IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2012-CP-43-2030

Appellate Case No. 2016-000774

Win Myat.....Petitioner,

v.

Tuomey Healthcare System.....Respondent.

RESPONDENT'S REPLY TO BRIEF OF *AMICUS CURIAE* SOUTH CAROLINA ASSOCIATION FOR JUSTICE

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INTRODUCTION

Respondent Tuomey Healthcare System respectfully submits this brief in reply to the South Carolina Association for Justice's (SCAJ) Amicus Curiae Brief. SCAJ's brief contains essentially the same erroneous arguments raised by Petitioner in his briefing to the Court. Like Petitioner's arguments, SCAJ's arguments can be easily dispensed of after an application of the plain reading of section 33-56-170 of the Solicitation of Charitable Funds Act.

DISCUSSION

I. The plain language of section 33-56-170 illustrates the bright-line test established by the South Carolina General Assembly entitles Respondent to the protections afforded by the Solicitation of Charitable Funds Act.

"The cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* "When the meaning of words is so plain and obvious, the courts cannot speculate on the intention. To do so would be an assumption of legislative power." *Indep. Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950).

The language of section 33-56-170 of the Solicitation of Charitable Funds Act (SCFA) is plain and unambiguous; therefore, this Court should reject SCAJ's tortured interpretation and effectuate the intent of our General Assembly. Section 33-56-170 provides a "charitable organization" for purposes of the damages cap in section 33-56-180(A) "means any organization, institution, association, society, or corporation which *is exempt* from taxation pursuant to Section 501(c)(3) . . . of Title 26 of the United States Code." (emphasis added). The operative language of the statute is whether an organization *is exempt* pursuant to Section 501(c)(3); the statute does

not require or permit a court to determine whether an organization *should* be exempt pursuant to Section 501(c)(3). SCAJ's erroneous interpretation of section 33-56-170 must be rejected. *See Georgia-Carolina Bail Bonds, Inc. v. Cty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) ("If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning.").

SCAJ grasps for support for its interpretation of section 33-56-170 by drawing attention to the fact that sections 33-56-170 and 33-56-20 define charitable organizations in slightly different ways. (SCAJ's Amicus Br. at 5–6). Even though the definitions are not verbatim, this fact *does not* alter the plain language of section 33-56-170. Indeed, the two statutes—saying the same thing different ways—are synonymous and consistent with each other. SCAJ, like Petitioner, attempts to create an ambiguity where there is none by contorting the statutes. *See Georgia-Carolina Bail Bonds*, 354 S.C. at 25, 579 S.E.2d at 337 ("The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction."). An ambiguity does not exist merely because the statute's plain language does not produce the outcome a party or an amicus curiae desires.

Like Petitioner, SCAJ attempts to create an ambiguity in section 33-56-170 by adding words into the statute when paraphrasing the statutory language. SCAJ argues the inclusion of the words "pursuant to" in section 33-56-170 shows an intent of the General Assembly to incorporate "the requirements of 501(c)(3)." (SCAJ's Amicus Br. at 2, 6). However, the General Assembly could have easily incorporated the requirements of 501(c)(3) if it intended to by actually incorporating the requirements of 501(c)(3). Instead, the phrase "pursuant to" in section 33-56-170 shows the General Assembly's intent to create a bright-line, objective test for application of the SCFA which relies on an organization's 501(c)(3) status. If an organization is exempt from

taxation by virtue of its 501(c)(3) status, the protections of the SCFA apply. If an organization is not exempt from taxation because it does not have 501(c)(3) status, the protections of the SCFA do not apply. There is only one way to be exempt from taxation pursuant to 501(c)(3)—obtaining this designation from the IRS.

SCAJ claims Respondent's interpretation of the statute's plain language would preserve a charitable organization's protections under the SCFA "inviolate and forever." (SCAJ's Amicus Br. at 2, 6). Ironically, SCAJ makes this "sky is falling" argument while pointing the finger at other parties for making an alleged "sky is falling" argument. (*See* SCAJ's Amicus Br. at 9). Regardless, SCAJ's claim regarding a charitable organization's status lasting *ad infinitum* is without merit. A charitable organization's tax-exempt status under section 501(c)(3) is determined by the IRS. Effectively, only the IRS has the power to challenge an organization's 501(c)(3) status. After a 501(c)(3) designation is made, the Secretary of the Treasury retains the power to challenge a charitable organization's 501(c)(3) status. 26 U.S.C.A. § 7428. A determination by the Secretary with respect to the continuing qualification is appealable to the federal courts by "the organization the qualification or classification of which is at issue." 26 U.S.C.A. § 7428(b)(1). However, any member of the public has the power to challenge a non-profit's federal tax-exempt status to the IRS for review by filing IRS Form 13909. Therefore, a charitable organization's protections under the SCFA clearly do not last "inviolate and forever."

As such, this Court should find the Court of Appeals properly applied the bright-line test established by the General Assembly in section 33-56-170 in determining Respondent, a 501(c)(3) organization, was entitled to receive the protections of the SCFA.

II. The General Assembly did not grant South Carolina courts the power to determine a charitable organization's 501(c)(3) status.

As discussed above and thoroughly in Respondent's Brief, the plain language of section

33-56-170 is clear that the General Assembly did not intend to grant trial courts the power to determine a charitable organization's 501(c)(3) status.

