

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Carmen T. Mullen

**RECEIVED**  
NOV 25 2020  
SC Court of Appeals

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Common Pleas Number: 2020-CP-07-01840  
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Town of Hilton Head Island, South Carolina, ..... Plaintiff/Intervenors  
v.  
Beaufort County, South Carolina, ..... Defendant/Plaintiff/Respondent  
v.  
James Beckert, in his official capacity as the Beaufort Co. Auditor, ..... Defendant/Petitioner

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**VERIFIED PETITION FOR A WRIT OF SUPERCEDEAS**  
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## **INTRODUCTION**

Undersigned petitions this Court for the issuance of a Writ of Supercedeas, pursuant to SCACR Rule 241, staying the temporary injunction issued by the circuit court. This injunction requires Petitioner Beckert to utilize a 4.8 mill rate to levy taxes for payment of a bond debt. This Court should issue the Writ because use of the 4.8 mill rate will produce an insufficient amount of revenue for the payment of principal and interest.

Levying an insufficient mill rate for bond indebtedness violates SC Code Section 4-15-150. This insufficiency could result in long term credit concerns for the taxpayers should the county default on the payments on these bonds. As explained below, extraordinary circumstances exist which make it impracticable to apply to the lower court for this stay before compliance with the injunction causes the harm this petition seeks to avoid.

### **VENUE: IMPRACTICABLE TO SEEK ISSUANCE OF A WRIT OF SUPERCEDEAS IN THE LOWER COURT**

Extraordinary circumstances make it impracticable for Petitioner to apply first to the lower court for a issuance of a writ of supercedeas. See SCACR Rule 241(d)(1).

No tax bills have been sent to the taxpayers. The tax bills that have already been generated with the 5.8 mill rate have not been mailed to the taxpayers or collected upon by the treasurer despite a statutory duty to do so. The Order at issue *sub judice* provides Petitioner just over three business days to complete the task of revising the tax rolls for well over a hundred thousands properties<sup>1</sup>.

Once the tax rolls and duplicate have been amended and the treasurer begins collections

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<sup>1</sup>Petitioner received the Order immediately upon filing at 4:15 pm on Friday, November 20, 2020. The Order provides until November 25 for a completion date for this task.

using the court enforced insufficient rate, no new tax bills can be sent and the county will then be stuck with the deficiencies. If the modification of the tax rolls and creation of the amended duplicate only involved a matter of flipping a switch, then such an application might be possible.

At the rate of modification occurring since the issuance of the injunction, the task ordered upon Petitioner's office will not be completed as projected in the Order<sup>2</sup>. As indicated in the Affidavit of Petitioner contained in the Addendum to this Petition, Petitioner, the deputy auditor, and the Auditor's information technology director have estimated that the modification at this rate and the generation of the tax roll and duplicate may well take hundreds of hours. See Addendum, p. 3, Affidavit of Petitioner Beckert, ¶ 8.

Should this writ not issue but the injunction be overturned after the modification of the tax roles using the insufficient rate of 4.8 mills, Petitioner's office and staff would require hundreds of more hours to change the bills back. In addition, it took at least a week to schedule the November 12 hearing on the amended motions. Then it took eight days following the hearing involving Respondent Beaufort County's motion for temporary relief for the signed order granting the injunction to be filed and a date of completion be ordered.

There just is not enough time for a modification to be made, a petition for a writ of supercedeas to be heard by the lower court and denied, a similar petition for supercedeas be brought in an appellate court and the mill rate changed back to the 5.8 mill rate before the current

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<sup>2</sup>Petitioner relies upon a staff of workers to assist in his yearly task of generating tax rolls and the duplicate. This includes a deputy auditor, a position created by statute, and a staff information technology (IT) director to handle the computer details as well as at least 13 other workers. While Petitioner, his deputy director and the IT director have been working over the weekend since the filing of the Order at the close of the business week on Friday, Petitioner can not take actions which deprive his staff of weekends or holidays as those terms of their employment are made with Respondent Beaufort County.

deadline of December 15, 2020 deadline. The SC Department of Revenue has already granted two extensions setting the current collection deadline of December 15, 2020.

Finally, it is worth noting that the collection of taxes based upon the insufficient mill rate of 4.8 mills for the bond debt in question will moot the appeal as a practical matter. Only two types of relief were requested in the Amended Complaint: an injunction and/or mandamus forcing use of the 4.8 mill rate and a declaratory judgment that Petitioner had to employ the 4.8 mill rate contained in the county ordinance. Once the bills have been sent with the **deficient rate**, there is no relief available for any appellate court to award except the hope the bond default will not occur.

