

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Feb 17 2021

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Bentley D. Price

Appellate Case No. 2020-000936

Skip Hoagland, ... Appellant,

v.

John Tecklenburg, in his official capacity, the City of Charleston, and the City of
Charleston Police Department, ... Respondents.

RECORD ON APPEAL

Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant

Christopher T. Dorsel
S.C. Bar No. 72504
SENN LEGAL, LLC
P.O. Box 12279
Charleston South Carolina 29422
(843) 556-4045
Attorney for Respondents

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
Charleston Police Department,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

**ORDER ON DEFENDANTS’
MOTION TO DISMISS**

Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF. Due to the restrictions in place during the COVID-19 crisis, the Court requested that the parties submit briefs in support and opposition to the Motion, and also gave the parties the option of having a hearing through video conferencing. The parties agreed to have the Court consider and rule upon the motions on briefs alone. Thereafter, the parties submitted briefs, which this Court closely considered, and after having reviewed the arguments submitted by the parties, this Court is granting the Defendants’ Motion to Dismiss.

This matter arises from a May 25, 2018, City Council meeting where Plaintiff began making a speech during the public comment session. However, after he called a woman a liar, the Mayor declared Plaintiff out of order and had a City of Charleston Police Officer remove Plaintiff from City Hall. Plaintiff has alleged violations of constitutional rights, a violation of the Freedom of Information Act (“FOIA”), and Civil Conspiracy.

This Court finds that the Mayor possesses the ordained power to maintain decorum at City Council meetings and may utilize his discretion in doing so. The police department must act at

the direction of the Mayor during City Council meetings and at no time was the plaintiff under arrest. Based on the facts as alleged in his Complaint, Plaintiff has not stated facts sufficient to state a claim of constitutional magnitude. Rather, the facts as alleged by Plaintiff are that the Mayor made a discretionary decision to remove Plaintiff from a City Council and the police department followed the direction of the Mayor to remove Plaintiff. These actions are entirely within the Defendants' rights as outlined in City of Charleston Ordinances. As such, Plaintiff's claims regarding constitutional violations should be dismissed.

Further, the meeting in question remained open and was open to the public, and the plaintiff was capable of viewing remotely. Therefore, Plaintiff's claim that his removal transformed the City Council meeting into a closed session or otherwise not open meeting in violation of FOIA are without merit.

Finally, Plaintiff has not alleged facts sufficient to constitute a claim for Civil Conspiracy. Plaintiff has failed to allege any separate and distinct acts to further the conspiracy or any separate special damages other than those that have been alleged in his other causes of action. Therefore, his civil conspiracy claim cannot proceed. As an additional ground, the factual allegations in this case show that the alleged conspirators were all City of Charleston employees. The claims against the Mayor are for actions taken in his Official Capacity, meaning as an employee of the City and there is no allegation that the Police Department employee was acting outside the course and scope of his employment. As an agency or corporation cannot conspire with itself, Plaintiff's Civil Conspiracy claim does not have merit based on the Intracorporate Conspiracy Doctrine.

THEREFORE, IT IS ORDERED that Plaintiff has not stated facts sufficient to constitute a cause of action, and pursuant to Rule 12(b)(6), of the South Carolina Rules of Civil Procedure,

Defendants' Motion to Dismiss is hereby granted, ending this matter and dismissing Plaintiff's claims with prejudice.

AND IT IS ORDERED!

The Honorable Judge Bentley Price

May ___, 2020



Charleston Common Pleas

Case Caption: Skip Hoagland VS John Tecklenburg

Case Number: 2018CP1003441

Type: Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-05-05 16:00:55 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1003441

Skip Hoagland
PLAINTIFF(S)

John Tecklenburg et al
DEFENDANT(S)

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.
- ☐ **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 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:

The Plaintiff's Motion to Reconsider the Court's order Granting the Defendant's Motion to Dismiss is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/27/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Skip Hoagland VS John Tecklenburg , defendant, et al

Case Number: 2018CP1003441

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-05-27 14:36:22 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff(s)

vs.

John Tecklenburg, in his Official capacity, the City
of Charleston, and the City of Charleston Police
Department,

Defendant(s)

Submitted By: Thomas R. Goldstein, Esq.

Address: P.O. Box 71121,

N. Charleston, SC 29415-1121

2018 CP-10-3441
IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP-10-

SC Bar #: 2186

Telephone #: 843-554-4291

Fax #: 843-554-5566

Other:

E-mail: tgoldstein@cobblaw.net

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)
☐ 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 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) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: July 5, 2018

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.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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. (Medical malpractice mediation is mandatory statewide.)
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.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

2018-CP-10-3441
IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-

Skip Hoagland,)
)
)
vs.)

SUMMONS
(Jury Trial Demanded)

John Tecklenburg, in his)
Official capacity, the City of)
Charleston, and the City of)
Charleston Police Department,)
)
Defendants.)

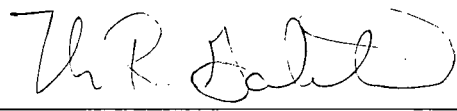
2018 JUL -9 PM 4:23
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

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 said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

June 21, 2018


Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

2018-CP-10-3441
IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-

Skip Hoagland,)
)
)
vs.)
)
)
John Tecklenburg, in his)
Official capacity, the City of)
Charleston, and the City of)
Charleston Police Department,)
)
Defendants.)

COMPLAINT
Jury Trial Demanded—Constitutional Claims
S. C. Constitution, §§ 15-77-300, 310

FILED
2018 JUL -9 PM 4:23
JULIE A. BENTON
CLERK OF COURT
BY

The Plaintiff above named, complains of the Defendants above named, alleges and says as follows:

1. That the Plaintiff, Skip Hoagland, is a resident of Beaufort County, South Carolina.
2. That the Defendant, John Tecklenburg, is the mayor of the City of Charleston, which operates under a “strong mayor” form of government authorized by § 5-7-10, S. C. Code, ann.
3. The Defendant, City of Charleston, is a municipality organized and existing under the laws of the State of South Carolina located in the counties of Charleston, Berkeley, and Dorchester.
4. The City of Charleston Police Department is an agency of the City of Charleston and provides armed security for City Council meetings.
5. This action is brought for violations of the South Carolina Constitution, Articles I, §§ 2 and 3, South Carolina statutes, §§ 15-77-300, 310 and as supported by identical claims brought under the United States Constitution, Amendments I, V, and XIV, as authorized by Congress in 42 U.S.C.A. §§1983 and 1988.
6. The Court has jurisdiction over the parties hereto and the subject matter herein as the acts complained of occurred in the County of Charleston.

7. That at the City Council Meeting held May 25, 2018, in City Council chambers, the plaintiff exercised his right to petition the government for the redress of his grievance as allowed under the State and Federal Constitutions.

8. The plaintiff properly signed in as required by City procedural rules and waited until he was called for his scheduled and approved opportunity to address Council.

9. The plaintiff attempted to address Council on important matters of alleged financial conduct involving millions of taxpayer dollars by an organization under the direct control and oversight of the City Council.

10. That as the plaintiff began his presentation, which he supported with detailed financial accounting and other financial documents detailing irregularities with taxpayer money, the plaintiff stated: "Numbers don't lie; Helen Hill lies."

11. At that point, the defendant, John Tecklenburg, without warning or advance notice, and without providing plaintiff an opportunity to be heard, declared the plaintiff "out of order" for violating the City of Charleston Ordinance 2-28, "Rules of Decorum," and directed the City of Charleston Police Department to remove the plaintiff from the public meeting in spite of the fact that the plaintiff adhered to City requirements for public participation and whose comments were directed at public figures who are charged with the fiduciary responsibility over large sums of taxpayer dollars.

12. Without affording the plaintiff an opportunity to be heard or providing advance warning that the Mayor considered plaintiff's statement a violation of § 2-28, the Mayor ordered the City of Charleston Police Department to take custody of the plaintiff and physically remove him from the public meeting and deposit him outside the building on a public street. Ordinance 2-28 states in applicable part:

(1) Rules of Decorum:

While any meeting of City Council is in session, the following rules of decorum shall be observed;

(a) Any person who speaks at a City Council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly

conduct which disrupts, disturbs or otherwise impedes the orderly conduct of a City Council meeting shall, at the discretion of the Mayor. . . be barred from further audience before City Council during that meeting and may be removed from the building.

13. The defendant, City of Charleston Police Department, took physical control of the plaintiff and physically removed him from the City Council meeting and from the entire City Hall building against his will but did not charge plaintiff with a crime.

14. The ordinance is vague and vests unbridled discretion in the Mayor to censor and suppress any unpopular message.

15. The plaintiff was not in the least “disorderly” as that term is defined by South Carolina Law. See §§ 21-109, 21-192, City of Charleston Code, which define “disorderly conduct” as either an effort to start a riot or if “he shall remain idle in essentially one location in a public place in such a manner as to (1) Create or cause to be created a danger of a breach of the peace, (2) Create or cause to be created any disturbance or annoyance calculated to interfere with the comfort and repose of any person. . .”

16. At the time the defendants took physical possession of the plaintiff’s person and forcibly removed him from a City Council meeting and the entire building, the plaintiff was exercising his First Amendment right to speak to the government about evidence of fraud, conversion, theft, and waste of millions of taxpayers’ dollars, which can never be considered a “breach of the peace” or “disorderly conduct.”

17. The defendants, jointly and severally, combining and concurring, violated the plaintiff’s fundamental rights of free speech, due process, and equal protection, combining and concurring, in the following particulars:

(a) In denying the plaintiff his Constitutional right to petition the government for the redress of his grievances;

(b) In refusing the plaintiff his fundamental right of free speech and in imposing an arbitrary and capricious rule on him to prevent him from exercising his right of free speech and to censor and prevent publication of evidence of tax fraud;

(c) In denying the right to the plaintiff to impart documented financial information he reasonably believes is true, and the plaintiff’s statement, “numbers don’t lie; Helen Hill lies” cannot be taken as a breach of the peace. (In 1971, the U.S. Supreme Court, in *Cohen v. California*, 403 U.S. 15 (1971), reversed a breach of peace conviction when police

arrested petitioner, Cohen, for wearing a jacket that displayed the message: "F**k the draft." The Los Angeles Municipal Court found Petitioner guilty for "offensive" speech that the Court determined "breached the peace.");

(d) In using armed police to remove the plaintiff from a lawful meeting and to prevent and censor lawful speech;

(e) In using armed police to remove the plaintiff from a public building and close a public City Council meeting to the plaintiff;

All of which, combining and concurring, were the direct and proximate cause of the damages suffered by the Plaintiff herein, said acts constituting irreparable harm and being in violation of the Constitutions, statutes and laws of the State of South Carolina and the rules and regulations of the City of Charleston City Council.

18. A governmental suppression of free speech based on its content is an irreparable harm for which the plaintiff is entitled to an injunction in addition to actual and special damages.

19. That by reason of the said acts of omission or commission of some one or more of them by the Defendants, as aforesaid, as the combining and concurring proximate causes without which the plaintiff's speech would not have been censored and suppressed and removed from a public building, the Plaintiff incurred both general and special damages.

20. That the actions taken by the defendants, combining and concurring, were intentional, reckless, and grossly negligent and taken without substantial justification and constitute violations of the plaintiff's fundamental rights to free speech and right to petition his government for redress of his grievances under the South Carolina Constitution, Article I, § 2 and the First Amendment to the United States Constitution.

21. As a direct result of the deliberate and/or conscious or reckless disregard for the plaintiff's fundamental rights of free speech and right to petition the government, he has suffered irreparable harm along with general and special damages, including but not limited to, being forced to expend sums for attorney's fees and costs to protect and enforce his fundamental rights for which the plaintiff is entitled to an award of damages and a permanent injunction, such amount of damages to be fixed by a jury.

**FOR A SECOND CAUSE OF ACTION
(F.O.I.A. violation)**

22. The plaintiff repeats the above allegations as if set forth here verbatim.

23. The *South Carolina Freedom of Information Act* requires that meetings of public bodies be conducted openly, allowing closed sessions of public bodies for limited, specified reasons set forth in § 30-4-70, S. C. Code, ann., none of which are implicated in this case.

24. On May 25, 2018, the City of Charleston, acting through the Mayor, directed armed City of Charleston Law Enforcement to use physical force to require the plaintiff to vacate City Council chambers and be removed from the entire building to “Broad Street,” thereby closing the public meeting to the plaintiff in violation of the *South Carolina Freedom of Information Act*.

25. The defendants, acting in concert, unlawfully closed a public meeting to the plaintiff’s participation for which the plaintiff is entitled to an injunction, declaration, and for a sum for reasonable attorney’s fees incurred in the prosecution of this action as allowed by § 30-4-100, S. C. Code, ann.: “(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.”

FOR A THIRD CAUSE OF ACTION (Conspiracy)

26. The plaintiff repeats the above allegations as if set forth here verbatim.

27. The plaintiff appeared before the Charleston City Council in accordance with the rules and regulations governing the public participation in a public meeting by a public body to present evidence to the City Council of false claims and waste, fraud and conversion of taxpayer money, which the plaintiff alleges is diverted for improper and unlawful use.

28. As the plaintiff attempted to speak and present evidence of improper and fraudulent use of taxpayer money, the defendants combined and joined in for the illegal purpose of censoring the plaintiff and preventing him from presenting evidence of improper and unlawful use of public money.

29. The unlawful combination of the defendants to use armed force to arrest the plaintiff and censor his speech to prevent him from presenting what he reasonably believes is evidence of unlawful conversion of public funds caused the plaintiff special damage, including the suppression of legal speech for which the law presumes an irreparable harm and forced the plaintiff to incur attorney's fees and associated case costs in order to vindicate his fundamental free speech rights guaranteed to him by the South Carolina Constitution and the First Amendment to the United States Constitution, both which guarantee to any citizen the right to speak and be heard by City Council about matters of public importance.

30. In using armed force to suppress and censor the plaintiff's free speech, the defendants, acting in concert, undertook unlawful action for which there is no immunity under the *South Carolina State Tort Claims Act*.

31. The plaintiff is entitled to trial by jury, and for an award of damages in such amount as calculated by the trier of fact.

WHEREFORE, the Plaintiff prays for a trial by jury and for judgment against the Defendants for actual and special damages together with a temporary and permanent injunction preventing the City from suppressing lawful speech and closing public meetings to citizens whose views may not be popular with the Mayor, for a declaration that the City's Ordinance § 2-28 is void for vagueness and for vesting unbridled discretion in the Mayor to censor or suppress speech of citizens with which he may disagree, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

June 29, 2018



Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P.O. Box 71121
Charleston, SC 29415-1121
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 5, 2018

Hon. Julie Armstrong,
Clerk of Court
100 Broad Street, Suite 106
Charleston, S.C. 29401

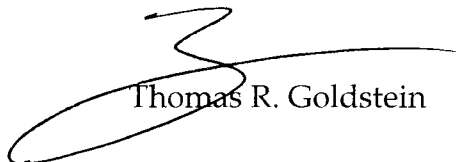
Re: Skip Hoagland vs. John Tecklenburg, in his official capacity, the City of
Charleston, and the City of Charleston Police Department;
Case No.: 2018-CP-10- **3441**

Dear Julie,

I enclose an original and an extra copy of a Summons and Complaint along with a civil cover sheet, and our firm's check in the amount of \$150.00 for the filing fee. I ask that you file the original with the court and return the extra copy marked filed to me in the envelope provided. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

/ral

enclosure: Summons and complaint, cover sheet, check

Office of the Sheriff



County of Charleston

Sheriff J. Al Cannon, Jr.

