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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Civil Action No. 2016-CP-14-198
Appellate Case No. 2019-001970

Rebecca J. Robbins and Marie Babayan, individually
and on behalf of all those similarly situated, ... Appellants,

v.

Town of Turbeville and the Town of Turbeville Police Department, ... Respondents,

v.

The State of South Carolina, ... Third Party Defendants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina,

Third Party Defendants.

RECEIVED

NOV 27 2019

SC Court of Appeals

**ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT,
GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT, AND
DENYING PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

This matter came before the Court on Motion of the Plaintiff for Class Certification and Summary Judgment on their claims for injunctive relief. Plaintiff further seeks a judgment declaring unconstitutional Turbeville traffic ordinances under which Plaintiffs received citations. Also before the Court was a Motion for Summary Judgment filed by the Defense. The issues having been fully briefed and having heard argument from all parties, the Court orders as follows:

THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

Turbeville has repealed the ordinances in question hence, there is nothing for this Court to enjoin. The claims of the Plaintiff for injunctive and declaratory relief are moot. The Motion of the Plaintiff for Summary Judgment is **DENIED** and the Motion of Turbeville for Summary Judgment is hereby **GRANTED**.

MOTION FOR CLASS CERTIFICATION

Under Rule 23 of South Carolina Rules of Civil Procedure, certification of a class requires that Plaintiff establish (1) the class is so numerous that joinder of all members is impractical (“numerosity”); (2) there are questions of law and fact that are common to the class (“commonality”); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (“typicality”); (4) the representative parties will fairly and adequately represent the interests of the class (“adequacy”).¹ In addition, where, as here, the class representative is seeking monetary relief, South Carolina has an additional requirement that the amount in controversy must exceed \$100 for each class member.² The proposed representative of the class has the burden of establishing each prerequisite for class certification.³ The Court is required to conduct and apply a rigorous analysis to assure that Plaintiff has established each of the Rule 23 prerequisites.⁴ The failure to establish any one of the prerequisites is fatal to class certification.⁵ Since, Plaintiff cannot establish the Rule 23 requirements for class certification the Motion for Class Certification is **DENIED**.

Rule 23(a)(2) Commonality. “To establish commonality, [the Plaintiff] must show that there are questions of law or fact common to the class. In practical terms this means the party must articulate the existence of *significant* common legal or factual issues that bind the class

¹ Rule 23(a), SCRPC.

² Rule 23(a)(5), SCRPC.

³ *Waller v. Seabrook Island Property Owners Association*, 388 S.E.2d 799 (S.C. 1990).

⁴ *Gardner v. South Carolina Dep’t of Revenue*, 577 S.E.2d 190, 200 (S.C. 2003); and *Waller*, 388 S.E.2d at 801, citing *General Tel. Co of Southwest v. Falcon*, 457 U.S. 147 (1982). The Court of Appeals blessed the conclusions of the *Gardner* decision in *BLH by Hensley v. South Carolina Dep’t of Social Services*, 814 S.E.2d 638 (Ct. App. 2018) cert. granted Nov. 9, 2018.

⁵ *Gardner*, 577 S.E.2d at 200; see also *Ferguson v. Charleston Lincoln/Mercury, Inc.*, 544 S.E.2d 285 (Ct. App. 2001) and *Waller v. Seabrook Island Prop. Owners Ass’n*, 388 S.E.2d 799, 801 (S.C. 1990).

together.”⁶ The common issues must be determinative, and most importantly, “a representative plaintiff *cannot* establish commonality if the court must investigate each [class member’s] claim.”⁷ The Court of Appeals held in *BLH v. South Carolina Dep’t of Soc. Services*, “the necessity of . . . individualized inquiries ‘negates the benefits of a class action suit.’”⁸

Rule 23(a)(4) Adequacy of Representation. The courts have noted that one factor to be examined is whether the putative class representative must actually be a member of the class she seeks to represent.⁹ A class representative who is not a member of the class cannot be an adequate representative. Plaintiff Robbins cannot be a class representative as her claims are herein denied. Further, if a claim cannot succeed as a matter of law, the Court should not certify a class on the issue, and the purported class representative should not be considered “adequate.”¹⁰ The claims of Plaintiff Babayan cannot succeed therefore she cannot be an adequate representative.

Rule 23(a)(5) Amount in Controversy. Rule 23(a)(5) of the South Carolina Civil Procedure is unique in that it requires Plaintiff to establish that the amount in controversy for each plaintiff exceeds \$100. While the Rule does not define the term, the South Carolina Supreme Court has held that the Court should look to the “amount to be gained by the lawsuit” to determine whether the claim of class members is for more than \$100.¹¹

1. **Plaintiff “Damages Subclass” must be denied because the claims are prohibited under the South Carolina Tort Claims Act.**

⁶ *Id.*

⁷ *Id.* at 201.

⁸ *BLH v. SCDSS*, 814 S.E.2d at 643 *quoting McGann v. Mungo*, 340 S.E.2d 154, 158 (S.C. 1986).

⁹ *See Wright, Miller, and Kane Federal Practice and Procedure* § 1761.

¹⁰ *See e.g. Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012). *Also Wright, Miller & Kane, Federal Practice and Procedure*, § 1785.1 (a party must have standing to assert the claim in order to serve as a class representative).

¹¹ *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 202 (S.C. 1991).

There is no legal or equitable basis for a court to order a town or other political subdivision of the State to reimburse or provide restitution to those who were cited for violations of the law. There is no statute commanding, or permitting the government to reimburse. Additionally, there is no statute waiving the sovereign immunity of the Town of Turbeville for the acts alleged in the Complaint. The Tort Claims Act affords the Town complete immunity from liability to the Plaintiffs.

The Tort Claims Act, S.C. CODE ANN. §15-78-60 prohibits claims of the Plaintiff for money damages. Pertinent provisions of the Tort Claims Act are as follows:

The governmental entity *is not liable for a loss resulting from:*

- (1) legislative, judicial, or quasi-judicial action;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (23) institution or prosecution of any judicial or administrative proceeding;

Thus, the Tort Claims Act specifically prohibits this action against the Town. The issue of traffic citations falls under the protections of § 15-78-60(4), and it does not matter whether the now-rescinded Traffic Ordinance was valid or invalid. Collecting the fines for violating the Ordinance falls squarely within the immunity afforded under §§15-78-60(3) and 15-78-60(23), for the Town cannot be liable for collecting judicially ordered fines or prosecuting crimes. The claims arising from the enactment of the Ordinance by the Town are barred under § 15-78-60(4).

2. **The constitutional challenge of Plaintiff to the Town of Turbeville Traffic Ordinance is preempted and completely barred by the Post Conviction Relief Act, and, on that basis, class certification must be denied.**

The proposed class-wide claims of the Plaintiff for a retroactive declaration that the Town Traffic Ordinance was invalid and unenforceable from the time it was adopted constitutes an improper collateral attack on potentially thousands of final judgments. Because neither she, nor any member of the putative class, can mount such a challenge to their convictions, class certification is inappropriate. When a claim cannot succeed as a matter of law, the Court should not certify a class on the issue.¹² Pursuant to S.C. CODE ANN. 56-5-6220, paying a traffic ticket or forfeiting the bond is the legal equivalent of entering a guilty plea and being convicted of the crime.¹³

The remedy that would have been available to Plaintiff Babayan, and ostensibly to the members of the putative class who likewise pled guilty or paid their fines, is under the Post-Conviction Relief Act. The clear language of the PCR statute establishes that bringing a PCR action is the exclusive remedy for challenging the constitutionality of the statute under which one was convicted.¹⁴

3. Motion of the Plaintiff to certify should be denied because she has failed to establish all the prerequisites for certification under Rule 23.

¹² See e.g. *Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012).

¹³ A very similar post-conviction challenge was filed in U.S. District Court challenging the validity of traffic tickets issued by the Town of Ridgeland based upon traffic cameras hidden along I-95. Judge Blatt dismissed the claims of all those who had paid their fines because the statutory guilty plea precluded them from challenging the traffic ordinance and the procedures used to issue tickets. See *Ahlum v. Town of Ridgeland*, 10-cv-3227, Transcript of Hearing, pp. 50-54, oral Order on Defendants' Motions to Dismiss (*Exhibit 2*).

¹⁴ S.C. CODE ANN. § 17-27-10 et seq. provides as follows:

- (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
 - (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Plaintiff cannot establish that there are common issues of law or fact that bind the class together and ultimately determine the case. Rather, because of the impenetrable morass of individual issues, Plaintiff cannot satisfy her burden of showing sufficiently common issues of law or fact to support class certification. It appears based upon the handful of depositions of members of the putative class, all that can be determined from the digital records are the names and addresses of the cited persons; the date of the arrest; the citation number; the amount of the fine on the citation; and a description of some sort of disposition. However, the data has shown to be inaccurate in many respects, for the disposition and fine actually paid by several of the deponents was different from the amount shown on the citation.

As Turbeville established, there are any number of individual inquiries that the Court would have to undertake in order to determine whether any person is in the class or not. Included among these are: whether the person pled guilty; entered an *Alford* plea; struck some deal for a reduction in the charge; or pled not guilty. Without an extensive individual inquiry, no one can determine which members of the putative class must be excluded from the class. That individual inquiry effectively destroys claim of commonality by the Plaintiff.

