficiency should be allowed to be cured by amending the Second Amended Complaint.

For the reasons stated above, no Cause of Action should be dismissed, and the Court should reconsider, alter or amend its Order, grant a rehearing, deny the Motions to Dismiss and allow this case to proceed through discovery.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)

AUSTEN & GOWDER, LLC

Charleston, South Carolina 29405

Phone: 843/727-2229

andy@austengowder.com

Counsel for Plaintiffs.



Michael T. Rose, Esquire (S.C. Bar #4910)

MIKE ROSE LAW FIRM, PC

406 Central Ave.

Summerville, SC 29483

Phone: 843-871-1821

Facsimile: 843-478-7595

mike@mikeroselawfirm.com

Counsel for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated; George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation,

Plaintiffs,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, individually and in his official capacity as a member of Summerville Town Council; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Captain Tony Phinney, individually and in his official capacity as an employee of the Dorchester County Sheriff; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-18-838

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND TO
STRIKE JURY DEMAND**

FILED-RECORDED

12-12-17

**Cheryl Graham
Clerk of Court
Dorchester County**

The Plaintiffs provide this memorandum in opposition to the motions to dismiss by the Defendants, as follows.

INTRODUCTION

This case challenges Dorchester County's ("County") and the Town of Summerville's ("Town") practice of funding School Resource Officers at schools out of the collection of taxes on primary residences in violation of Act 388, a state statute that forbids the expenditure of residential property taxes for school operating expenses. The various Defendants in this case have each filed Motions to Dismiss grounded primarily on the exclusive jurisdiction of the Revenue Procedures Act ("RPA") over tax collection challenges. The Defendants argue that the RPA provides a "straightforward procedure to determine ... a dispute concerning property taxes," and that the RPA is "the sole and specific remedy for deciding tax disputes involving the illegal or wrongful collection of taxes...." See S. C. Code Sec. 12-60-80. ("There is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes" (emphasis added)).

Plaintiffs do not quarrel with that statement. The Defendants' Motion should be denied, though, because Plaintiffs have stated claims for which relief can be granted. The case does not challenge the collection of taxes. Rather, it challenges the expenditure of public funds, specifically a practice of paying for SROs in a manner that explicitly violates a state statute. The only connection to the collection of taxes in this case is that public funds, raised by the collection of taxes, are being used to pay these SROs. Neither the manner nor the amount of taxes collected is

being challenged in this case, nor is any Plaintiff seeking a refund of their taxes paid. They do seek to have the public officials cease spending and receiving the funds in violation of state law.

If the Defendants' arguments are correct, no challenge to a state or local government's action can be brought in Circuit Court, if that challenge involves the expenditure of public funds. That is not what the RPA says nor what the exclusive remedy provision for deciding tax disputes is meant to provide, and is not consistent with the precedents set by numerous decisions of our appellate courts.

STATEMENT OF FACTS

The Plaintiffs are individual residents and taxpayers of Dorchester County or Berkeley County, a neighborhood association and two nonprofit public advocacy organizations dedicated to transparent and efficient government in compliance with the laws and constitution of this state. Second Amended Complaint ¶¶ 5-18.

School Resource Officers ("SROs") are sworn law enforcement officers assigned to one or more school districts in the state with their primary duty being to provide safety and security of students, staff and property within the school system. Second Amended Complaint ¶¶ 48-50. Their use in the schools is for school operating purposes within the definition of S.C. Code Ann. § 12-39-220(b)(47)(a), (c) ("Act 388") as they provide for security and order within the schools and school districts themselves, a task that would otherwise be filled by principals, teachers, coaches or other employees of the school district, and often develop safety policies and procedures as "an advisor and teacher." Second Amended Complaint ¶¶ 50, 95.

The South Carolina General Assembly passed Act 388 to provide that "one hundred percent of the fair market value of owner-occupied residential property... is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt" (emphasis added). In other words, Act 388 exempts

owner-occupied residential property from all property taxes imposed for “school operating purposes” with the exception of the service of bond indebtedness. Second Amended Complaint ¶¶ 51-53.

In 2015, the General Assembly, through the South Carolina Oversight Committee, funded an “independent review of the efficiency” of Dorchester School District 2 (“DD2”) by Tidwell and Associates. In May 2015, Tidwell issued its report, divided into tiers of recommendation, with Tier 1 being those of “Greatest Impact: the district should implement these recommendations immediately to take maximum advantage of their opportunities.” One of those Tier 1 recommendations was for DD2 to directly employ its own district security officers or contract with a private security company to provide security in DD2 schools, rather than using deputies from the County Sheriff’s office. The Tidwell report found that such a change would save DD2 \$1,755,600 over 5 years. Second Amended Complaint ¶¶ 56-57.

DD2 attempted to implement this change, but met with significant opposition from the Dorchester County Sheriff, and ultimately, the elected leaders of Dorchester County and the Town of Summerville. Second Amended Complaint ¶ 58. In the course of the public debate over this issue, the Sheriff, a Deputy Sheriff and a Summerville Town Council member, all defendants here, crossed the line between permissible free speech and impermissible intimidation and slander. Second Amended Complaint ¶¶ 59- 61. One individual citizen who supported this change in SRO staffing, David Messinger, is a plaintiff in this case, stating claims against the Sheriff, Deputy Sheriff and Town Council members for their unconstitutional actions taken with intent to harm him and squelch his speech and advocacy of this measure.

In the end, County, Town and Sheriff got their way and DD2, Dorchester District Four (“DD4”) and the Dorchester County Career and Technology Center (“DCCTC”) all entered into

contracts providing that Dorchester County and the Town of Summerville would pay the salaries and other expenses of SROs in the school district, using County and Town taxes collected on primary residences. Second Amended Complaint ¶¶ 63-77.

As a result, the County through the Sheriff's office provides SROs to the three school districts for an approximate amount of \$60,000 per officer per year, plus other expenses. Under these contracts, the school district is required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Sheriff when they are "reassigned by the Sheriff, or his designee, during school holidays, vacations, law enforcement emergencies or other necessity." In addition, Dorchester County is required to tax all property owners, including owner-occupied homes, to subsidize the salaries and other DD2 school operating expenses for SROs working at schools within each school district. Second Amended Complaint ¶¶ 63-77. All funds paid by the County or the Town to any of the school districts for SROs have been paid with property taxes raised, among others, on owner-occupied homes in the County and/or the Town in violation of Act 388. Second Amended Complaint ¶ 76.

Residential property owners who live in the County or the Town and in one of these three school districts are being taxed twice---once by the County or Town and once by a school district—to pay the same salaries and other associated operating expenses for the same SROs operating in schools in that district. Second Amended Complaint ¶¶ 82-83.

In addition, the Plaintiffs who reside in Berkeley County are being taxed by the Town to provide SROs for DD2 and DD4 schools when no resident of Berkeley County attends any DD2 or DD4 school. Second Amended Complaint ¶ 90.

LEGAL STANDARD

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The Court must deny a motion to dismiss under Rule 12(b)(6) if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id.; Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) ("The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory."). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. "Pleadings in a case should be construed liberally so that substantial justice is done between the parties." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Plyler, 373 S.C. at 645, 647 S.E.2d at 192.

Under Rule 12(b)(1), SCRCP, the movant challenges the power of the court over the subject matter. "The question of subject matter jurisdiction is a question of law for the court." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009), citing Chew v. Newsome Chevrolet, Inc., 315 S.C. 102, 104, 431 S.E.2d 631 (Ct. App. 1993) (citing Bargesser v. Coleman Co., 230 S.C. 562, 96 S.E.2d 825 (1957)). Subject matter jurisdiction is defined as "the power to hear and determine cases of the general class to which the proceedings in question belong." See Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008); Ward v. State, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 246 n.5 (2000).

ARGUMENT

The primary question before the court is whether the RPA preempts every challenge to state or local government action that involves the expenditure of public funds. If so, the Administrative Law Court's exclusive jurisdiction will expand well beyond what the legislature intended when it assigned the adjudication of tax dispute appeals to that Court, and beyond the prior precedents of South Carolina courts. That is clearly not what is meant by the provisions of the RPA, and the Defendants' motion to dismiss on those grounds therefore should be denied.

SUBJECT MATTER JURISDICTION OVER CHALLENGE TO PAYMENT FOR SROs

A. This court has subject matter jurisdiction over these Plaintiffs' challenge to the payment for SROs using owner-occupied tax revenues in violation of Act 388.

Numerous court decisions have established the right of taxpayers to ask Circuit Courts to halt illegal expenditures by South Carolina government entities, starting over a hundred years ago with the South Carolina Supreme Court decision in Mauldin vs. City Council of Greenville, 33 S.C. 1, 11 S.E. 434 (1890). As stated by the South Carolina Court of Appeals in Sloan v. School District of Greenville County, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) (emphasis added):

In this case, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. "**Public policy demands a system of checks and balances** whereby **taxpayers can hold public officials accountable** for their acts **Taxpayers must have some mechanism of enforcing the law.** Eastern Missouri Laborers Dist. Council, 781 S.W. 2d at 47. Id. (emphasis added).

South Carolina circuit courts are vested with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. Rainey v. Haley, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013), citing S.C. Const. art. V, § 11. "In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant

statute." Id., citing Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009).

The Defendants claim that this Court does not have jurisdiction over this matter because it is a case "involving the illegal or wrongful collection of taxes" and the Administrative Law Court, under the RPA, has exclusive jurisdiction over those matters. If this were a case challenging the wrongful collection of taxes, that would be true, but it is not.

Looking for guidance to the relevant statute, "the legislative intent of the RPA is to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent." S.C. Code Ann. § 12-60-20 (LexisNexis, Lexis Advance through Chs. 1-16, 18-30, 33-35, 38-39 of the 2017 session). The entire statute is concerned with a taxpayer's ability to challenge what that taxpayer contends is the wrongful collection of taxes. "Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80 (LexisNexis, Lexis Advance through Chs. 1-16, 18-30, 33-35, 38-39 of the 2017 session).

The process to which the Defendants argue this court must cede jurisdiction and submit this action is described as follows:

For the purposes of this section, the administrative tax process includes matters connected with presentation to a state or local tax authority, or their officials or employees, relating to a client's rights, privileges, or liabilities pursuant to laws, regulations, or rules administered by state or local tax authorities. These presentations include the preparation and filing of necessary documents, correspondence with, and communications to, state and local tax authorities, and the representation of a client at conferences and meetings, including conferences with the county boards of assessment

appeals. It does not include contested case hearings held by the Administrative Law Court or the courts.

S.C. Code Ann. § 12-60-90 (LexisNexis, Lexis Advance through Chs. 1-16, 18-30, 33-35, 38-39 of the 2017 session)

By its plain and unambiguous allegations, this Second Amended Complaint challenges the payment¹ of money for the funding of SROs for the school districts, using property taxes on owner-occupied homes. That these are public funds, collected by the local government through property taxation, does not make this a tax appeal.