Attorney or Party Without Attorney:
 BELK COBB INFINGER & GOLDSTEIN PA
 PO BOX 71121
 CHARLESTON, SC 29415-1121
 Att For: HOAGLAND, SKIP

Telephone No.
 843-554-4291

SHERIFF NO.
 CISC-18006465-002

Court Use Only

FILED
 2018 JUL 31 PM 2:37
 JULIE J. ARMSTRONG
 CLERK OF COURT

Name and Address of Court:
 CHARLESTON COUNTY COURT OF COMMON PLEAS

Plaintiff: SKIP HOAGLAND

Defendant: JOHN TECKLENBURG, ET AL

PROOF OF SERVICE
 (SUMMONS & COMP)

Hearing Date
 0/00/00

Time

Case Number
 2018CP103441

I, J. AL CANNON, JR., ESQ., SHERIFF in and for said County and State, do hereby certify that I have received the annexed:

CIVIL ACTION COVER SHEET; SUMMONS AND COMPLAINT;

on the 16th day of JULY, 2018, and that I served the same on the 23rd day of JULY, 2018, at the hour of 9:50 AM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on:

PERSON SERVED: CITY OF CHARLESTON PROSECUTORS OFFICE
 PS TITLE: SERVED THEDA MONTERO, LEGAL SECRETARY FOR CITY OF CHARLESTON LEGAL

SUBSTITUTED SERVICE: BY LEAVING A COPY THEREOF AT THEIR DWELLING HOUSE OR USUAL PLACE OF ABODE WITH A PERSON OF SUITABLE AGE AND DISCRETION, THEN RESIDING THEREIN, OR WITH AN AGENT AUTHORIZED BY APPOINTMENT OR BY LAW TO RECEIVE SERVICE OF PROCESS
 SERVED AT CLERK OF COUNCIL FIRST, THEN AT CITY OF CHARLESTON LEGAL

Address Served: 180 LOCKWOOD BLVD
 CHARLESTON, SC 29403

Service By GREEN, B.

SHERIFF'S FEES	Charges
SERVICE FEE	15.00
** TOTALS **	15.00

I am a SOUTH CAROLINA SHERIFF,
 and I certify that the foregoing
 is true and correct.

ATTEST OF CERTIFIED TRUE COPY

S. Shackelford

J. AL CANNON, JR., ESQ., SHERIFF
 COUNTY OF CHARLESTON
 STATE OF SOUTH CAROLINA

NOTARY PUBLIC SOUTH CAROLINA

MY COMMISSION EXPIRES: 9/26/27

DATE: 7/23/18

BY *Bothy A*

Administrative Office

3691 Leeds Avenue
 N. Charleston, SC 29405
 ~ Sheriff ~
 Voice (843) 554-2230
 Fax (843) 554-2243

Law Enforcement Division

3691 Leeds Avenue
 N. Charleston, SC 29405
 ~ Patrol ~
 Voice (843) 202-1700
 Fax (843) 554-2234

Al Cannon Detention Center

3841 Leeds Avenue
 N. Charleston, SC 29405
 Voice (843) 529-7300
 Fax (843) 529-7406

Judicial Center

100 Broad Street, Suite 381
 Charleston, SC 29401
 Voice (843) 958-2100
 Fax (843) 958-2128

Office of the Sheriff



County of Charleston

Sheriff J. Al Cannon, Jr.

Attorney or Party Without Attorney:
 BELK COBB INFINGER & GOLDSTEIN PA
 PO BOX 71121
 CHARLESTON, SC 29415-1121
 Att For: HOAGLAND, SKIP

Telephone No.
 843-554-4291

SHERIFF NO.
 CISC-18006465-001

Court Use Only

FILED
 2018 JUL 31 PM 2:37
 JULIE J. ARMSTRONG
 CLERK OF COURT

Name and Address of Court:
 CHARLESTON COUNTY COURT OF COMMON PLEAS

Plaintiff: SKIP HOAGLAND

Defendant: JOHN TECKLENBURG, ET AL

PROOF OF SERVICE
 (SUMMONS & COMP)

Hearing Date
 0/00/00

Time

Case Number
 2018CP103441

I, J. AL CANNON, JR., ESQ., SHERIFF in and for said County and State, do hereby certify that I have received the annexed:

CIVIL ACTION COVER SHEET; SUMMONS AND COMPLAINT;

on the 16th day of JULY, 2018, and that I served the same on the 23rd day of JULY, 2018, at the hour of 9:50 AM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on:

PARTY TO SERVE: CITY OF CHARLESTON

PERSON SERVED: C/O CLERK OF COUNCIL

PS TITLE: SERVED B. WHITACKER, ASSISTANT SECRETARY AT CLERK OF COUNCIL

SUBSTITUTED SERVICE: BY LEAVING A COPY THEREOF AT THEIR DWELLING HOUSE OR USUAL PLACE OF ABODE WITH A PERSON OF SUITABLE AGE AND DISCRETION, THEN RESIDING THEREIN, OR WITH AN AGENT AUTHORIZED BY APPOINTMENT OR BY LAW TO RECEIVE SERVICE OF PROCESS

Address Served: 80 BROAD STREET
 CHARLESTON, SC 29401

Service By: GREEN, B.

SHERIFF'S FEES Charges

SERVICE FEE 15.00

** TOTALS ** 15.00

I am a SOUTH CAROLINA SHERIFF,
 and I certify that the foregoing
 is true and correct.

ATTEST OF CERTIFIED TRUE COPY

S. Shae Kelford

J. AL CANNON, JR., ESQ., SHERIFF
 COUNTY OF CHARLESTON
 STATE OF SOUTH CAROLINA

NOTARY PUBLIC SOUTH CAROLINA

MY COMMISSION EXPIRES: 9/26/27

DATE: 7/23/18

BY: *Billy A.*

Administrative Office

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BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 26, 2018

Hon. Julie Armstrong,
Clerk of Court
100 Broad Street, Suite 106
Charleston, S.C. 29401

Re: Skip Hoagland vs. John Tecklenburg, in his official capacity, the City of
Charleston, and the City of Charleston Police Department;
Case No.: 2018-CP-10-3441

Dear Julie,

I enclose two original Affidavits of Service and an extra copy of each.
Would you be so kind as to please the originals with the court and return the
extra copies marked filed to me in the envelope provided? I thank you in
advance for your attention to this request. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Rebekah Lambooy, Paralegal to
Thomas R. Goldstein

/ral

enclosure: as stated

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-03441

Skip Hoagland,)
)
)

vs.)
)
)

SUMMONS
(Jury Trial Demanded)

John Tecklenburg, in his)
Official capacity, the City of)
Charleston, and the City of)
Charleston Police Department,)
)
Defendants.)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 AUG 13 PM 3:48

FILED

TO THE DEFENDANTS ABOVE NAMED:

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 said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.



August 10, 2018

Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-03441

Skip Hoagland,)
)
)
vs.)
)
)
John Tecklenburg, in his)
Official capacity, the City of)
Charleston, and the City of)
Charleston Police Department,)
)

Defendants.)

AMENDED COMPLAINT
Jury Trial Demanded—Constitutional Claims
S. C. Constitution, §§ 15-77-300, 310

FILED
2018 AUG 13 PM 3:48
JULIE J ARMSTRONG
CLERK OF COURT
BY _____
SQ

The Plaintiff above named, complains of the Defendants above named, alleges and says as follows:

1. That the Plaintiff, Skip Hoagland, is a resident of Beaufort County, South Carolina.
2. That the Defendant, John Tecklenburg, is the mayor of the City of Charleston, which operates under a “strong mayor” form of government authorized by § 5-7-10, S. C. Code, ann.
3. The Defendant, City of Charleston, is a municipality organized and existing under the laws of the State of South Carolina located in the counties of Charleston, Berkeley, and Dorchester.
4. The City of Charleston Police Department is an agency of the City of Charleston and provides armed security for City Council meetings.
5. This action is brought for violations of the South Carolina Constitution, Articles I, §§ 2 and 3, South Carolina statutes, §§ 15-77-300, 310 S. C. Code of Laws and § 30-4-60 of the *South Carolina Freedom of Information Act*.
6. The Court has jurisdiction over the parties hereto and the subject matter herein as the acts complained of occurred in the County of Charleston.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Constitution)

7. The plaintiff appeared before the City of Charleston City Council on May 25, 2018, in City Council chambers, and the plaintiff attempted to exercise his right to attend the City Council meeting and petition the government for the redress of his grievance as allowed under the South Carolina Constitution and under the *South Carolina Freedom of Information Act*.

8. The plaintiff properly signed in as required by City procedural rules and waited until the Mayor called him for his scheduled and approved opportunity to address Council.

9. The plaintiff attempted to address Council on important matters of alleged financial conduct involving millions of taxpayer dollars by an organization funded by the City of Charleston's tax revenues and under the direct control and oversight of the City Council.

10. That as the plaintiff began his presentation, which he supported with detailed financial accounting and other financial documents detailing irregularities with taxpayer money, the plaintiff stated: "Numbers don't lie; Helen Hill lies."

11. At that point, the defendant, John Tecklenburg, without warning or advance notice, and without providing plaintiff an opportunity to be heard, declared the plaintiff "out of order" for violating the City of Charleston Ordinance 2-28, "Rules of Decorum," and directed the City of Charleston Police Department to remove the plaintiff from the public meeting in spite of the fact that the plaintiff adhered to City requirements for public participation and whose comments were directed at public figures who are charged with the fiduciary responsibility over large sums of taxpayer dollars.

12. Without affording the plaintiff an opportunity to be heard or providing advance warning that the Mayor considered plaintiff's statement a violation of § 2-28, the Mayor ordered the City of Charleston Police Department to take custody of the plaintiff and physically remove him from the public meeting and deposit him outside the building on a public street. Ordinance 2-28 states in applicable part:

(1) Rules of Decorum:

While any meeting of City Council is in session, the following rules of decorum shall be observed;

(a) Any person who speaks at a City Council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of a City Council meeting shall, at the discretion of the Mayor. . . be barred from further audience before City Council during that meeting and may be removed from the building.

13. The defendant, City of Charleston Police Department, took physical control of the plaintiff and physically removed him from the City Council meeting and from the entire City Hall building against his will but did not charge plaintiff with a crime.

14. The Rules of Decorum ordinance is vague and vests unbridled discretion in the Mayor to censor and suppress any unpopular message.

15. The plaintiff was not “disorderly” as that term is defined by South Carolina Law. See §§ 21-109, 21-192, City of Charleston Code, which define “disorderly conduct” as either an effort to start a riot or if “he shall remain idle in essentially one location in a public place in such a manner as to (1) Create or cause to be created a danger of a breach of the peace, (2) Create or cause to be created any disturbance or annoyance calculated to interfere with the comfort and repose of any person. . .”

16. At the time the defendants took physical possession of the plaintiff’s person and forcibly removed him from a City Council meeting and the entire building, the plaintiff was exercising his Article I, § 2 Constitutional right to speak to the government about evidence of fraud, conversion, theft, and waste of millions of taxpayers’ dollars, which can never be considered a “breach of the peace” or “disorderly conduct.” (“The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.”)

17. The defendants, jointly and severally, combining and concurring, violated the plaintiff’s fundamental rights of free speech, due process, and equal protection, combining and concurring, in the following particulars:

(a) In denying the plaintiff his Article I, § 2 Constitutional right to petition the government for the redress of his grievances;

(b) In refusing the plaintiff his fundamental right of free speech and in imposing an arbitrary and capricious rule on him to prevent him from exercising his right of free speech and to censor and prevent publication of evidence of tax fraud;

(c) In denying the right to the plaintiff to impart documented financial information he reasonably believes is true, and the plaintiff's statement, "numbers don't lie; Helen Hill lies" cannot be taken as a breach of the peace. (In 1971, the U.S. Supreme Court, in *Cohen v. California*, 403 U.S. 15 (1971), reversed a breach of peace conviction when police arrested petitioner, Cohen, for wearing a jacket that displayed the message: "F**k the draft." The Los Angeles Municipal Court found Petitioner guilty for "offensive" speech that the Court determined "breached the peace.");

(d) In using armed police to take physical control of the plaintiff and physically remove the plaintiff from a lawful meeting and to prevent and censor lawful speech;

(e) In using armed police to remove the plaintiff from a public building and close a public City Council meeting to the plaintiff;

(f) In closing a public meeting to the plaintiff in violation of the *South Carolina Freedom of Information Act*,

All of which, combining and concurring, were the direct and proximate cause of the damages suffered by the Plaintiff herein, said acts constituting irreparable harm and being in violation of the Constitutions, statutes and laws of the State of South Carolina and the rules and regulations of the City of Charleston City Council.

18. A governmental suppression of free speech based on its content is an irreparable harm for which the plaintiff is entitled to an injunction in addition to actual and special damages.

19. That by reason of the said acts of omission or commission of some one or more of them by the Defendants, as aforesaid, as the combining and concurring proximate causes without which the plaintiff's speech would not have been censored and suppressed and removed from a public building, the Plaintiff incurred both general and special damages.

20. That the actions taken by the defendants, combining and concurring, were intentional, reckless, and grossly negligent and taken without substantial justification and constitute violations of the plaintiff's fundamental rights to free speech and right to petition his government for redress of his grievances under the South Carolina Constitution, Article I, § 2 and the *South Carolina Freedom of Information Act*.

21. As a direct result of the deliberate and/or conscious or reckless disregard for the plaintiff's fundamental rights of free speech and right to petition the government, he has suffered irreparable harm along with general and special damages, including but not limited to, being forced to expend sums for attorney's fees and costs to protect and enforce his fundamental rights for which the plaintiff is entitled to an award of damages and a permanent injunction, such amount of damages to be fixed by a jury.

**FOR A SECOND CAUSE OF ACTION
(F.O.I.A. violation)**

22. The plaintiff repeats the above allegations as if set forth here verbatim.

23. The *South Carolina Freedom of Information Act* requires that meetings of public bodies be conducted openly, allowing closed sessions of public bodies for limited, specified reasons set forth in § 30-4-70, S. C. Code, ann., none of which are implicated in this case.

24. On May 25, 2018, the City of Charleston, acting through the Mayor, directed armed City of Charleston Law Enforcement to use physical force to require the plaintiff to vacate City Council chambers and be removed from the entire building to "Broad Street," thereby closing the public meeting to the plaintiff in violation of the *South Carolina Freedom of Information Act*.

25. The defendants, acting in concert, unlawfully closed a public meeting to the plaintiff's participation for which the plaintiff is entitled to an injunction, declaration, and for a sum for reasonable attorney's fees incurred in the prosecution of this action as allowed by § 30-4-100, S. C. Code, ann.: "(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists."

**FOR A THIRD CAUSE OF ACTION
(Conspiracy)**

26. The plaintiff repeats the above allegations as if set forth here verbatim.

27. The plaintiff appeared before the Charleston City Council in accordance with the rules and regulations governing the public participation in a public meeting by a public body to present evidence to the City Council of false claims and waste, fraud and conversion of taxpayer money, which the plaintiff alleges is diverted for improper and unlawful use.

28. As the plaintiff attempted to speak and present evidence of improper and fraudulent use of taxpayer money, the defendants combined and joined in for the illegal purpose of censoring the plaintiff and preventing him from presenting evidence of improper and unlawful use of public money.

29. The unlawful combination of the defendants to use armed force to arrest the plaintiff and censor his speech to prevent him from presenting what he reasonably believes is evidence of unlawful conversion of public funds caused the plaintiff special damage, including the suppression of legal speech for which the law presumes an irreparable harm and forced the plaintiff to incur attorney's fees and associated case costs in order to vindicate his fundamental free speech rights guaranteed to him by the South Carolina Constitution and the *South Carolina Freedom of Information Act*, both which guarantee to any citizen the right to be present for public meetings, and to speak and be heard by City Council about matters of public importance.

30. In using armed force to suppress and censor the plaintiff's free speech, the defendants, acting in concert, undertook unlawful action for which there is no immunity under the *South Carolina State Tort Claims Act*.

31. The plaintiff is entitled to trial by jury, and for an award of damages in such amount as calculated by the trier of fact.

**FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment)**

32. The plaintiff repeats the above allegations as if set forth here verbatim.

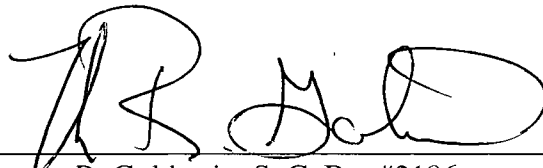
33. As authorized by § 15-53, 20, S. C. Code, ann., the plaintiff prays for an Order of the Court vacating City Ordinance 2-28 (Conduct Code) for being unconstitutionally vague (Article 1, § 3, S. C. Constitution) because a person of common intelligence cannot know in advance what Mayor Tecklenburg considers to be "profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct" because the statement: "Numbers

don't lie; Helen Hill lies" is neither (1) profane, (2) abusive, (3) obscene, (4) fighting words, or finally (5) "disorderly conduct."

34. Ordinance 2-28 vests unbridled discretion in the Mayor to decide at any moment to have the police take physical custody of citizens and remove him or her from a public meeting, and vests in the Mayor the unbridled discretion to censor speech in violation of the South Carolina Constitution and the *South Carolina Freedom of Information Act*.

WHEREFORE, the Plaintiff prays for a trial by jury and for judgment against the Defendants for actual and special damages together with a temporary and permanent injunction preventing the City from suppressing lawful speech and closing public meetings to citizens whose views may not be popular with the Mayor, for a declaration that the City's Ordinance § 2-28 is void for vagueness and for vesting unbridled discretion in the Mayor to censor or suppress speech of citizens with which he may disagree, for the costs of this action, including a reasonable sum as attorney's fees as provided for by §§ 15-77-300, 310, S. C. Code, ann., and for such other and further relief as this Court may deem just and proper.

August 10, 2018



Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P.O. Box 71121
N. Charleston, South Carolina 29415-1121
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☒ handing counsel a copy thereof
- ☒ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 10th day of August, 2018
By Th. R. Goldstein

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

August 10, 2018

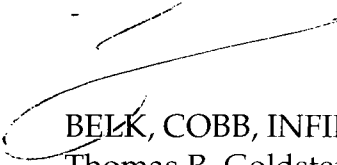
Hon. Julie Armstrong,
Clerk of Court
100 Broad Street, Suite 106
Charleston, S.C. 29401

Re: Skip Hoagland vs. John Tecklenburg, in his official capacity, the City of
Charleston, and the City of Charleston Police Department;
Case No.: 2018-CP-10-3441

Dear Julie,

I enclose an original and an extra copy of plaintiff's Amended Complaint. Would you be so kind as to please the original with the court and return the extra copy marked filed to me in the envelope provided? By copy of this letter, I am providing a copy to opposing counsel. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,



BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/
enclosure: Amended Complaint, return envelope

cc:
Sandra J. Senn, Esq. (with enclosure)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
Charleston Police Department,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

THE CITY OF CHARLESTON'S
ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT

(JURY TRIAL DEMANED)

Come now the Defendant, the City of Charleston, and respectfully answers Plaintiff's Amended Complaint (to the extent not already answered in Defendants' Motion to Dismiss) as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. Upon information and belief, admits.
2. Admits.
3. Admits.
4. Admits.
5. Calls for legal conclusions requiring no response.
6. Calls for legal conclusions requiring no response.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Constitution)

7. Calls for legal conclusions requiring no response.
8. Denies as stated.

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2018 SEP 21 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT

9. Lacks knowledge or information as to the plaintiff's intent and therefore deny.
10. Admits only that the recorded council meeting is the best evidence of the exact exchanges. Denies the remainder.
11. Admits only that the recorded council meeting is the best evidence of the exact exchanges. Denies the remainder.
12. Admits only that the recorded council meeting is the best evidence of the exact exchanges. Denies the remainder.
13. Denies as stated.
14. Denies.
15. Denies as stated.
16. Denies as stated and calls for legal conclusions requiring no response.
17. Denies including subparts.
18. Calls for legal conclusions requiring no response.
19. Denies.
20. Denies.
21. Denies.

FOR A SECOND CAUSE OF ACTION
(F.O.I.A. Violation)

22. Requires no response.
23. Calls for legal conclusions requiring no response.
24. Denies as stated.
25. Denies.

FOR A THIRD CAUSE OF ACTION
(Conspiracy)

- 26. Requires no response.
- 27. Lacks knowledge or information as to plaintiff's true intentions and therefore denies as stated.
- 28. Denies as stated.
- 29. Denies.
- 30. Calls for legal conclusions requiring no response.
- 31. Calls for legal conclusions requiring no response.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment)

- 32. Requires no response.
- 33. Calls for legal conclusions requiring no response.
- 34. Denies.

FOR A SECOND DEFENSE
(Rules 8 and 12)

- 35. Plaintiff has failed to state a cause of action for which relief can be granted. Further, the Amended Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process, No Proximate Cause)

- 36. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, service of process, statute of limitations, and the acts of the

defendant were not the proximate cause of the injuries.

FOR A FOURTH DEFENSE
(Sole Negligence/Comparative Negligence)

37. Answering Defendant asserts that Plaintiff is solely negligent for his suffering and injuries or in the alternative is comparatively negligent.

FOR A FIFTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

38. As to any violation of common law or state law, Answering Defendant asserts the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as a defense and asserts that it does not waive any of the rights, privileges or immunities therein, including but not limited to Eleventh Amendment immunity.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

39. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages should there be any damages.

FOR A SEVENTH DEFENSE
(Standing)

40. The statutes and/or regulations referenced in Plaintiff's Amended Complaint do not confer a private right of action on the Plaintiff in connection with this matter. Therefore, the Plaintiff lacks standing and his claims against the Defendant are barred.

FOR AN EIGHTH DEFENSE
(No Duty)

41. The City of Charleston owes no duty to hear a petition or address from a non-citizen.

FOR A NINTH DEFENSE
(No Damages/No Special Damages)

42. Plaintiff lacks damages because he had no cognizable right to address officials from a different county, and because Plaintiff was free to attend the public meeting without comment. Further, Plaintiff has failed to allege special damages and therefore, his Conspiracy cause of action fails.

FOR A TENTH DEFENSE
(Frivolous Proceeding)

43. Plaintiff has instituted and maintained an action against Defendants primarily for a purpose other than that of securing a proper adjudication in law or fact in violation of the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. § 15-36-10.

FOR AN ELEVENTH DEFENSE
(Abuse of Process)

44. Plaintiff's involvement of the judicial process was undertaken with a willful effort to obtain economic gain and other illegitimate gains and collateral objectives.

FOR A TWELFTH DEFENSE
(State Law Immunity)

45. At all times relevant to the allegations contained in the Amended Complaint, the agents of the Defendants were acting according to and in compliance with specific laws, rules, and regulations of the State of South Carolina and the City of Charleston, and are, therefore, immune from suit and plead such statutory or regulatory authorization as a complete defense and bar to the allegations within the Amended Complaint.

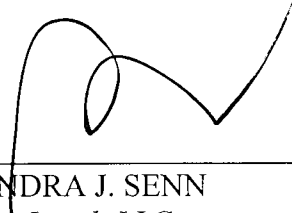
FOR A THIRTEENTH DEFENSE
(Absolute/Judicial/Quasi-Judicial/Legislative Immunity)

46. Defendants, as sued, are absolutely immune from liability for acts committed in their legislative, judicial, or quasi-judicial roles.

FOR A FOURTEENTH DEFENSE
(Intracorporate Immunity)

47. Plaintiff's conspiracy claims are barred as he cannot establish the existence of any conspiracy involving the answering defendant or its employees; further the intracorporate conspiracy doctrine bars the claims as set forth in the Amended Complaint.

Wherefore, having fully answered the Amended Complaint, Answering Defendant hereby prays that the Amended Complaint be dismissed with prejudice; that Plaintiff be responsible for all costs and fees associated with defending this action; and for all such further relief as this court deems just and proper. In addition, Answering Defendant reserves the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.



SANDRA J. SENN
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
(843) 556-4046 (fax)
Sandy@SennLegal.com

Attorney for Defendants

September 20, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Skip Hoagland,
Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
Charleston Police Department,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

CERTIFICATE OF SERVICE

FILED
2018 SEP 21 PM 3:00
JULIE A. BRISTOL
CLERK OF COURT

The undersigned hereby certifies that a true copy of the foregoing City of Charleston's Answer to Plaintiff's Amended Complaint was served this 20th day of September, 2018, by depositing the same in the United States mail, postage pre-paid and affixed thereto, and addressed to the following:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger, & Goldstein, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121



Senn Legal, LLC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2018-CP-10-03441

Skip Hoagland,

Plaintiff,

vs.

John Tecklenberg, et al,

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Thomas R. Goldstein, Bar No. 2186 Address: P.O. Box 71121, Charleston, SC 29415 Phone: (843)554-4291 Fax (843) 554-5566 E-mail: tgoldstein@cobblaw.net Other: _____		Defendant's Attorney: Sandra J. Senn, Bar No. 15036 Address: P.O. Box 12279, Charleston, SC 29422 Phone: (843) 556-4045 Fax (843) 556-4046 E-mail: Sandy@SennLegal.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
_____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant		9/20/18 Date submitted	
SECTION III: Motion Fee			
☒ PAID – AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
Charleston Police Department,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

MOTION TO DISMISS

FILED
2018 SEP 21 PM 2:58
JAMES J. ARISTIDE
CLERK OF COURT

Come now the Defendants, above-named, moving pursuant to Rule 12(b)(6), SCRCP, for dismissal on the following grounds:

I. CPD is merely an agency of the City, and therefore should be dismissed as it is not a legal entity subject to suit.

II. The Mayor, in his official capacity, and the City of Charleston are one in the same for purposes of this litigation such that this action may not be brought against both. If this lawsuit had any merit, the City of Charleston would be the only proper defendant.

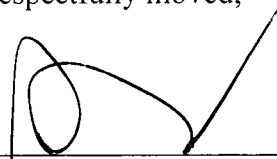
III. The City may limit those who can comment at council meetings only to citizens of the city and deny non-residents the right to speak entirely. The City also has a substantial interest in conducting orderly efficient meetings. Therefore, the non-resident Plaintiff's removal from the meeting after his disruptive speech was not a violation of any cognizable right.

IV. Plaintiff has failed to state a FOIA cause of action as FOIA does not require governmental bodies to allow citizens to speak at meetings, rather it only requires that meetings be open to the public. The meetings are not only open to the public, they are video-recorded.

VI. Plaintiff has failed to state a Civil Conspiracy cause of action as he has not alleged special damages and because the claim is barred by the intra-corporate conspiracy doctrine.

This Motion will be supplemented by a Memorandum of Law.

Respectfully moved,



SANDRA J. SENN
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
(843) 556-4046 (fax)
Sandy@SennLegal.com

Attorney for Defendants

September 20, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
Charleston Police Department,

Defendants.

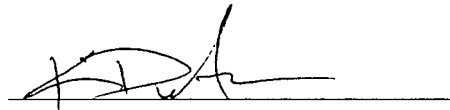
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

CERTIFICATE OF SERVICE

FILED
2018 SEP 21 PM 2:58
CLERK OF COURT

The undersigned hereby certifies that a true copy of the foregoing Motion to Dismiss was served this 20th day of September, 2018, by depositing the same in the United States mail, postage pre-paid and affixed thereto, and addressed to the following:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger, & Goldstein, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121



Senn Legal, LLC



*Sandra J. Senn
Robin L. Jackson
Christopher T. Dorsel
Kevin M. DeAntonio*

*3 Wesley Drive
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
F: (843) 556-4046*

Sandy@sennlegal.com

September 20, 2018

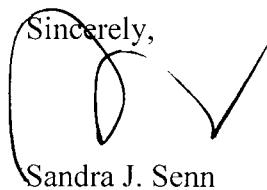
The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Skip Hoagland v. City of Charleston, et al
C/A No.: ~~2017-CP-08-0177~~
2018 10 3441

Dear Julie:

Enclosed for filing please find the original and one copy each of a Motion to Dismiss and the City of Charleston's Answer in the above referenced matter. If you would, please file the same and return the clocked copies to me in the enclosed self-addressed stamped envelope provided for your convenience. By copy of this letter, opposing counsel is being served with copies of these responsive pleadings on today's date.

With kind regards, I am,

Sincerely,

Sandra J. Senn

kmd

Enclosures

cc: Thomas R. Goldstein, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-03441

Skip Hoagland,)
))
))
vs.))
))
))
John Tecklenburg, in his)
Official capacity, the City of)
Charleston, and the City of)
Charleston Police Department,)
))
Defendants.)

MEMORANDUM OF LAW

The City of Charleston seeks a Rule 12 dismissal on so much of the plaintiff's complaint as pertains to the defendant, John Tecklenburg and/or the police department on five grounds as follows:

1. The police force is an agent of the City and cannot be sued separately.
2. The Mayor cannot be sued individually **and** officially.
3. A non-resident has no right to address Council.
4. *F.O.I.A.* is not implicated when a citizen is barred from a public meeting.
5. There can be no conspiracy between sub agencies. (Defendant's Motion to Dismiss filed September 21, 2018)

In essence, the City contends that the defendant's, Mayor's, actions in ordering an armed police officer to take physical custody of the plaintiff and deposit him on the sidewalk outside of a City Council meeting are actions immune from suit. The short answer is, of course, that the City's discretionary acts are immune if it is discharging a discretionary duty. Both the State and the Federal Constitutions bar government officials, no matter how great their discretionary

powers may be, from censoring, arresting, of barring citizens from public meetings absent probable cause to believe that a citizen is, or is about to, commit a criminal act. Here, the government discretion is implicated if, and only if, the plaintiff's conduct constitutes a crime or a reasonable threat of a criminal act, but as set forth in plaintiff's complaint, and as reaffirmed by thousands of cases, a citizen's expression of truthful statements about financial matters of significant public importance cannot be censored or arrested by the government by designating speech a crime. See plaintiff's complaint, ¶¶ 8-10:

8. The plaintiff properly signed in as required by City procedural rules and waited until he was called for his scheduled and approved opportunity to address Council.

9. The plaintiff attempted to address Council on important matters of alleged financial conduct involving millions of taxpayer dollars by an organization under the direct control and oversight of the City Council.

10. That as the plaintiff began his presentation, which he supported with detailed financial accounting and other financial documents detailing irregularities with taxpayer money, the plaintiff stated: "Numbers don't lie; Helen Hill lies."

The facts set forth in the plaintiff's complaint are not in dispute and neither is the law. In evaluating the defendants' motion to dismiss, this Court is required to base its ruling solely on the allegations of the complaint, viewing the pleadings in the light most favorable to the plaintiff, construing every doubt in favor of the plaintiff. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007), *Plyer v. Burns*, 373 S. C. 637, 647 S.E.2d 188 (2007). Mayor Tecklenburg grounds his legal argument on his assertion that he removed the plaintiff from the public meeting for violation of the City's Ordinance § 2-28, which prohibits "obscenity," "fighting words," and "disorderly conduct." The plaintiff's complaint also contains an application for declaratory judgment to declare this ordinance invalid for vagueness. The Court cannot decide this issue on a Motion to Dismiss, but, at the appropriate time, the Court will be called upon to decide if the

plaintiff's statement: "Numbers don't lie; Helen Hill lies.," meets the definition of "obscene," "fighting words," or constitutes "disorderly conduct." The City defines disorderly conduct thus:

§§ 21-109, 21-192, City of Charleston Code: "disorderly conduct" is either an effort to start a riot or if "he shall remain idle in essentially one location in a public place in such a manner as to (1) Create or cause to be created a danger of a breach of the peace, (2) Create or cause to be created any disturbance or annoyance calculated to interfere with the comfort and repose of any person. . ." (See ¶ 15 of Plaintiff's Complaint.)