Plaintiff has failed to establish that each member of the putative class has a claim of more than \$100. Plaintiff Babayan seeks restitution or a refund of the fines levied by Turbeville for violations of its Ordinance. Plaintiff Babayan is not challenging her guilt, only the law under which she was convicted. The only proper measure of the real value of the relief is the difference between the fine that each individual class member paid as part of their guilty plea and conviction under the Town Traffic Ordinance and the fine they would have received under State law.¹⁵ In

¹⁵ It is important to note that State law mandates a number of assessments that must be added to the uniform traffic statute – Babayan could have been fined between \$50 and \$75 for speeding (S.C. CODE ANN. § 15-5-1520(G)(3), plus the mandatory fee for the Victim's Compensation Fund (\$25) (S.C. CODE ANN. § 14-1-211), the conviction charge (\$25) (S.C. CODE ANN. § 14-

order to determine whether any of the putative class members satisfy the amount in controversy requirement, the Court would have to conduct an impermissible individual inquiry into each and every traffic citation. This individual inquiry militates against class certification.

Plaintiff *cannot* establish the requisite \$100 amount-in-controversy for each class member. Because of that failure of proof, certification must be denied.

Based on the foregoing, the motion of the Plaintiff for Class Certification is likewise **DENIED.**

AND IT IS SO ORDERED.

Clifton Newman
Presiding Judge

October __, 2019

1-212), the Criminal Justice Academy fee (\$5) (S.C. CODE ANN. § 14-1-240), and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208). Thus Babayan's State penalty would have ranged between \$158.75 and \$210.63.



Clarendon Common Pleas

Case Caption: Rebecca J. Robbins , plaintiff, et al VS Turbeville Town of ,
defendant, et al
Case Number: 2016CP1400198
Type: Order/Class Certification

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-10-29 16:25:52 page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.:
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	SUMMONS
	)	(Jury Trial Demanded)
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

(Signature Page Follows)

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May 9, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan, individually and on behalf of all those similarly situated,	)	Case No.:
	)	
Plaintiffs,	)	COMPLAINT
	)	(Jury Trial Demanded)
vs.	)	
	)	
Town of Turbeville, the Turbeville Police Department, and David Jones, in his official capacity as Chief of the Turbeville Police Department,	)	
	)	
Defendants.	)	

**CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE
RELIEF, AND DAMAGES**

The Plaintiffs, Rebecca J. Robbins and Marie Babayan, individually, and on behalf of all persons similarly situated, by and through their undersigned counsel will respectfully show unto this Honorable Court:

NATURE OF THE CASE

1. This is a class action against the Town of Turbeville, the Turbeville Police Department, and David Jones, in his official capacity as Chief of the Turbeville Police Department. Plaintiffs file this Complaint on behalf of the proposed Class of people who have been charged with violating the Turbeville Town Traffic Ordinance and the proposed Subclass of people who have paid fines to Defendants for violating the Turbeville Town Traffic Ordinance. Plaintiffs and the Class members seek declaratory relief and injunctive relief holding that the Turbeville Town Traffic Ordinance is preempted by State law and illegal, and Plaintiff Marie Babayan seeks

damages on behalf of herself and the proposed Subclass as a result of Defendants' illegal enactment and application of the Turbeville Town Traffic Ordinance.

PARTIES

2. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

3. Plaintiff Rebecca J. Robbins is, and was at all times material to this action, a resident of the County of Lexington, State of South Carolina.

4. Plaintiff Marie Babayan is, and was at all times material to this action, a resident of the State of Florida.

5. Defendant Town of Turbeville is a political subdivision of the State of South Carolina located in Clarendon County, South Carolina.

6. Defendant Turbeville Police Department is the law enforcement agency in charge of supervising the streets and citizens of Defendant Town of Turbeville.

7. Defendant David Jones, who at all times relevant to this suit was an agent and/or employee of Defendant Town of Turbeville operating within the scope of his official duties, is in charge of Defendant Turbeville Police Department.

JURISDICTION AND VENUE

8. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

9. The jurisdiction of this Court is founded upon S.C. Const. Ann. art. V, § 11, which grants the Circuit Court general jurisdiction over civil actions.

10. Additionally, jurisdiction is founded on the South Carolina Uniform Declaratory Judgments Act, South Carolina Code Ann. §§ 15-53-10 to -140, and the State's equity jurisdiction for injunctive relief.

11. Plaintiffs and members of the Class and Subclass have each suffered an individual injury by virtue of Defendants' unconstitutional actions within the County of Clarendon.

12. Venue is appropriate under South Carolina Code Ann. §§ 15-7-20 through -30.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

13. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

The Uniform Traffic Act

14. The South Carolina General Assembly has enacted Chapter 5 of Title 56, entitled the "Uniform Act Regulating Traffic on Highways" (hereinafter, "Uniform Traffic Act").

15. The Uniform Traffic Act provides that:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

S.C. Code Ann. § 56-5-30.

16. The Uniform Traffic Act further provides limitations on maximum and minimum speed limits, and provides that a person violating the speed limits is guilty of a misdemeanor and subject to various fines. S.C. Code Ann. § 56-5-1520(G).

17. A person convicted of exceeding the speed limit by less than ten miles per hour is subject to a fine of not less than fifteen dollars nor more than twenty-five dollars. S.C. Code Ann. § 56-5-1520(G)(1).

18. A person convicted of exceeding the speed limit by between ten and fifteen miles per hour is subject to a fine of between twenty-five and fifty dollars. S.C. Code Ann. § 56-5-1520(G)(2).

19. A person convicted of exceeding the speed limit by between fifteen and twenty-five miles per hour is subject to a fine of between fifty and seventy-five dollars. S.C. Code Ann. § 56-5-1520(G)(3).

20. Finally, a person convicted of exceeding the speed limit by more than twenty-five miles per hour is subject to a fine of between seventy-five and two-hundred dollars or imprisonment for not more than thirty days. S.C. Code Ann. § 56-5-1520(G)(4).

21. Additionally, the Uniform Traffic Act "establishe[s] a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. S.C. Code Ann. § 56-1-720.

22. A person convicted of exceeding the speed limit by less than ten miles per hour is to be assessed two points. *Id.*

23. A person convicted of exceeding the speed limit by between ten and twenty-five miles per hour is to be assessed four points. *Id.*

24. A person convicted of exceeding the speed limit by more than twenty-five miles per hour is to be assessed six points. *Id.*

25. South Carolina State law also requires that law enforcement officers use a Uniform Traffic Ticket (hereinafter, "UTT") when citing drivers for traffic offenses. S.C. Code Ann. § 56-7-10(A), (C); *see also* S.C. Code Ann. § 56-7-80(B) ("No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.").

The Turbeville Town Traffic Ordinance

26. Upon information and belief, on May 13, 2003, the Turbeville Town Council enacted Section 13-22 ("the Town Traffic Ordinance"). (Turbeville Town Ordinances, attached as Exhibit A).

27. Upon information and belief, on August 11, 2009, the Turbeville Town Council amended the Town Traffic Ordinance, which now states:

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do (sic) shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

(Ex. A).

28. Upon information and belief, on August 11, 2009, the Turbeville Town Council adopted Section 13-23 ("the Penalty Ordinance"), which states:

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

(Ex. A).

29. Upon information and belief, Defendants Turbeville Police Department and David Jones in his official capacity as Chief of the Turbeville Police Department (hereinafter, "the Police

Defendants") have stopped tens of thousands drivers for allegedly speeding and issued tickets to those drivers for violating the Town Traffic Ordinance. The Defendants have then imposed penalties under the Penalty Ordinance far in excess of the penalties authorized by Section 56-1-720 of the South Carolina Code.

30. Upon information and belief, the Police Defendants have also issued numerous tickets under the Town Traffic Ordinance to drivers who allegedly violated other portions of the Uniform Traffic Act. For example, the Police Defendants issue Town Traffic Ordinance tickets to motorists stopped for driving without a driver's license.

31. Upon information and belief, the Police Defendants entice drivers to pay these unlawfully excessive fines by not assessing the points required under the Uniform Traffic Act or by not charging motorists with other traffic related criminal offenses.

Attorney General Advisory Opinions

32. On November 18, 2013, the South Carolina Attorney General's Office issued two advisory opinions relevant to this litigation.

Treasurer Loftis Advisory Opinion

33. First, the Attorney General issued an opinion requested by State Treasurer Loftis. (Loftis Opinion, attached as Exhibit B).

34. Treasurer Loftis noted in his request to the Attorney General's Office that the Treasury Office had noticed a decrease in the amount of court fines and fees remitted in recent years. (Ex. B at 1).

35. Treasurer Loftis also noted that South Carolina Court Administration suggested that the "decline may be the result of jurisdictions writing traffic and other tickets under recently adopted local . . . ordinances rather than under the [Uniform Traffic Act]. The end result being that the

court fines and fees may not be reported and remitted to the [Treasurer's Office] but rather are retained by the local jurisdictions." (Ex. B at 1).