The only references to the Plaintiffs as taxpayers in the Second Amended Complaint are allegations meant to establish their standing to bring this action. The Second Amended Complaint does not seek to reduce or challenge the amount of taxes that the Plaintiffs are collecting or seek refunds to any of the Plaintiffs. Rather, the Second Amended Complaint only seeks cessation of illegal expenditures of public funds by the County and the Town in the ordinary courses of their business, in accordance with their budgets approved by County and Town Councils by ordinance.

Persuasive authority on this point can be found in an Order of a Circuit Court in another case pending against Dorchester County, Greene v Dorchester County, C.A. No. 2016-CP-18-1414. In that case, citizens are challenging the County's practice of making cash payments to certain Council members in lieu of their participating in the state's health insurance system, contrary to a S.C. Attorney's General Opinion, which opines that such a practice is illegal. In ruling on an identical argument made by the County that the challenge by those plaintiffs could only be brought under the RPA, Judge Carmen Mullen denied the motion to dismiss of the County, finding as follows:

The County's Motion should be denied, though, because Plaintiffs have stated claims for which relief can be granted. The case does not challenge the collection

¹ Second Amended Complaint ¶¶ 2,16,80,81,88,89,90,91,98,100,101,103,104, and at pp. 39-40.

of taxes. Rather, it challenges the expenditure of public funds, specifically a practice of paying public officials beyond their salaries set by ordinance in a manner that the SC Attorney General has opined violates the South Carolina Constitution and state statutes. The only connection to the collection of taxes in this case is that public funds, perhaps raised by the collection of taxes, are being used to pay these officials. Neither the manner nor amount of taxes collected is being challenged in this case, nor is any Plaintiff seeking a refund of their taxes paid. They do seek to have the public officials cease spending and receiving the funds in violation of state law, and that those who received funds in violation of state law return those funds to the public coffers. If the Defendants' arguments are correct, no challenge to a state or local government's action can be brought in Circuit Court, if that challenge involves the expenditure of public funds. That is not what the RPA says, what the exclusive remedy provision for deciding tax disputes is meant to provide, nor is consistent with the precedents set by numerous decisions of our appellate courts.

Order Denying Defendant's Motion to Dismiss, Judge Carmen T. Mullen, Greene v Dorchester County, C.A. No. 2016-CP-18-1414 (attached as Exhibit #1).

Additionally, decisions of the Supreme Court and Court of Appeals support this conclusion. For example, Brackenbrook North Charleston LP v. County of Charleston, 360 S.C. 390, 602 S.E.2d 39 (S.C. 2004) involved a challenge to the validity of the amount of taxes collected by Charleston County using a certain millage calculation rate, and sought a tax refund after payment of the taxes sought to be refunded. However, unlike in Brackenbrook, Plaintiffs in this case absolutely do not challenge the validity of the amount or nature of the taxes collected from them and do not seek a refund but, instead, object as unlawful the manner in which those collected tax monies have been spent and will be spent after they are collected. *Id.* Second Amended Complaint; *supra* at 9. Therefore, the ruling requiring the exhaustion of administrative remedies in *Brackenbrook* is not precedent for requiring compliance with the RPA regarding Plaintiffs' challenges to the legality of tax expenditures by the Defendants.

Similarly, B&A Development, Inc. v. Georgetown County, 372 S.C. 261, 641 S.E.2d 888 (S.C. 2007) involved a challenge to the legality of a county's millage rate resulting in the alleged excessive collection of taxes and requests for a refund. Unlike in B&A Development, Inc., Plaintiffs in this case absolutely do not challenge the validity of the amount or nature of the taxes collected from them and do not seek a refund but, instead, object as unlawful the manner in which those collected tax monies have been spent and will be spent after they are collected. *Id.* Second Amended Complaint, *supra* at 9. Therefore, the ruling requiring the exhaustion of administrative remedies in B&A Development, Inc. is not precedent for requiring compliance with the RPA regarding Plaintiffs' challenges to the legality of tax expenditures by the Defendants.

Similarly, Riverwoods, LLC v. Charleston Cnty., 349 S.C. 378, 563 S.E.2d 651, 657 (S.C. 2002) involved a challenge to the collection of taxes and request for a refund. Unlike in Riverwoods, LLC, Plaintiffs in this case absolutely do not challenge the validity of the amount or nature of the taxes collected from them and do not seek a refund but, instead, object as unlawful the manner in which those collected tax monies have been spent and will be spent after they are collected. *Id.* Second Amended Complaint, *supra* at 9. Therefore, the ruling requiring the exhaustion of administrative remedies in Riverwoods, LLC is not precedent for requiring compliance with the RPA regarding Plaintiffs' challenges to the legality of tax expenditures by the Defendants.

As such, this court does have jurisdiction over this challenge to actions by local governments that the Plaintiffs, as taxpayers, assert are illegal and therefore *ultra vires*. The RPA does not apply to this dispute. Plaintiffs' First and Second Causes of Action are not subject to dismissal.

The Defendants have provided the Court additional arguments they claim support their Motion to Dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction that in reality do not support their Motion to Dismiss but, rather, are arguments on the merits of the lawsuit. None of those additional arguments would deprive this Court of jurisdiction even if they were true, which they are not.

The Plaintiffs briefly respond to Defendants' additional inapplicable and incorrect arguments, as follows:

B. Paying for a School Resource Officer is a "School Operating Purpose"

The Defendants claim that the Plaintiffs misinterpret the meanings of the phrase "school operating purposes" as used in Act 388 and of the phrase "School Resource Officer." However, as alleged in the Second Amended Complaint and as discussed thoroughly by the Attorney General of South Carolina in Exhibit #1 to the Second Amended Complaint, the Plaintiffs' interpretations of the meanings of "school operating purposes" and "School Resource Officer" are correct and are consistent with Berkeley County School Dist. v. S.C. Dep't of Revenue, 383 S.C. 334, 679 S.E.2d 913 (2009). Second Amended Complaint, at 12-14, 28, 33-34 §§ 48-53, 80, 95-96; 2015 S.C. AG LEXIS 105, attached as Exhibit #1 to the Second Amended Complaint. This is true in part because in Berkeley, *supra*, the South Carolina Supreme Court recognized that a "school operating purpose" could be defined as those expenses "required to keep [a] business running" OR "incurred in running a business,"² and providing SROs to the

² Berkeley, 679 S.E.2d 913, 919. Although in Berkeley the Court held that the lease payments in issue were for "school operating purposes" because the Court found them to be "necessary," SROs are for "school operating purposes" both because they are "necessary" at schools (as determined by the Defendant School Districts) and because they are "incurred in running" a school. See id.

Defendant schools was required or incurred in running those schools. As stated by the South Carolina Attorney General:

Based on the Court's interpretation in Berkeley and a plain reading of the statute, **if a School Resource Officer is a part of a school, the costs thereof will likely be considered an operating expense of the school.** This will especially be the case where the School Resource Officer is an "advisor, and teacher" for the school district. S.C. Code § 5-7-12. If the School Resource Officer's costs are an operating expense of a school, then Dorchester County's taxation of owner-occupied residences to pay for them would be in violation of Act No. 388 of 2006 and South Carolina Code Section 12-37-220(8)(47).

We believe a court will determine that a School Resource Officer - whether an employee of the county, school district, or sheriff - falls within the meaning of a "school operating purpose" by the very statutory definition of a School Resource Officer. S.C. Code § 5-7-12(B). Since the statute appears clear and unambiguous, this Office will not look further to determine the meaning of the language in the statute. 2015 S.C. AG LEXIS 105, 108, attached as Exhibit #1 to Second Amended Complaint (emphasis added).

C. Plaintiffs do not contend that the Defendants were under any obligation to implement or follow the Tidwell Report.

The County Defendants misstate the Plaintiffs' use and the significance of the Tidwell Report described in the Second Amended Complaint. Specifically, the Plaintiffs do not contend that the Defendants were under any obligation to implement or follow the Tidwell Report, and do not interpret the Tidwell Report as having advocated only the hiring of private security officers to provide police protection at schools. Rather, the Tidwell Report demonstrated how the Defendant Dorchester School District #2 ("DD2") could have saved millions of dollars either by hiring private security officers or by hiring security officers as employees of DD2, instead of by using more expensive School Resource Officers furnished by the Sheriff of Dorchester County. Whether DD2 saves those millions of dollars by selecting one of those two money-saving options recommended by the Tidwell Report is a decision within the prerogative of the DD2

Board of Trustees to make or reject. However, the Plaintiffs do contend that, regardless of the source of police security at DD2 schools selected by the DD2 Board, no government entity, including DD2, DD4, Dorchester County and the Town of Summerville, can use taxes on owner-occupied homes to pay for SROs at schools.

D. The Plaintiffs do not challenge the authority of a Sheriff to hire, supervise or direct SROs.

The County Defendants misstate that the positions of the Plaintiffs somehow interfere with or are inconsistent with the powers and legal authority of the Dorchester County Sheriff to provide police protection. That is an incorrect misrepresentation of the Plaintiffs' positions. The Plaintiffs do not challenge the authority of a Sheriff to hire, supervise or direct SROs, if a school elects to use SROs furnished by a Sheriff instead of hiring SROs as in-house school employees or from a private company. However, the Plaintiffs do contend that the Defendants lack the authority to use any taxes on owner-occupied homes to pay the costs of SROs, as alleged in the Second Amended Complaint and concluded by the Attorney General. The issues of who has what authority to hire and supervise and who has what authority to fund are entirely separate issues that should not be confused or conflated. It is perfectly consistent for a Sheriff to retain and exercise his authority to hire and supervise SROs, while simultaneously not paying for those SROs with taxes on owner-occupied homes in violation of Act 388.

E. The financing of the SROs by the Defendants is in fact double taxation.

Both the South Carolina Attorney General and the Plaintiffs contend that the financing scheme of the Defendants described in the Second Amended Complaint constitutes illegal "double taxation." Second Amended Complaint ¶¶ 29-31, 33, 36, 82-89, 95, 103; 2015 S.C. AG LEXIS 105, attached as Exhibit #1 to Second Amended Complaint. The Plaintiffs' lawsuit should not be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction just because

the Defendants disagree with the Plaintiffs and the Attorney General over this issue and any of the other issues discussed above. Discovery followed by motions and trial should be allowed to proceed in the normal course of litigation before the Court makes a ruling on whether the Plaintiffs' claims about "double taxation" and these other issues are valid on their merits.

