

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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

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.

SECOND SUPPLEMENTAL RECORD ON APPEAL

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Response to Plaintiffs' Motion to Reconsider, Alter, or Amend Judgment, and for a Hearing, Filed by 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; Dorchester County Sheriff, Luther C. Knight in his official capacity; and Captain Tony Phinney, individually and in his official capacity as an employee of Dorchester County Sheriff filed April 16, 2018 1

Certificate of Counsel..... 13

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;)

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

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.)

Response to Plaintiffs' Motion to Reconsider)
Alter or Amend Judgment, and for a Hearing, Filed)
by 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;)
Dorchester County Sheriff, Luther C. Knight in his)
official capacity; and Captain Tony Phinney,)
individually and in his official capacity as an)
employee of the Dorchester County Sheriff)

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RECORDED
CLERK OF COURT
DORCHESTER COUNTY

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 the County Council; Dorchester County Sheriff, Luther C. Knight (the "Sheriff"), in his official capacity; and Tony Phinney, in his personal and official capacities, respectfully file this Response to the Plaintiffs' Motion to Reconsider, Alter or Amend Judgment, and For a Hearing ("Motion to Reconsider) and would show the Court the following:¹

I. Response to Plaintiffs' Assertions About the 1st and 2nd Causes of Action

A. The Court's Order is Correct Because the Plaintiffs' Property-Tax-Based Claims Are Based on Allegedly Improper "Double Taxation"

In their Second Amended Complaint, the Plaintiffs asserted (at ¶ 2, p. 3) that "[t]his action is not brought to challenge the collection of . . . any tax." Now, in their Motion to Reconsider (at pp. 3-4), Plaintiffs repeat the same erroneous argument, insisting that, the first and second causes of action (the "Property-Tax-Based Claims") of the Second Amended Complaint involved only "the illegal expenditure of taxes" and, therefore, this Court has subject matter jurisdiction to hear those claims.

The Plaintiffs are wrong. Even a cursory review of the allegations in the Second Amended Complaint confirms that the Property-Tax-Based Claims involve a dispute concerning the allegedly wrongful assessment and collection of property taxes. See, e.g., Second Amended Complaint at ¶ 89 (alleging "illegal double taxation" and "illegal violations of Act 388"); ¶ 95 (citing an Attorney General's Opinion for the principle that "it is illegal for government entities... to double tax the same property...."); and the Plaintiffs' prayer for relief at p. 40, Part B(3) (requesting that the County Defendants be "enjoined, restrained and prohibited" from "[e]xpending funds in a manner that constitutes illegal double taxation"). It is clear, therefore, that the Plaintiffs' references to the propriety of tax expenditures are premised on, and inextricably linked to, allegations concerning revenues generated by allegedly improper property taxation.

Under these circumstances, the Plaintiffs' position about "illegal double expenditures" is without merit. Because the Plaintiffs' claims hinge on allegedly improper taxation, this Court

¹In this Response, the parties listed in the text are collectively referred to as the "County Defendants."

correctly held that it does not have subject matter jurisdiction to hear their Property-Tax-Based Claims.

B. The Revenue Procedures Act (“RPA”) Provides the Exclusive Remedies for the Plaintiffs’ Property-Tax-Based Claims

In their Motion to Reconsider, the Plaintiffs assert that the RPA does not preclude them from seeking declaratory and injunctive relief because this “action is not brought to challenge the collection of or to request a refund of any tax.” Motion to Reconsider at p. 4 (emphasis in the original). Once again, Plaintiffs improperly ignore or attempt to disavow the substance of their Second Amended Complaint; namely, the alleged “illegal double taxation” and “illegal violations of Act 388.” Second Amended Complaint at ¶ 89.

As noted previously, the Property-Tax-Based Claims in the Second Amended Complaint clearly involved allegations about the illegal or wrongful collection of tax, which is dispositive here since the RPA provides the exclusive remedies for such disputes. In that regard, Section 12-60-80(A) of the RPA specifically states the following: “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.” (Emphasis added.)

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.” Importantly, however, the terms of RPA Exception provide that 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).

The Plaintiffs cite the RPA Exception in support their position that this Court has jurisdiction to hear their Property-Tax-Based Claims. Motion to Reconsider at p. 5. However, the Plaintiffs fail to recognize that the RPA Exception is inapplicable here because, among other things, (a) it “does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons;”² and (b) the Plaintiffs describe themselves in the Second Amended Complaint as precisely such a limited class: “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.” See Second Amended Complaint at ¶ 15 (emphasis added).