36. Treasurer Loftis requested the Attorney General's opinion whether such local traffic ordinances were legal under State Law and what action might be taken to collect those unlawfully obtained fines from municipalities and counties. (Ex. B at 1).

37. In a thoroughly reasoned opinion, the Attorney General discussed a variety of prior Advisory Opinions and concluded that "local ordinances attempting to regulate traffic in the same manner as any provision under the [Uniform Traffic Act], unless expressly authorized, are likely invalid." (Ex. B at 5).

38. The Attorney General also cited an earlier Advisory Opinion and noted that "Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy." (Ex. B at 5) (quoting Op. S.C. Att'y Gen., 2006 WL 422574 (Feb. 1, 2006)).

39. Specifically, that earlier Advisory Opinion held:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance. Furthermore, it appears that there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violations tracked or points assessed against the driver but, instead, there would be a civil penalty imposed. As a result, in my opinion, such a speeding ordinance would not be authorized.

(Ex. B at 5–6) (quoting Op. S.C. Att'y Gen., 2006 WL 422574 (Feb. 1, 2006)).

Rep. Jimmy C. Bales Advisory Opinion

40. The Attorney General also issued a related Advisory Opinion requested by Representative Jimmy C. Bales (Bales Opinion, attached as Exhibit C).

41. In that Advisory Opinion, the Attorney General similarly concluded that municipal ordinances setting their own penalties for speeding violations was invalid as it conflicted with State law. (Ex. C at 4–5).

42. The Attorney General also reaffirmed "the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State of local law using a local ordinance summons." (Ex. C at 6).

Chief Justice Toal's Letter

43. Upon information and belief, on April 2, 2013, Chief Justice Jean Toal sent a letter to Director Hubert F. Harrell of the South Carolina Criminal Justice Academy addressing concerns with officers writing unlawful tickets. (Toal Letter, attached as Ex. D).

44. Upon information and belief, Chief Justice Toal stated that she was "concerned with information [she has] received regarding the substance and application of careless operation of motor vehicle ordinances." (Ex. D at 2).

45. Upon information and belief, Chief Justice Toal noted:

It is my understanding that rather than writing motorists speeding tickets or other applicable violations, officers offer to write the motorist a ticket under a careless operation ordinance which carries, in some circumstances, a much higher fine that would be provided under the applicable state violation. Further, the motorists are told that if they pay the higher fine under the ordinance, the violation will not affect their insurance. This long-standing practice of municipalities and counties in regards to passing local ordinances against careless or negligent operation of motor vehicles, as well as the creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act.

(Ex. D at 2).

Turbeville's Pattern of Unlawful Conduct

46. Upon information and belief, despite these letters and opinions from the Chief Justice and Attorney General, the Police Defendants continued to issue tickets under the Town Traffic Ordinance unabated.

47. Several news outlets did investigative pieces on Defendants' practices.

48. For example, WIS conducted a months-long investigation into Defendants' practices and observed the Police Defendants write "nearly 10 traffic tickets within the span of a few hours on Labor Day. Each ticket carried fines of either \$288 or \$388." (WIS Report, attached as Exhibit E).

49. WIS journalists observed Defendant Jones stop Hudson Marques for speeding and driving without a license. "[Jones] didn't arrest Hudson for driving without a license, instead he made Marques an offer. 'He asked me for \$488, so they can let me go.' [Marques] said. . . . The chief gave Marques a receipt for the bond he posted, then allowed one of the other men in the van to drive away from the scene." (Ex. E).

50. In an interview, Defendant Jones confirmed that the Police Defendants "are writing these municipal ordinances every day of the week." (Ex. E).

51. When asked how Defendants would defend a lawsuit challenging the validity of the Town Traffic Ordinance, Defendant Jones responded, "I don't know, sir." (Ex. E).

Plaintiff Robbins' Traffic Stop

52. On October 28, 2014, Plaintiff Robbins was stopped by Lt. Philip C. Wilkes of the Turbeville Police Department and cited with violating the Town Traffic Ordinance.

53. Plaintiff Robbins was issued a UTT with a recommended bond amount of \$288. (Robbins Ticket, attached as Exhibit F).

54. Plaintiff Robbins, represented by counsel, challenged her ticket by filing a Motion to Dismiss, in which she contended that the Town Traffic Ordinance was illegal and preempted by State law. (Trial Transcript, attached as Exhibit G).

55. According to the trial transcript, Plaintiff Robbins was stopped for going sixty miles per hour in a forty-five mile per hour zone. (Ex. G at 2).

56. At trial, Judge Luci Coleman apparently converted Plaintiff Robbins' ticket to a UTT for violating the State speeding law, effectively prohibiting Plaintiff Robbins from challenging the validity of the Town Traffic Ordinance. (Ex. G at 4).

57. The arresting officer did not move for the charge to be changed to a violation of the State speeding law, nor did he rewrite a ticket for violation of that statute. Instead, the Judge *sua sponte* changed the charge.

58. This practice essentially insulates the Town Traffic Ordinance from any meaningful judicial review.

59. Plaintiff Robbins was convicted of violating the State speeding law, and has appealed that conviction on the ground that the Judge clearly cannot change a defendant's charge; only a prosecuting officer may do that.

60. That appeal is still pending in the Clarendon County Court of Common Pleas.

61. Plaintiff Robbins still drives through Turbeville and is subject to being charged again with the illegal Town Traffic Ordinance should she speed within the city limits, which she attests she may unintentionally do. (Affidavit of Rebecca Robins, attached as Exhibit H).

Plaintiff Marie Babayan's Traffic Stop

62. On August 16, 2015, Plaintiff Babayan was stopped by Sgt. Robert Haskell Carter of the Turbeville Police Department and cited for violating the Town Traffic Ordinance.

63. Plaintiff Babayan was issued a UTT with a recommended bond amount of \$388. (Babayan Ticket, attached as Exhibit I).

64. Plaintiff Babayan paid a reduced fine of \$188. (Money Order Records, attached as Exhibit J).

65. Plaintiff Babayan still drives through Turbeville and is subject to being charged again with the illegal Town Traffic Ordinance should she speed within the city limits, which she attests she may unintentionally do. (Affidavit of Marie Babayan, attached as Exhibit K).

CLASS ACTION ALLEGATIONS

66. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

67. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, as representatives of a Class defined as follows:

All persons who have been charged with violating the Town Traffic Ordinance and/or the Penalty Ordinance ("the Injunctive Class").

Plaintiff Babayan also brings this action on behalf of a Subclass of similarly situated individuals defined as follows:

All persons who have paid fines for violating the Town Traffic Ordinance and/or the Penalty Ordinance ("the Damages Subclass").

68. Plaintiffs reserve the right to amend the Injunctive Class and/or the Damages Subclass definition if further investigation and discovery indicates that the Injunctive Class and/or the Damages Subclass definition should be narrowed, expanded, or otherwise modified.

69. Upon information and belief, the exact number of Injunctive Class and Damages Subclass members is unknown and is not available to Plaintiffs at this time as this information is within the exclusive control of the Defendants, but Plaintiffs believe that the Injunctive Class and

Damages Subclass likely consists of tens of thousands of individuals. The sheer size of the Injunctive Class and the Damages Subclass make individual joinder in this case impracticable, if not impossible.

70. In addition to the large number of individuals who are members of the Injunctive Class and the Damages Subclass, there are several questions of law and fact common to the claims of Plaintiffs and members of the Injunctive Class and the Damages Subclass. Those questions predominate over any questions that may affect individual Injunctive Class and Damages Subclass members. Common questions include, but are not limited to, the following:

- a. Whether the Defendants have violated the law in adopting and enforcing the Town Traffic Ordinance and Penalty Ordinance;
- b. Whether the Town Traffic Ordinance and Penalty Ordinance are preempted by State law;
- c. Whether the Defendants should be permanently enjoined from citing drivers for violating the Town Traffic Ordinance and assessing fines under the Penalty Ordinance;
- d. Whether Defendants were unjustly enriched by keeping the illegal fines paid by drivers for violating the Town Traffic Ordinance and Penalty Ordinance;
- e. Whether Plaintiff Babayan and members of the Damages Subclass are entitled to a refund; and
- f. The amount of damages suffered by Plaintiff Babayan and members of the Damages Subclass

71. Plaintiffs' claims are typical of the claims of the Injunctive Class and the Damages Subclass members. All are based on the same legal and factual issues. Plaintiffs and each of the Injunctive Class members were issued citations pursuant to the Town Traffic Ordinance. Plaintiff Babayan and each of the Damages Subclass members paid fines for violating the Town Traffic Ordinance.

72. Plaintiffs, as named representatives, have common interests with members of the Injunctive Class and Damages Subclass and will vigorously prosecute the interests of the Injunctive Class and the Damages Subclass through qualified legal counsel, and do not have any identifiable legal conflicts with any potential Injunctive Class or Damages Subclass member, and thus, the Plaintiffs will fairly and adequately represent and protect the interests of the whole Injunctive Class and Damages Subclass.