Even the City will concede that plaintiff's statement: "Helen Hill lies," is not obscene, fighting words, or disorderly conduct as defined in its Code. Even if the words, "Helen Hill lies," interfered with the Mayor's "comfort and repose," they are not criminal. When petitioning the government for redress of grievances, speech alone can never be "disorderly conduct," except in specific, narrow circumstances, none of which are implicated in this case. In fact, even alleged "obscene" speech is protected if used in the context of challenging government. In 1968, a Los Angeles police officer arrested Paul Cohen and charged him with "breach of peace" because he wore his jacket into the courthouse emblazed with the words: "F**k the draft." After the trial court convicted him and sentenced Cohen to 30 days, when this case reached the U. S. Supreme Court, the Court invalidated the conviction, holding that speech alone cannot serve as a basis for alleged criminal conduct. *Cohen v. California*, 403 U.S. 15, 91 S.Ct. 1780 (1991). The *Cohen* case makes a difficult climb for the City here. It is a steep hill to justify tossing the plaintiff out of the building for his statement, when weighing "F**k the Draft" on one hand—a protected utterance—against "Helen Hill lies" on the other hand. It will be interesting to see how the City attempts to persuade this Court that plaintiff's words were "disorderly conduct" in the shadow of the *Cohen* case.

Here, when plaintiff attempted to speak to Council, after he properly signed in and waited for his turn, about important financial matters involving millions of taxpayer dollars, the plaintiff said:

Numbers do not lie; Helen Hill lies.

At that moment, as the video recording of the meeting confirms, the Mayor, without hesitation, without warning, without discussion, or without even consultation with other members of Council or the legal staff, the defendant, John Tecklenburg, instantly ordered an armed police officer to take custody of the plaintiff and ordered him to remove the plaintiff not only from the meeting but also from the building. What is not known at the Motion to Dismiss juncture is whether:

(1) John Tecklenburg was acting in the course and scope of his employment as Mayor of the City of Charleston, or whether

(2) John Tecklenburg stepped outside of his lawful duties as Mayor and misused his governmental powers to punish the plaintiff to suppress his speech.

Either way, the plaintiff has set forth a colorable claim for either theory under the State and Federal Constitutions and under the *South Carolina Freedom of Information Act*, §§ 30-4-10, *et. seq.* (In its motion to dismiss, the City contends the plaintiff has failed to set forth a cause of action under the *S. C. Freedom of Information Act* because “*F.O.I.A.* . . . only requires that meetings be open to the public.” The City’s conception of the *Freedom of Information Act* is unnaturally narrow and in conflict with well-established caselaw strengthening the intent of the General Assembly that government does not freeze citizens out of governmental decisions. At least, for purposes of a Motion to Dismiss, the parties can agree that the Mayor dispatching an

armed police office to escort the plaintiff out of the building does not comport with the traditional notion of an “open” meeting.)

The City implies that the Mayor’s prerogative to conduct the meeting includes an unlimited power to censor the plaintiff. The Mayor’s powers do not include executive branch powers that put him as gatekeeper to the right of a citizen to petition his or her government, or—and this is the thrust of the City’s motion to dismiss—beyond the power of the Court to provide a remedy. The *Tort Claims Act*, § 15-78-60, S. C. Code, ann. does not suggest, let alone grant, that a Mayor has the power to censor a citizen who is saying something he does not want to hear. There is no governmental immunity for censorship, assault, battery, or closing a public meeting to a “non-resident.” “The General Assembly seeks an orderly transition to the recognition of individual rights against the tortious sovereign as defined herein.” § 15-78-20(a), S. C. Code, ann.

When called upon to adjudicate the balance between governmental immunity and liability for torts, the U. S. Supreme Court has always found that, in federal court, 42 U.S.C. § 1983 makes government agents liable for violations of citizens’ constitutional rights. In fact, as early as 1803, the Supreme Court of the United States made clear that the Courts do not operate to second guess or evaluate governmental decisions in which officers have discretion, but rather exist “solely to vindicate the private rights of the individual.” *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803) 175 years later, the Supreme Court reaffirmed this position (overruling both the district court and the Court of Appeals) that when a governmental official violates civil rights of citizens, the government is not immune from action. *Monnell v. Dept. of Social Services*, 436 U.S. 658 (1978). Eight years later, the Supreme Court laid to rest the arguments that action against governments can only be maintained when it is the “policy” to discriminate

against citizens. *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) held that a single act is sufficient to give rise to a claim against a government official, and in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000), the Supreme Court left no doubt that an aggrieved citizen subject to discriminatory governmental action can bring an action as a “class of one.” Finally, in 2018, the U. S. Supreme Court took up a case factually similar to this one. In *Lozman v. City of Riviera Beach*, 585 U.S. ___, 138 S.Ct. 1945 (2018), the City Council tossed the plaintiff out of a City Council meeting. Like the plaintiff here, the plaintiff, Lozman, was a frequent critic of municipal government and therefore on its radar. (The same was true of Grace Olech.) When he attempted to speak at a City Council meeting, the Mayor had him removed and went a step further and had him charged with “disorderly conduct.” When the plaintiff brought suit for his removal and arrest, the District Court and the Eleventh Circuit Court of Appeals dismissed his case because they found “probable cause” for his arrest. The Supreme Court reversed the lower courts and reaffirmed the principle that government is not immune from tortuous acts, especially in cases in which a citizen is exercising his or her right to petition the government. In reminding the City Council of Riviera Beach to protect and respect the rights of its citizens to address government, the Supreme Court said:

As a final matter, it must be underscored that this Court has recognized the “right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights.” *BE&K Const. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (internal quotation marks omitted). Lozman alleges the City deprived him of this liberty by retaliating against him for his lawsuit against the City and his criticisms of public officials. Thus, Lozman’s speech is high in the hierarchy of First Amendment values. See *Connick v. Myers*, 461 U.S. 138, 145 (1983)

South Carolina has the state equivalent of federal constitutional protections. Our State Constitution protects free speech, Article I, § 2 as well as guarantees due process and equal protection, Article I, § 3. Likewise, the General Assembly provided for an award of attorney’s fees for citizens who prosecute successfully against unlawful government action. See §§ 15-77-300,

310, and 30-4-100(b), S. C. Code, Ann. There is nothing in the *Tort Claims Act* that abrogates a citizen's protection under the State Constitution in general and the *Freedom of Information Act* in particular, and the parties can agree that being tossed out not only off the podium but also out of the building is not conducting an "open" meeting. Presumably, the City is arguing that the meeting is open to anyone except the plaintiff or such other "non-resident" as it designates. If this is the City's position, it is both novel and unsupported. In fact, the *S. C. Freedom of Information Act* makes every violation an "irreparable injury." See § 34-4-100: "The court may order equitable relief as it considers appropriate and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists."

The leading case in South Carolina on governmental immunity is *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (2001). There, the plaintiff sought to bring an action against the Attorney General and the Solicitor for the Fifth Judicial Circuit for prosecuting the plaintiff with little or no evidence. Both the trial court and the Court of Appeals found that the Solicitor and the Attorney General had immunity from suit because **they were acting in their official capacities** in prosecuting the plaintiff. This case is much different. Here, the Mayor, without warning, without referring to the City's Rules of Decorum, without consultation with any member of City Council, and without consultation with the legal staff, abruptly ordered an armed police officer to take physical control of the plaintiff and remove him, not only from the meeting, but also from the public building itself. There is only one possible conclusion that the Court can draw from this: The Mayor, either acting on his own, or on behalf of the City, censored the plaintiff and closed the meeting to him. The Mayor's action is not something the City can ignore on the ground that the *State Tort Claims Act* provides universal immunity for torts. Whether the Mayor is or is not immune under the *State Torts Claim Act* is an affirmative defense that must be plead and proved,

not something that a court can decide on a Rule 12 motion. The burden of proving an immunity is an affirmative defense that the City must carry by a preponderance of the weight of the evidence. *Steinke v. South Carolina Dept. of Labor, Licensing, and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999):

The South Carolina Tort Claims Act, which provides the exclusive remedy in tort against Department, is a limited waiver of governmental immunity. *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 444 S.E.2d 498 (1994); S.C. Code Ann. § 15-78-20(a) (Supp. 1998). The Act provides that, subject to limitation, a governmental entity is "liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances." *Id.*; S. C. Code Ann. § 15-78-40 (Supp 1993).

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. *Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. S. C. Code Ann. § 15-78 20(f) (Supp. 1998); *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990).

The purpose of the *State Torts Claim Act* is just the opposite of unlimited immunity—to make sure government officials do not put themselves above the law. If it were a function of local government to censor citizens or close meetings to them, then perhaps the City could find protection in one of the exceptions in the *Act*, but the City cannot argue to this Court with a straight face that the Mayor's duties include suppressing speech with which he may disagree. As a result of this undisputed principle, the City cannot argue to the Court that the Mayor tossing citizens out on the street to prevent City Council from hearing them is either the City's official policy of the executive or one of the exceptions to liability provided by the *Act*. Whether the Mayor was acting in his "official capacity" as government censor, or he stepped outside of his authority and injured the plaintiff "under color of law," the plaintiff has identified cognizable claims. An assault upon the plaintiff is no different than a hypothetical executive groping a citizen, and in either case, even

though the assault was carried out by an armed Charleston Police Officer, the City took physical possession of the plaintiff to censor him and physically removed him from the building. In what capacity the Mayor and the Officer acted is a highly disputed question of fact. A jury will have to decide whether this was a proper exercise in governmental authority or a misuse of authority under color of law. (Of course, the issue of liability is also subject to being decided by the Court by either summary judgment or directed verdict.) The officer acted on the Mayor's order, and the deployment of the police cannot be both a sword and a shield. If at trial, the officer asserts the "I was just following orders" defense, it will be a risky strategy, but without question, the issue is at least a disputed question of fact. Likewise, the Mayor cannot escape liability by claiming he did not pull the trigger. Either act is equally—as lawyers say, combining and concurring—wrongful, and it makes no difference if the assault is by the Mayor personally or through a police officer acting on his order. One does not exonerate the other; it is not "either-or." The *State Torts Claim Act* does not provide immunity to governmental officials who go about assaulting citizens. Whether Mayor Tecklenburg can or cannot establish that his decision to deploy armed force against the plaintiff was or was not in the course and scope of his duties as mayor remains to be seen. The best that the City can say about it at this point is that it is a highly disputed question of fact. However, under the standards applied to evaluating cases at a Motion to Dismiss, these are questions that survive a dismissal under Rule 12.

Respectfully submitted,

April 24, 2020

/s/ Thomas R. Goldstein
 Thomas R. Goldstein, S. C. Bar #2186
 BELK, COBB, INFINGER & GOLDSTEIN, P.A.
 Post Office Box 71121
 Charleston, South Carolina 29415-1121
 (843) 554-4291; (843) 554-5566 fax
 ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Skip Hoagland,

Plaintiff,

v.

John Tecklenburg, in his Official capacity,
the City of Charleston, and the City of
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Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-03441

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

Defendants submit this Memorandum in Support of their Motion to Dismiss. For the reasons set forth below, Defendants respectfully request that this Honorable Court grant their motion, find that Plaintiff has not, as a matter of law, stated facts sufficient to constitute a cause of action, and dismiss Plaintiff's Complaint with prejudice pursuant to Rule 12(b)(6), SCRPC.

OVERVIEW

Although Plaintiff is attempting to make this matter into an epic constitutional rights case, this case really only involves a simple question: do the City of Charleston ordinances grant the Mayor discretion to limit public comment at City Council meetings? As will be explained below, the answer to that question is yes.

In this case, Plaintiff stood up during the public comment section of a City Council meeting and chose to start off his speech by calling a woman a liar. The Mayor, who runs the City Council meetings and who has rather broad discretion in how the meetings are conducted,¹ determined that

¹ Ordinance 2-39 – Council members are prohibited from leaving Council meeting without permission of Mayor; Ordinance 2-40 – Council members have to be recognized by the Mayor before they can speak on a topic; Ordinance 2-44 - Mayor shall decide all questions of order; Ordinance 2-28(a) – Mayor has discretion to bar a person for violating Rules of Decorum; and 2-28(b) – the sergeant-at-arms shall carry out all orders and instructions given by the Mayor for the purpose of maintaining order and decorum.

Plaintiff was in violation of the Rules of Decorum. *See* City of Charleston Ordinance 2-28. This means that the Mayor determined that Plaintiff's choice to call a woman a liar indicated that Plaintiff was not conducting himself in a "manner appropriate to the decorum of the meeting" or that Plaintiff's calling a woman a liar was an action that "disrupts, disturbs, or otherwise impedes the orderly conduct of a City Council meeting." *Id.* Either way, the Ordinance specifically states that in the event of actions such as Plaintiff's, the Mayor has the discretion to bar that person from the meeting and remove him or her from the building. *Id.* This is precisely what happened here and the Defendants' actions were completely within the rights and abilities granted to them by the ordinances. Simply because Plaintiff does not think that calling someone a liar is disruptive, disturbing, or inappropriate at a City Council meeting does not change the discretionary power of the Mayor to limit public comment at City Council meetings.

FACTUAL ALLEGATIONS²

On May 25, 2018, Plaintiff attended a Charleston City Council meeting in City Council chambers. Compl. ¶ 7. When Plaintiff's name was called during the public comment section of the meeting, Plaintiff began his presentation and stated "Numbers don't lie; Helen Hill lies." Compl. ¶ 8-10. After Plaintiff called Ms. Hill a liar, Mayor Tecklenburg declared that Plaintiff was "out of order" and was in violation of "Rules of Decorum." Compl. ¶ 11. According to Plaintiff, the Mayor "directed the City of Charleston Police Department to remove the plaintiff from the public meeting..." *Id.* Plaintiff also alleges that "the Mayor ordered the City of Charleston Police Department to take custody of the plaintiff and physically remove him from the public meeting and deposit him outside the building on a public street." Compl. ¶ 12. The City of Charleston Police Department "took physical control of the plaintiff and physically removed

² Although Defendants dispute Plaintiff's allegations, for the purposes of this motion, and in line with the legal standard, the factual basis for this motion is taken solely from the four corners of Plaintiff's Complaint.

him from the City Council meeting and from the entire City Hall building against his will but did not charge plaintiff with a crime.” Compl. ¶ 13.

STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCPP. “Rule 12(b)(6), SCRCPP, ‘retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.’” *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)). “A [motion to dismiss] admits the facts well pleaded in the complaint but does not admit the inferences drawn by the plaintiff from the facts, nor does it admit conclusions of law.” *Charleston Cnty. Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct. App. 1984); *see also Sease v. City of Spartanburg*, 242 S.C. 520, 527, 131 S.E.2d 683, 687 (1963) (finding allegations in the complaint which merely characterize the facts are mere conclusions which are not admitted by a demurrer). When a plaintiff states nothing more than legal conclusions, a claim should fail. *Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889).

ARGUMENT

I. The City of Charleston Police Department should be dismissed as a party.

Plaintiff has named the Charleston Police Department (“CPD”) as a defendant. The CPD is an office of the City of Charleston and does not exist separate and apart from the City. *Post v. City of Fort Lauderdale*, 750 F.Supp. 1131 (S.D. Fla. 1990) (dismissing city police department and holding that city itself was proper party); *Shelby v. City of Atlanta*, 578 F.Supp. 1368, 1370

(N.D. Ga. 1984) (dismissing city police department as an entity not subject to suit because it “is merely the vehicle through which the City government fulfills its policing functions”). Further, as CPD is not a standalone legal entity, it is not a suable entity. *McNeil v. Rock Hill Police Dep’t*, No. 0:12-1933-CMC-SVH, 2012 WL 6863917, at *2 (D.S.C. Dec. 27, 2012) (dismissing local police department as it is not legal entity subject to suit). Sheriff’s departments and police departments are not usually considered legal entities subject to suit. *See, e.g., Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985) (dismissing Denver Police Department as not a suable entity). Any suit against CPD is a suit against the City. Any allegations against a CPD officer are allegations against a city employee. Therefore, CPD is not a proper party to this case and should be dismissed.

II. The only proper Defendant is the City of Charleston.

The Complaint alleges a variety of state law tort causes of action against the City of Charleston, but also names Mayor Tecklenburg as a defendant in his official capacity only. The South Carolina Tort Claims Act (“TCA”), S.C. Code Ann. § 15-78-10 to -220, governs these causes of action because the TCA “constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a). Pursuant to the TCA:

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting.... In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326 S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his being immune from suit under S.C. Code Ann. § 15-78-70(c)).