#### **STATEMENT OF FACTS AND THE CASE**

On June 22, 2020, Beaufort County Council passed a budget ordinance (2020/22) which included mill rates concerning both operational debt and bonded indebtedness. The mill rate contained in the budget ordinance for the Rural and Critical Land Bond(RCLB) debt was 4.8 mills.

In August and September, 2020, Petitioner Beckert, in his capacity as the auditor for Beaufort County, performed his calculations as to the bond debt. As to the Rural and Critical Land Bond, he calculated a mill rate of 5.8 as the appropriate rate of taxation to produce a **sufficient amount of taxes** to pay the principal and interest on this debt.

Prior to the issuance of the tax rolls and duplicate, the Town of Hilton Head Island sued Respondent Beaufort County to enjoin a different fee, the Law Enforcement Service Fee (LESC) contained in a later ordinance (2020/29). In a separate suit, Respondent Beaufort County sued Petitioner Beckert to force him to apply the LESF and moved for temporary relief through

injunction and mandamus. Hilton Head moved to intervene in the second suit and consolidate the suits. Petitioner Beckert moved to dismiss the LESC suit because it was not ripe as the tax rolls and duplicate had not yet been assigned at the time of the filing.

Hilton Head amended its suit to add taxpayer co-plaintiffs. Respondent Beaufort County amended its suit and motion for temporary relief to add a claim as to the millage rate for the RCLB. Petitioner Beckert amended his motion to dismiss to argue that Respondent Beaufort County's RCLB claim was a nonjusticiable political question.

In opposition to the motion for temporary relief, Petitioner Beckert explained in an affidavit that he calculated this mill rate by first determining the value of the mill to be \$1,885,324. See Addendum, p. 6, Affidavit of James Beckert, ¶ 28. He then divided the amount of the payment amount due on the bond, \$11,019,124, by the value of the mill arriving at the 5.84 mill rate. He rounded this rate to 5.8 as mill rates can not be expressed in hundreds as a matter of state law. SC Code Section 12-39-170. Petitioner estimated the 5.8 mill rate would generate \$11,915,125. Addendum p. 7, Affidavit of James Beckert, ¶ 30.

Petitioner Beckert determined the RCLB mill rate provided by the budget ordinance would only produce \$9,049,555. Addendum p. 7, Affidavit of James Beckert, ¶ 29.

In support of its motion for temporary relief, Respondent Beaufort County submitted the affidavit of the county's chief financial officer. See Addendum, p. 115-118, Affidavit of Hayes Williams. Despite utilizing a value of a mill more favorable to its positions, this affidavit confirms that the 4.8 mill rate will not produce sufficient funds to pay the principal and interest payments due in the tax year 2021. As that affidavit indicates, there will be a shortfall in the amount of approximately \$600,000.00.

In contrast, Petitioner opposed the motion for temporary relief concerning the mill rate on two grounds. Petitioner's opposition was based upon the practical concern that the mill rate will produce a deficiency in taxes for the RCLB debt. According to Petitioner's calculations, the 4.8 mill rate will produce a nearly \$2,000,000.00 shortfall. See Addendum, p. 6-7, Affidavit of James A. Beckert, ¶¶ 28-29. This will result in a near total depletion of the sinking fund assuming a 100% timely collection rate and no assessment appeals or devaluation of properties. Petitioner's opposition was also based upon the more intellectual but very real concern that the injunction represented judgment as to a nonjusticiable political question.

On November 12, 2020, the circuit court heard all three pending motions. For purposes of this Petition, the circuit court granted the temporary injunction as to the mill rate and asked the Respondent to prepare a proposed Order. Following the filing of formal objections by Petitioner Beckert, the circuit court signed and filed the Order on November 20, 2020 at 4:15 pm requiring that Petitioner Beckert apply the mill rate change to the tax rolls and duplicate by November 25, 2020.

On November 20, 2020, Petitioner Beckert filed and served his Notice of Appeal and Proof of Service along with the Order Granting Temporary Injunction as to the Rural and Critical Lands Debt Service Millage Rate, with the Court of Appeals. A Motion for Certification was filed with the Supreme Court on this date as well. This Petition follows.

## **ARGUMENT**

This Court should grant this Petition because the law requires that an auditor levy a sufficient tax to pay principle and interest. Use of the 4.8 mill rate will not produce enough money to pay principle and interest due on the RCLB during the tax year 2021. In contrast, a

stay of the injunction will still allow the Respondent Beaufort County to timely collect taxes using the available tax rolls containing the 5.8 mill rate calculated and applied by Petitioner Beckert in compliance with his statutory duty owed to the General Assembly and without harm to the taxpayers of Beaufort County or the Respondent Beaufort County.