73. Plaintiffs seek declaratory relief and injunctive relief on behalf of themselves and the Injunctive Class. Additionally, Plaintiff Babayan seeks damages on behalf of herself and the Damages Subclass. Upon information and belief, all citations for violating the Town Traffic Ordinance exceeded \$100 per violation. Thus, to the extent damages are sought, the amount in controversy exceeds one hundred dollars for each member of the Damages Subclass.

74. Plaintiffs have retained competent legal counsel who have extensive experience with class action litigation and are experienced attorneys well versed in South Carolina constitutional, statutory, and common law.

75. Class action treatment of the matters in issue in this controversy is superior to the alternatives, if any, for the fair and efficient adjudication of such issues, because such treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would entail. Class action treatment in this case will have the added virtue of permitting the adjudication of relatively small claims by certain members of the Injunctive Class and the Damages Subclass, for whom it would otherwise not be financially feasible to litigate their claims as individual actions against Defendants.

76. Plaintiffs are aware of no difficulty in the management of this action that would preclude it from being maintained as a class action.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Against All Defendants)**

77. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

78. In contravention of South Carolina's Constitution, and in violation of South Carolina statutory laws, Defendants have issued illegal citations to Plaintiffs and members of the Injunctive Class for violating the illegal Town Traffic Ordinance and Penalty Ordinance.

79. For the reasons stated above, Plaintiffs ask the Court to declare the following:

- a. It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which are in conflict with, and preempted by, State law.
- b. It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which impose greater penalties for traffic violations than those set forth by the South Carolina General Assembly in the Uniform Traffic Act and related statutes.
- c. All citations, penalties, and fines issued under the Town Traffic Ordinance and Penalty Ordinance were unlawful and in violation of the South Carolina Constitution and South Carolina statutory laws.

**FOR A SECOND CAUSE OF ACTION
(Injunctive Relief Against All Defendants)**

80. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

81. By virtue of the foregoing, Plaintiffs have demonstrated a likelihood of success on the merits in this case.

82. Plaintiffs and members of the Injunctive Class travel through the Town of Turbeville. Unless Defendants are enjoined from the foregoing conduct, Plaintiffs and members of the

Injunctive Class will suffer irreparable harm, including but not limited to being subjected to illegal and unconstitutional fines and penalties under the Town Traffic Ordinance and the Penalty Ordinance.

83. Plaintiffs and members of the Injunctive Class have no adequate remedy at law.

84. Plaintiffs therefore seek the entry of a permanent injunction prohibiting Defendants from enforcing the Town Traffic Ordinance or Penalty Ordinance.

**FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment Against All Defendants)**

85. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

86. The South Carolina Constitution and statutory laws create a contract implied in law between the Plaintiff, the Injunctive Class, and the Damages Subclass and the Defendants. The quasi-contract conferred upon the Defendants a duty and obligation not to collect or accept illegally charged fines and penalties.

87. Defendants breached this obligation and accepted these illegal fines and penalties from Plaintiff Babayan and the Damages Subclass, receiving a pecuniary benefit.

88. Defendants have realized that pecuniary benefit by retaining said monies and designing a system that makes it impossible for an individual charged with violating the Town Traffic Ordinance and Penalty Ordinance to judicially challenge the validity of that charge.

89. Defendants retained that pecuniary benefit under circumstances that make it inequitable for them to retain it.

90. Defendants have been unjustly enriched through the receipt of these monies, to the detriment of Plaintiff Babayan and members of the Damages Subclass.

91. Plaintiff Babayan and members of the Damages Subclass are entitled to restitution of the illegally collected fines and penalties.

**FOR A FOURTH CAUSE OF ACTION
(Refund Against All Defendants)**

92. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

93. It is a constitutional right of due process that a citizen who has paid an illegal fine or penalty to the government has a remedy for refund.

94. As set forth above, the Plaintiff Babayan and members of the Damages Subclass have paid fines and penalties pursuant to the illegal Town Traffic Ordinance and Penalty Ordinance.

95. Plaintiff Babayan and members of the Damages Subclass are entitled to a refund with interest of all such payments.

WHEREFORE, Plaintiffs and all those similarly situated pray:

- A. That this Court certify the Injunctive Class and the Damages Subclass;
- B. That the Court declare the actions of all Defendants described herein illegal and enjoin them from any further such actions;
- C. That the Court require Defendants to refund with interest all illegally collected fines;
- D. That Plaintiff Babayan and members of the Damages Subclass be awarded such actual damages as the jury should allow;
- E. That the Defendants be required to pay attorneys' fees, including but not limited to attorneys' fees under South Carolina Code Ann. § 15-77-300 as Defendants were not substantially justified in enacting and enforcing the Town Traffic Ordinance;
- F. That the Defendants be required to pay costs, including but not limited to costs under South Carolina Code Ann. § 15-53-100;
- G. That the Court grant such other and further relief as shall be just and proper, including but not limited to prejudgment and postjudgment interest.

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May 9, 2016

Exhibit A

ARTICLE II. MOVING TRAFFIC

Sec. 13-20 Using Vehicle for Advertising

No person shall operate or park on any street any vehicle for the primary purpose of advertising.

Sec. 13-21 Driving Across Private Property

It shall be unlawful for any person driving a vehicle to use the driveway of any service station in the Town as a roadway or thoroughfare.

It shall be unlawful for any person driving a vehicle to make any "U" turn or other turn prohibited at any point where such turn is prohibited, and it shall be unlawful to accomplish a "U" turn by deviously going into or through private property adjoining the street where such turn is prohibited.

Sec. 13-22 Town Traffic Ordinance

Sec. 13-22 adopted May 13, 2003
Sec. 13-22 Amended November 08, 2005
Sec. 13-22 Amended July 8, 2008
Sec. 13-22 Amended August 11, 2009

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

Sec. 13-23 Town Traffic Ordinance Penalty

Sec. 13-23 adopted by council August 11, 2009

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

Sec. 13-24 Loading Zones

Sec. 13-24 moved to Article II by council on August 11, 2009

No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious unloading or loading of passengers in any place marked as a

Exhibit B



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Curtis M. Loftis, Jr.
South Carolina State Treasurer
P.O. Box 11778
Columbia, S.C. 29211

Dear Treasurer Loftis,

You seek an opinion of this Office concerning the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 et seq. By way of background, you state:

The amounts of court fines and fees submitted to the STO by the jurisdictions are self-reported and remitted to the STO. The STO has no way of knowing what a jurisdiction has actually collected in court fines and fees versus what amount of court fines and fees are remitted to the STO by that jurisdiction. The STO has to accept the amount the jurisdiction reports and remits. The STO distributes the amounts received from court fines and fees to a number of court and public safety related agencies as prescribed by the Code.

The STO has noticed a decline in the total amounts of reported and remitted court fines and fees in recent years. Court Administration staff has proffered the thought that the decline may be the result of jurisdictions writing traffic and other tickets under recently adopted local ... ordinances rather than under the [UTA]. The end result being that the court fines and fees may not be reported and remitted to the STO but rather are retained by the local jurisdiction.

Assuming such a practice is occurring, you specifically ask the following questions:

- (1) Is it legal?
- (2) If not legal, which State agency has the responsibility to bring the matter to the attention of the local jurisdiction?
- (3) Is an amendment to the Code necessary to clarify that this practice is wrong or to require all jurisdictions to write traffic and other tickets under the [UTA]?
- (4) Please advise of any other corrective action you believe may be appropriate.

We have also received an opinion request from Representative Jimmy C. Bales as to the legality of local jurisdictions issuing their own tickets and setting their own fines for speeding violations as opposed to issuing a uniform traffic ticket ("UTT") for a violation under the UTA. If such a practice is not permitted

The Honorable Curtis M. Loftis, Jr.
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under State law, you ask whether local jurisdictions can be held accountable and forced "to refund fines levied in violation of state law?" As both opinion requests address the same subject matter, we will address them together.

Law/Analysis

When considering the validity of any local ordinance, we begin with the principle that "[a]n ordinance is a legislative enactment and is presumed to be constitutional." Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). The burden of proving the invalidity of a local ordinance rests with the party attacking it. Id. Furthermore:

A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general laws of the State.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted).

Our State Constitution gives the Legislature the power to establish by general law the powers and duties of local governments. S.C. Const. art. VIII, §§ 7, 9. The powers of local governments are to be liberally construed in their favor. See S.C. Const. art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."). However, the Constitution also provides that ordinances enacted by local governments shall not set aside general law provisions applicable to, *inter alia*: "(5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the ... administration of any governmental service or function ... which requires statewide uniformity." S.C. Const. art. VIII, § 14.

Looking to the provisions of the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 et seq., the Legislature has provided as follows:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt **additional** traffic regulations which are not in conflict with the provisions of this chapter.

§ 56-5-30 (emphasis added). Accordingly, the Legislature has expressly declared that local governments are only authorized to enact traffic regulations *in addition to* those set forth in the UTA to the extent such ordinances do not conflict with the provisions of the UTA unless expressly authorized.