CONSTITUTIONAL CLAIMS BY DAVID MESSINGER

Messinger's Constitutional Claims alleged in the Second Amended Complaint are that Defendants Phinney, McIntosh and Chinnis acted collaboratively and with malicious intent to cause Messinger to lose his employment and become unemployable as a police officer, and to threaten, intimidate, retaliate against and punish Messinger with the effect and for the common purpose of preventing and deterring Messinger from making statements criticizing a candidate or policy one or more of them supported. One of the most egregious tactics by these Defendants was to contact and/or threaten to contact Messinger's employers to cause Messinger to become unemployed and unemployable, if Messinger continued expressing views unsatisfactory to these Defendants.³ Another tactic violating Messinger's rights was to cause Messinger's employer to counsel Messinger and to require that Messinger stop serving as the Administrator of a website as a condition of Messinger's continued employment as a police officer with the Mt. Pleasant police department.⁴ Another tactic was to harass and harangue Messinger with harsh, derogatory and defamatory statements about Messinger's competency as a police officer and motives to the point that Messinger feared being unemployed and unemployable if Messinger continued expressing his views.⁵

Specifically, for example, the Second Amended Complaint alleges that:

³ Second Amended Complaint at §§ 59-61, 109, 112

⁴ Second Amended Complaint at § 61.

⁵ Second Amended Complaint at §§ 59-61, 109, 112.

Captain Phinney repeatedly called the Chief ("Chief") of the Mt. Pleasant Police Department ("Department") during which conversations Phinney made statements to the Chief discrediting Messinger and trying to get the Mt. Pleasant Police Department to terminate the employment of Messinger. Captain Phinney told the Chief of the Mt. Pleasant Police Department that Captain Phinney was calling that Chief at the request of Captain Phinney's supervisors at the Dorchester County Sheriff's office, to state that the Chief and the Department should terminate the employment of Messinger because Messinger was the Administrator of the Facebook page for Concerned Citizens of Dorchester County where Messinger was claimed to have made slanderous statements. As a result, Messinger was involuntarily counseled and warned by the Chief and the Internal Affairs Sergeant of the Mt. Pleasant Police Department; Messinger was required by that Chief to cease being the Administrator of the Concerned Citizens of Dorchester County Facebook page as a condition of his continued employment with the City of Mt. Pleasant; and Messinger was intimidated and deterred from exercising his Constitutional rights of expression and assembly and to petition his government for redress of grievances.⁶

Similarly, the Second Amended Complaint alleges that:

Defendant McIntosh repeatedly threatened to interfere with the employment of Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding these SRO matters.⁷

In addition, the Second Amended Complaint alleges that:

... "[O]n multiple occasions McIntosh gratuitously questioned Messinger about whether Messinger's current boss at the Mt. Pleasant Police Department would disapprove of McIntosh's statements and opposition to the SRO funding scheme McIntosh supported."⁸

Evidence of malicious and purposeful intent by McIntosh to render Messinger unemployed and unemployable, and to intimidate, harm, punish and deter Messinger from exercising his Constitutional Rights, is provided by the following wholly gratuitous⁹ publication

⁶ Second Amended Complaint at § 61.

⁷ Second Amended Complaint at § 60.

⁸ Second Amended Complaint at § 61.

⁹ The defamatory statements by McIntosh about Messinger were "gratuitous," Second Amended Complaint at §§ 60, 112C, because they were made in a conversation in progress on Facebook between Chinnis and Messinger into which McIntosh injected himself, uninvited, about a subject unrelated to the substance of the defamatory statements made by McIntosh. Messinger had said nothing in his conversation with Chinnis about the subject about which McIntosh made derogatory statements about Messinger.

by McIntosh on Facebook of hostile and derogatory statements about Messinger and Michael Turner, Messinger's associate who advocated views similar to those of Messinger to which McIntosh objected:

Mr. Messinger is just sore that the county didn't go along with his and Mike Turner's hare-brained scheme to create a taxpayer-financed private security force for washed-out enforcement officers.

The truth is you were part of a group of unemployed and barely employed law enforcement officers and former (and with good reason former) law enforcement officers who rallied behind Mike Turner to hoo-doo District 2 into supporting the creation of private security force in our schools. It was nothing more than a full employment scheme for washed-out cops. The county saw right through it, and now you're mad at the county council chairman. You are right – I do have a sense of humor. **Hopefully, your chief in Mt. Pleasant has one too.**

[Messinger] spent countless hours emailing folks to support this hare-brained private security scheme for all our schools, and he is spitting nails at the county for quashing it. (Emphasis added.)¹⁰

The Second Amended Complaint further alleges that:

Defendants McIntosh's and Chinnis' threats and personal attacks on Plaintiff Messinger described above are part of a **pattern, a conspiracy and a continuation of past efforts** by Dorchester County, the Town and the Dorchester County Sheriff to **discredit, defame, intimidate and interfere with the Constitutional rights and with the employment of Messinger and others who criticize or oppose their actions or policies.** (Emphasis added.)¹¹

Evidence of this "pattern, conspiracy and continuation of past efforts by [Defendants] to discredit, defame, intimidate and interfere with the Constitutional rights and with the employment of Messinger and others who criticize or oppose their actions or policies,"¹² and of the malicious

¹⁰ Second Amended Complaint at § 59.

¹¹ Second Amended Complaint at § 61.

¹² Id.

intent of the Defendants to interfere with the Constitutional rights of Messinger, is provided in part by the following additional allegations in the Second Amended Complaint:

1. "After reading these statements by McIntosh on Facebook Chinnis republished them by stating on Facebook 'Nailed it Bill!'",¹³
2. "Defendant McIntosh is an employee or a member of the law firm owned, in whole or in part, by the daughter of the Sheriff, who adamantly objected to DD2's hiring its own SROs, as private contractors or as in-house employees of DD2, as recommended by the Tidwell Report. Defendant McIntosh made these statements and took these actions, and other actions, to help the Town of Summerville, the County, the Dorchester County Sheriff and other Defendants continue the illegal *status quo* methods of funding SROs advantageous to the Dorchester County Sheriff and to avoid implementing the SRO funding recommendations in the Tidwell Report."¹⁴
3. "Similarly, Captain Tony Phinney of the Dorchester County Sheriff's Office e-mailed the then Director of the Department of Public Safety at the Medical University of South Carolina stating in part the following regarding Rowland Turner:

. . . [M]y supervision requested I drop you a note and inform you of the actions of one of your employees, Rowland Turner.

Mr. Turner has posted inaccurate, slanderous comments in an open forum on Facebook in an attempt to harm my reputation and to aid his brother in his bid as a candidate for Sheriff. . . . There are at least 4 other persons that are preparing actions against Mr. Turner also

The Facebook forum is 'Concerned Citizens for Dorchester County.' Mr. Turner is listed as the 'administrator' for this site.

I have asked to have the comments removed and they have not, one week later. My attorney is preparing a 'cease and desist' letter.

The only reason I would ever bother a man with your responsibilities with such pettiness is to inform you that the press has already asked me about this and my attorney will probably push the matter. Cops suing cops is too juicy to ignore, but I must protect my reputation. As a professional courtesy my supervisor asked that I let you know what lay on the horizon. E-mail dated May 1, 2012, from Lt. Tony Phinney, Dorchester County Sheriff's Office, to Anthony Dunbar (emphasis added), attached as Exhibit #2."¹⁵

¹³ Second Amended Complaint at § 59.

¹⁴ Second Amended Complaint at § 59.

¹⁵ Second Amended Complaint at § 61.

First Amendment Claims

It is well established that a valid cause of action can be stated under 42 USC § 1983 for violating a plaintiff's rights to freedom of expression and association, and to petition a government for redress of grievances, in violation of the First and Fourteenth Amendments of the United States Constitution. See, e.g., Lee, David W., 2014 Handbook of Section 1983 Litigation (Wolters Kluwer Law & Business 2014) at §§ 6.01[A], 6.01[E], 6.08, 6.08[A], 6.08[B], 6.09[F]. In addition, a cause of action can be stated under 42 USC § 1983 due to retaliation against a plaintiff for having exercised his First and Fourteenth Amendment rights. *Id.* at §§ 4.01[F][1], 6.01[A], 6.01[B], 6.01[D], 6.02[A], 6.09[A].

Indeed, the United States District Court for the District of South Carolina has made clear that:

The "right to free speech includes not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right." (citations omitted) (reasoning that "if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited").

Int'l Ass'n of Machinists & Aerospace Workers v. Haley, 832 F.Supp.2d 612, 627 (D.S.C., 2011).

In addition, that Court has stated "plaintiffs should rest assured that if the defendants actually infringe their rights through imminent threats or retaliatory action, the federal courts stand ready to grant relief," *id.* at 635, and that:

To establish a First Amendment § 1983 retaliation claim, a plaintiff must demonstrate (1) "that his or her speech was protected," (2) "that the defendant's alleged retaliatory action adversely affected the plaintiff's constitutionally protected speech," and (3) "that a causal relationship exists between its speech and the defendant's retaliatory action."

Id. at 628, quoting Suarez Corp. Indus. V. McGraw, 202 F.3d 676, 685-686 (4th Cir.

2000)(quotation marks and citations omitted).

Messinger's speech about the method by which some of the Defendants funded SROs¹⁶ was private¹⁷ speech protected by the First Amendment. Defendant Phinney's complaints to Messinger's employer about Messinger's private speech on Messinger's private website resulted in Messinger's foreseeable removal as the Administrator of the website and, therefore, cessation of Messinger's expression of his views on that website.¹⁸ Phinney's complaints to Turner's employer¹⁹ about Turner expressing views similar to those expressed by Messinger further made Messinger fear Messinger could lose his job. Further, McIntosh's written and verbal threats²⁰ that McIntosh would contact Messinger's employer, and McIntosh's repeated harsh public defamatory public statements denigrating Messinger's worth and performance as a police officer,²¹ all made Messinger fear loss of his employment if he continued expressing his views. The allegations of the Second Amended Complaint expressly and/or impliedly state these points, and Messinger should be able to proceed to discovery to obtain additional evidence to use at trial.

Similarly, "the First Amendment forbids government officials to discharge or threaten to discharge public employees solely for not being supporters of the political party in power, unless party affiliation is an appropriate requirement for the position involved." Rutan v. Republican

¹⁶ Second Amended Complaint at § 59.

¹⁷ Plaintiff Messinger's speech pertained to his disagreements with the manner of funding SROs for Dorchester School District Two and other actions by governments in Dorchester County, not regarding anything involving his employment by the Mt. Pleasant Police Department. See Second Amended Complaint at §§ 59-61. Thus, Messinger's speech was as a private citizen about a matter of public concern, and therefore was protected by the First Amendment. See, e.g., 2014 Handbook of Section 1983 Litigation, *supra* at 23.

¹⁸ Second Amended Complaint at § 61.

¹⁹ Second Amended Complaint at §§ 60,109,112.

²⁰ Second Amended Complaint at §§ 1,59-61,109,112.

²¹ Second Amended Complaint at §§ 59,61,109,112.