²S.C. Code Ann. § 12-60-80(B)(emphasis added).

C. The Plaintiffs' Reliance on an Order Issued in Another Case is Misplaced

The Plaintiffs also rely a lawsuit they claim is “similar to this case,” James Stephen Greene, Jr. et al. v. Dorchester County et al., Case No. 2016-CP-18-1414, where Judge Mullen purportedly denied a Motion to Dismiss “for the same reasons.” Motion to Reconsider at p. 5. However, the Plaintiffs' characterization of Greene is incorrect and, as a result, their reliance on Judge Mullen's Order is misplaced.

On its face, the Order issued in Greene reflects that the allegations at issue there involved “a practice of paying public officials beyond their salaries set by ordinance.” See Ex. 2 to the Motion to Reconsider at p. 2. Other portions of the Order (id. at pp. 3-4) indicate that the Complaint in Greene alleged that alternative payments “in lieu of payments toward health insurance premiums are not part . . . of normal compensation.” Here, however, the Plaintiffs have not made any such compensation-based allegations and, for that reason alone, the Order issued in Greene is not controlling here.

In addition, the Order in Greene says nothing at all about Act 388 or any other property tax statute. That is not true here, however, as the central issue in the instant case is the interpretation and application of Act 388, which is a property tax statute, and whether there have been “illegal violations” of the tax statute resulting in “illegal double taxation.” See Second Amended Complaint at ¶ 89. Thus, the Plaintiffs' reliance on the Order issued in Greene is misplaced for that reason as well.

II. Response to David Messinger's Constitutional Claims³

A. Messinger, Not the Court, Is “In Error” as to the 4th Cause of Action

The fourth cause of action, asserted by Messinger, was a claim under Article I, Section 2, of the South Carolina Constitution. In making the claim, Messinger alleged that certain statements, allegedly made by some of the County Defendants (and Town Defendant McIntosh), caused him to “suffer fear” in connection with his work as a police officer and also resulted in “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.” Second Amended Complaint at ¶ 110.

³The fourth and fifth causes of action, collectively referred to herein as the “Constitutional Claims,” were asserted by Messinger only against four of the County Defendants—Chinnis, Phinney, the County and the Sheriff (the “Several County Defendants”)—and two of the Town Defendants, McIntosh and the Town.

In the Motion to Reconsider, Messinger assert that this Court was “in error” and “mistaken” as to the dismissal of the fourth cause of action. Motion to Reconsider at p. 6. To that end, Messinger claims that he “specifically pled in the Second Amended Complaint that he was not seeking monetary damages in this action,” with the exception of his claims in the fifth cause of action, involving alleged violations of the United States Constitution and 42 U.S.C. §1983. *Id.* at p. 7. He also asserts (at p. 6) that the Second Amended Complaint “clearly shows” that he asked for a declaratory judgment and injunctive relief. In that regard, he refers to the Prayer for Relief in the Second Amended Complaint, noting that it asked for a declaration, that his rights under the South Carolina Constitution had been violated, and an injunction, “to prevent prospective violations of his rights.” *Id.* at pp. 6-7.

Messinger is wrong for several reasons. First, he made no request in the fourth cause of action for a declaratory judgment or an injunction; instead, his only request was for “nominal, actual, compensatory and punitive damages and reasonable attorney fees and costs.” *See* Second Amended Complaint at ¶ 110.⁴ Second, it is well established that the Prayer for Relief is not part of a plaintiff’s cause of action. *See, e.g., O’Dell v. United Ins. Co. of America*, 132 S.E.2d 14, 15 (S.C. 1963)(disregarding conclusory statement in a Complaint when determining the nature of the cause of action and further noting that “Neither can the prayer for relief be considered in determining the character of the action stated.”). *See also* Wright & Miller, *Federal Practice and Procedure* § 1255 (“The sufficiency of a pleading is tested by the Rule 8(a)(2) statement of the claim for relief and the demand for judgment is not considered part of the claim for that purpose . . .) (footnotes omitted).

Finally, and in any event, the County Defendants addressed the general requests in the Prayer for Relief, noting the following (at p. 22, fn. 10 of their Motion to Dismiss):⁵

While Messinger’s fourth and fifth causes of action request money damages only, the “Relief Requested” section of the Second Amended Complaint (at p. 40) appears to contain a request for declaratory and/or injunctive arising out of Messinger’s Constitutional Claims. In the absence of a constitutional violation, however, neither Messinger nor any of the other Plaintiffs can obtain any type of relief, injunctive or otherwise, on those claims.