The Honorable Curtis M. Loftis, Jr.
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Particularly instructive here is the case of Aakjer v. City of Myrtle Beach, 388 S.C. 129, 694 S.E.2d 213 (2010) in which our State Supreme Court held a local ordinance requiring motorcycle riders to wear a protective helmet and eyewear was invalid in light of §§ 56-6-3660 and -3670 of the Uniform Traffic Act which already addressed such matters. In reaching this conclusion, the Court stated:

In S.C.Code Ann. § 56-5-30 (2009) the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act. Even assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear. Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fail under the doctrine of implied preemption.¹

Id. at 134, 694 S.E.2d at 215.

In a recent opinion we addressed the authority of a local government to enact an ordinance imposing a fine of anywhere between \$100 and \$300 for certain traffic violations, including speeding, which are already unlawful under the UTA. Op. S.C. Att'y Gen., 2013 WL 2450878 (May 29, 2013). In concluding such an ordinance would be invalid, we explained that local governments lack the authority to enact ordinances which impose lesser or greater penalties for traffic violations than those imposed by the UTA:

The UTA sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to [§ 56-5-1520(G)] may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer "must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years." § 56-5-750(B)(I). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable "by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days." § 56-5-6190.

¹ The Court explained that "[a]n ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." Aaker, 388 S.C. at 133, 694 S.E.2d at 215.

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Numerous opinions of this Office have concluded that a local ordinance which imposes greater or lesser penalties than that provided for identical unlawful acts under State law are invalid. See, e.g., Ops. S.C. Att'y Gen., 2008 WL 317749 (Jan. 15, 2008) ("municipalities lack the authority to adopt ordinances and provide penalties ... that either increase or decrease the penalty provided for the same offense by the general law"); 2003 WL 164476 (Jan. 3, 2003) ("local ordinances which impose lesser penalties than State law for the possession and sale of drugs and narcotics are void"); 2001 WL 957755 (Aug. 15, 2001) (noting Article VIII, § 14 has been construed by the S.C. Supreme Court as providing that "local governments may not enact ordinances that impose greater or lesser penalties than those established by state law") (citations omitted).

Our Supreme Court addressed a situation analogous to the one at hand in City of N. Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991). In that case, the City enacted an ordinance making simple possession of marijuana an offense for which the person convicted "*shall be sentenced to thirty (30) days in jail*" Id. at 155, 410 S.E.2d at 570 (emphasis in original). On other hand, the same offense was punishable under State law by up to thirty days in prison or a fine of a one hundred to two hundred dollars. Id. (citing § 44-53-370(c), (d)). The Court found the City lacked the authority to enact the ordinance, stating:

The legislature has provided parameters within which local governments may enact ordinances dealing with the criminal offense of simple possession of marijuana. This legislation occupies the field as far as penalties for this offense are concerned. Local governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. City Code § 13-3 exceeds the parameters established under state law by denying offenders the opportunity to pay a fine and thus avoid a jail sentence. The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons guilty of simple possession. Accordingly, we hold City Code § 13-3 violates the strictures of Article VIII, § 14 of the South Carolina Constitution.

Id. at 156, 410 S.E.2d at 570-71.

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. See § 56-5-30, supra; see also Aakjer v. City of Myrtle Beach, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) ("In S.C. Code Ann. § 56-5-30 ... the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act"). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted, would violate Article

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VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Id.

In that same opinion, we went even further and concluded that, as a general matter, local ordinances attempting to regulate traffic in the same manner as any provision under the UTA, unless expressly authorized, are likely invalid:

[T]he proposed ordinance, if enacted, would conflict with the various provisions of the UTA referenced therein. The UTA authorizes local governments to adopt “*additional* traffic regulations which are not in conflict with the provisions of this chapter.” § 56-5-30 (emphasis added). Local governments are not authorized to adopt traffic regulations which are *duplicative* of, or *identical* to, the regulations imposed by the UTA. See 56 Am. Jur. 2d Municipal Corporations, Etc. § 316 (“A conflict between state law and a local ordinance exists if the ordinance *duplicates*, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication”) (emphasis added); 6 McQuillin Mun. Corp. § 26:11 (3d. ed.) (“In various jurisdictions, where a subject is covered by statute, a municipal corporation cannot deal with it by ordinance, unless expressly authorized”). Therefore, we believe local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the UTA [unless expressly authorized]. Thus, it is our opinion that the proposed ordinance in question, if enacted, would be void as in conflict with the UTA.

Id. (emphasis in original).

In a 2006 opinion, we specifically addressed whether a local jurisdiction may enact an ordinance regulating speeding where a violation thereof would be punishable only by a civil penalty. Op. S.C. Att’y Gen., 2006 WL 422574 (Feb. 1, 2006). Quoting a prior opinion addressing the validity of local ordinances, we stated:

[P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law **Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy....**

Id. (quoting Op. S.C. Att’y Gen., 1988 WL 383550 (Sept. 1, 1988)) (emphasis added). We concluded such a speeding ordinance would be invalid for several reasons, stating:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance.

The Honorable Curtis M. Loftis, Jr.
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Furthermore, it appears that **there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violation tracked or points assessed² against the driver but, instead, there would be a civil penalty imposed.** As a result, in my opinion, such a speeding ordinance would not be authorized.

Id. (emphasis added).

Even assuming a local traffic ordinance is valid, it cannot be enforced using a local ordinance summons. Pursuant to § 56-7-10:

(A) There will be a uniform traffic ticket ["UTT"] used by all law enforcement officers in arrests for traffic offenses

....

(C) **No other ticket may be used for these offenses....**

§ 56-7-10(A) (Supp. 2013) (emphasis added).³

As for local ordinances, § 56-7-80 provides:

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. **No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.**

....

§ 56-7-80(A), (B) (emphasis added).

In light of § 56-7-10's mandate that only a UTT be used by all law enforcement officers for the enforcement of traffic offenses, and § 56-7-80's express prohibition against counties and municipalities

² See § 56-1-720 (establishing "point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles....").

³ Although amended in 2013, § 56-7-10 contained the same language quoted prior to amendment.

The Honorable Curtis M. Loftis, Jr.
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using an ordinance summons to enforce local traffic ordinances, it is abundantly clear that a local ordinance summons may never be used to enforce a local ordinance regulating traffic. See Op. S.C. Att'y Gen., 2006 WL 3522438 (Nov. 14, 2006) ("[A] municipality is required to use the uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses It may not use a municipal ordinance summons").

In addition, it is expressly unlawful under § 56-7-40 to use anything other than a UTT for traffic offenses, with the punishment for such a violation being dependent on whether the use of a nonuniform ticket is intentional or inadvertent:

Any person intentionally violating the provisions of § 56-7-10 or 56-7-30 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate's court and upon conviction shall be punishable by a fine of not more than one hundred dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate's court and upon conviction shall be fined not more than one hundred dollars.

§ 56-7-40.

The above language of § 56-7-40 reaffirms the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State or local law using a local ordinance summons. Since the statute also makes the "unintentional" misuse of a nonuniform ticket unlawful, we advise local law enforcement to ensure that only UTTs are issued for traffic violations, whether under the UTA or a local ordinance.

Questions are also presented concerning court fines and fees which you assert local jurisdictions may not be reporting and remitting to the State Treasurer's Office. Since fines paid as penalties for traffic or criminal offenses are generally retained by the county or municipality with jurisdiction over the offense, we assume such questions specifically concern the additional assessments, surcharges, and other fees imposed by statute. See, e.g., §§ 14-1-207, -208 (imposing assessment on fines paid in magistrates and municipal court for certain offenses); § 14-1-212 (imposing surcharge on all fines or penalties imposed in any court for misdemeanor traffic offenses or nontraffic violations). Such assessments and surcharges are generally paid over to the treasurer of the county or municipality who remits a specific portion thereof to the county or municipality and the remainder to the State Treasurer to allocate amongst certain agencies and entities as set forth in these statutes. As we concluded in a recent opinion, such assessments and surcharges must be imposed, and the relevant portions thereof remitted to the State Treasurer, even where the offense committed was a violation of a county ordinance. Op. S.C. Att'y Gen., 2013 WL 3243062 (June 13, 2013). Court Administration has likewise issued a memorandum to

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summary court judges advising that such statutory assessments and surcharges must be imposed on convictions for violations of county or municipal ordinances.⁴

To ensure that court assessments are properly collected and remitted to the State Treasurer, § 14-1-207(E) and § 14-1-208(E) provide that the annual, external audit required to be performed for each county and municipality pursuant to § 4-9-150 and § 5-7-240 must include a detailed review of the collection, reporting, and distribution of the assessments imposed pursuant to those sections. The auditor's report must be submitted to the State Treasurer within thirty days of its issuance. § 14-1-207(E)(3); § 14-208(E)(3). As for surcharges under § 14-1-212, subsection (C) states that "[t]he State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer" § 14-1-212(C). That subsection also provides that "[t]he State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination." *Id.*

Other statutory provisions generally provide that the State Auditor is responsible for ensuring that court assessments have been properly collected and the appropriate portion remitted to the State Treasurer and notifying the local jurisdiction of any errors or deficiencies. As stated in § 14-1-210(A):

(A) Based upon a random selection process, the State Auditor shall periodically examine the books, accounts, receipts, disbursements, vouchers, and any records considered necessary of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated, or both, by law in family court, circuit court, magistrates court, and municipal court are properly collected and remitted to the State. In addition, these audits shall determine if the proper amount of funds have been reported, retained, and allocated for victim services in accordance with the law.... If the State Auditor finds that a jurisdiction has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds collected by the jurisdiction, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the State Office of Victim Assistance for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211.