Party, 497 U.S. 62, 64 (1990). The First Amendment provides that protection to Messinger, who is a public employee as a police officer at the Mt. Pleasant police department.²²

Moreover, according to the Second Circuit Court of Appeals:

Where comments of a government official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request, a valid claim can be stated. Similarly, claimants who can demonstrate that the distribution of items containing protected speech has been deterred by official pronouncements might raise cognizable First Amendment issues.

Hammerhead Enters., Inc. v. Brezenoff, 707 F. 2d 33, 39 (2d Cir. 1983).

The Fourth Circuit has held that “[g]overnment action [is] sufficiently chilling when it is ‘likely [to] deter a person of ordinary firmness from the exercise of First Amendment rights.’” Benham v. City of Charlotte, 635 F.3d 129, 135 (4th Cir. 2011). This determination calls for an objective analysis, which “can be resolved as a matter of law.” Baltimore Sun v. Ehrlich, 437 F.3d 410, 416. Further, “[w]hat the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly.” Rutan, 497 U.S. at 77-78.

Messinger’s Constitutional Claims are based in part on intimidating and retaliatory actions by the Defendants to prevent future private speech and government protests by Messinger and to punish Messinger for his past private speech and protests that the Defendants disliked. They are based also on the coerced, involuntary removal of Messinger as the Administrator of a private website expressing Messinger’s private views; on involuntary counseling sessions with him by his employer; and on the Defendants’ repeated attempts to cause and threats to cause Messinger to lose his employment -- all caused by the Defendants.

²² Second Amended Complaint at § 61.

Allegations in the Second Amended Complaint state that Phinney, while an officer of and upon the instructions of his supervisors at the Dorchester County Sheriff's Department,²³ contacted the employer of Messinger²⁴ and the employer of Rowland Turner,²⁵ on separate occasions, and attempted to have their employments terminated because the Defendants disliked their speech.²⁶ Phinney complained by e-mail to the Director of the Department of Public Safety at the Medical University of South Carolina. Turner's employer, that Turner was the Administrator of the Facebook page for Concerned Citizens of Dorchester County where Phinney claimed Messinger made slanderous statements about Phinney and the Dorchester County Sheriff's Office.²⁷ Similarly, Phinney complained to the Chief of the Mt. Pleasant Police Department, Messinger's employer, that Messinger was the Administrator of the Facebook page for Concerned Citizens of Dorchester County where Phinney claimed Messinger made slanderous statements.²⁸ As a result, and as sought and desired by Phinney, Messinger was required to cease being the Administrator of that Facebook page and, thereby, to cease criticizing the Dorchester County Sheriff on that webpage, as a condition of his continued employment with the Mt. Pleasant Police Department.²⁹ Phinney knew or should have know that result would occur.

Further, as alleged in the Second Amended Complaint, McIntosh harrassed and instilled fear in Messinger by repeatedly threatening Messinger that McIntosh would interfere with Messinger's employment by contacting Messinger's employer, as had Phinney, to denigrate

²³ Second Amended Complaint at § 61.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Messinger and to complain about Messinger's statements and opposition to the Sherriff's SRO funding scheme.³⁰

Due Process Claims

A valid cause of action can be stated for violating the due process clause of the Fourteenth Amendments of the United States Constitution by interfering with a plaintiff's liberty or property, including employment and/or rendering a plaintiff virtually unemployable. See, e.g., Paul v. Davis, 424 U.S. 693, 705, 96 S.Ct. 1155, 1162, 47 L.Ed.2d 405 (1976)(stigmatization coupled with loss of legal status, including loss of employment, can be a deprivation of liberty for due process purposes).

McIntosh and Chinnis evidenced their malicious and vindictive motives and animus against Messinger with harsh and angry words denigrating Messinger's professional abilities that McIntosh published, gratuitously and unprovoked, and that Chinnis republished, on a Facebook website. McIntosh and Chinnis did not just express their views on issues. They publicly attacked and denigrated the professional qualifications and competence of Messinger. Phinney gratuitously volunteered defamatory statements about Messinger to Messinger's employer, the Chief of Police of Mt. Pleasant, SC, for the purpose and with the effect of getting Messinger removed as the administrator of a website expressing views disapproved by Phinney and his supervisors. Those defamatory words coupled by attempts to get Messinger's employment terminated and to get Messinger to fear termination of his employment (in part by publishing those defamatory words), as well as coupled with requiring Messinger to be involuntarily counseled by his employer and to cease being the Administrator of a website on which his speech was constitutionally protected, constitute a loss of liberty and property in violation of the

³⁰ Second Amended Complaint at §§ 59-61

due process clause of the Fourteenth Amendment of the United States Constitution and of Section 1983. Defamations allegedly resulting in exclusions from employment but not associated with termination have been upheld as actionable under Section 1983. See Larry v. Lawler, 605 F.2d 954 (7th Cir. 1978); Bone v. City of Lafayette, 763 F.2d 295 (7th Cir. 1985); Sudeikis v. Chicago Transit Authority, 774 F.2d 766, 771 (C.A. 7 (Ill.), 1985).

The Second Amended Complaint alleges that the Defendants' threats and personal attacks on Plaintiff Messinger were part of a pattern, a conspiracy and a continuation of past efforts by officials of Dorchester County, the Town and the Dorchester County Sheriff to discredit, defame, intimidate and interfere with the Constitutional rights and with the employment of Messinger and others who criticize or oppose their actions or policies.

These alleged facts, in combination, provide an ample basis for Messinger's Constitutional Claims not to be dismissed for violations of the First and Fourteenth Amendments of the United States Constitution, as well as of Article I, Section 2 of the South Carolina Constitution.

Eleventh Amendment Immunity

It is well established that "[m]unicipalities are not protected by the Eleventh Amendment," City of Oakland v. Federal Maritime Commission, 724 F.3d 224, 227 (D.C. Cir. 2013), and that "the Eleventh Amendment does not bar a § 1983 lawsuit against counties and municipalities." 2014 Handbook of Section 1983 Litigation, supra at 7-32, 7-33, § 7.02[D], citing Northern Insurance Company of New York v. Chatham County, 547 US. 189 (2006) (noting that only states and arms of the state possess Eleventh Amendment immunity from suits authorized by federal law; this immunity does not extend to counties); Pennhurst State School &

Hospital v. Halderman, 465 U.S. 89, 123 n. 34 (1984). See also Frazar v. Gilbert, 300 F.3d 530, 543 n. 67 (5th Cir. 2002) (cities do not enjoy Eleventh Amendment immunity).

Therefore, the Eleventh Amendment does not bar Messinger's Constitutional Claims against Dorchester County and the Town of Summerville; against Chinnis, who acted as an official of Dorchester County; and against McIntosh, who acted as an official of the Town of Summerville.

Concededly, the "Eleventh Amendment bars § 1983 lawsuits against a state, its agencies, and its officials sued in their official capacities for damages." 2014 Handbook of Section 1983 Litigation, supra at 7-35, § 7.02[D], citing Cady v. Arrowneck County, 574 F.3d 334, 342 (6th Cir. 2009) (emphasis added).³¹

However, the Eleventh Amendment generally does not bar a federal-court suit so long as it (1) seeks only declaratory and injunctive relief rather than monetary damages for alleged violations of federal law; and (2) is aimed at state officers acting in their official capacities, rather than against the state itself.

2014 Handbook of Section 1983 Litigation, supra at 7-36, § 7.02[D], citing Hill v. Kemp, 478 F.3d 1236, 1255 (10th Cir. 2007) (emphasis added).

Moreover, the Eleventh Amendment has not prevented federal suits against state officials in their *personal* capacities, since it is well-established that *personal* liability suits are not barred by the Eleventh Amendment. *Ex parte Young*, 209 US 123, 28 S.Ct 441, 52 LE 714 (1908); *Scheur v. Rhodes*, 416 US 232, 94 S.Ct 1683, 40 LE2d 90 (1974); *American Civil Liberties Union of Mississippi, Inc. v. Finch*, 678 F.2d 1336 (5th Cir. 1981).

As stated in Civil Actions Against State Government Its Divisions, Agencies and Officers (Shepard's/McGraw-Hill 1982):

³¹ "Units of government [e.g., counties and cities], however, are not entitled to sovereign immunity under the Eleventh Amendment. [*Id.* at 345]

When officials' conduct exceeds the sphere of their allocated power, or violates the constitutional rights of others, the officials will be stripped of their representative nature and, as a result, of the Eleventh Amendment shield. *Ex parte Young*, 209 US 123, 28 S.Ct 441, 52 LE 714 (1908) . . . [A]n action may be instituted against a state employee who is charged with depriving others of their constitutional rights which acting under color of state law. *Scheur v. Rhodes*, 416 US 232, 94 S.Ct 1683, 40 LE2d 90 (1974).

Id. at 197-198, § 4.35.

The Defendants contend that the Sheriff of Dorchester County is an agency of the State of South Carolina and, therefore, that the Eleventh Amendment bars Plaintiff Messinger's Constitutional Claims under § 1983 against the Sheriff of Dorchester County and against Lt. Phinney, the Sheriff's subordinate employee. However, as shown by the authorities cited above, although the Eleventh Amendment may bar Messinger's Constitutional Claims for damages against the Sheriff and Phinney in their official capacities, the Eleventh Amendment does not bar Messinger's § 1983 claims for damages against Phinney in his personal³² capacity and does not bar Messinger's § 1983 claims for declaratory and prospective injunctive relief against the Sheriff and Phinney in their official capacities.

Legislative Immunity

The United States Supreme Court has held that "municipal bodies sued under § 1983" for constitutional violations "cannot be entitled to . . . absolute immunity." *Monell v. DSS*, 436 U.S. 658, 701 (1978). Moreover, a municipality is not entitled to qualified immunity under section 1983 based upon the good faith of its officers or agents. See *Owen v. City of Independence*, 445 U.S. 622, 650 (1980) (concluding that because "a municipality has no 'discretion' to violate the Federal Constitution," review of a municipality's conduct under section 1983 does not interfere

³² Phinney is being sued in his personal and official capacities. See Second Amended Complaint.

with the municipality's policy discretion, which the immunity was accorded to preserve. *Id.* at 649, 100 S.Ct. at 1414).

The *Owen* Court surveyed the common law and found that there was "no [common law] tradition of [qualified] immunity for municipal corporations" based upon the good faith of their officers or agents. *Id.* at 638, 100 S.Ct. at 1409. It then considered whether Congress intended to import into section 1983 either of the municipal immunities that were recognized at common law. It concluded that Congress could not have intended either the common law municipal immunity for "governmental" (as distinguished from proprietary) activities or the immunity for "discretionary" or "legislative" (as distinguished from ministerial) activities to limit municipal liability under section 1983. See *id.* at 644-50, 100 S.Ct. at 1412-15.