SCAJ argues Respondent's interpretation of the plain language of the statute should not be accepted because it would be "in derogation of the common law." (SCAJ's Amicus Br. at 6-7). SCAJ notes statutes in derogation of the common law must be strictly construed. (SCAJ's Amicus Br. at 7). SCAJ cites *Eiserhardt v. State Agricultural & Mechanical Society of South Carolina*, 235 S.C. 305, 111 S.E.2d 568 (1959), for the proposition that our courts have traditionally determined a charitable organization's status. SCAJ cites a correct proposition from *Eiserhardt*; however, such a determination by the courts would only be made to determine whether *charitable immunity* applied. The law in South Carolina has dramatically evolved since *Eiserhardt*. In fact, charitable immunity was abolished almost forty years ago in *Fitzer v. Greater Greenville South Carolina Young Men's Christian Association*, 277 S.C. 1, 4, 282 S.E.2d 230, 232 (1981).

Despite abolishing charitable immunity, the General Assembly determined charitable organizations are entitled to some limits to their liability. These protections afforded by the General Assembly arise via statute. SCAJ's plea for strict construction of section 33-56-170 misses the mark. Regardless of whether the statute should be strictly construed or whether the statute should not be strictly construed, the plain language of section 33-56-170 is unavoidable. The General Assembly did not intend for trial courts to determine a charitable organization's 501(c)(3) status. If the General Assembly wanted to do so, it would have said so. *See Lazerson v. Hilton Head Hosp., Inc.*, 312 S.C. 211, 213, 439 S.E.2d 836, 838 (1994) ("It is for the legislature and not this Court to determine what criteria best establish eligibility for the statutory limitation on liability."). SCAJ attempts to have a court improperly revoke Respondent's 501(c)(3) status—an action reserved by law for the Secretary of the Treasury.

Further, this Court has already determined that when an organization is found to be an IRS tax-exempt organization pursuant to section 501(c)(3), there is an irrebuttable presumption that it qualifies as a charitable organization as defined by section 33-56-170 and entitled to the charitable cap created by the General Assembly in section 33-56-180. *See Lazerson*, 312 S.C. at 213, 439 S.E.2d at 838. This Court in *Lazerson*, analyzing an essentially identical version of section 33-56-170,[1] refused to declare the statue unconstitutional because it created "an irrebuttable presumption that an organization exempt from taxation under the Internal Revenue Code qualifies as a 'charitable organization' and thus is entitled the limitation on liability." *Id.* As noted in *Lazerson*, the General Assembly provided clear criteria to establish whether an organization is entitled to receive the protections of the charitable cap. *Id.*

Section 33-56-170 specifically requires an inquiry as to whether an organization *is exempt* under section 501(c)(3), a determination made by the IRS. Section 33-56-170 does not say that a court is to make this status determination. *Lazerson* explained the test under section 33-56-170 is based upon "an objective criterion." 312 S.C. at 213, 439 S.E.2d at 838. Here, the objective test ("yes" or "no") looks no further than whether the IRS has granted an organization a 501(c)(3) designation.

III. The clear bright-line rule established by the General Assembly best effectuates its policy decision to preserve the resources of charitable organizations.

Obviously, SCAJ's injection of public policy concerns cannot override the plain language interpretation of section 33-56-170. Although unnecessary to delve into a public policy analysis, Respondent's plain language reading of the statute effectuates the intent of the General Assembly

[1] Section 33-55-200(a), which was analyzed in *Lazerson*, provides: "'Charitable organization' means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended, or Section 12–7–330 of the Code of Laws of South Carolina, 1976."

and supports the sound public policy of South Carolina.

By enacting the SCFA, the General Assembly balanced the important needs for charitable work and remedies for injured people. After this Court abolished charitable immunity in *Fitzer*, the General Assembly responded by enacting now section 33-56-180 to impose a cap on the damages against charitable organizations. The need to preserve the limited resources of charitable organizations—who provide an invaluable service to society—was obviously very important to our General Assembly. The limitation on the liability of charities has continuously been upheld by this Court. *See Doe v. Am. Red Cross Blood Servs., S.C. Region*, 297 S.C. 430, 439, 377 S.E.2d 323, 328 (1989) ("[T]here is a reasonable relationship between promoting charitable activities and limiting the liability of entities that engage in such activities.").

In *Lazerson*, this Court again upheld a constitutional challenge to the limitations of a charitable organization's liability. 312 S.C. at 213, 439 S.E.2d at 838. Most tellingly, this Court commented—with approval—of the General Assembly's public policy decision to use an "objective" and bright-line test. *Lazerson*, 312 S.C. at 213, 439 S.E.2d at 838 ("[W]e find tax exempt status under the Internal Revenue Code to be *an objective criterion* that bears a close nexus with the underlying legislative policy to preserve the resources of charitable organizations." (emphasis added)). Contrary to SCAJ's argument, the plain reading of the statute is not violative of public policy and instead best promotes the public policy of our state.

CONCLUSION

Accordingly, for the reasons discussed herein and in Respondent's Brief, Respondent respectfully requests the Court affirm the decision of the Court of Appeals.

(Signature page follows)

Respectfully Submitted,

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