If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the responsible office, their

⁴ This memorandum can be downloaded at:
www.sccourts.org/trial/feeAssess2012/summaryCourt/Summary%20Court%20Memo.docm.

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supervising authority, and the chief justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to be the state's portion or the crime victim fund portion within ninety days of the audit notification.

§ 14-1-210(A).

Likewise, § 11-7-25 provides:

To the extent practicable and consistent with his overall responsibility, the State Auditor periodically shall audit or cause to be audited the financial records of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report if fines and assessments imposed pursuant to Sections 14-1-205 through 14-1-208 are collected properly and remitted to the State Treasurer. Upon the issuance of an audit report, the State Auditor immediately shall notify the State Treasurer, Division of Court Administration, and the chief administrator of the affected agency, department, county, or municipality.

§ 11-7-25.

In the event a local jurisdiction is found to have not properly collected and remitted the assessments, surcharges, and fees required by statute, several legislative provisions authorize the State Treasurer to deduct the amount owed to the State from certain State funds that jurisdiction would normally receive or withhold a certain amount of State funds from that jurisdiction until the amount owed is paid. As previously mentioned, § 14-1-210(A) provides that if the State Auditor finds a local jurisdiction has failed to collect and remit the appropriate portion of such assessments, surcharges, and fees to the State, and that jurisdiction fails to make full payment within ninety days of notice, "the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211." In the event a local jurisdiction's audit report "contains a significant finding related to court fine reports or remittances to the Office of the State Treasurer," the State Treasurer may withhold twenty-five percent of all State payments to that local jurisdiction until the deficiency is satisfied. 2013-2014 Appropriations Act, Act No. 101, Part IB § 97.9; 2012-2013 Appropriations Act, Act No. 288, Part IB § 76.9.

Conclusion

The determination of whether a local jurisdiction is improperly writing tickets for violations of local ordinances as opposed to violations of the UTA is a factual question which must be answered on a case-by-case basis; thus, such a question is beyond the scope of an opinion of this Office. That being said, we note the Legislature, through the provisions of the UTA, has enacted comprehensive legislation regulating traffic which is to be uniformly applied across this State. As our Supreme Court recognized in Aakjer, supra, the field of traffic regulation is a unique one requiring statewide uniformity. While the General Assembly has "authorized local authorities to act in the field of traffic regulation," the ordinance may not "conflict with the provisions of the Uniform Traffic Act." Aakjer, 388 S.C. at 134, 694 S.E.2d at

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215. As the Court further recognized in Aakjer, local traffic regulations which conflict with the UTA impose burdens upon and "unduly limit a citizen's freedom of movement throughout the State."

Furthermore, prior opinions of this Office have concluded various local traffic regulations are invalid for a number of reasons. Relying on § 56-5-30 of the UTA which authorizes local governments to adopt *additional* traffic regulations which do not conflict with the provisions of the UTA, we have advised that local authorities lack the power to adopt ordinances regulating traffic in a manner which is *duplicative* of, or *identical* to, the provisions of the UTA unless expressly authorized. In consideration of Article VIII, § 14 of the S.C. Constitution which prohibits local governments from enacting ordinances that set aside general law provisions applicable to criminal laws and penalties for violations thereof, we have previously concluded that local ordinances imposing greater or lesser penalties for traffic violations than those set forth by the UTA are invalid. Finally, prior opinions of this Office have advised that local traffic regulations which relax the statutory standards applicable to a violation of the UTA, or which impose a mere civil penalty for a traffic offense thereby circumventing the criminal tracking and point system the Legislature intended to be imposed against persons who commit traffic violations, would be void as in conflict with State law.

Accordingly, consistent with case law, Article VIII, § 14, and prior opinions of this Office, we believe local ordinances regulating traffic are void as in conflict with State law if such ordinances: regulate traffic in the same manner as any provision of the UTA without express statutory authorization to do so; impose greater or lesser penalties for traffic violations than those set forth by the UTA; or impose a civil fine as opposed to the criminal penalties prescribed by the UTA, thereby circumventing the criminal tracking and point system the Legislature intended to be used for traffic violations.

Applying the above principles to the particular offense of speeding, it is our opinion local jurisdictions are prohibited from regulating the matter by express ordinance or the manner in which any ordinance under any designation is enforced. Speeding is specifically regulated by § 56-5-1520 of the UTA which sets forth the penalties for violations thereof, and § 56-1-720 sets forth the number of points which are to be assessed against the license of any person convicted of speeding. Furthermore, no statutory provision expressly authorizes local jurisdictions to enact ordinances or rules regulating speeding. Thus, we believe local ordinances regulating speeding are void as in conflict with State law.

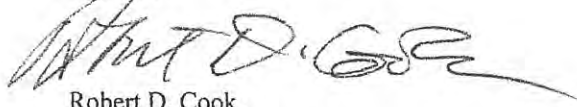
Even assuming a local ordinance regulating traffic is valid, §§ 56-7-10 and -80 expressly prohibit the use of a local ordinance summons for the enforcement of a traffic violation in any circumstance; only a UTT may be used to enforce traffic offenses regardless of whether the ticket is written for a violation of a local ordinance or the UTA. Since § 56-7-40 expressly makes the intentional or inadvertent use of a nonuniform ticket for traffic offenses unlawful, we advise law enforcement to ensure that only UTTs are issued for any and all traffic violations. As to the questions concerning whether legislative clarification or some other corrective action is necessary to address the above matters, we believe it is not. It is our opinion the provisions of the UTA are sufficiently clear to support the above conclusions. However, such a determination is ultimately in the hands of the Legislature which may, if it deems it necessary, provide further clarification on these issues.

Finally, assessments, surcharges, and fees which courts are statutorily required to impose in addition to fines paid as penalties for criminal and traffic offenses, a portion of which local treasurers are required to remit to the State Treasurer to allocate amongst certain agencies and entities, must be imposed regardless of whether the offense is a violation of State law or a local ordinance. Thus, even if a local

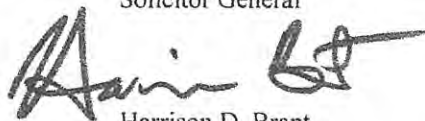
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jurisdiction improperly imposes and accepts a fine for a violation of a local traffic ordinance as opposed to the proper provision of the UTA, the same assessments and surcharges should still be imposed and the appropriate portions thereof remitted to the State Treasurer. The State Auditor is generally designated by statute as the officer responsible for ensuring that local jurisdictions properly collect such assessments and surcharges and remit the appropriate portions to the State Treasurer. Furthermore, local jurisdictions are annually required to conduct an independent external audit to review such matters. If a finding is made that a local jurisdiction has failed to properly collect such assessments, surcharges, and fees and remit them to the State, the State Treasurer is authorized to adjust the amount of State funds the local jurisdiction would normally receive under the State Aid to Subdivisions Act or withhold twenty-five percent of all State funds to that jurisdiction until the deficiency is satisfied.

Sincerely,



Robert D. Cook
Solicitor General



Harrison D. Brant
Assistant Attorney General

Exhibit C



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Jimmy C. Bales, Ed.D.
Representative, District No. 80
1515 Crossing Creek Road
Eastover, S.C. 29044

Dear Representative Bales,

You seek an opinion of this Office concerning the legality of municipalities setting their own fines for speeding violations as opposed to the penalties set forth in the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 *et seq.* If such a practice is not allowed under State law, you ask whether such municipalities can be held accountable for fines levied in violation of State law.

In addition, we have received an opinion request from State Treasurer Curtis Loftis concerning the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the UTA. The specific questions and background information relevant to that request are set forth the opinion we issued to Treasurer Loftis which is also dated November 18, 2013. As both opinion requests address the same subject matter, we will address them together.

Law/Analysis

When considering the validity of any local ordinance, we begin with the principle that "[a]n ordinance is a legislative enactment and is presumed to be constitutional." Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). The burden of proving the invalidity of a local ordinance rests with the party attacking it. *Id.* Furthermore:

A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general laws of the State.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted).

Our State Constitution gives the Legislature the power to establish by general law the powers and duties of local governments. S.C. Const. art. VIII, §§ 7, 9. The powers of local governments are to be liberally construed in their favor. *See* S.C. Const. art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and

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responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."'). However, the Constitution also provides that ordinances enacted by local governments shall not set aside general law provisions applicable to, *inter alia*: "(5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the ... administration of any governmental service or function ... which requires statewide uniformity." S.C. Const. art. VIII, § 14.

Looking to the provisions of the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 *et seq.*, the Legislature has provided as follows:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt **additional** traffic regulations which are not in conflict with the provisions of this chapter.

§ 56-5-30 (emphasis added). Accordingly, the Legislature has expressly declared that local governments are only authorized to enact traffic regulations *in addition to* those set forth in the UTA to the extent such ordinances do not conflict with the provisions of the UTA unless expressly authorized.