According to the United States Supreme Court, in § 1983 actions for violations of constitutional rights, immunity "attaches to all acts taken 'in the sphere of legitimate legislative activity,' *Tenney [v. Brandhove.]*, 341 U.S. at 376, 71 S.Ct., at 788" and "[w]hether an act is legislative turns on the nature of the act itself, rather than on the motive or intent of the official performing it. *Id.*, at 370, 377, 71 S.Ct., at 785, 788-89." *Bogan v. Scott-Harris*, 523 U.S. 44, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998)(emphasis added). The United States Supreme Court has recognized that the applicability of immunity in a Section 1983 action depends on the answer "to the question whether from the pleadings it appears that the defendants were acting in the sphere of legitimate legislative activity;" that "[l]egislatures may not of course acquire power by an unwarranted extension of privilege;" and that the Supreme Court "has not hesitated to sustain the rights of private individuals when it found Congress was acting outside its legislative role. *Tenney*, 341 U.S. at 376-77 (emphasis added).

In Bogan, the United States Supreme Court ruled that a city's Mayor and other officials had immunity from civil liability for their conduct in introducing, voting for and signing an ordinance to eliminate a plaintiff's office, despite the fact that the elimination was found by a jury to be racially motivated, because the nature of the actions to introduce, vote for and sign an ordinance was by definition "legitimate legislative activity."

In contrast, however, the actions by Phinney, McIntosh, Chinnis, Dorchester County, the Dorchester County Sheriff and the Town of Summerville that are the gravamen of Messinger's § 1983 action against them for violating his constitutional rights are not legitimately legislative in nature. There is nothing legitimately "legislative" about those Defendants contacting the employers of Messinger and Turner to attempt to get Messinger's and Turner's employments terminated. There is nothing legitimately "legislative" about Phinney contacting Messinger's employer causing Messinger to be removed as administrator of a website where Messinger had been expressing his protected private political speech. There is nothing legitimately "legislative" about McIntosh threatening Messinger that McIntosh might provide derogatory information about Messinger to Messinger's employer, thereby jeopardizing Messinger's continued employment. Further, there is nothing legitimately "legislative" about Phinney, McIntosh and Chinnis publicly discrediting and attacking Messinger personally and professionally on Facebook in retaliation for Messinger's expressed views and petitions for redress to his local governments, instead of commenting solely on the merits of issues.

For all of these reasons, the nature of the actions by the Defendants complained about by Plaintiff Messinger is not "legitimate legislative activity" and, therefore, those Defendants do not have legislative immunity preventing them from being held accountable under § 1983 for violations of Messinger's constitutional rights.

SC Tort Claims Act

The South Carolina Tort Claims Act "grant[s] the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b) (Supp.1997)(emphasis added). Section 15-78-70(b) of the South Carolina Tort Claims Act provides:

Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

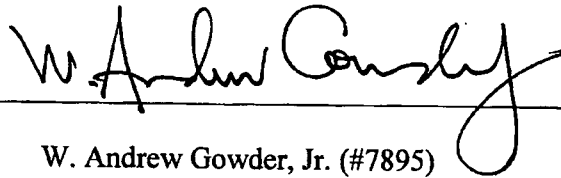
See O'Laughlin v. Windham, 330 S.C. 379, 383, 498 S.E.2d 689, 673 (S.C. App., 1998)(emphasis added).

The allegations in the Second Amended Complaint allege facts that support the conclusion that Defendants Phinney, McIntosh and Chinnis were acting outside the scope of their duties, with actual malice and with intent to harm when they contacted Messinger's and Turner's employer, threatened to contact Messinger's employer, caused Messinger to be removed as administrator of a website advocating private political speech, published defamatory words attacking Messinger personally, and engaged in other alleged activities for the purpose and with the effect of harming and deterring the free speech of Messinger.

CONCLUSION

This Court has jurisdiction to decide this case. It is not a tax collection appeal requiring decision by the Administrative Law Court, but is a challenge to Dorchester County's practice of funding SROs using property taxes on owner occupied homes in violation of Act 388. Messinger has stated valid causes of action under the state and federal constitutions and Section 1983 in the complaint. All Motions to Dismiss should be denied.

By:



W. Andrew Gowder, Jr. (#7895)
AUSTEN & GOWDER, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-2229
andy@austengowder.com

Michael T. Rose, Esquire (#4910)
MIKE ROSE LAW FIRM, PC
406 Central Ave.
Summerville, SC 29483
Phone: 843-871-1821
Facsimile: 843-478-7595
mrose5@sc.rr.com

ATTORNEYS FOR PLAINTIFFS

December 11, 2017
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801414

James Stephen Greene Jr David Messinger Dorchester County Taxpayers Association	George Resnick Gerald E Ziegler South Carolina Public Interest Foundation	Dorchester County John or Jane Does 1-100	Dorchester County Council

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or ☐ Other: _____
modify arbitration award;
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Carmen T. Mullen
Circuit Court Judge

2142
Judge Code

6/26/2017
Date

FILED-RECORDED

12-12-17
Cheryl Graham
Clerk of Court
Dorchester County

For Clerk of Court Office Use Only

This judgment was entered on 6/26/2017, and a copy mailed first class or placed in the appropriate attorney's box on 6/26/2017, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. 1629 Meeting Street Suite A
Charleston, SC 29405
Michael T. Rose 409 Central Ave. Summerville, SC 29483

Drew Hamilton Butler 171 Church Street, Suite 150
Charleston, SC 29401
Anthony E. Rebollo PO Box 7788 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

James Stephen Greene, Jr.; George Resnick;
William A Harbeson; Gerard E. Ziegler;
David Messinger; South Carolina Public
Interest Foundation; and Dorchester County
Taxpayers Association, individually, and
behalf of all others similarly situated,

Plaintiffs,

v.

Dorchester County; Dorchester County
Council; Charles D. Chinnis, George H.
Bailey, Sr., Jay Byars, Willie R. Davis,
Carroll S. Duncan, Larry Hargett and
William R. Hearn, Jr., personally and in their
official capacities as members of Dorchester
County Council; John or Jane Does 1-100,
personally and in their official capacities.

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2016-CP-18-1414

**ORDER DENYING
DEFENDANTS' MOTION TO DISMISS**

2017 JUN 26 AM 10:34
CERTIFIED COPY
Clayton B. Hearn
CLERK OF COURT
DORCHESTER COUNTY

FACTUAL BACKGROUND

This case arises out of the Plaintiffs' challenge to Dorchester County Council's practice of making cash payments to certain Council members when those officials opt out of participating in the state's health insurance system. Defendants, Dorchester County, Dorchester County Council and individual Council members (hereinafter, collectively, the "County"), filed this Motion to Dismiss primarily based upon the exclusive jurisdiction of the Revenue Procedures Act ("RPA") over tax collection challenges. The County argues that the RPA provides a "straightforward procedure to determine... a dispute concerning property taxes," and that the RPA is "the sole and

specific remedy for deciding tax disputes involving the illegal or wrongful collection of taxes....”

See S. C. Code Sec. 12-60-80. (“There is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.”)

The County’s Motion to Dismiss is denied. Plaintiffs have stated claims for which relief can be granted. The Plaintiffs’ case does not challenge the collection of taxes. Rather, it challenges the expenditure of public funds, specifically a practice of paying public officials beyond their salaries set by ordinance. The only possible connection to the collection of taxes in this case is that public funds, raised by the collection of taxes, are being used to pay these officials. Neither the manner nor the amount of taxes collected is being challenged in this case, nor is any Plaintiff seeking a refund of their taxes paid. Rather, Plaintiffs seek to have public officials cease spending and receiving the funds allegedly in violation of state law, and that those who received funds allegedly in violation of state law, return those funds to the public coffers. If the Defendants’ arguments are correct, no challenge to a state or local government’s action may be brought in Circuit Court if that challenge involves the expenditure of public funds. That is not what the RPA states, what the exclusive remedy provision for deciding tax disputes is meant to provide, nor is it consistent with the precedents set by numerous decisions of our appellate courts.

LEGAL STANDARD

In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The Court must deny a motion to dismiss under Rule 12(b)(6) if “‘facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.’” Id.; Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (“The 12(b)(6) motion may not be sustained if the facts alleged and inferences

therefrom would entitle the plaintiff to any relief on any theory.”). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* “Pleadings in a case should be construed liberally so that substantial justice is done between the parties.” Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Plyler, 373 S.C. at 645, 647 S.E.2d at 192.

ANALYSIS

This Order encompasses all outstanding motions and addresses each one in turn as follows:

Defendants' Motion to Dismiss

Defendants argue the RPA preempts every challenge to state or local government action involving the expenditure of public funds. However, if so, the Administrative Law Court’s exclusive jurisdiction would expand well beyond what the legislature intended when it assigned the adjudication of tax dispute appeals to that Court. Additionally, such jurisdiction is beyond the precedents of South Carolina courts and is clearly not what is meant by the provisions of the RPA. Therefore, Defendants’ Motion to Dismiss on those grounds is denied.

Defendants also argue that the Complaint is not supportable on its facts as it lacks allegations in support of the statutory provision prohibiting extra compensation after services are rendered as well as the timing of payments to Council members. However, the Complaint alleges these payments are cash in lieu of payments toward health insurance premiums and are not part of their normal compensation. Compl. ¶¶ 39-40, 44-45, 49-50 and Exhibits 2, 7 & 10 thereto. Further, the frequency and amounts of the payments are alleged in the text of the Complaint and listed in

Exhibits 1, 6 & 9 to the complaint. Plaintiffs' allegations do state causes of action entitling them to relief, if proved, and are therefore not subject to dismissal.

Defendants also argue the Complaint should be dismissed on the basis of legislative immunity. Here, Plaintiffs are not seeking to hold Council members, or the County, liable for their actions as Council members based on tortious negligence or breach of duty. Such claims in tort may be barred by legislative immunity as Defendants argue. To the contrary, the Plaintiffs are seeking the repayment of payments allegedly made illegally by Council and therefore, through *ultra vires* acts. South Carolina law does impose liability on legislators who authorize *ultra vires* payments of public funds in the amount of those payments made. Moreover, any member of the County Council or employee of the County who causes payment to a party pursuant to an illegal action would be personally liable to repay the County monies unlawfully paid pursuant to that illegal action. As a result, a request for repayment by recipients of illegal payments made to and from the Council members does not abridge legislative immunity. As a result, the causes of action requesting such relief are not barred by law and Defendants' Motion to Dismiss on this basis is denied.

Plaintiff's Motion to Amend

The Seventh and Eighth Causes of Action in the subject Complaint using the terms "unjust enrichment" seek the return of the unauthorized and illegal payments by the recipients and the Council members authorizing them, as described above. Plaintiffs, as taxpayers, have the requisite standing to request the relief sought. Plaintiffs recognize this case is not one involving quasi-contract and the term "unjust enrichment" was improper to describe this request for relief. As such, Plaintiffs seek to amend these causes of action by restating the relief sought as one consisting of restitution or repayment of any funds illegally spent by the Council and received by the Council

members. That motion to amend is granted and Plaintiffs shall amend the Seventh and Eighth Causes of Action within 30 days of this Order.