⁴Therefore, Messinger’s representation to the Court (at p. 7 of the Motion to Reconsider), that his claim for money damages was limited to the fifth cause of action, is plainly incorrect.

⁵For purposes of responding to the Motion to Reconsider, the County Defendants incorporate their Motions to Dismiss the Second Amended Complaint by reference.

At the hearing on the Motion to Dismiss the Second Amended Complaint, the County Defendants noted that, for the record, they were relying on the arguments and authorities in their Motion to Dismiss. Based on our understanding of the Order granting the County Defendants' Motion to Dismiss (the "Order"), this Court properly took all of the foregoing factors into account. Therefore, the Order correctly dismissed the fourth cause of action for the reasons stated above.

C. Messinger's Other Arguments About the 4th cause of Action Are Misplaced

1. **Preliminary Remarks.** As noted above, Messinger's fourth cause of action involved only a claim for money damages based on the alleged violation of Article I, § 2, of the South Carolina Constitution, which does not provide for the payment of damages. Accordingly, this Court's Order correctly dismissed the fourth cause of action for that reason. Order at p. 7.

The only other conceivable ground advanced in support of Messinger's request for damages under the fourth cause of action was that his state-law claim was cognizable under 42 U.S.C. § 1983. Consequently, this Court's Order (at p. 7) correctly dismissed his fourth cause of action for that reason as well. See 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 based on state-law claims allegedly suffered at the hands of state officials).

2. **The "Mixed Messages" in the Motion to Reconsider Confirm that Messinger's Fourth Cause of Action Was Properly Dismissed.** In one breath, Messinger argues that, other than the fifth cause of action (involving 42 U.S.C. § 1983), he did not request money damages in the Second Amended Complaint, but was actually seeking only declaratory and injunctive relief, as evidenced by the Prayer for Relief in the Second Amended Complaint. Motion to Reconsider at p. 7. Yet, in the next breath, Messinger appears to concede that he did make claims for money damages in the fourth cause of action and that, "if that is not allowed," he should be permitted to "add a request for declaratory and injunctive relief" to allow the lawsuit to proceed. In that regard, Messinger asserts the following:

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 [of the Second Amended Complaint] in the Fourth Cause of Action, if the Court deems that necessary for Messinger's state constitutional claims to proceed.

Id. at p. 8.

In making the foregoing argument, Messinger tacitly concedes that (a) he actually sought only money damages in the fourth cause of action of the Second Amended Complaint; (b) he now realizes that damages are not recoverable under the fourth cause of action, which is evident because the Motion to Reconsider advances no reasons why he should be entitled to recover them and (c) any prior claims for money damages will be abandoned if he can amend the Second Amended Complaint to focus exclusively on declaratory and/or injunctive relief.

Next, Messinger argues that the County Defendants' defenses to his claim for money damages (a claim he now disavows), would not prohibit the declaratory and/or injunctive relief that he failed to properly plead in the first place, but which he now wants "to add." See, e.g., Part 7 of the Motion to Reconsider at p. 8.⁶ The two implications of that argument are, first, Messinger acknowledges, once again, that the County Defendants' defenses to his claims for money damages were valid and, second, he now wants to try something else. However, it would be improper and futile to allow him "to add" something else at this point for several reasons.

3. Messinger Improperly Seeks a Ruling on a Hypothetical. As indicated above, the Motion to Reconsider essentially requests a ruling from this Court that Messinger is entitled to pursue claims that are not presently before this Court but could be added later in a document that no one has ever seen. This essentially amounts to a request for a ruling on a hypothetical situation and is, therefore, improper. See, e.g., Byrd v. Irmo High Sch., 468 S.E.2d 861, 864 (S.C. 1996) (noting that courts will not rule on a "dispute or difference of a contingent, hypothetical or abstract character"). See also Power v. McNair, 177 S.E.2d 551, 553 (S.C. 1970)(declining to rule on "purely advisory opinion as to the issues sought to be raised"). Accordingly, any such request by Messinger must be rejected.

4. Any Belated Request to Amend Should Be Rejected. To the extent that Messinger seeks leave to amend at this point "to add" a request for declaratory judgment and/or injunctive relief, any such request should be denied in any event. Rule 15(a) of the South Carolina Rules of Civil Procedure provides that "[a] party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served[.]" "Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and

⁶Part 7 of the Motion to Reconsider, at p. 8, is entitled "The SC Torts Claims Act does not immunize members of County Council and Town Council from declaratory and injunctive relief regarding their violations of Messinger's state-based Constitutional Claims."

leave shall be freely given when justice so requires and does not prejudice any other party.” *Id.* (Empahsis added.)