The TCA defines “agency” as the following:

the individual **office**, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

S.C. Code Ann. § 15-78-30(a) (emphasis added). The TCA further defines “political subdivision” as the following:

the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

S.C. Code Ann. § 15-78-30(h).

The Complaint alleges that the Mayor in his official capacity (*i.e.* as an employee or agent of the City of Charleston) wrongfully denied Plaintiff the right to speak at a City Council meeting. Pursuant to the TCA, “only the agency or political subdivision for which the employee was acting” may be named as a defendant. Mayor Tecklenburg is neither an “agency” nor a “political subdivision” as defined by the TCA. Therefore, Mayor Tecklenburg is not a proper defendant—or is at least a duplicative and unnecessary one—and should be dismissed from this action, and the City of Charleston—as “the agency or political subdivision for which the employee[s] w[ere] acting”—should be substituted in the Mayor’s place as the only party defendant pursuant to S.C. Code Ann. § 15-78-70(c).

III. Plaintiff was not a citizen of the City of Charleston, and therefore, no cognizable right has been violated.

Plaintiff admits in his Complaint that he is a resident of Beaufort County. Compl. ¶ 1. The claims in this case involve a Charleston City Council meeting and Plaintiff’s allegation that he was

wrongfully prevented from providing a public comment at a Council meeting. However, the City of Charleston Ordinances, which govern City Council meetings, do not provide Plaintiff the right to provide public comment.

Sec. 2-37 of the City of Charleston Ordinances outlines the order of business at Council meetings. This section states that the “Citizens participation period” is governed by Sec. 2-69. That section reads as follows:

All communications to the city council shall be by petition or memorial. None other than members of council shall be heard on any petition or memorial without the unanimous consent of council, except that during a period of thirty (30) minutes of each regular meeting the mayor may recognize citizens of Charleston who wish to address council on matters of city business. ...

City of Charleston Ordinance, Sec. 2-69 (emphasis added).

In this case, Plaintiff alleges that his “right” to petition the Charleston City Council was violated. However, Plaintiff cannot point to any provision in the Ordinances that indicates that he, as a non-resident, has a specific right to address City Council. According to the ordinances, the right to address City Council is limited to “citizens of Charleston” and only during the public comment period of the meeting.

Plaintiff is alleging he was *wronged* by not being allowed to petition the City of Charleston City Council, but Plaintiff, as a non-resident of Charleston, did not have the *right* to petition the City Council. Therefore, Plaintiff has failed to state facts sufficient to constitute a cause of action, and his case should be dismissed pursuant to Rule 12(b)(6), SCRPC.

IV. Plaintiff has not stated a valid cause of action under the South Carolina Freedom of Information Act (“FOIA”).

Plaintiff has not alleged sufficient facts in his Complaint to prove a FOIA violation. The FOIA allegations in his Complaint include the following: 1) FOIA requires City Council meetings

to be conducted openly; 2) Plaintiff was removed from the Council meeting; 3) Defendants “closed a public meeting to the plaintiff’s participation.” Of note, Plaintiff does not allege that the May 25, 2018, Council Meeting was a closed session. He does not allege that the meeting was not conducted openly. He does not allege that the meeting was closed to the general public. Rather, Plaintiff alleges that the May 25th meeting was closed to him alone.³ Plaintiff was removed from a City Council meeting, which was in the discretionary powers provided by City Ordinances. The removal of one person from a meeting does not mean that the Council meeting was not conducted openly and it does not mean that the meeting suddenly went into a closed session.⁴ As such, Plaintiff has not stated facts sufficient to support his claim of a FOIA violation.

V. Plaintiff has not alleged a valid cause of action for conspiracy.

“A civil conspiracy ... consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage.” *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (1986).

Plaintiff’s Complaint alleges that Defendants conspired to harm Plaintiff, and did so harm Plaintiff, by preventing him from completing his speech at the City Council meeting and removing him from the building. Plaintiff alleges that this was a violation of his state and federal constitutional rights. Plaintiff’s claim for civil conspiracy fails as a matter of law and should be dismissed for any of the following three reasons: (1) Plaintiff has failed to allege any additional acts separate and independent from those alleged in his other causes of action; (2) Plaintiff has failed to plead special damages beyond the damages alleged in his other causes of action; and (3)

³ What Plaintiff also does not recognize is that each meeting is videotaped, which provided Plaintiff with an avenue to watch and observe the remainder of the meeting after he was removed.

⁴ If Plaintiff’s argument was valid, then a person who committed a criminal act during a Council meeting and was arrested and removed would be able to state a FOIA violation. This is simply not the case and not what FOIA contemplates.

Defendants' alleged actions that form the basis of Plaintiff's civil conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

A. Plaintiff has failed to allege additional acts separate and independent from those alleged in his defamation claim.

"A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than re-allege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009); *see also Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (sustaining demurrer to civil conspiracy cause of action which did "no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy") *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985). Failure to properly plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the Complaint will merit dismissal of the claim. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009).

As stated above, Plaintiff has simply reiterated the allegations contained in his cause of action for a constitutional violation in his civil conspiracy claim. Plaintiff has failed to plead that Defendants took any separate and independent actions outside of stopping his comments and removing him from the building. Thus, Plaintiff's Complaint fails to state facts sufficient to constitute civil conspiracy and should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

B. Plaintiff has failed to plead special damages beyond the damages alleged in his other causes of action.

Our South Carolina courts have held that because the essence "of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages

alleged in other causes of action.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citing *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct.App.1989)). “Special damages...are not implied at law because they do not necessarily result from the wrong. Special Damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party.” *Paradis*, 424 S.C. at 615, 819 S.E.2d at 153.

If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed. *See Vaught*, 300 S.C. at 209, 387 S.E.2d at 95 (“The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under *Todd*.”); *Charleston Aluminum, Inc. v. Samuel, Son & Co.*, No. 3:05–02337–MBS, 2006 WL 2370292, at *3 (D.S.C. Aug. 15, 2006) (granting defendant’s motion to dismiss plaintiff’s civil conspiracy claim because “the damages pleaded by [p]laintiff in the civil conspiracy cause of action are duplicative of the damages asserted with respect to the contract causes of action”); *Doe v. Erskine College*, No. 8:04-23001, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (holding plaintiff’s conspiracy claim failed as a matter of law because plaintiff failed to plead special damages; instead plaintiff’s conspiracy count “merely reallege[d] the same damages [p]laintiff claim[ed] to have suffered in relation to her other claims”).

In this case, Plaintiff has reiterated the same damages contained in his civil conspiracy claim as are alleged in his “constitutional claims”. Nothing in the Complaint informs Defendants what separate and distinct special damages are attributable to the alleged conspiracy. Specifically, the damages Plaintiff attributes to the alleged “constitutional claims” are as follows:

- (1) “violations of the plaintiff’s fundamental rights to free speech and right to petition his government for redress of his grievances under the South

Carolina Constitution, Article I, §2 and the First Amendment to the United States Constitution.”

- (2) “irreparable harm along with general and special damages, including but not limited to, being forced to expend sums for attorney’s fees and costs”

(Compl. ¶ 20-21). The damages Plaintiff attributes to the alleged civil conspiracy are as follows:

- (1) “special damage, including the suppression of legal speech for which the law presumes an irreparable harm”
- (2) “forced plaintiff to incur attorney’s fees and associated case costs in order to vindicate his fundamental free speech rights guaranteed to him by the South Carolina Constitution and the First Amendment to the United State Constitution.”

(Compl. ¶ 29).

In both of these causes of action, the wrong that plaintiff is alleging is that he was not allowed to complete his speech at the City Council meeting and that he was removed from City Hall. As a result of that wrong, in both of these causes of action Plaintiff is alleging special damages, a violation of his constitutional rights, irreparable harm, and attorney’s fees and costs. In his conspiracy claim, Plaintiff re-words the damage claims and the alleged special damages do not “go beyond the damages alleged in” Plaintiff’s constitutional claims. *Pye v. Estate of Fox*, 369 S.C. 555, 568 633 S.E.2d 505, 511 (2006). Because Plaintiff has merely repeated the damages from another claim instead of specifically listing special damages, based on precedent, his claim should be dismissed. *See Vaught*, 300 S.C. at 209, 387 S.E.2d at 95.

C. Defendants’ actions that form the basis of Plaintiff’s civil conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

South Carolina recognizes an exception to civil conspiracy liability when all the alleged members of a conspiracy are agents of a single corporate entity and act on behalf of the corporation: a so-called intracorporate conspiracy. *See McMillan v. Oconee Mem. Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886–87 (2006); *Anderson v. S. Ry. Co.*, 224 S.C. 65, 69, 77 S.E.2d 350, 351 (1953). As a result, “no conspiracy can exist if the conduct challenged is a single act by

a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.” *McMillan*, 367 S.C. at 565, 626 S.E.2d at 887. However, although a corporation cannot conspire with itself, “the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct. App. 1986).

Plaintiff’s allegations against Defendants all relate to conduct that occurred at a City Council meeting, which the Mayor was chairing and for which CPD was providing security. This means that the Defendants in this action were acting within the course and scope of their employment as City of Charleston employees or agents. Plaintiff has failed to allege that the Defendants were acting outside the course and scope of their employment or that the conspiracy involved some third party. As such, the Intracorporate Conspiracy Doctrine applies, and Plaintiff’s conspiracy claim should be dismissed.

VI. Any claims brought pursuant to the South Carolina Constitution should be dismissed.

In the Complaint, it is alleged that defendants violated certain of the plaintiff’s federal and state constitutional rights. (Compl. ¶5). To the extent the causes of action alleged assert a violation of rights secured by the South Carolina Constitution, they should be dismissed. Unlike federal law that allows claims pursuant to 42 U.S.C. § 1983, there is no procedural mechanism for a private right of action for damages for a state constitutional deprivation. “The general presumption of law is that all constitutional provisions are self-executing, and are to be interpreted as such, rather than as requiring further legislation for the reason that, unless such were done, it would be in the power of the Legislature to practically nullify a fundamental of legislation.” *Palmer v. State*, 427 S.C. 36, 45 (SC Ct. App. 2019), *quoting Brice v. McDow*, 116 S.C.329, 331, 108 S.E. 84, 87; *See also Beatty v. Wittekamp*, 171 S.C. 326, 332, 172 S.E. 122, 125 (1933). In *Palmer*, the Court of Appeals

went on to define self-executing provision as “one which supplies the rule or means by which the right given may be enforced or protected, or by which a duty enjoined may be performed.” *Id.* The Supreme Court declined to review this decision as well. “Considering the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute” any claims pursuant to the South Carolina Constitution should be dismissed. *Palmer*, 427 S.C. at 46.

Defendants assert the state constitutional claims are also barred by sovereign immunity. Prior to the Supreme Court’s decision in *McCall v. Batson*, 285 S.C. 243, 329 S.E. 2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. *McCall* abolished sovereign immunity, but the following year, the South Carolina Tort Claims Act was enacted by the General Assembly, and “reinstat[ed] sovereign immunity for the State and its political subdivisions with certain exceptions.” *Jinks v. Richland Cnty.*, 349 S.C. 298, 306, 563 S.E.2d 104, 108 (2002), *rev’d on other grounds*, 538 U.S. 456 (2003). The Act “removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act.” *Bayle v. S.C. Dep’t of Transp.*, 344 S.C. 115, 121, 542 S.C. 2d 736, 739 (Ct. App. 2001). The General Assembly plainly states that it “intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein.*” S.C. Code Ann. § 15-78-20(b) (emphasis added). “All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.” *Id.*

It is clearly established that in response to the *McCall* decision, the General Assembly reinstated sovereign immunity, subject only to a limited waiver provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for violations of the South Carolina

Constitution. Therefore, sovereign immunity is a bar to a claim for damages, including those made by Plaintiff in this case, and Defendants respectfully request that this court dismiss all claims brought pursuant to the South Carolina Constitution.

CONCLUSION

For all the reasons stated herein, Defendants respectfully request that Plaintiff's claims be dismissed in their entirety against all Defendants. In the alternative and to the extent that any causes of action remain, Defendants respectfully request that Defendants Tecklenburg and the City of Charleston Police Department be dismissed as party defendants.

Respectfully submitted,

s/Christopher T. Dorsel
Christopher T. Dorsel, Esquire
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
(843) 556-4046 (fax)
Chris@SennLegal.com

Attorney for Defendants

April 30, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-03441
	)	
Skip Hoagland,	)	
	)	
	)	
vs.	)	REPLY TO DEFENDANT’S MEMORANDUM
	)	
John Tecklenburg, in his	)	
Official capacity, the City of	)	
Charleston, and the City of	)	
Charleston Police Department,	)	
	)	
Defendants.	)	

Replying to the City’s memorandum filed April 30, 2020, the Plaintiff wishes to correct some inaccuracies.

On page 1 of the City’s Memorandum, the City states: “Although Plaintiff is attempting to make this matter into an epic constitutional rights case, this case really only involves a simple question: do the City of Charleston ordinances grant the Mayor discretion to limit public comment at City Council meetings?” (Memo at page 1)

Let us examine each part of this compound question:

1. Is the suppression of a citizen’s right to address government an “epic” constitutional case? The United States Supreme Court answered this question “yes,” as set forth in the Plaintiff’s April 27th memorandum, quoting *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945 (2018), on page 6. In the well-developed body of constitutional law limiting local government’s suppression of speech, the Court has always treated such cases seriously and always protected the citizen against arbitrary and retaliatory government conduct. So, yes, the constitutional infraction in this case is “epic”

because it involves a single citizen challenging government oppression, and whenever a small person challenges a powerful organization, that is the definition of “epic.”

2. Does the Mayor have the discretion to limit public comment? The City is here reframing the legal question to raise into a straw man. Of course he does, but there is a world of difference between “limiting” discussion and censoring and arresting a citizen to remove him from the building. The Mayor can require that the speakers’ comments be germane to the issue before Council, or limit speakers to a reasonable time limit, or prohibit obscenity, but how does the factual statement: “Numbers don’t lie; Helen Hill lies,” rise to that level? The short answer is that it does not, and throughout the City’s well written and well argued memorandum does the City approach, let alone explain, how plaintiff’s statement broke the rules of “decorum,” which apparently are like the double secret probation rules of *Animal House*.

Not only does the City fail to engage the central legal issue raised by the pleadings, it makes light of the entire case in footnote 3 on page 7 when it suggests that the plaintiff was welcome to participate in the meeting by watching the video feed. This unhelpful suggestion does not address the lack of video feed on the curb of Broad Street, nor does it address how plaintiff might address Council from the curb of Broad Street.

The City also argues that the Mayor cannot be personally sued. This is true if, and only if, he was acting in his official capacity. This Court cannot determine whether the Mayor was or was not acting in his official capacity without evaluating the evidence and thus whether the Mayor’s decision was an official act or something else is not a question that can be decided on a motion to dismiss. Moreover, if the Court dismissed one of the two claims on a Rule 12 motion, the only consequence would be to split a single legal question into two cases, open the parties to conflicting results, and cause the City to spend more in legal fees to defend the same case on two tracks. By

contrast, if the City were willing to stipulate that the decision to toss the plaintiff was an official act of the City, then the need to sue the Mayor individually evaporates, but no Court can determine whether the act was an official or a personal one without evaluating the evidence. See Rule 8, *South Carolina Rules of Civil Procedure*, General Rules of Pleading: “Relief in the alternative or of several different types may be demanded.”