Plaintiffs also assert in their complaint that certain payments made to the Council Members must be reported on their SEI forms as alleged in the complaint. Plaintiffs' counsel represented to the Court at the hearing that these allegations within the Complaint have since been decided by the State Ethics Commission. As a result, Plaintiffs have withdrawn their corresponding requests for relief in this action under the State Ethics Act. The Plaintiffs' motion to voluntarily withdraw their request for relief under the State Ethics Act is granted without prejudice.

Demand for Jury Trial

Lastly, Plaintiffs have withdrawn their request for a jury trial. Accordingly, this case will proceed as a nonjury matter.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is denied. The Plaintiffs' Motions to Amend its Seventh and Eighth Causes of Action and voluntarily dismiss its request for relief based on the State Ethics Act is granted. Finally, as Plaintiffs have withdrawn their request for a jury trial and this matter will proceed as a nonjury matter.

IT IS SO ORDERED.



Carmen T. Mullen, Presiding Judge
First Judicial Circuit

St. George, S.C.
June 21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiff(s)

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS BY DEFENDANTS
✓ DORCHESTER COUNTY SCHOOL
DISTRICT FOUR AND DORCHESTER
COUNTY SCHOOL DISTRICT FOUR
BOARD**

FILED-RECORDED
2017 DEC 11 PM 1:41
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

Defendants Dorchester County School District Four and Dorchester County School District Four Board (hereinafter "District 4 Defendants"), by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion to Dismiss in the

above-captioned action. The grounds for this Motion are that this Court lacks subject matter jurisdiction over Plaintiffs' tax-based claims and that Plaintiffs have failed to state facts sufficient to constitute a cause of action against District 4 Defendants. In support of this Motion, District 4 Defendants join the arguments presented in the Motion to Dismiss filed by Co-Defendants Dorchester County Council, et al., on January 23, 2017, but with the exceptions noted as to the issues concerning Act 388 and double taxation set forth herein.

FACTUAL BACKGROUND

Dorchester County School District Four ("District") is a public school district located in Dorchester County, South Carolina, organized and existing under the laws of South Carolina. The Dorchester County School District Four Board ("Board") is the governing body of the District.

As alleged by Plaintiffs, District 4 Defendants, on or about July 29, 2015, entered into an agreement with Dorchester County authorizing and requiring Dorchester County to appropriate, requiring Dorchester County to bill District 4 Defendants, and requiring District 4 Defendants to reimburse Dorchester County \$120,000.00 for School Resource Officers ("SROs") serving at District 4 Defendants' schools during FY 2015-17. Pls. Sec. Am. Compl., ¶ 70. Plaintiffs further contend that the funds to be reimbursed by Defendants are not designated as capital expenses and are for the purpose of paying SRO salaries. Id. Plaintiffs assert that under this contract, Defendants are "required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff." Pls. Sec. Am. Compl., ¶ 71.

Pursuant to Page 50 of the Dorchester County Budget Ordinance for Fiscal Year 2015-16, referenced in Paragraph 68 of the Second Amended Complaint as Ordinance 15-14, this payment

from District 4 Defendants to the County is listed as a line item under the category “Charges for Services.”¹ On Page 49 of the Budget Ordinance, a separate category called “Taxes” is listed and includes a separate line item for “Current – Real Estate Taxes.” The amendment to the Budget Ordinance included as Exhibit 7 to the Seconded Amended Complaint does nothing to alter the revenue source for the payment from District 4 Defendants.

Plaintiffs allege that the County has violated Act 388, which exempts owner-occupied residential property from taxation for school operating purposes, by spending “taxes on ‘owner-occupied residential property’ ‘for school operating purposes’ to finance police protection and other services” in District 4 Defendants’ schools. Pls. Sec. Am. Compl., ¶ 81. Further, Plaintiffs rely upon this allegation to assert that the County and District 4 Defendants taxed their exempt property twice, stating that “Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County.” Pls. Sec. Am. Compl., ¶ 82. Based on this premise, Plaintiffs allege that property owners living in the Town of Summerville or Dorchester County are being taxed in violation of Act 388 and have been subject to double taxation, with one of the taxes being imposed by District 4 Defendants. Pls. Sec. Am. Compl., ¶¶ 82 – 83.

Plaintiffs’ Second Amended Complaint, filed on December 12, 2016, asserts claims of violations of State law concerning the taxation of owner-occupied residences and double taxation against District 4 Defendants. On January 23, 2017, District 4 Defendants filed their Answer to

¹ The Dorchester County Budget Ordinance for Fiscal Year 2015-16 is attached as Exhibit A. Pursuant to Rule 201 of the South Carolina Rules of Evidence, the District 4 Defendants request that the Court take judicial notice of the Dorchester County Budget Ordinance for Fiscal Year 2015-16 as this ordinance, and the information contained therein, constitutes “common knowledge that it is accepted by the general public without qualification or contention,” and “its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” Bowers v. Bowers, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct. App. 2002).

Plaintiffs' Second Amended Complaint, denying Plaintiffs' allegations, and asserting that this Court lacks subject matter jurisdiction over Plaintiffs' claims and that Plaintiffs fail to state facts sufficient to constitute a cause of action.

STANDARD OF REVIEW

Whether this Court has subject matter jurisdiction over a matter is a question of law. See, e.g., Berry v. S.C. Dep't of Health & Envtl. Control, 402 S.C. 358, 363, 742 S.E.2d 2, 4 (2013).

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, this Court "should consider only the allegations set forth on the face of the plaintiff's complaint." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). Under Rule 12(b)(6), this Court should dismiss the complaint "if the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff," would not entitle the plaintiff to relief on any theory. McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 190-91, 743 S.E.2d 843, 846 (Ct. App. 2013).

ARGUMENT

1. PLAINTIFFS' TAX-BASED CLAIMS SHOULD BE DISMISSED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION.

District 4 Defendants incorporate by reference the arguments with regard to lack of subject matter jurisdiction raised in the Motion to Dismiss filed by Co-Defendants Dorchester County Council, et al., on January 23, 2017, but with the exceptions noted as to the issues concerning Act 388 and double taxation set forth herein.

2. PLAINTIFFS' TAX-BASED CLAIMS BASED ON ACT 388 SHOULD BE DISMISSED BECAUSE PLAINTIFFS HAVE FAILED TO STATE A CAUSE OF ACTION AGAINST District 4 DEFENDANTS.

District 4 Defendants incorporate by reference the arguments regarding the alleged violations of Act 388 by the County, Town, and School Defendants in this matter raised in the

Motion to Dismiss filed by Co-Defendants Dorchester County Council, et al., on January 23, 2017. In addition, District 4 Defendant offers the additional arguments provided below as additional grounds for dismissing the Act 388 cause of action.

- a. **As a matter of law Act 388 does not prohibit the use of revenues generated from other sources, excluding owner-occupied residential property, for school operating purposes, including the funding of the SRO agreements.**

Even if the Court accepts Plaintiffs' argument that the funding of SROs is a school operating purpose, Act 388 does not prohibit the funding of SRO's by District 4 Defendants from sources other than owner-occupied residential property. Pursuant to Act 388:

[O]ne hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

S.C. Code Ann. § 12-37-220(B)(47)(a). To reimburse school districts for the amounts exempt under Act 388, the State collects an additional one percent sales tax which it credits to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to -1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts for the tax revenue lost as a result of the owner-occupied residential property exemption set forth in Act 388. S.C. Code Ann. § 11-11-156(A)(1). Specifically, the reimbursement to the school district "consists of an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed by the district on owner-occupied residential property for that fiscal year as if no reimbursed exemptions applied." Id.

In the present case, despite Plaintiffs' allegations, District 4 Defendants cannot and have not funded the SRO agreements with revenue collected by the County from exempt owner-occupied residential property. On the face of the Budget Ordinance, the SRO payments from

District 4 Defendants are identified under “Charges for Services” rather than “Current – Real Estate Taxes.” Under the exemption-reimbursement funding mechanism set forth above, the State reimburses District 4 Defendants in an amount equal to the revenue that would have been collected from the tax-exempt property. District 4 Defendants in turn apply that reimbursement to fund the SRO agreements. Therefore, because the alleged expenditures do not violate Act 388 as a matter of law, dismissal of Plaintiffs’ claims as to Act 388 is appropriate in this matter.

b. Defendants lack taxing authority, and, therefore are not subject to Act 388.

To the extent that any revenue raised pursuant to Act 388 is used for school operating purposes, District 4 Defendants cannot be held liable for any violations of Act 388, because District 4 Defendants are not taxing authorities subject to Act 388.

Pursuant to S.C. Code Ann. § 59-73-20, some school districts have the authority to impose a tax for school purposes. This section was last amended in 1962. However, the District was created by legislation consolidating Dorchester County School Districts One and Three in 1986. That legislation, Act 536 of 1986, Part I, Section 4, states in relevant part that the “Executive Committee of Dorchester County School District No. 4 shall promptly prepare and submit to the appropriate taxing authority a budget for the ensuing year.” A plain reading of this language establishes that the legislation creating the District explicitly withholds the taxing authority granted to other school districts under S.C. Code Ann. § 59-73-20.

The District’s policies reflect that District 4 Defendants do not have taxing authority. District Policy DC provides “[e]ach school district’s taxing authority is established by state law. In Dorchester County, that authority is vested in Dorchester County Council within statutory limitations.”

In the present case, Plaintiffs allege that District 4 Defendants have violated Act 388, because the arrangement assigning SROs to District 4 Defendants' schools requires the expenditure of tax revenue from exempt property for school operating purposes. Pls. Sec. Am. Compl., ¶¶ 80, 81. Act 388 creates specific exemptions from the ad valorem taxation of specified property, including designated owner-occupied residential property. Because Act 388 is not a general prohibition against the expenditure of tax revenue but the actual imposition of a specific tax, Act 388 does not apply to entities, like District 4 Defendants, which do not have the authority to impose a tax as a matter of law. Therefore, Plaintiffs are not entitled to relief on their Act 388 claims as a matter of law, and this Court should dismiss this claim against District 4 Defendants with prejudice.

3. PLAINTIFFS' CLAIM FOR RELIEF BASED ON DOUBLE TAXATION SHOULD BE DISMISSED BECAUSE DISTRICT 4 DEFENDANTS DID NOT AND CANNOT IMPOSE A TAX AS ALLEGED BY PLAINTIFFS.

a. District 4 Defendants do not have the authority to impose a tax.

Double taxation does not occur unless there is "an identity of taxing authority, taxing period, taxing purpose, and person and property taxed." Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 369, 223 S.E.2d 592, 596 (1976). Pursuant to S.C. Const. Ann. Art. X, § 6, "the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including . . . school districts." However, the grant of taxing authority is permissive, and the South Carolina Constitution does not require the General Assembly to vest taxing authority in each school district.