Requirement of Sufficiency as to Taxes Levied for Bond Debt and Duties of the Auditor

The South Carolina code contains multiple provisions addressing the levying of taxes. Succinctly, the levying of operational budget taxes is left to the county government, in this case the Beaufort County Council. See SC Code Section 4-9-30. However, as to bonded indebtedness, the levying is the duty of the auditor. See SC Code Section 4-15-150.

SC Code Section 4-15-150 states that as to county bond debt "... there shall be levied annually by the county auditor and collected by the county treasurer in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the county sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor."

On its face, the statute placing the duty to levy taxes for bond debt upon the auditor states that the taxes levied must be *sufficient* to pay the principal and interest payments on that debt. The statute also indicates that the taxes shall be sufficient to create a sinking fund as necessary. Nowhere does the statute indicate that a determination of sufficiency allows resort to a sinking fund.

To the contrary, the plain language of the statute indicates that the sufficiency relates to the amount needed to pay principle and interest in addition to creating a sinking fund. Further, the statute plainly states that the amount of taxes levied for sufficiency of bond debt was

“without limit.” This is in contrast to the plain language of other statutes concerning the generation of taxes. See *Charleston Cty. Parents for Pub. Sch., Inc. v. Moseley*, 541 S.E.2d 533 (SC 2001)(discussing the function of a statutory mill rate cap concerning school district operations budgets).

The appellate courts have indicated the simple nature of calculations concerning sufficiency as to a mill rate. See *County of Lee v Stevens*, 289 SE2d 155, at 156 (SC 1982).

Further, the appellate courts have discussed events which may effect the actual collections beyond any calculations of sufficiency. See *Angus v City of Myrtle Beach*, 609 SE2d 808, at 810 (SC 2005)(Pleicones dissenting opinion). These include valuation appeals and collection rates. Other events include exemptions and property devaluation. In the context of municipal budgeting, then Justice Pleincones referred to tax levying as an “inexact science, relying as it must upon estimates and ‘best guesses.’” *Angus*, at 810.

Authorities caution that because of these uncertainties, an excess is always desired and that an insufficiency should never occur. Addendum, p. 9-18, Affidavit of James A. Beckert, Exhibit A. During a presentation made by the South Carolina Department of Revenue at a June 27, 2019 Beaufort County Council Millage Workshop, Government Affairs Administrator Sanford Houck provided his advice to this effect. See Addendum, p. 12-13, Affidavit of James A. Beckert, Exhibit A, p. 4, l. 25- p. 5, l. 1 (“David, I honestly, if I am sitting there, I want excess collections every year.”). Administrator Houck explained that insufficiency can cause lasting economic impact upon taxpayers. In contrast, Mr. Houck explained that excess can be either credited in the future back to taxpayers or refunded directly. See Addendum, p. 13, Affidavit of James A. Beckert, Exhibit A, p. 5, l. 24-25 (“[i]f you’re rolling it forward every year, the citizens

haven't been harmed." Mr. Houck also opined when questioned as to an appropriate level of excess, that an overage of five percent (5%) would be acceptable but that twenty five percent (25%) would not. The overage using Petitioner Beckert's calculations and 5.8 mill rate would be seven percent (7%). Addendum, p. 7, Affidavit of James A. Beckert, ¶ 31.

At this same presentation, Mr. Houck indicated that it is the auditor's job to determine the sufficient mill rate for bond debt. Specifically, Mr. Houck stated: "Millage for bonded indebtedness has no limitation. ... The county auditor is authorized to set millage to make that bond payment. That's one of the things that the auditor is tasked with doing by state law." See Addendum, p. 11, Affidavit of James A. Beckert, Exhibit A, p. 3, l. 13-17 and <https://beaufortcountysc.new.swagit.com/videos/64634>, at minute mark 23:15-23:55.

Finally as to the law concerning debt servicing and millage calculations, the Supreme Court has recognized this delegation of authority in the opinion in *Stackhouse v Floyd*, 149 SE2d 437 (SC 1966). In *Stackhouse*, the Supreme Court stated that the auditor's job to set millage rate for bond indebtedness is an act reserved to the auditor in his ministerial duty as an agent of the General Assembly. *Stackhouse*, at 445-446. Specifically, the *Stackhouse* Court stated that an auditor is compelled to levy annually "a tax sufficient to pay principal and interest of the bonds" and that the auditor "acts in a ministerial fashion as the agent of the General Assembly in this matter." *Id.*

The circuit court's order substituting the calculation made by a legislative body for the determination made by the auditor is a usurpation of the General Assembly's power to make laws and the executive branch power to execute these duties. This violates the separation of powers doctrine. Two decades later, *Stackhouse* was cited in favor of debt servicing millage rate setting

powers being vested with the auditor. See *In Re Betty J. Catoe*, Opinion No. 85-24 (SC Atty Gen Op. March 20, 1985)(relying upon *Stackhouse* to conclude “The auditor, however, is to determine the mills necessary to produce the tax revenue.”).