As for the dismissal of the police department, this request, too is premature. It is possible that a reasonable jury could conclude that the police department was acting on behalf of the City, but it is also possible that a reasonable jury could conclude that the police department was an individual actor. The City of Charleston does not control when a police officer decides whether to take a person into custody and each police officer uses his or her individual discretion when to act. The officer who took control of the plaintiff was not required to do so; he had to make an individual decision based on the totality of the circumstances whether to remove the plaintiff or not. This Court is required to assess the City’s motion based on the pleadings, and there is nothing in the pleadings that would allow a Court deciding a Rule 12 motion that the police officer who removed the plaintiff was acting on anything other than his independent decision that probable cause existed to take control of the plaintiff and remove him from the building.

As for the City’s contention that a City ordinance, § 2-69, forbids presentation to the City Council to anyone other than a citizen, the plaintiff replies with two incontrovertible points. First, § 2-69 must yield to Article I, § 2 of the South Carolina Constitution and Amendment 1 to the United States Constitution. The assertion that a citizen cannot petition the government without being a resident of a specified geographical area is not supported by case law. Second, thousands of non-resident citizens address Council regularly, and if the City really did attempt to enforce § 2-69, then it would have to apply it across the board and not allow residents from Sullivan’s Island to address

Council but deny residents of North Charleston. City Council is a local government, not a Homeowner's Association in a gated community.

The City's attack on the plaintiff's conspiracy theory is the same mistake the City makes in attacking the plaintiff's claims against the Mayor or separate grounds. Rule 8 allows plaintiffs to plead alternative theories of recovery. The plaintiff properly alleges the elements of civil conspiracy under South Carolina law, and this case represents the quintessential special damages case:

Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct. *Loeb v. Mann*, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893). General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. *Sheek v. Lee*, 289 S.C. 327, 328-29, 345 S.E.2d 496, 497 (1986). Special damages, on the other hand, are not implied at law because they do not necessarily result from the wrong. *Id.* at 329, 345 S.E.2d at 497. Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party. *Id.*

Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009)

Being deprived of the right to speak is as fundamental a loss as can be imagined, and the plaintiff properly pled them. And if the Court believes that special damages are not sufficiently pled, it is a simple matter to file an amended pleading setting them out in more detail, but the purpose of pleading is to provide the opposing party a "short and plain statement of the grounds" so that the City is on notice what it is required to defend.

Moreover, Judge Bell in writing for the Court of Appeals in *Lee v. Chesterfield General Hospital, Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 186) analyzed the legal history, as only Judge Bell could, of conspiracy and laid to rest any doubt that a government official can be guilty of conspiracy with a third party:

The Hospital next argue that the complaints failed to state a cause of action because Madory, the hospital administrator, is legally incapable of conspiring with his employer, the Hospital. This

argument rests on the proposition that a corporation has a legal person in contemplation of law cannot conspire with itself. [citations omitted]

In this case, however, the complaints allege that Madory and the Hospital conspired with “other members of the medical staff.” Since the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties, the complaints are sufficient to withstand a [motion to dismiss]. See *Goble v. American Railway Express Co*, *supra* (agents of corporation may conspire among themselves.) (dictum)

Since the plaintiff was before Council to address fraud and waste involving millions of dollars, a reasonable jury could easily conclude that there was a conspiracy between the defendants and others to suppress his speech to prevent disclosure. See ¶ 30 of Plaintiff’s complaint. What the City seeks through its motion to dismiss is the same thing the Mayor sought when he removed the plaintiff from City Council—to prevent the plaintiff’s allegations of financial fraud from being heard. The plaintiff has set forth the necessary elements of conspiracy to prevent being tossed out of Court on a preliminary motion.

The City’s final argument is that Courts cannot hear cases involving allegations of Constitutional violation. This is a shocking allegation, which, if true, would lessen the workload of the trial and appellate courts of this state. First, obviously a citizen can bring a constitutional violation claim in circuit court—the General Assembly provides a mechanism for recovering attorney’s fees for bringing such cases. §§ 15-77-300, 310, S. C. Code. The *South Carolina Freedom of Information Act* not only gives a citizen the right to make a claim against a local government for failing to hold an “open meeting,” but also, it deems the lack of an open meeting to be an irreparable harm. It also it gives such actions priority on the roster. Second, and this seems so obvious as to not require mentioning, the lawbooks are full of constitutional challenges in state court. Take but one example: *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Lucas brought that case in Charleston County Court of Common Pleas based on what he contended was a taking of his property. The trial court found the Beachfront Management Act to be a total

regulatory taking, and thus, in violation of the Vth Amendment to the United States Constitution. The South Carolina Supreme Court reversed the trial court. The U. S. Supreme Court reversed the South Carolina Supreme Court. The lawbooks contain hundreds of cases brought in state court challenging government action as violation—it happens in General Sessions Court by the hour. This Court is not a potted plant; it exists, as elucidated by Justice Marshall in *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803), “solely to vindicate the private rights of the individual.”

In conclusion, the plaintiff has set forth proper causes of action. If the Court believes that the allegations of special damages are not set forth with sufficient specificity, the plaintiff has no objection to filing an amended complaint to ensure that the City is aware that the plaintiff is claiming special damages.

May 1, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P.O. Box 71121
Charleston, SC 29415-1121
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

**IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT**

CASE NO. 2018-CP-10-03441

Skip Hoagland,

Plaintiff,
vs.

**John Tecklenburg, in his Official
 capacity, the City of Charleston, and the
 City of Charleston Police Department,**

Defendants.

MOTION TO RECONSIDER

YOU WILL PLEASE TAKE NOTICE that the Plaintiff Skip Hoagland moves before this court pursuant to Rules 52(b) and 59(e), SCRPC, as well as pursuant to all other applicable law, for an order in the above-captioned action that reconsiders, alters, amends, and/or clarifies the court's order granting Defendants' motion to dismiss (hereinafter "Order").

As grounds for this motion, the Plaintiff hereby incorporates as if here set forth verbatim all of the arguments made in his memorandum of law (filed April 27, 2020) and reply to Defendant's memorandum (filed May 1, 2020) regarding Defendant's motion to dismiss and orally to date concerning this matter, and also notes the following:

1. A court must dismiss a complaint whenever it "fail[s] to state facts sufficient to state a cause of action." Rule 12(b)(6), S.C.R.C.P. A court must view the allegations and draw inferences in the light most favorable to the plaintiff, but even taking this approach, the court must dismiss the complaint if "the facts alleged in the complaint do not support relief under any theory of law." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

2. A judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally[.]” Overcash v. S.C. Elect. & Gas Co., 356 S.C. 165, 588 S.E.2d 116, 118 (Ct. App. 2003).
3. The amended complaint provides that Plaintiff on May 25, 2018, attended the city council meeting of City of Charleston. Prior to addressing council during its public comment period, Plaintiff “signed in as required by City procedural rules and waited until the Mayor called him for his scheduled opportunity to address Council.” Amended Complaint at paragraph 8. Further, after Plaintiff started his presentation, he said “Numbers don’t lie; Helen Hill lies.” Amended Complaint at paragraph 10. Then “John Tecklenburg ... declared plaintiff ‘out of order’ for violating the City of Charleston Ordinance 2-28, ‘Rules of Decorum’ and directed the City of Charleston Police Department to remove the plaintiff from the meeting.” Amended Complaint at 11.
4. The Court’s Order provides on Page 2: “Based on the facts as alleged in his Complaint, Plaintiff has not stated facts sufficient to state a claim of constitutional magnitude. Rather, the facts as alleged by Plaintiff are that the Mayor made a discretionary decision to remove Plaintiff from a City Council and the police department followed the direction of the Mayor to remove Plaintiff.”
5. Plaintiff’s Amended Complaint states specifically the moment Defendant Tecklenburg interrupted Plaintiff’s presentation and ejected him from the meeting. Relying solely on these allegations as it relates to the alleged state constitution violation of suppression of freedom of speech and the right to petition, a reasonable inference was raised that Defendant Tecklenburg’s silencing and removal of Plaintiff was to stop him speaking about “lies” “Hellen Hill” or any other subject of reasonable inference from the Amended Complaint.

6. Furthermore, a reasonable inference from the recited passages herein from the Amended Complaint could also show that Defendant Tecklenburg created a limited public forum for Plaintiff to address city council and that when Plaintiff said something Tecklenburg disagreed with, he used the power of his office to remove Plaintiff from the public meeting. This “discretionary decision” of Defendant Tecklenburg is capable of a constitutional violation and, although not precisely the subject of this suit, likely incited fear in the chosen speakers after Plaintiff and may have altered their comments before council that evening.
7. Plaintiff also seeks reconsideration of the Court’s finding that “Plaintiff has not alleged facts sufficient to constitute a claim for civil conspiracy.” Order 2. Specifically, the Order provides the Amended Complaint fails “to allege any separate and distinct acts to further the conspiracy or any special damages than those that have been alleged in his other causes of action.” Id. Plaintiff is entitled to reasonable inference from his allegations against the three Defendants in this matter. While an inference from paragraph 12 of the Amended Complaint that “the Mayor ordered the City of Charleston Police Department to take custody of the Plaintiff and physically remove him from the public meeting and deposit him outside on a public street” may be that the Defendant Police Department was acting at the behest of the mayor, that is not necessarily the case. A reasonable inference could be that for different reasons (perhaps because they did not like the appearance of Plaintiff or wanted to protect the reputation of Helen Hill) the police department took custody of Plaintiff and removed him from the building. While the Defendant Mayor had already successfully silenced the Plaintiff by saying he was out of order, the Defendant Police Department took the separate and distinct action of removal. Essentially, Plaintiff could not have known the intentions of

- these distinct and separate actors, but he may be able to prove them if he is allowed this reasonable inference at this stage in the proceeding.
8. Lastly, Plaintiff's Fourth Cause of Action in the Amended Complaint for declaratory judgment that the "decorum" Ordinance 2-28 of Defendant City of Charleston is unconstitutionally vague is not addressed by Defendant's Motion to Dismiss or the Court in its Order. Consequently, even if the Court does not reconsider its Order as to the other causes of action, this matter is still pending.

Pursuant to Rule 11, SCRCF, there is no duty of consultation prior to this motion.

Respectfully submitted,

s/ Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
taylor@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 18, 2020

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Skip Hoagland,	)	CASE NO. 2018-CP-10-03441
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
John Tecklenburg, City of	)	
Charleston, et. al,	)	
	)	
DEFENDANTS.	)	
	)	

May 27, 2020

Charleston, South Carolina, via Zoom

B E F O R E:

The Honorable Bentley Price

A P P E A R A N C E S:

Taylor M. Smith, IV, Esquire
For the Plaintiff

Christopher Dorsel, Esquire
For the Defense

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 26

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: This is the motion to reconsider; is that
2 correct?

3 MR. SMITH: That is correct, Your Honor. I am Taylor
4 Smith for the plaintiff, recently in this matter, on our
5 motion to reconsider.

6 THE COURT: All right.

7 Phyllis, are you ready?

8 THE COURT REPORTER: I am ready.

9 THE COURT: Okay. All right. So we have Taylor Smith
10 for the plaintiff.

11 MR. SMITH: That is correct, Your Honor.

12 THE COURT: And for the defense just announce yourself
13 for the record.

14 MR. DORSEL: Chris Dorsel for the defense.

15 THE COURT: All right. If my memory serves me correctly
16 I have taken a look at everything again. I dismissed -- or
17 excuse me, I granted the motion for summary judgment as to
18 all defendants in this case. And he - he, being the
19 plaintiff - previously had different counsel.

20 I received something I think that same day or the next
21 day indicating that plaintiff's counsel was being relieved.
22 And then I got this motion to reconsider from Mr. Smith.

23 Is that correct?

24 MR. SMITH: That is correct, Your Honor. I was hired,
25 if you will, by Mr. Hoagland on the precipice basically of

1 the deadline to file a motion to reconsider. And the order
2 substituting counsel I know was sent to you previously. So
3 as primarily an administrative in my office thing, getting
4 what I needed to get done to bring on any client.

5 But, yes, he had already agreed by the time you had
6 received your proposed order to hire me as an attorney. So
7 this has been a little bit weird honestly in trying to come
8 in so late. So I apologize for any inconvenience that
9 played.

10 THE COURT: No, it was fine. It is his decision who he
11 wants to hire so.

12 MR. SMITH: Correct, Your Honor. And I appreciate you
13 allowing me in at this late stage in the proceeding. As a
14 moment of clarification though, Your Honor, it was an order
15 on their motion to dismiss that was granted ---

16 THE COURT: Okay.

17 MR. SMITH: --- as opposed to a motion for summary
18 judgment.

19 THE COURT: Okay.

20 MR. SMITH: So I will be talking obviously about the
21 motion to dismiss standard a little bit. And that is what
22 was in our motion to reconsider that I filed before Your
23 Honor.

24 THE COURT: Okay.

25 MR. SMITH: So I want to just start with I appreciate

1 you guys allowing me to be heard on this. This will be my
2 first appearance like in the case at this late stage.

3 And I also greatly appreciate all of you doing this in
4 the midst of what apparently is a tropical storm down there.
5 I am up here in Columbia and it is just raining a little bit.
6 I don't have probably near the wind or power loss you guys
7 have endured over night. So I appreciate that.

8 Your Honor, if you like, I can go ahead and kind of get
9 started in my motion.

10 THE COURT: Okay.

11 MR. SMITH: So, Your Honor, this comes on the basis of,
12 like you said, your order granting the motion to dismiss
13 brought by all of the defendants in this case. So what we
14 have sought in this case is to give an understanding of where
15 we felt that we did make the fact-sufficient statements
16 within that and that the reasonable inferences as the law
17 regards carried forward from that would create a problem for
18 Your Honor granting dismissal.

19 But primarily what I wanted to address with Your Honor
20 is that because I did not plead this case and have come into
21 it at this late stage I am primarily going to be asking Your
22 Honor to make sure we didn't overlook what was a request by
23 previous counsel for the plaintiff in this case in his reply
24 memorandum of law to their motion to dismiss in late April
25 which did allude to him offering the chance to amend his

1 complaint.

2 Now, Your Honor, I, if having the opportunity to plead
3 this case, would have done it differently. And what I would
4 like to have an opportunity to do in this case, Your Honor,
5 is to explain why we think that Your Honor's order on
6 dismissal may not have provided certain reasonable inferences
7 of claims that we are going to -- would like to bring again
8 if we were allowed the opportunity to amend the complaint but
9 also to say we think you probably were correct as to some of
10 the causes of action that were in the complaint.

11 So, Your Honor, what I am doing today is I am hoping to
12 understand that what -- wanted to make sure the record
13 reflects is that request that he made in his memorandum for
14 an opportunity to have the motion to reconsider applied to
15 primarily the two -- the cause of action concerning freedom
16 of speech as guaranteed under the state constitution and
17 federal constitution but also, Your Honor, looking at whether
18 or not there is a way in which we could amend the complaint
19 to reflect those being pled more fully so Your Honor
20 understands what that looks like.

21 Now I looked at the other causes of action, that being
22 for civil conspiracy and the Freedom of Information Act. And
23 both of those are in the complaint, in the wording of the
24 complaint. I do believe Your Honor was incorrect in not in
25 granting reasonable inferences as to the civil conspiracy.

1 But as to the Freedom of Information Act claim, Your Honor, I
2 believe you were correct. And if we were given an
3 opportunity to amend this we would like to assert probably
4 the civil conspiracy claim; but I need to talk with my client
5 a little bit more to see what distinct acts he is claiming of
6 and what special damages he thought he had when these
7 officers did eject him from this city council meeting.
8 Because in a civil conspiracy claim we know that the damages
9 alleged mustn't go beyond the damages alleged in the other
10 causes of action.

11 Honestly, I, at this point, Your Honor, have not been in
12 this case long enough to fully understand that point from
13 that -- for my client and would need to do additional
14 investigation to determine what damages he has alleged are
15 different than what may have been caused by the other causes
16 of action such that a civil conspiracy claim could even be
17 pled.

18 So I am telling Your Honor that I am seeking
19 reconsideration of course of all of what the order provided;
20 but primarily, Your Honor, what I really want to address
21 today is that your order dismissed with prejudice.

