

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

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Opinion No. 5077 (S.C. Ct. App. Filed January 23, 2013)

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Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,

of whom,

Balisides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, are

..... Respondents,

v.

City of Columbia,..... Petitioner.

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**PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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*Attorney for Petitioner*

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In their return filed April 10, 2013 and received April 16, 2013, Respondents contend that verbal representations by employees of the City of Columbia (“City”) can bind the municipality to provide permanent, free health insurance despite written disclaimers and the absence of lawful authority to enter contracts. Respondents’ argument, if accepted, would encourage legal challenges to any changes in municipal policy, creating unnecessary uncertainty and chilling elected decision makers from exercising lawful authority to meet changing conditions.

Throughout their argument, Respondents claim that City employees made promises of free health insurance relied upon to their detriment. Respondents contend, without offering supporting evidence, that they would have left employment with the City had they been aware that health insurance benefits were subject to change. This argument was rejected by Judge Barber, the trier of fact. Addressing Respondents’ promissory and equitable estoppel claims, Judge Barber held:

Regardless of what they were told, [Respondents] agreed to be bound by the terms of the group health plan and were aware that the terms of the group health plan changed during their employment. [Respondents] could not reasonably assume that changes would cease to take place after they retired. . . Here, discovery is complete and the material facts are before me. These facts lead to only one conclusion: that reliance by the [Respondents] was unreasonable. In this context, summary judgment in favor of the [City] is proper on the issue of promissory estoppel.

R. pp. 30-31.

Taking all the allegations by the [Respondents] as true, it remains clear that no person, whether employee, city manager, or council member had the authority to guarantee free lifetime health insurance. Like their promissory estoppel claim, [Respondents] equitable estoppel cause of action is properly adjudicated by summary judgment.


R. p. 33-34.

To avoid summary judgment, a plaintiff must not only identify factual disputes, those disputes must be “material.” Materiality requires demonstration that favorable resolution of the dispute will lead to judgment for the plaintiff. In this instance, there are no facts in the record that prohibit the City’s elected officials from prospectively altering the group health plan. Even without the disclaimers in the health plan booklets, applications for health insurance, and City handbook, funding of health insurance for municipal employees and retirees is a legislative function that cannot be compromised by “promises” regardless of sincerity or reliance. To rule otherwise would overturn long-standing principles of law affirmed in this Court’s decisions of Alston v. City of Camden, 322 S.C. 38, 471 S.E.2d 174 (1996) and Ahrens v. State, 392 S.C 340, 709 S.E.2d 54 (2011)

**CONCLUSION**

Allowing Respondents to proceed on their promissory and equitable estoppel claims, even if unsuccessful, will create confusion regarding the authority of municipalities to exercise legislative functions and promote unnecessary, costly litigation. Accordingly, it is respectfully submitted that the public interest will be served by granting Petitioner’s request for review.

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By: 

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Columbia, South Carolina  
April 18, 2013

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CERTIFICATE OF SERVICE

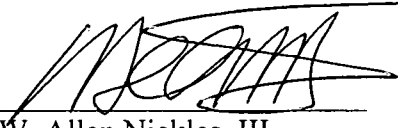
The undersigned hereby certifies that he has served Petitioner's Reply Memorandum in Support of Petition for Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Nancy Bloodgood, Esquire  
Lucy C. Sanders, Esquire  
Foster Law Firm, LLC  
895 Island Park Drive, Suite 202  
Daniel Island, South Carolina 29492

This 18<sup>th</sup> day of April, 2013.

NICKLES LAW FIRM, LLC

By: \_\_\_\_\_

  
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