Here, the County Defendants would most certainly be prejudiced by any such amendment. This case was filed on May 2, 2016, almost two years ago. The original Complaint was eighty-eight pages long including exhibits. The First Amended Complaint, filed several days after the original Complaint was filed, was ninety-six pages long including exhibits.

The County Defendants spent considerable time, effort and expense briefing a Motion to Dismiss the First Amended Complaint, which the Plaintiffs then attempted to “plead around” by filing the Second Amended Complaint. At that point, the live Complaint was expanded to more than one hundred pages including exhibits and consisted of more than one hundred thirteen paragraphs. The Court properly dismissed the Second Amended Complaint in its entirety.

Allowing Messinger to expand the Complaint yet again should not be permitted as it will simply require the County Defendants to incur substantial additional expenditures of time and money in responding to a recycled version of Messinger’s prior claims. Those claims have already been made more than once and they have now been considered and properly rejected.

D. In Any Event, the Defenses to Messinger’s Claims for Money Damages Would Also Apply to Requests for Declaratory Judgment and/or Injunctive Relief

1. The Alleged Actions of the Defendants Do Not Give Rise to a Constitutional Violation. Any request to amend the Complaint would also be improper because the County Defendants’ defenses to Messinger’s claims for money damages effectively bar the declaratory judgment and/or injunctive relief he now seeks to add.

As the County Defendants noted in their Motion to Dismiss (at pp. 21-23), politicians and public officials—including the Several County Defendants (and Town Defendant McIntosh)—have a right to personal expression. See, e.g., Bond v. Floyd, 385 U.S. 116, 136-37 (1964)(rejecting the idea that the First Amendment only applies to the “citizen-critics” of government and concluding that “[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy”). In fact, the very essence of our political system is based on government speech. As a result, the speech and opinions of public officials are the vehicle through which constituents and recipients of government services come to know their public officials and the opinions those officials have about the issues. Republican Party of Minn. V. White, 536 U.S. 765, 781-82 (2002)(“The role that elected officials play in our society makes it

all the more imperative that they be allowed to freely express themselves on matters of current public importance.”)(quoting Wood v. Georgia, 370 U.S. 375, 395 (1962)).

Free political speech, in other words, is not off-limits to someone simply because he or she is a public official. In Citizens United v. Federal Election Commission, 558 U.S. 310, 3340-41 (2010), the Supreme Court described the vital importance of political speech as “an essential mechanism of democracy,” further noting that “political speech must prevail against laws that would suppress it, whether by design or inadvertence.” Consistent with this, “[t]he First Amendment protects speech and speaker, and the ideas that flow from each.” Id. at 341 (emphasis added).

Here, Messinger’s constitutional claims for money damages, and any incidental requests for declaratory and injunctive relief, are based on statements by public officials who were allegedly expressing their views on the use of School Resource Officers (“SROs”). Therefore, even if one were to assume, arguendo, that all of his allegations concerning the statements of the County Defendants and Town Defendants were true, his attempts to base legal and/or equitable claims on the speech of these public officials must fail as a matter of law, because he is effectively seeking to control the expression of public officials concerning SROs. See, e.g., Int’l Ass’n of Machinists & Aero. Workers v. Haley, 832 F. Supp. 2d 612, 629 (D.S.C. 2011), aff’d by unpublished opinion (4th Cir. 2012)(noting that politicians, elected officials and their appointees “can be expected to take sides on virtually any issue that captures the public’s attention,” adding that if courts were to entertain pronouncements concerning public matters as First Amendment challenges, then virtually every interchange would be subject to a lawsuit).

Furthermore, the statements allegedly made by the Several County Defendants and McIntosh were protected by the First Amendment right that each of them holds in both their official and personal capacities. See, e.g., Wood v. Georgia, 370 U.S. 375, 394-95 (1962) (addressing a sheriff’s right, both as a candidate for public office and as a private citizen, to free expression on matters of current public importance). To conclude otherwise would impermissibly diminish the value of free speech and deter public officials from stating their opinions to their constituents and/or colleagues, which is the type of unrestricted “government speech” described in Pleasant Grove City, Utah v. Summum, 555 U.S. 460, 467-68 (2009):

A government entity has the right to “speak for itself.” “[I]t is entitled to say what it wishes,” and to select the views that it wants to express. Indeed, it is not easy to imagine how government could function if it lacked this freedom. “If every

citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed." (citations omitted).