22 If Your Honor did not dismiss with prejudice then what
23 we would probably be able to do is to be able to submit and
24 serve an amended complaint. Your Honor has clearly defined
25 the allegations of that complaint as being deficient. And

1 that is obviously a ruling that we would need to address.

2 We did it in the context of this Rule 59 motion because
3 Your Honor's order provided that dismissal was with
4 prejudice, and we knew that by filing an additional motion to
5 with leave to amend and filing an amended complaint would
6 probably not toll the appeal time from your order. Meaning
7 you probably wouldn't be able to hear that motion. So we
8 knew we needed to file a Rule 59 to do that.

9 What I was hoping to establish in an amended complaint
10 is that yes there probably are causes of action that will be
11 taken out of this case but there are things that could have
12 been pled more artfully to give an opportunity for the
13 defendants to be on notice of what legal vehicles of
14 liability we're trying to say can be used.

15 Because the facts, just the pure facts as to what
16 happened in the meeting that night, I believe does create
17 Your Honor's ability to determine that we have stated a
18 claim. That, you know, as the Fourth Circuit once said, you
19 know, a well-pleaded complaint can proceed even if a savvy
20 judge that -- strikes a savvy judge that actual proof on
21 those facts is improbable and that recovery is very remote
22 and unlikely.

23 So in this case it may have been, honestly, a long shot
24 for us to succeed on civil conspiracy, for instance, or on
25 some of the other claims; but I believe, Your Honor, a claim

1 was stated.

2 If we have an opportunity to amend then I believe we
3 would have an opportunity to show both Your Honor and the
4 defense to give them proper notice as to which identical
5 legal theories and vehicles we would use to try to get
6 recovery in a way that perhaps was not done to satisfy Your
7 Honor or defendants in this case, which is why they filed a
8 motion to dismiss.

9 And I believe that the Supreme Court last year in
10 Skydive Myrtle Beach versus Horry County established what the
11 rule would be in the context of a 12(b)(6) order being filed,
12 meaning granting a 12(b)(6), and that when they said that
13 when a trial court finds that a complaint failed to state
14 facts sufficient to constitute a cause of action, as Your
15 Honor did here, under Rule 12(b)(6) the court should give the
16 plaintiff an opportunity to amend the complaint pursuant to
17 Rule 15A before the filing of the final order of dismissal.

18 But the problem, as the court stated in that case, which
19 is why they said it was an error in that case and remanded
20 it, was that they would have to have an opportunity to do
21 that and it was not proper for the court in that case to
22 order dismissal with prejudice because it deprived Skydive in
23 that case the ability to then serve a Rule 15A motion for
24 leave to amend and an amended complaint within the time of
25 which they would have to appeal that case, that Rule 59 was

1 something that could have tolled it in that case but they
2 chose not to do it that way and that was an error by the
3 court in not allowing them an opportunity to amend it, i.e.,
4 making their order on dismissal be with prejudice.

5 So, Your Honor, with that I just wanted to present all
6 of those arguments to you in consideration of our motion to
7 reconsider.

8 THE COURT: All right. Mr. Dorsel, have y'all discussed
9 this prior to this hearing; have y'all had an opportunity to
10 talk?

11 MR. DORSEL: We have not spoken.

12 THE COURT: Okay. All right. What would you -- I will
13 be happy to hear from you. What would you like to say in
14 response?

15 MR. DORSEL: Certainly, Your Honor. Looking at the
16 motion to reconsider it looks to me as though the portions
17 that counsel is asking the court to reconsider are the state
18 constitutional claims, the -- and the civil conspiracy. I
19 didn't see anything about federal constitutional claims, if
20 there are any in the complaint.

21 And so with regard to the state constitutional violation
22 claims even if plaintiff were allowed to amend their
23 complaint there simply is no vehicle in South Carolina for a
24 state constitutional claim.

25 There is the Palmer vs. State case as recent as 2019

1 that says there is no private right of action for a state
2 constitutional claim. Unlike in federal court where there is
3 a 1983 statute, there is no enabling statute in state court.

4 But even beyond that, if you just go look at sovereign
5 immunity the state and its agents are immune from suit except
6 for the statute the Tort Claims Act. And in the name itself
7 it tells us that there is no constitutional claims. It is
8 the Tort Claims Act, not the constitutional violation claims
9 act.

10 So the state and the legislature has outlined ways you
11 can sue. And that is for torts that are committed, not for
12 constitutional claims.

13 So regardless of how the complaint is amended, what
14 additional facts are alleged, there's simply is no avenue for
15 a state constitutional claim; and, therefore, we think that
16 your order is correct that there is no constitutional claim
17 asserted in the complaint and that it should be dismissed via
18 12(b) (6) .

19 With regard to -- I was a little unclear in the motion
20 to reconsider. But it talks about a limited public forum
21 that the citizen comment section was a limited public forum
22 and the mayor used his discretion in violation of the
23 Constitution.

24 I just want to address that. You know, the ordinance
25 gives the mayor discretion. They give the -- him discretion

1 to control the order of the meeting, to prohibit council
2 members from leaving, to allow council members to speak, to
3 allow members of the community to speak.

4 And I did want to point out in ordinance 2-69 it says
5 the mayor may recognize citizens of Charleston. It doesn't
6 say he is required to. It gives him discretion.

7 And, you know, Ordinance 244 gives the mayor the power
8 to decide all rules of order. And so I think Your Honor was
9 correct in his order saying that there -- the mayor has
10 discretion.

11 Someone has to. Someone has to control these meetings.
12 Someone has to make the decision on whether someone is within
13 order or is out of order. And the ordinances give the mayor
14 that discretion; therefore, I think your order is exactly
15 right on that.

16 With regard to civil conspiracy, even if it is the
17 complaint -- or as the complaint is alleged -- and I would
18 like to point out the complaint was already amended once. It
19 was amended in -- on August 13th, 2018. So almost two years
20 ago it -- it has been amended. And we have been working on
21 this case since then.

22 But with regard to civil conspiracy and the motion to
23 reconsider, plaintiff asserts that the police department
24 could have been acting independently of the mayor. And they
25 say that could be an independent action separate and

1 distinct.

2 But I think that misses what the case law says. Because
3 it doesn't talk about separate and distinct independent
4 actions of people. It says separate and distinct claims or
5 factual basis from other claims in the complaint. And I --
6 it says -- I cited some cases. But in Todd v. South Carolina
7 Farm Bureau the Supreme Court dismissed the civil conspiracy
8 cause of action which did no more than incorporate the prior
9 allegations and then alleged the existence of civil
10 conspiracy.

11 And in 2009 the Court of Appeals in Hackwork vs.
12 Greywood said the failure to properly plead additional acts
13 in furtherance of the conspiracy and independent from other
14 wrongful acts in the complaint will merit dismissal.

15 And so what we have here is that -- what -- the
16 plaintiff has done exactly what the Supreme Court says you
17 can't do. It says I was prohibited from speaking, that was a
18 violation of my constitutional rights, that was a violation
19 of FOIA, and it was also civil conspiracy.

20 It is alleging the same factual basis and our -- or case
21 law, and our Supreme Court has said you cannot do that.

22 But in addition to that in the motion to reconsider
23 there was nothing about special damages. Which you have to
24 have special damages. Also it didn't address the
25 Intracorporate Conspiracy Doctrine. Any one of those three,

1 not -- you don't have to have all three of them. Any one of
2 those three would merit dismissal. And Your Honor addressed
3 those elements in the order; and therefore, I think it should
4 stand.

5 So for all of these reasons I would ask the court to
6 deny the motion to reconsider, to enstate the motion to
7 dismiss or the order on the motion to dismiss with prejudice,
8 and dismiss this case.

9 THE COURT: All righty. Thank you. Anything in
10 response, Mr. Taylor?

11 MR. SMITH: Briefly, Your Honor, if you don't mind.

12 THE COURT: Sure. Absolutely.

13 MR. SMITH: Your Honor, in this case we are not
14 contesting that discretion was given for the exercise of
15 power in the mayor to conduct these meetings of how the mayor
16 felt it was appropriate in -- in doing so under the
17 ordinances.

18 Your Honor, I think what the Constitution has always
19 protected though is when you have an exercise of power that
20 violates an individual's civil rights, or frankly I guess any
21 right that is statutory, that is when the interplay is
22 usually brought before a court to say the discretion given to
23 this person to act and the use of that power is power they
24 have, that being the authority, like you brought up immunity,
25 that can be within someone to give them immunity.

1 So here we are indicating that even if we are looking at
2 this in an immunity context, the right of freedom of speech
3 is a clearly established right and this case was one where
4 the facts as pled in this complaint if they entitled any
5 relief -- if they were entitled relief under any theory of
6 law then dismissal was inappropriate here.

7 And, Your Honor, that is the law of the state as it
8 comes to the opportunity for a court who is reviewing a
9 granting of a motion for -- to dismissal to say, well, was
10 there an attempt to show that they could have fixed those
11 things to provide greater notice.

12 As Skydive last year and the Supreme Court said, that
13 the plaintiff in that case was entitled -- I mean this is the
14 words from the court, was entitled to accept the court's
15 ruling that the original complaint was deficient and replead
16 in an attempt to fix the deficiency.

17 And, Your Honor, the test the court cited in that case
18 as to why a court could deny under Rule 15A why this -- why
19 the ability to then amend and submit a new complaint that
20 would -- that the court had found to be deficient previously,
21 is that if the leave to amend is given it can -- it can be
22 denied if someone is proponing for it to be given, where the
23 amendment would be futile. But the court said in that case
24 if a court awards a grant of a motion to dismiss then what
25 they have done if they do it with prejudice is they have

1 chosen not to even consider the request for a leave to amend.
2 Which as I said, Your Honor, is in the reply memorandum that
3 was submitted before Your Honor. And that their failure to
4 consider the request as a failure to amend is an abuse of
5 discretion when the order is filed with prejudice like in
6 this case.

7 So, Your Honor, I am indicating having just come into
8 this case that Chris may be exactly right, for instance, on
9 the civil conspiracy claims; I don't -- I have not had an
10 opportunity yet to be close enough to the evidence of this
11 case to determine if ethically I could proceed on pleading
12 even a civil conspiracy claim.

13 I am telling you right now that I think the FOIA cause
14 of action is one that will be tossed. I think that your
15 court -- Your Honor was correct in probably dismissal of
16 that. FOIA is not implicated here in this case.

17 So I am indicating that like they're -- we are asking
18 for reconsideration of Your Honor's order granting the motion
19 to dismiss, particular with prejudice. If Your Honor were to
20 reconsider that order and give an opportunity for us to know
21 that you had called it deficient than I then would have the
22 opportunity procedurally to submit that order -- excuse me,
23 the amend- -- an amended complaint that provides for Your
24 Honor to then review that.

25 If that doesn't cause Your Honor to see that it is no

1 longer -- that it is still deficient, then your dismissal
2 with prejudice is not only appropriate but probably would not
3 be undone on appeal.

4 But if Your Honor decided that it was appropriate, then
5 what you -- we could do at that point is the order could be
6 denied and -- or excuse me, the order on the motion to
7 dismiss could be denied and we could proceed on additional
8 theories that Ms. Senn and the defendant can raise, including
9 issues of immunity or other issues that are ripe for summary
10 judgment.

11 But in this case, Your Honor, the facts as pled amount
12 to under a theory of free speech that this complaint be
13 allowed to proceed if Your Honor were to disagree with me for
14 instance on the civil conspiracy claim.

15 Finally I just want to bring up I did not notice - and
16 Chris might can answer this - but I did not notice in their
17 motion to dismiss that they were seeking dismissal of the
18 what I guess is the fourth cause of action here which is
19 concerning the unbridled discretion the ordinance provides.
20 Basically a -- seeking an order from Your Honor indicating
21 that a declaratory judgment should be issued, that the
22 unbridled discretion given to the mayor under that ordinance
23 at the City Council meetings is unconstitutionally vague.

24 And that would be obviously an issue that I think Your
25 Honor -- if I am correct about the procedural nature of this

1 case - although, again, I just came into it - is that the
2 motion neither sought the dismissal of that declaratory
3 judgment cause of action nor did Your Honor rule in your
4 order on motion -- on the declaratory judgment.

5 So regardless of what happens here today with our motion
6 to reconsider, I think that actually has survived, which I
7 think puts us in a particularly peculiar scenario if Your
8 Honor were to just already indicate that you wanted to
9 continue with dismissal with prejudice as to the other causes
10 of action.

11 THE COURT: So what are you alleging that survived?

12 MR. SMITH: That would be under the amended complaint,
13 Your Honor, there is an additional fourth cause of action.
14 It begins at Paragraph 32 for declaratory judgment. He,
15 meaning previous counsel for this, indicated that he thought
16 that the use of the mayor's discretion under this particular
17 ordinance is so unbridled that it creates an ordinance that
18 on its face is unconstitutionally overly broad and vague.

19 And that is not something, like I said -- but again I
20 mean I am just looking at it from the words of what was
21 filed. There may have been at -- that y'all had a motion
22 hearing at any point previously or on anything else or
23 communications y'all may -- he may have brought this up. But
24 I don't see that their motion was directed to this fourth
25 cause of action. And I don't see it mentioned in Your

1 Honor's order of dismissal.

2 THE COURT: All righty. Well, address the fact that,
3 you know, you are asking for leave from the court to amend
4 the complaint. And I didn't know this until Mr. Dorsel just
5 said it because they didn't bring it up in previous hearing,
6 it has already been amended once before; so this will be the
7 third amendment.

8 MR. SMITH: Your Honor, I honestly don't know what -- I
9 would have to go back and look as to what the initial
10 complaint was as to why it was amended.

11 I think -- if I compared those two documents, Your
12 Honor, or maybe even given time to perhaps with leave to
13 brief this issue I could do that.

14 I don't know why it was amended. I just know that the
15 only motion dismissing this case is their motion to dismiss,
16 and that was filed as to this amended complaint.

17 There hasn't been a previous, you know, attempt to
18 dismiss the previous complaint. And if there were issues, it
19 sounds like between the parties on that, they resolved them
20 to give the defendant better notice, I would assume; that is
21 why they allowed for this particular amended complaint to
22 then only die on the basis of the grounds raised before Your
23 Honor in this motion.

24 THE COURT: Mr. Dorsel, did y'all consent to the
25 amendment of the complaint, the second amendment of the

1 complaint; or did y'all -- I mean did they have to seek leave
2 from the court?

3 MR. DORSEL: They did not have to seek leave from the
4 court. I -- I actually wasn't involved at that point. But I
5 believe that -- it looks to me as though he just voluntarily
6 or amended as of right within 30 days before we filed any
7 kind of responsive pleadings.

8 THE COURT: Gotcha. Okay. All right. Would you like
9 to respond, Mr. Dorsel, at all?

10 MR. DORSEL: Just briefly, Your Honor. The -- oh, I
11 know what I was going to say. Taylor brought up futility.
12 And that really is kind of the heart of my argument, that
13 any -- even allowing an amendment in this case would lead to
14 futility. The -- the facts can't change. You know, he got
15 up to speak. He was taken out by a City of Charleston police
16 officer.

17 So the civil conspiracy there aren't any kind of
18 additional acts that could be pled. And special damages I
19 don't believe there could be any either. But even more
20 importantly, you can't get around the fact that all of these
21 people are City of Charleston employees and therefore the
22 Intracorporate Conspiracy Doctrine would apply.

23 And then also with regard to amending to state a state
24 constitutional claim, our Court of Appeals has determined
25 that you can't bring a state constitutional claim. The Tort

1 Claims Act doesn't allow for it. Our legislature didn't
2 allow for it. And therefore amending to better layout the
3 issues for the state constitutional claim would lead to
4 futility.

5 And with regard to the whether the statute is vague or
6 not, with this I think, you know, by arguing this motion, by
7 replying to this motion, it is clear that the statute -- or
8 the ordinance is not vague. And, therefore, I don't think
9 that it is necessary to have a declaratory judgment to say
10 that the court finds that it is not vague, as the court has
11 already ruled on the alleged violation of this ordinance or
12 whether or not the mayor had discretion or didn't have
13 discretion.