Particularly instructive here is the case of Aakjer v. City of Myrtle Beach, 388 S.C. 129, 694 S.E.2d 213 (2010) in which our State Supreme Court held a local ordinance requiring motorcycle riders to wear a protective helmet and eyewear was invalid in light of §§ 56-6-3660 and -3670 of the Uniform Traffic Act which already addressed such matters. In reaching this conclusion, the Court stated:

In S.C.Code Ann. § 56-5-30 (2009) the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act. Even assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear. Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fail under the doctrine of implied preemption.¹

Id. at 134, 694 S.E.2d at 215.

¹ The Court explained that "[a]n ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." Aaker, 388 S.C. at 133, 694 S.E.2d at 215.

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In a recent opinion we addressed the authority of a local government to enact an ordinance imposing a fine of anywhere between \$100 and \$300 for certain traffic violations, including speeding, which are already unlawful under the UTA. Op. S.C. Att'y Gen., 2013 WL 2450878 (May 29, 2013). In concluding such an ordinance would be invalid, we explained that local governments lack the authority to enact ordinances which impose lesser or greater penalties for traffic violations than those imposed by the UTA:

The UTA sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to [§ 56-5-1520(G)] may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer "must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years." § 56-5-750(B)(1). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable "by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days." § 56-5-6190.

Numerous opinions of this Office have concluded that a local ordinance which imposes greater or lesser penalties than that provided for identical unlawful acts under State law are invalid. See, e.g., Ops. S.C. Att'y Gen., 2008 WL 317749 (Jan. 15, 2008) ("municipalities lack the authority to adopt ordinances and provide penalties ... that either increase or decrease the penalty provided for the same offense by the general law"); 2003 WL 164476 (Jan. 3, 2003) ("local ordinances which impose lesser penalties than State law for the possession and sale of drugs and narcotics are void"); 2001 WL 957755 (Aug. 15, 2001) (noting Article VIII, § 14 has been construed by the S.C. Supreme Court as providing that "local governments may not enact ordinances that impose greater or lesser penalties than those established by state law") (citations omitted).

Our Supreme Court addressed a situation analogous to the one at hand in City of N. Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991). In that case, the City enacted an ordinance making simple possession of marijuana an offense for which the person convicted "*shall be sentenced to thirty (30) days in jail*" Id. at 155, 410 S.E.2d at 570 (emphasis in original). On other hand, the same offense was punishable under State law by up to thirty days in prison or a fine of a one hundred to two hundred dollars. Id. (citing § 44-53-370(c), (d)). The Court found the City lacked the authority to enact the ordinance, stating:

The legislature has provided parameters within which local governments may enact ordinances dealing with the criminal offense of simple possession of marijuana. This legislation occupies the field as far as penalties for this offense are concerned. Local governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. City Code § 13-3 exceeds the parameters established under state law by denying offenders the opportunity to pay a fine and thus avoid a jail sentence. The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons guilty of simple possession.

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Accordingly, we hold City Code § 13-3 violates the strictures of Article VIII, § 14 of the South Carolina Constitution.

Id. at 156, 410 S.E.2d at 570-71.

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. See § 56-5-30, *supra*; see also *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) (“In S.C. Code Ann. § 56-5-30 ... the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act”). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted, would violate Article VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Id.

In that same opinion, we went even further and concluded that, as a general matter, local ordinances attempting to regulate traffic in the same manner as any provision under the UTA, unless expressly authorized, are likely invalid:

[T]he proposed ordinance, if enacted, would conflict with the various provisions of the UTA referenced therein. The UTA authorizes local governments to adopt “*additional* traffic regulations which are not in conflict with the provisions of this chapter.” § 56-5-30 (emphasis added). Local governments are not authorized to adopt traffic regulations which are *duplicative* of, or *identical* to, the regulations imposed by the UTA. See 56 Am. Jur. 2d Municipal Corporations, Etc. § 316 (“A conflict between state law and a local ordinance exists if the ordinance *duplicates*, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication”) (emphasis added); 6 McQuillin Mun. Corp. § 26:11 (3d. ed.) (“In various jurisdictions, where a subject is covered by statute, a municipal corporation cannot deal with it by ordinance, unless expressly authorized”). Therefore, we believe local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the UTA [unless expressly authorized]. Thus, it is our opinion that the proposed ordinance in question, if enacted, would be void as in conflict with the UTA.

Id. (emphasis in original).

In a 2006 opinion, we specifically addressed whether a local jurisdiction may enact an ordinance regulating speeding where a violation thereof would be punishable only by a civil penalty. *Op. S.C. Att’y Gen.*, 2006 WL 422574 (Feb. 1, 2006). Quoting a prior opinion addressing the validity of local ordinances, we stated:

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[P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law **Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy....**

Id. (quoting Op. S.C. Att'y Gen., 1988 WL 383550 (Sept. 1, 1988)) (emphasis added). We concluded such a speeding ordinance would be invalid for several reasons, stating:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance. Furthermore, it appears that **there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violation tracked or points assessed² against the driver but, instead, there would be a civil penalty imposed.** As a result, in my opinion, such a speeding ordinance would not be authorized.

Id. (emphasis added).

Even assuming a local traffic ordinance is valid, it cannot be enforced using a local ordinance summons. Pursuant to § 56-7-10:

(A) There will be a uniform traffic ticket ["UTT"] used by all law enforcement officers in arrests for traffic offenses

....

(C) **No other ticket may be used for these offenses....**

§ 56-7-10(A) (Supp. 2013) (emphasis added).³

As for local ordinances, § 56-7-80 provides:

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

² See § 56-1-720 (establishing "point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles....").

³ Although amended in 2013, § 56-7-10 contained the same language quoted prior to amendment.

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(B) The uniform ordinance summons may not be used to perform a custodial arrest. **No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.**

....

§ 56-7-80(A), (B) (emphasis added).

In light of § 56-7-10's mandate that only a UTT be used by all law enforcement officers for the enforcement of traffic offenses, and § 56-7-80's express prohibition against counties and municipalities using an ordinance summons to enforce local traffic ordinances, it is abundantly clear that a local ordinance summons may never be used to enforce a local ordinance regulating traffic. See Op. S.C. Att'y Gen., 2006 WL 3522438 (Nov. 14, 2006) ("[A] municipality is required to use the uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses It may not use a municipal ordinance summons").

In addition, it is expressly unlawful under § 56-7-40 to use anything other than a UTT for traffic offenses, with the punishment for such a violation being dependent on whether the use of a nonuniform ticket is intentional or inadvertent:

Any person intentionally violating the provisions of § 56-7-10 or 56-7-30 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate's court and upon conviction shall be punishable by a fine of not more than one hundred dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate's court and upon conviction shall be fined not more than one hundred dollars.

§ 56-7-40.

The above language of § 56-7-40 reaffirms the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State or local law using a local ordinance summons. Since the statute also makes the "unintentional" misuse of a nonuniform ticket unlawful, we advise local law enforcement to ensure that only UTTs are issued for traffic violations, whether under the UTA or a local ordinance.

Questions are also presented concerning court fines and fees which you assert local jurisdictions may not be reporting and remitting to the State Treasurer's Office. Since fines paid as penalties for traffic or criminal offenses are generally retained by the county or municipality with jurisdiction over the offense, we assume such questions specifically concern the additional assessments, surcharges, and other fees imposed by statute. See, e.g., §§ 14-1-207, -208 (imposing assessment on fines paid in magistrates and municipal court for certain offenses); § 14-1-212 (imposing surcharge on all fines or penalties imposed in any court for misdemeanor traffic offenses or nontraffic violations). Such assessments and

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surcharges are generally paid over to the treasurer of the county or municipality who remits a specific portion thereof to the county or municipality and the remainder to the State Treasurer to allocate amongst certain agencies and entities as set forth in these statutes. As we concluded in a recent opinion, such assessments and surcharges must be imposed, and the relevant portions thereof remitted to the State Treasurer, even where the offense committed was a violation of a county ordinance. *Op. S.C. Att'y Gen.*, 2013 WL 3243062 (June 13, 2013). Court Administration has likewise issued a memorandum to summary court judges advising that such statutory assessments and surcharges must be imposed on convictions for violations of county or municipal ordinances.⁴

To ensure that court assessments are properly collected and remitted to the State Treasurer, § 14-1-207(E) and § 14-1-208(E) provide that the annual, external audit required to be performed for each county and municipality pursuant to § 4-9-150 and § 5-7-240 must include a detailed review of the collection, reporting, and distribution of the assessments imposed pursuant to those sections. The auditor's report must be submitted to the State Treasurer within thirty days of its issuance. § 14-1-207(E)(3); § 14-208(E)(3). As for surcharges under § 14-1-212, subsection (C) states that "[t]he State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer" § 14-1-212(C). That subsection also provides that "[t]he State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination." *Id.*

Other statutory provisions generally provide that the State Auditor is responsible for ensuring that court assessments have been properly collected and the appropriate portion remitted to the State Treasurer and notifying the local jurisdiction of any errors or deficiencies. As stated in § 14-1-210(A):

(A) Based upon a random selection process, the State Auditor shall periodically examine the books, accounts, receipts, disbursements, vouchers, and any records considered necessary of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated, or both, by law in family court, circuit court, magistrates court, and municipal court are properly collected and remitted to the State. In addition, these audits shall determine if the proper amount of funds have been reported, retained, and allocated for victim services in accordance with the law.... If the State Auditor finds that a jurisdiction has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds collected by the jurisdiction, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the State Office of Victim Assistance for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211.