After applying the foregoing principles, it is clear that, even if the Messinger's allegations in the fourth cause of action were assumed to be true (which they are not), they do not give rise to a Constitutional violation. Consequently, there is no basis for a request for declaratory judgment and/or injunctive relief.

2. The Alternative Grounds for Dismissal Set Forth in Order Would Also Preclude the Declaratory Judgment and/or Injunctive Relief. Claims concerning constitutional violations are necessarily based on conduct. For example, Messinger's fourth cause of action is based on claims that one or more of the County Defendants, and Defendant McIntosh, repeatedly made "false and defamatory statements about the positions, views, character, motives and professional history, employment background abilities of Messinger...." Second Amended Complaint at ¶¶ 109(C) and 119 (emphasis added).

In the Motion to Reconsider, however, Messinger now asserts that, "while some of the alleged threatening statements happen to be defamatory," the claims he made in the fourth cause of action "are not based on a cause of action for defamation, which is not alleged anywhere in the Second Amended Complaint." Motion to Reconsider at p. 9. Next, he argues that other alleged acts, such as alleged statements made to "persuade" or "suggest" certain things about Messinger (*id.*), do not constitute defamation either and, therefore, the portion of the Order granting dismissal of the fourth cause of action was erroneous to the extent that it was based on the theory that Messinger sought damages and/or sued in tort.

Here again, Messinger is mistaken. First, he did sue for damages and even the Motion to Reconsider concedes (at p. 14) that, in Messinger's view, "the threatening statements made by the Defendants . . . were defamatory." Second, and more important, the Order (at p. 8) simply references alleged actions that arose out of allegedly false and defamatory statements as basis for the dismissal of his claims for money damages, which was entirely proper.

Thus, the conduct allegedly attributable to the Several County Defendants (and also Town Defendant McIntosh) involved statements that Messinger found objectionable. As politicians and/ or public officials, however, the Several County Defendants (and McIntosh) are immune from suits arising out of such alleged conduct due to the application of one or more of

the following defenses: the Tort Claims Act, legislative immunity and/or the Eleventh Amendment to the United States Constitution. Accordingly, the Order's references to those defenses as alternative, independent grounds for dismissal were completely proper and Messinger has no basis to complain.

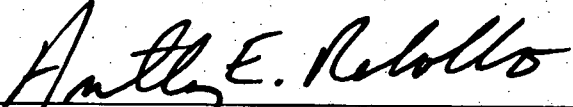
III. Response to Plaintiffs' Assertions Regarding the 5th Cause of Action

Messinger's fifth cause of action is based on the United States Constitution. He claims that one or more of the County Defendants, and Town Defendant McIntosh, repeatedly made "false and defamatory statements about the positions, views, character, motives and professional history, employment background abilities of Messinger[,]" resulting in Constitutional wrongs. Second Amended Complaint at ¶¶ 109(C) and 119 (emphasis added).

In the Motion to Reconsider, Messinger adopts the arguments he made in connection with the fourth cause of action in support of his fifth cause of action: "All statements . . . regarding the Fourth Cause of Action are restated and incorporate[d] by reference regarding the Fifth Cause of Action to the extent applicable."

In the same way, the County Defendants against whom the fifth cause of action was asserted—including Chinnis, the Sheriff and Phinney—restate and incorporate by reference each of the arguments set forth above in connection with their response to the points raised about the fourth cause of action.

WHEREFORE, the County Defendants respectfully request that the Court deny the Plaintiffs' Motion to Reconsider. In addition, the County Defendants respectfully request that the court award them such other and further relief to which they may show themselves entitled.



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April 13, 2018

CERTIFICATE OF SERVICE

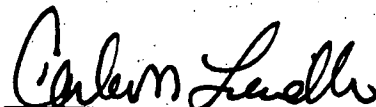
I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for County Defendants, do hereby certify that I have served the foregoing *Response to Plaintiffs' Motion to Reconsider, Alter or Amend Judgment, and for a Hearing*, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the following attorney(s):

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Carla Linder

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THE STATE OF SOUTH CAROLINA
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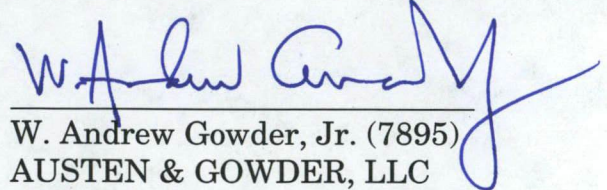
Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler 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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Second Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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