The legislation creating District 4 Defendants as a school district withheld fiscal autonomy, including taxing authority, rendering District 4 Defendants dependent upon their local and State governments for raising revenue. Act 536 of 1986, Part I, Section 4. Moreover, District

4 Defendants have memorialized this limitation in their policies by explicitly providing that the County and not District 4 Defendants hold the authority to impose taxes for the maintenance and support of the school program.

In the present case, District 4 Defendants do not have the authority to impose a tax as a matter of law. Because District 4 Defendants cannot impose a tax, Plaintiffs' claim that the SRO program constitutes double taxation fails as a matter of law.

b. To the extent that District 4 Defendants are able to impose a tax, Plaintiffs fail to allege that Defendants imposed a tax in accordance with State law.

To the extent that this Court finds that District 4 Defendants have the authority to impose a tax, Plaintiffs fail to assert sufficient facts showing that District 4 Defendants exercised such authority here. S.C. Code Ann. § 59-73-10, *et seq.*, sets forth a comprehensive public referendum process where "at least one third of the resident electors and a like proportion of the resident freeholders of the age of twenty-one years" file a written petition with the County Board of Education requesting that the school district impose a tax. S.C. Code Ann. § 59-73-40. The County Board will then "order the board of trustees of such school district to hold an election at some place within the district" after giving the prescribed notice. *Id.* Plaintiffs' Complaint makes no allegations as to this public referendum process taking place. Because Plaintiffs fail to assert sufficient facts showing that District 4 Defendants followed the necessary process to impose a tax in accordance with State law, Plaintiffs' double taxation claim should be dismissed.

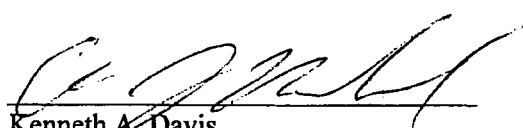
Accordingly, Plaintiffs fail to state facts sufficient to constitute a cause of action for double taxation, and this claim should be dismissed as a matter of law.

CONCLUSION

For the reasons stated above, District 4 Defendants respectfully request that this Court dismiss with prejudice Plaintiff's Second Amended Complaint against District 4 Defendants in accordance with Rule 12(b)(1) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: 

Kenneth A. Davis
Christopher S. Elliot
Adam J. Mandell

P.O. Box 11844
Columbia, South Carolina 29211
Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Defendants Dorchester County
School District Four & Dorchester County
School District Four Board

December 7, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

CERTIFICATE OF SERVICE

FILED-RECORDED
2017 DEC 11 PM 1:41
CHERYL GRAYSON
CLERK OF COURT
DORCHESTER COUNTY

The undersigned of Boykin & Davis, LLC, hereby certifies that she has served the following counsel of record with the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS DORCHESTER COUNTY SCHOOL DISTRICT FOUR AND DORCHESTER COUNTY SCHOOL DISTRICT FOUR BOARD,**

in the above-captioned action by mailing a copy of the same, postage prepaid and return address clearly indicated, to the following on this 7th day of December 2017:

W. Andrew Gowder, Jr., Esq.
Pratt-Thomas Walker, P.A.
P. O. Drawer 22247
Charleston, South Carolina 29413-2247

Michael T. Rose, Esq.
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, South Carolina 29483

David L. Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212

Drew Hamilton Butler, Esq.
Anthony E. Rebollo, Esq.
Richardson, Plowden, Carpenter & Robinson, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202

Erik P. Doerring, Esq.
McNair Law firm, P.A.
P.O. Box 11390
Columbia, SC 29211

William H. Davidson, Esq.
Davidson & Lindemann PA
P.O. Box 8568
Columbia, SC 29202

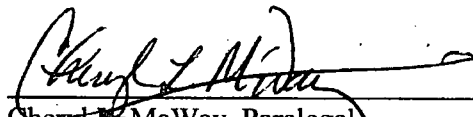
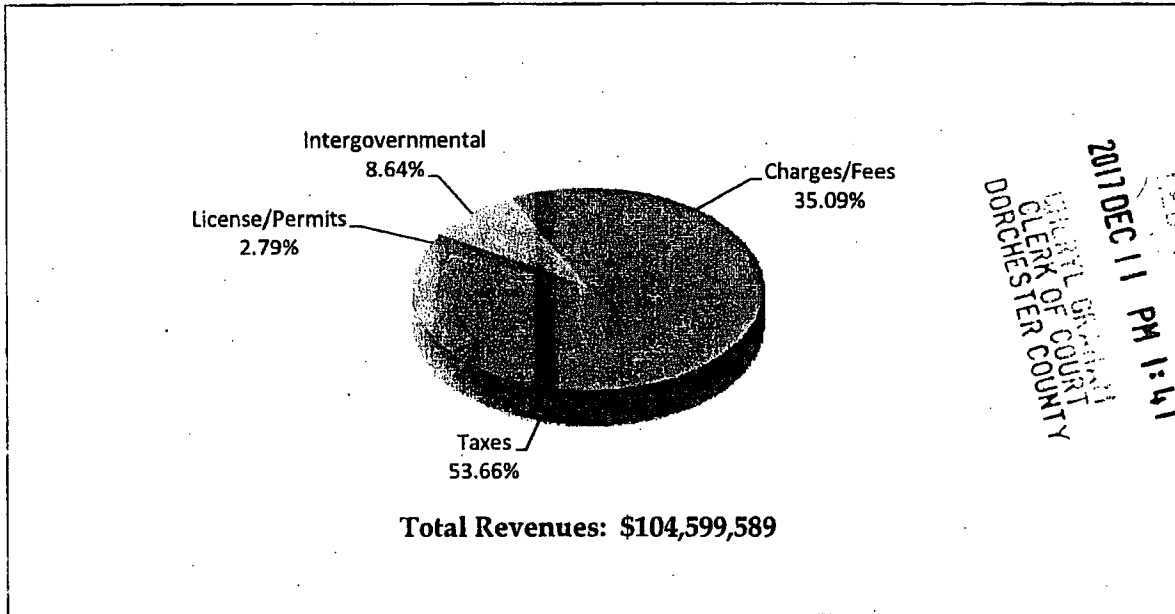

Cheryl E. McWay, Paralegal

EXHIBIT A

FILED-RECORDED
2017 DEC 11 PM 1:41
JUDICIAL BRANCH
CLERK OF COURT
DORCHESTER COUNTY

REVENUES BY SOURCE FY 2016 All Funds

Throughout the budget document, the revenues are presented in several different ways: by Source; by Fund Type; and by Department. Each format shows the \$119,662,827 in revenues, but each format organizes the revenues by different categories. The County's Revenues are presented below by Source. The County's Revenues are presented by Fund Type and Organization on pages 49-52.



Source	FY 2013 Actual	FY 2014 Actual	FY 2015 Budget	FY 2016 Approved	Change
Taxes	\$ 51,462,414	\$ 53,769,683	\$ 51,730,650	\$ 55,029,907	\$ 3,299,257
Licenses & Permits	2,304,660	1,969,602	2,321,750	2,856,800	535,050
Intergovernmental	17,247,920	12,249,690	8,490,598	8,857,544	366,946
Charges & Fees	37,096,902	35,824,839	35,411,062	35,813,531	402,469
Fines	654,020	2,241,581	681,671	1,809,678	1,128,007
Interest	6,619,507	4,630,996	263,145	174,529	(88,616)
Rents & Royalties	2,068,582	1,244,078	-	-	-
Miscellaneous	80,600,804	4,988,340	1,765,002	57,600	(1,707,402)
Total Revenues	\$ 198,054,809	\$ 116,918,809	\$ 100,663,878	* \$ 104,599,589	\$ 3,935,711

Reconciliation

between statements: *	\$ 104,599,589	Total Revenues by Source	
	15,063,238	Interfund transfers	
	<u>\$ 119,662,827</u>	Total Revenues by Fund Type & Department	
		see explanation on page 49	

Dorchester County, South Carolina
All Funds Revenues by Fund Type and Department

	FY 2013 ACTUAL	FY 2014 ACTUAL	FY 2015 BUDGET	FY 2016 APPROVED
GENERAL FUND				
TAXES				
Current - Motor Vehicle Taxes	\$ 2,684,129	\$ 2,962,231	\$ 2,943,714	\$ 3,165,384
Current - Real Estate Taxes	20,313,642	20,648,769	20,843,027	23,536,278
Current - Rollback Taxes	71,508	24,970	-	-
Advance Mobile Home Taxes	1,971	2,315	-	2,500
Fee-in-Lieu of Taxes	798,605	814,614	668,494	800,000
Homestead Reimbursement	741,653	781,158	741,653	741,653
Manufacturing Exempt	174,752	190,035	140,102	140,102
TMA Audit Tax	26,098	-	-	-
Motor Carrier FILOT	39,226	41,984	36,379	36,379
Merchants Inventory Tax	67,841	67,841	67,840	67,840
Delinquent - Real Estate Taxes	1,386,602	994,926	1,070,420	990,000
Delinquent - Excess Land Sale	454,041	869,262	211,838	75,000
Delinquent - TMA Audit Tax	111,503	120,354	-	-
Delinquent - Vehicle Taxes	-	19	-	-
Delinquent - Fee-in-Lieu of Taxes	118,199	31,962	25,000	30,000
Subtotal	26,989,770	27,550,440	26,748,467	29,585,136
LICENSES AND PERMITS				
Assessor - Mobile Home Licenses	\$ 2,310	\$ 2,860	\$ 2,250	\$ 2,500
Building Services - Building Permits	1,028,004	988,310	1,000,000	1,479,300
Cable TV Franchises	367,059	327,164	310,000	325,000
Codes Enforcement - Business Licenses	648,368	655,580	683,000	710,000
Probate Judge - Marriage Licenses	14,213	13,564	16,500	15,000
Subtotal	2,059,954	1,987,478	2,011,750	2,531,800
INTERGOVERNMENTAL				
Accommodations Tax	\$ 27,538	\$ 28,006	\$ 28,000	\$ 29,000
Clerk of Court - State Supplement	1,575	1,575	1,575	1,575
Coroner - Supplement	1,575	1,575	1,575	1,575
DSS/Federal Financial Participation	85,782	83,936	75,000	80,000
Family Court - Unit Cost Process	8,448	8,399	8,832	10,000
Family Court - Unit Cost Reimb	210,023	-	-	-
Elections Commission - Supplement	215,122	62,125	122,562	94,773
Emergency Management	1,252	994	-	-
Probate Judge - Supplement	1,575	1,575	1,575	1,575
ROD - Supplement	1,575	1,575	1,575	1,575
Sheriff - Supplement	1,575	1,575	1,576	1,576
State - Local Government Fund	5,023,254	5,044,293	5,159,218	5,159,218
Veterans Affairs - Supplement	4,467	-	-	-
Subtotal	5,583,761	5,235,628	5,401,488	5,380,867
CHARGES FOR SERVICES				
Assessor - Moving Permit Fees	\$ 9,225	\$ 11,975	\$ 9,250	\$ 10,000
Assessor - School Dist #2 SRO	30,000	-	30,000	30,000
Clerk of Court - County Fees 5%	2,776	3,389	3,180	2,900
Clerk of Court - Criminal Expungements	4,025	4,655	4,158	4,000
Clerk of Court - Filing Fees	73,993	79,556	67,427	70,000
Clerk of Court - Professional Bond Fees	880	560	880	560
Clerk of Court - Judgment and Misc	21,073	22,038	20,364	22,500
Codes Enforcement - Salary Reimbursement	12,662	4,560	10,000	5,000
Delinquent Taxes - Research Fee	167,610	196,485	150,000	198,000
Delinquent Taxes - Tax Fee	232,127	217,486	219,000	220,000
EMS - Fees	3,777,528	3,787,132	3,900,000	4,070,000