Thus, the law requires the mill rate be sufficient to produce at least enough revenue to pay the principle and interest on the RCLB debt. The determination of sufficiency is to be made by the auditor. A deficiency is the opposite of sufficiency.

#### Effect of Ruling on this Petition

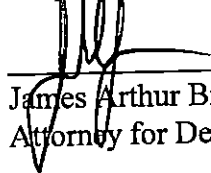
If this Court grants this Petition and the issue as to the mill rate is ultimately decided in Petitioner’s favor or the issue is not determined by December 15, 2020, there will be no harm to Beaufort County or its taxpayers. To the contrary, the tax rolls and duplicate, employing the 5.8 mill rate, are ready right now for the billing and collection of the taxes for the 2020 tax year. These taxes will be sufficient to pay the bond debt and may produce an excess if the estimates prove true.

In contrast, should this Court not grant the Petition, then the Petitioner will continue to modify the bills to adjust to the lower mill rate. Even under the best case scenario, the amount of revenue produced will not be sufficient to pay the RCLB debt. This deficiency would nearly wipe out the entire \$2,700,000.00 sinking fund, even assuming a 100% collection rate for timely tax payments. Should the pandemic or other economic facts such as assessed valuation appeals by taxpayers lower the expected collections, a default on the debt is possible and the county’s bond rating would suffer causing future economic hardship on the taxpayers for years to come. There would be no mechanism in the law to send a second bill and the result may be taxpayer suits against the Respondent Beaufort County or the Petitioner for allowing this deficiency.

## CONCLUSION

The Court should issue a Writ of Supercedeas staying enforcing of the temporary injunction. Succinctly, a better steward errs on the side of caution and would never dial in an insufficiency as to debt repayment. The issuance of the Writ will allow Petitioner Beckert to be the better steward and comply with his statutory duty to the taxpayers and the General Assembly.

Respectfully Submitted by:



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James Arthur Brown, Jr.  
Attorney for Defendant/Petitioner

November 23, 2020

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THE STATE OF SOUTH CAROLINA  
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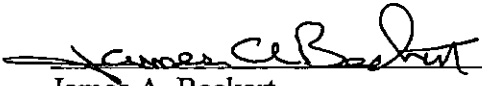
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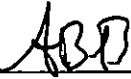
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**VERIFICATION FOR PETITION FOR WRIT OF SUPERCEDEAS**  
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**PERSONALLY**, appeared before me, James A. Beckert who being duly sworn, deposes and says that he is the Petitioner, that he has read the Verified Petition for a Writ of Supercedeas along with the supporting addendum, and the claims and the facts stated therein are true of his own knowledge, except those matters and things stated on information and belief. As to those matters and things, he believes them to be true.

  
\_\_\_\_\_  
James A. Beckert  
Petitioner

November 23, 2020

Sworn to before me this 23<sup>rd</sup> day of November, 2020.

  
\_\_\_\_\_  
Arthur Bradley, Brown, Notary Public

My Commission Expires June 24, 2030

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November 23, 2020

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Office of the Clerk

South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC 29211

Re: Petition for a Writ of Supercedeas  
Town of Hilton Head Island, et al, v. Beaufort County v. James Beckert in his  
official capacity as the Beaufort County Auditor; 2020-CP-07-01840

Office of the Clerk Staff:

Under cover of the paper copy of this letter and attached with the email version, please find enclosed an original and six copies of the Verified Petition for a Writ of Supercedeas, an Addendum with Supporting Affidavits and Exhibits, a Certified Copy of the Order Granting Temporary Injunction as to the Rural and Critical Lands Debt Service Millage Rate, and a Proof of Service for the same. Also enclosed with the mailed copy of this letter is a check in the amount of \$250.00 which represents a filing fee for this Petition. Please contact me if you have any questions.

Sincerely,

/s/Jim Brown

Jim Brown

w/ enclosures

cc via US Mail and Email w/ enclosures and attachments minus filing fee:

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John W. Fletcher, Attorney for Beaufort County, South Carolina  
Curtis L. Coltrane, Attorney Town of Hilton Head, South Carolina  
James A. Beckert, Beaufort County Auditor