14 THE COURT: All right. Well, I mean the argument for
15 that one, I liken it to be almost the inherent powers that I
16 have. I mean you can't bring a constitutional claim against
17 me every time that I allow you to speak on behalf of, you
18 know, the victim in a criminal case and you start cussing at
19 me or you start cussing at the litigants I can remove you
20 from the courtroom and that is not a violation of your
21 constitutional rights.

22 It is the inherent power that is given to me to keep the
23 forum in the courtroom; which is what I assume is your
24 argument, Mr. Dorsel, as the inherent power that is given to
25 the mayor to keep the decorum in these meetings and that is

1 what is given to him.

2 So that is the way I keep reasoning this when I am
3 making these decisions on the case and the way I hear it.
4 But is that -- is that essentially what your argument to some
5 degree is, Mr. Dorsel, is that the inherent power is similar
6 to kind of what I have; I mean they can't bring a claim
7 against me for removing someone from the courtroom every time
8 that they decide to cuss at a litigant or do something along
9 those lines; correct?

10 MR. DORSEL: Yes, Your Honor, that is correct.

11 THE COURT: All right.

12 All right. Mr. Taylor, anything else -- or Mr. Smith.
13 Excuse me. I'm sorry, it has your first name on the thing.

14 MR. SMITH: It is, Your Honor. Thank you. Very
15 briefly. In Chris' presentation to Your Honor he did bring
16 up that there is an understanding I think in this complaint
17 that he has alleged state constitutional violations. But the
18 law of this state concerning the review of pleadings on a
19 12(b)(6) motion is frankly so geared towards making sure that
20 there is an opportunity for general notice to be given to
21 defendants.

22 There are facts in this, Your Honor, that would clearly
23 establish a First Amendment violation under the United States
24 Constitution in addition to our state constitutional
25 requirements for free speech that we have as a corollary.

1 So, Your Honor, I believe that there are -- there is an
2 opportunity for Your Honor to view these words in this
3 complaint to show that he has stated the facts sufficient to
4 show that there is a theory of law that could provide relief
5 in this case.

6 As to whether or not the defendants are immune, Your
7 Honor, you brought up that you have that discretion. You are
8 exactly right. The Constitution affords you under the color
9 of law to do what is necessary to maintain your courtroom.

10 When you are not acting though under the color of law,
11 that is where oftentimes there can be problems with the
12 immunity that Your Honor would assert, which is absolute
13 under judicial immunity typically.

14 So this is where I am coming in as the plaintiff's
15 attorney in this and indicating that just based upon the
16 facts alleged there may be defenses in this. There may be
17 claims of immunity.

18 But this is just based upon on the sufficiency of the
19 facts. That is what the defendants raised in this case. And
20 based upon these facts they may prevail later on an immunity
21 claim, but we should be afforded an opportunity to -- with
22 leave to amend if the court found that these particular facts
23 were not sufficient to be provided such that the court can
24 then consider.

25 Because I fear that if the court were not allowing us

1 leave to amend this case this may in fact be an abuse of
2 discretion. They may end up win -- winning later on this
3 case and the same theories that Your Honor and Chris have
4 espoused about immunity and about those theories; but those
5 would in fact come to bear when we do have a complaint and
6 have facts sufficient to show that they were acting outside
7 of the color of law, perhaps the officers in this case.
8 Which is a reasonable inference that can be drawn from the
9 words of this complaint.

10 But, Your Honor, as I said, having just come into this
11 case I am not entirely sure that we will be able to ethically
12 plead a claim for civil conspiracy. I am indicating that if
13 given the opportunity with leave to amend Your Honor would
14 see clearly that maybe what we need to do is take away that
15 cause of action and take away the cause of actions for FOIA;
16 therefore, we could proceed with what Your Honor felt we had
17 no potential recovery as a matter of law on.

18 I need to talk with my client about what facts are there
19 so that I ethically know if there are the kinds of damages
20 necessary as Chris correctly argued that the law requires in
21 a case of a civil conspiracy.

22 But based upon the facts of this case as pled in the
23 complaint as to the causes of action for freedom of speech, I
24 believe they are there and I believe dismissal would be
25 inappropriate.

1 THE COURT: All right. Anything further from anybody?
2 Anything else?

3 MR. DORSEL: No, Your Honor.

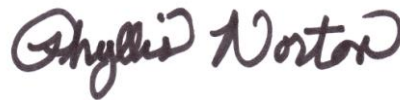
4 THE COURT: All right. You will have my decision by the
5 end of the day. And I hope everybody is doing well. If
6 y'all need something else certainly just let us know.
7 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on May 27, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: July 24, 2020

Certified Transcript Provided For: Taylor M. Smith, IV
Certification Reference #2020-0724 Original



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Skip Hoagland VS John Tecklenburg , defendant, et al

Case Number:	2018CP1003441	Court Agency:	Common Pleas	Filed Date:	07/09/2018
Case Type:	Common Pleas	Case Sub Type:	Person Inj/Other 399	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	05/07/2020	Disposition Judge:	Price, Bentley
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials	
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Hoagland, Skip	Appeal to Court of Appeals for Order Dated 5/28/2020	Filing		06/30/2020-09:00		
Hoagland, Skip	NEF(06-29-2020 02:40:08 PM) Appeal/Notice of Appeal to C...	Filing		06/30/2020-09:00		
	Miscellaneous Documents	Filing		06/05/2020-09:16		
Hoagland, Skip	NEF(05-28-2020 10:16:25 AM) Order/Electronic Form 4	Filing		05/28/2020-10:16		
Hoagland, Skip	Order/Ptiffs Motion to Reconsider is Denied	Order		05/28/2020-10:16		
Hoagland, Skip	NEF(05-19-2020 01:42:46 PM) Order/Substitution Of Counse...	Filing		05/19/2020-13:42		
Hoagland, Skip	Order/Substitution Of Counsel for Pltff	Order		05/19/2020-13:42		
Hoagland, Skip	NEF(05-18-2020 06:52:05 PM) Motion/Reconsider	Filing		05/19/2020-10:26		
Hoagland, Skip	Motion/Reconsider	Motion		05/18/2020-18:52	05/27/2020-18:52	
Tecklenburg, John	NEF(05-07-2020 11:01:24 AM) Order/Dismissal	Filing		05/07/2020-11:01		
Tecklenburg, John	Order Granting Motion to Dismiss	Order		05/07/2020-11:01		
Hoagland, Skip	NEF(05-05-2020 10:47:21 AM) Motion/Relieve As Counsel	Filing		05/05/2020-15:29	05/07/2020-15:29	
Tecklenburg, John	NEF(05-04-2020 02:30:41 PM) Proposed Order/Dismissal	Filing		05/05/2020-13:40	05/07/2020-13:40	
Hoagland, Skip	Motion/Relieve As Counsel & Rule 11 Certificate	Motion		05/05/2020-10:47	05/05/2020-10:47	
Charleston City of	Order/Order Cover Sheet \$25.00	Filing		05/04/2020-14:30	05/07/2020-14:30	
Hoagland, Skip	NEF(05-01-2020 03:19:36 PM) Reply/Other	Filing		05/01/2020-15:51	05/07/2020-15:51	
Hoagland, Skip	Pltffs reply to Defnts Memo filed April 30, 2020	Filing		05/01/2020-15:19	05/07/2020-15:19	
Tecklenburg, John	NEF(04-30-2020 04:58:22 PM) Memo/Memo in Support	Filing		05/01/2020-10:04	05/07/2020-10:04	
Tecklenburg, John	Defnt Memo in Support of Motion to Dismiss	Filing		04/30/2020-16:58	05/07/2020-16:58	
Hoagland, Skip	NEF(04-27-2020 12:38:37 PM) Memo/Memo in Opposition	Filing		04/27/2020-15:54	05/07/2020-15:54	
Hoagland, Skip	Pltff Memo of Law	Filing		04/27/2020-12:38	05/07/2020-12:38	
Goldstein, Thomas R.	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-12:50	05/07/2020-12:50	
Senn, Sandra J.	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-12:50	05/07/2020-12:50	
Dorsel, Christopher Thomas	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-12:50	05/07/2020-12:50	
Dorsel, Christopher Thomas	3/16/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		03/10/2020-08:38	05/07/2020-08:38	
Senn, Sandra J.	3/16/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		03/10/2020-08:38	05/07/2020-08:38	
Goldstein, Thomas R.	3/16/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		03/10/2020-08:38	05/07/2020-08:38	
Goldstein, Thomas R.	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/24/2020-09:11	05/07/2020-09:11	
Senn, Sandra J.	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/24/2020-09:11	05/07/2020-09:11	
Dorsel, Christopher Thomas	3/23/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		02/24/2020-09:11	05/07/2020-09:11	
Dorsel, Christopher Thomas	2/17/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		02/11/2020-08:31	05/07/2020-08:31	
Senn, Sandra J.	2/17/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		02/11/2020-08:31	05/07/2020-08:31	
Goldstein, Thomas R.	2/17/2020_JRY_Roster/Notice of Case Roster Publication Sent	Action		02/11/2020-08:31	05/07/2020-08:31	
Goldstein, Thomas R.	10/28/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/24/2019-08:35	05/07/2020-08:35	
Senn, Sandra J.	10/28/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/24/2019-08:35	05/07/2020-08:35	
Dorsel, Christopher Thomas	10/28/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/24/2019-08:35	05/07/2020-08:35	
Dorsel, Christopher Thomas	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	05/07/2020-08:51	
Senn, Sandra J.	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	05/07/2020-08:51	
Goldstein, Thomas R.	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	05/07/2020-08:51	
Hoagland, Skip	ADR/Notice of ADR	Action		05/05/2019-16:28	05/07/2020-16:28	
Hoagland, Skip	ADR/Alternative Dispute Resolution (Workflow)	Action		02/04/2019-16:23	05/05/2019-16:23	
Hoagland, Skip	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Goldstein, Thomas R.	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Dorsel, Christopher Thomas	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Senn, Sandra J.	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Juncu, Alexandru	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Keaveny, Thomas J. II	Archived Document	Filing		02/04/2019-00:00	05/07/2020-00:00	
Senn, Sandra J.	3/11/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:21	05/07/2020-08:21	
Dorsel, Christopher Thomas	3/11/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:21	05/07/2020-08:21	
Goldstein, Thomas R.	3/11/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/30/2019-08:21	05/07/2020-08:21	
	Notice of Appearance of Atty Dorsel for Defendants, crt/srv	Filing		11/13/2018-14:36	05/07/2020-14:36	
Senn, Sandra J.	Defnt Motion/Dismiss & Crt/Srv	Motion		09/21/2018-16:11	05/07/2020-16:11	
Charleston City of	Answer To Pltff Amended Complaint & Crt/Srv	Filing		09/21/2018-16:10	05/07/2020-16:10	
Tecklenburg, John	Motion/Motion Filing Fee	Filing		09/21/2018-14:56	05/07/2020-14:56	
Hoagland, Skip	Amended Summons And Complaint, crt/srv	Filing		08/13/2018-13:24	05/07/2020-13:24	
	Service/Proof Of (2)	Filing		07/31/2018-11:39	05/07/2020-11:39	
Hoagland, Skip	Summons & Complaint	Filing		07/09/2018-16:22	05/07/2020-16:22	

Sec. 2-28. - Rules of decorum.

(1) *Rules of decorum.*

While any meeting of city council is in session, the following rules of decorum shall be observed:

- (a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the mayor, or in his absence, the mayor pro tempore, be barred from further audience before city council during that meeting and may be removed from the building.
- (b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the mayor or in his absence, the mayor pro tempore, for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the mayor, or in his absence, the mayor pro tempore, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of city council.
- (c) This section in no way limits any person from being charged or arrested for criminal conduct which occurs during the course of a city council meeting or during the course of a person being removed from a city council meeting pursuant to this section.

(Ord. No. 2007-13, § 1, 1-23-07; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16)

Sec. 2-37. - Call to order; order of business.

Immediately at the hour appointed for the meeting, the mayor shall take the chair, and the clerk shall proceed to call the roll. If a quorum is present, business shall proceed in the following order:

- (1) Properly advertised public hearings shall be conducted. Immediately following the adjournment of the public hearings, city council shall discuss the matters for which the public hearings were held.
- (2) Citizens participation period as provided by section 2-69 herein.
- (3) Reading of the journal of the previous meeting.
- (4) Petitions received and disposed of.
- (5) Councilmember communications.
- (6) Reports or communication from city officers or boards.
- (7) Reports from standing committees.
- (8) Reports from special or joint committees.
- (9) Bills already in possession of council shall then be taken up for a second or third reading.
- (10) Introduction of bills and resolutions.
- (11) Miscellaneous business not included in any of the previous orders.

(Ord. No. 2004-06, § 1, 1-27-94; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16; Ord. No. 2019-056, § 1, 6-18-19)

Sec. 2-39. - Leaving council meeting without permission of mayor prohibited.

Any member leaving the council chamber during a meeting, without permission of the mayor, shall be fined five dollars (\$5.00), and should his/her leaving council chamber, without such permission, cause any suspension of business, he/she shall be fined fifteen dollars (\$15.00), unless excused. Permission to leave the council chamber shall be requested of the mayor in open session of council after having been duly recognized. The amount of all fines shall be deducted from the councilmember's salary on the councilmember's next paycheck.

(Ord. No. 2004-06, § 1, 1-27-94; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16)

Sec. 2-40. - Recognition of members desiring to speak; forms of address; profanity.

- (a) Any member when about to speak shall address the mayor as "Mr. Mayor," but shall not proceed with his/her remarks until recognized and named by the mayor. A member shall at all times avoid any profanity or disrespect to the council and all personalities, and shall confine himself/herself to the question under consideration. The fine for use of profanity shall be ten dollars (\$10.00) for the first occurrence at a meeting and fifteen dollars (\$15.00) for the second occurrence at the same meeting. The amount of all fines shall be deducted from the councilmember's salary on the councilmember's next paycheck.
- (b) The mayor, when addressed by a member, shall name the member using the title of "councilmember." The member who shall first seek to be heard in order shall be first heard and if two (2) or more members seek to be heard at the same time, the mayor shall decide who shall speak first.

(Ord. No. 2004-06, § 1, 1-27-94; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16.)

Sec. 2-44. - Mayor to decide questions of order.

All questions of order shall be decided by the mayor without any debate, subject to an appeal to council.

(Ord. No. 2004-06, § 1, 1-27-94; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16.)

Sec. 2-69. - Petitions and memorials.

All communications to the city council shall be by petition or memorial. None other than members of council shall be heard on any petition or memorial without the unanimous consent of council, except that during a period of thirty (30) minutes of each regular meeting the mayor may recognize citizens of Charleston who wish to address council on matters of city business. City council shall be provided, by the office of the clerk of council, with a published agenda the Thursday before each regular meeting. The deadline for submitting items to be considered at the city council and ways and means committee shall be noon on the Monday of the week prior to the scheduled meetings. A two-thirds ($\frac{2}{3}$) vote of the council members present shall be required for a matter to be added to the agenda after it has been closed.

(Ord. No. 2004-06, § 1, 1-27-04; Ord. No. 2008-08, § 1, 1-22-08; Ord. No. 2010-84, § 2, 4-27-10; Ord. No. 2012-58, § 1, 2-14-12; Ord. No. 2016-015, § 1, 1-26-16)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price

Appellate Case No. 2020-000936

RECEIVED

Feb 17 2021

SC Court of Appeals

Skip Hoagland, ... Appellant,

v.

John Tecklenburg, in his official capacity, the City of Charleston, and the City of
Charleston Police Department, ... Respondents.

CERTIFICATION OF COUNSEL REGARDING MATTER
INCLUDED IN THE RECORD ON APPEAL

I certify that the Record on Appeal contains all material proposed to be
included by any of the parties and not any other material.

Respectfully submitted,

/s/ Taylor Smith

Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant

February 17, 2021