Dorchester County, South Carolina
All Funds Revenues by Fund Type and Department

	FY 2013 ACTUAL	FY 2014 ACTUAL	FY 2015 BUDGET	FY 2016 APPROVED
Family Court - Copy Charges	5,830	6,555	7,296	5,664
Family Court - County Fees 3%	260,721	287,749	261,672	274,668
Family Court - Court Costs	11,052	10,828	11,292	10,356
Family Court - Filing Fees	60,989	66,308	66,648	65,040
Family Court - Criminal Expungements	35	70	-	-
Health Dept. - Vital Statistics Fee	25,679	-	-	-
Magistrates' Courts - Civil Fines	328,779	336,289	378,000	333,000
Master-in-Equity - Fees	427,273	454,124	480,000	486,000
Planning - Fees	36,391	109,682	90,000	90,000
Planning - MWV Development Agreement	-	-	100,000	100,000
Planning - Sale of Maps & Publications	167	-	-	-
Probate Judge - Wedding Ceremonies	475	2,535	1,500	-
Probate Judge - Contract Fees	-	-	-	10,000
Probate Judge - Copy Charges	9,536	12,247	10,000	12,000
Probate Judge - Fees	140,835	194,289	145,000	160,000
Probate Judge - Maps and Publications	-	-	2,500	-
ROD - Bad Check Fees	90	140	90	90
ROD - Copy Charges	58,526	54,351	56,500	45,000
ROD - County Stamp	639,195	728,563	633,000	750,000
ROD - Documentary Stamps 3% Fees	45,325	51,662	48,000	52,000
ROD - Federal Tax Lien	3,000	2,210	1,700	1,800
ROD - Real Estate Recording Fee	315,881	279,223	290,000	290,000
ROD - SC Tax Lien	41,720	38,396	35,000	38,000
ROD - UCC Recording Fee	1,808	1,604	1,250	1,500
Sheriff - DD2 School Security	74,575	167,001	154,805	162,000
Sheriff - False Alarm Fees	200	1,050	400	1,200
Sheriff - Fees	22,769	24,244	21,600	22,548
Sheriff - SCAAP Program	4,411	5,271	5,800	4,320
Sheriff - School Dist # 4 SRO	41,000	64,258	64,258	120,000
Sheriff - School Dist # 2 SRO	120,000	-	301,340	-
Sheriff - Career School SRO	26,959	51,814	51,814	60,000
Sheriff - US Marshall Housing Prisoners	30,861	8,615	25,848	8,616
Sheriff - USAF-Housing Prisoners	-	5,738	-	-
Solicitor - Traffic Education Program	603	1,130	-	-
Treasurer - Copy Charges	-	-	-	300
Treasurer - Decal/Regis Issuance Fee	94,159	96,421	95,004	96,600
Treasurer - Temporary Tag Fee	1,375	1,150	1,380	1,200
Treasurer - Bad Check Fee	-	37,726	-	5,000
Treasurer - North Chas STWMF Fees 5%	-	-	20,631	20,631
Treasurer - Summerville Solid Waste 2%	23,303	-	24,859	24,859
Subtotal	7,185,421	7,429,079	7,801,446	7,885,352
FINES				
Clerk of Court - Bond forfeits	\$ 13,408	\$ -	\$ -	\$ -
Clerk of Court - Fines	3,654	7,062	7,087	4,500
Family Court - Fines	-	280	-	280
Magistrate - Fines	532,681	552,222	565,000	1,663,602
Pollution Control Fines	-	2,800	3,700	2,000
Subtotal	549,743	562,364	575,787	1,670,382
INTEREST REVENUES				
Treasurer - Interest Income	\$ 33,015	\$ 26,090	\$ 33,300	\$ 20,496
Department Interest Income	19,989	95	80	80
Subtotal	53,004	26,185	33,380	20,576

Dorchester County, South Carolina
All Funds Revenues by Fund Type and Department

	FY 2013 ACTUAL	FY 2014 ACTUAL	FY 2015 BUDGET	FY 2016 APPROVED
RENTS AND ROYALTIES				
Airport Ops - Summerville FBO Rent	\$ 2,087	\$ 3,257	\$ 3,250	\$ 3,250
Airport Ops - S'ville Hangar Lease	1,315	2,800	2,800	2,800
Nextel Site Lease	4,831	3,308	4,872	-
Road Maintenance - Contrib Capital - County	75,317	12,825	-	-
Clemson Extension Internet Lease	-	2,000	2,000	2,000
EMS - Health Fair	4,500	2,200	1,150	3,000
EMS - Santa's Ambulance Christmas	650	205	200	850
Subtotal	88,700	26,595	14,272	11,900
MISCELLANEOUS				
Assessor - Sale of Maps & Publications	\$ 8,166	\$ 10,136	\$ 6,500	\$ 9,000
Facilities & Grounds Maint - Sale of Scrap Metal	67	273	-	-
Fleet Services - Sale of Scrap Metal	423	-	-	-
Fleet Services - Sales of Recycling Oil	285	-	-	-
Road Maintenance - Sales of Pipe	17,785	2,040	-	-
Miscellaneous Revenues	11,772	37,247	10,550	11,100
Subtotal	38,498	49,696	17,050	20,100
OTHER FINANCING SOURCES				
Other Cost Reimbursement	\$ -	\$ -	\$ -	\$ -
Transfers from other Funds	1,681,672	1,835,683	1,660,467	1,798,415
Subtotal	1,681,672	1,835,683	1,660,467	1,798,415
Total GENERAL FUND	\$ 44,230,523	\$ 44,703,148	\$ 44,264,107	\$ 48,904,528
CAPITAL IMPROVEMENTS FUND				
Taxes	\$ 3,678,161	\$ 3,723,725	\$ 3,684,953	\$ 3,684,953
Interest	7,470	16,211	7,020	6,060
Other Financing Sources	1,485,801	160,623	127,605	-
Transfers from other Funds	330,706	29,843	-	-
Total CAPITAL IMPROVEMENTS FUND	\$ 5,502,138	\$ 3,930,402	\$ 3,819,578	\$ 3,691,013
DEBT SERVICE FUND				
Debt Service Fund	12,884,205	3,374,964	3,339,695	3,339,695
Total DEBT SERVICE FUND	\$ 12,884,205	\$ 3,374,964	\$ 3,339,695	\$ 3,339,695
SPECIAL REVENUE FUNDS				
Accommodations Tax	\$ 48,222	\$ 57,111	\$ 48,500	\$ 49,000
Airport Grants - Federal	3,844,099	46,293	-	-
Capital Projects	20,732,674	879,470	1,718,606	1,342,916
Centennial Fund	13	-	-	-
Children in Crisis	534,986	539,315	522,317	522,317
Communications Tower	(5)	17	-	-
County Recreation	251,658	329,837	316,420	329,548
County Reserve	8,667	5,094	6,000	-
DHEC EMS Grant	14,643	84,689	-	-
Disaster	-	2,514,733	-	-
Economic Development	3,437,114	425,190	369,225	369,225
Emergency 911	651,037	916,846	1,559,876	674,912

Dorchester County, South Carolina
All Funds Revenues by Fund Type and Department

	FY 2013 ACTUAL	FY 2014 ACTUAL	FY 2015 BUDGET	FY 2016 APPROVED
Family Court/DSS	22,933	24,700	20,968	-
Family Court/Unit Cost	-	214,783	-	-
Fire Districts	3,808,701	3,609,880	3,410,842	3,410,842 *
Fire Protection Improvement Fund	2,369,252	2,648,702	2,149,652	2,164,079 *
Infrastructure Bank	660,578	189,317	-	-
LLEBG Grants	32,077	29,123	-	-
Miscellaneous Grants	62,176	438,669	-	-
Public Defender	1,259,743	1,133,189	637,525	637,525
Senior Citizens Center	1,017,949	1,025,633	993,106	994,246
School Resource Fund	4,805	4	-	-
Sheriff-Child Support Enforcement	1,617	1,622	-	-
Sheriff - DEA Funds	74,183	45,095	-	-
Sheriff-Drug Funds	4,027	5,446	-	-
Sheriff-Equipment Funds	2,848	-	-	-
Sheriff-Grants	319,739	204,081	-	-
Sheriff - Seized Funds	(979)	22	-	-
Sheriff - Solicitor Funds	1,825	7,953	-	-
Sheriff-Victims' Advocate	225,774	180,153	155,640	160,279
Solicitor	2,472,642	2,281,503	2,458,985	2,572,035
Solicitor- Federal Grants	147,136	36,292	-	-
Solid Waste Grants	20,975	42,019	-	-
State C-Funds	461,164	1,828,075	-	-
Transportation Impact Fee	339,837	432,520	-	-
Transportation Sales Tax	60,993,475	16,723,016	11,123,624	11,234,860
Upper Dorchester Economic Dev.	326,749	284,571	4,404	-
Veterans Affairs	-	176,607	175,439	182,586
Total SPECIAL REVENUE FUNDS	\$ 104,152,334	\$ 37,361,570	\$ 25,671,129	\$ 24,644,370
ENTERPRISE FUNDS				
Solid Waste	\$ 6,309,617	\$ 5,897,256	\$ 5,972,300	\$ 6,024,570
Stormwater	1,586,611	1,546,881	1,560,488	2,402,820
Water & Sewer	27,866,296	25,040,512	19,913,477	30,655,831
Total ENTERPRISE FUNDS	\$ 35,762,524	\$ 32,484,649	\$ 27,446,265	\$ 39,083,221
Total GENERAL FUND	44,230,523	44,703,148	44,264,107	48,904,528
Total OTHER FUNDS	158,301,201	77,151,585	60,276,667	70,758,299
Total REVENUES	\$ 202,531,724	\$ 121,854,733	\$ 104,540,774	\$ 119,662,827

*Fire Districts will be accounted for with Fire Protection Improvement fund for FY 2014, with the exception of Old Fort & Ashley River whose figures are not available at May 17, 2013.