⁴ This memorandum can be downloaded at:
www.sccourts.org/trial/feeAssess2012/summaryCourt/Summary%20Court%20Memo.docm.

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If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the responsible office, their supervising authority, and the chief justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to be the state's portion or the crime victim fund portion within ninety days of the audit notification.

§ 14-1-210(A).

Likewise, § 11-7-25 provides:

To the extent practicable and consistent with his overall responsibility, the State Auditor periodically shall audit or cause to be audited the financial records of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report if fines and assessments imposed pursuant to Sections 14-1-205 through 14-1-208 are collected properly and remitted to the State Treasurer. Upon the issuance of an audit report, the State Auditor immediately shall notify the State Treasurer, Division of Court Administration, and the chief administrator of the affected agency, department, county, or municipality.

§ 11-7-25.

In the event a local jurisdiction is found to have not properly collected and remitted the assessments, surcharges, and fees required by statute, several legislative provisions authorize the State Treasurer to deduct the amount owed to the State from certain State funds that jurisdiction would normally receive or withhold a certain amount of State funds from that jurisdiction until the amount owed is paid. As previously mentioned, § 14-1-210(A) provides that if the State Auditor finds a local jurisdiction has failed to collect and remit the appropriate portion of such assessments, surcharges, and fees to the State, and that jurisdiction fails to make full payment within ninety days of notice, "the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211." In the event a local jurisdiction's audit report "contains a significant finding related to court fine reports or remittances to the Office of the State Treasurer," the State Treasurer may withhold twenty-five percent of all State payments to that local jurisdiction until the deficiency is satisfied. 2013-2014 Appropriations Act, Act No. 101, Part IB § 97.9; 2012-2013 Appropriations Act, Act No. 288, Part IB § 76.9.

Conclusion

The determination of whether a local jurisdiction is improperly writing tickets for violations of local ordinances as opposed to violations of the UTA is a factual question which must be answered on a case-by-case basis; thus, such a question is beyond the scope of an opinion of this Office. That being said, we note the Legislature, through the provisions of the UTA, has enacted comprehensive legislation regulating traffic which is to be uniformly applied across this State. As our Supreme Court recognized in *Aakjer*, *supra*, the field of traffic regulation is a unique one requiring statewide uniformity. While the General Assembly has "authorized local authorities to act in the field of traffic regulation," the ordinance may not "conflict with the provisions of the Uniform Traffic Act." *Aakjer*, 388 S.C. at 134, 694 S.E.2d at

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215. As the Court further recognized in Aakjer, local traffic regulations which conflict with the UTA impose burdens upon and "unduly limit a citizen's freedom of movement throughout the State."

Furthermore, prior opinions of this Office have concluded various local traffic regulations are invalid for a number of reasons. Relying on § 56-5-30 of the UTA which authorizes local governments to adopt *additional* traffic regulations which do not conflict with the provisions of the UTA, we have advised that local authorities lack the power to adopt ordinances regulating traffic in a manner which is *duplicative of*, or *identical to*, the provisions of the UTA unless expressly authorized. In consideration of Article VIII, § 14 of the S.C. Constitution which prohibits local governments from enacting ordinances that set aside general law provisions applicable to criminal laws and penalties for violations thereof, we have previously concluded that local ordinances imposing greater or lesser penalties for traffic violations than those set forth by the UTA are invalid. Finally, prior opinions of this Office have advised that local traffic regulations which relax the statutory standards applicable to a violation of the UTA, or which impose a mere civil penalty for a traffic offense thereby circumventing the criminal tracking and point system the Legislature intended to be imposed against persons who commit traffic violations, would be void as in conflict with State law.

Accordingly, consistent with case law, Article VIII, § 14, and prior opinions of this Office, we believe local ordinances regulating traffic are void as in conflict with State law if such ordinances: regulate traffic in the same manner as any provision of the UTA without express statutory authorization to do so; impose greater or lesser penalties for traffic violations than those set forth by the UTA; or impose a civil fine as opposed to the criminal penalties prescribed by the UTA, thereby circumventing the criminal tracking and point system the Legislature intended to be used for traffic violations.

Applying the above principles to the particular offense of speeding, it is our opinion local jurisdictions are prohibited from regulating the matter by express ordinance or the manner in which any ordinance under any designation is enforced. Speeding is specifically regulated by § 56-5-1520 of the UTA which sets forth the penalties for violations thereof, and § 56-1-720 sets forth the number of points which are to be assessed against the license of any person convicted of speeding. Furthermore, no statutory provision expressly authorizes local jurisdictions to enact ordinances or rules regulating speeding. Thus, we believe local ordinances regulating speeding are void as in conflict with State law.

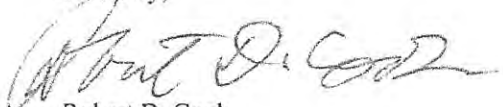
Even assuming a local ordinance regulating traffic is valid, §§ 56-7-10 and -80 expressly prohibit the use of a local ordinance summons for the enforcement of a traffic violation in any circumstance; only a UTT may be used to enforce traffic offenses regardless of whether the ticket is written for a violation of a local ordinance or the UTA. Since § 56-7-40 expressly makes the intentional or inadvertent use of a nonuniform ticket for traffic offenses unlawful, we advise law enforcement to ensure that only UTTs are issued for any and all traffic violations. As to the questions concerning whether legislative clarification or some other corrective action is necessary to address the above matters, we believe it is not. It is our opinion the provisions of the UTA are sufficiently clear to support the above conclusions. However, such a determination is ultimately in the hands of the Legislature which may, if it deems it necessary, provide further clarification on these issues.

Finally, assessments, surcharges, and fees which courts are statutorily required to impose in addition to fines paid as penalties for criminal and traffic offenses, a portion of which local treasurers are required to remit to the State Treasurer to allocate amongst certain agencies and entities, must be imposed regardless of whether the offense is a violation of State law or a local ordinance. Thus, even if a local jurisdiction improperly imposes and accepts a fine for a violation of a local traffic ordinance as opposed to the proper provision of the UTA, the same assessments and surcharges should still be imposed and the appropriate portions thereof remitted to the State Treasurer. The State Auditor is generally designated by

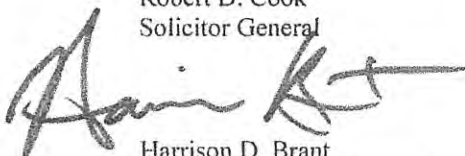
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statute as the officer responsible for ensuring that local jurisdictions properly collect such assessments and surcharges and remit the appropriate portions to the State Treasurer. Furthermore, local jurisdictions are annually required to conduct an independent external audit to review such matters. If a finding is made that a local jurisdiction has failed to properly collect such assessments, surcharges, and fees and remit them to the State, the State Treasurer is authorized to adjust the amount of State funds the local jurisdiction would normally receive under the State Aid to Subdivisions Act or withhold twenty-five percent of all State funds to that jurisdiction until the deficiency is satisfied.

Sincerely,



Robert D. Cook
Solicitor General



Harrison D. Brant
Assistant Attorney General

Exhibit D



The Supreme Court of South Carolina

JEAN HOFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1584
FAX: (803) 734-1167

April 2, 2013

Director Hubert F. Harrell
South Carolina Criminal Justice Academy
5400 Broad River Rd.
Columbia, SC 29212

Dear Director Harrell:

I am writing in response to your letter dated March 18, 2013, to our State Treasurer and Auditor, in which you requested that an audit be conducted on a municipality based on their use of citing a charge of "careless driving" on a uniform traffic ticket (UTT). Since my Court Administrator, Rosalyn Frierson, and myself, were copied on the letter, I asked that she explore the issues you raised. She provided me with the following information.

By opinion dated November 14, 2006, the Attorney General concluded that municipal law enforcement is "required" to use a UTT when citing municipal ordinance violations dealing with traffic offenses, such as careless operation of a motor vehicle. The opinion referenced a prior opinion of that Office dated October 15, 2003, which concluded that the plain language of Code §56-7-10 provides that the uniform traffic ticket be used by all law enforcement officers in arrests for traffic offenses, as well as the clear language contained in Code §56-7-80 prohibiting the use of the uniform ordinance summons for citing local ordinances regulating the use of motor vehicles on the public roads of this State, requiring that any local ordinance such as careless or negligent operation of a motor vehicle must be written on a UTT. Finally, by opinion dated June 15, 2011, that Office reaffirmed that, consistent with Code §§56-7-10 and 56-7-80, a municipality is required to use a uniform traffic ticket when citing municipal ordinance violations dealing with traffic offenses, and may not use a municipal ordinance summons in such situation.

While I am satisfied local ordinances regarding traffic violations can be written on a UTT, I am concerned with information I have received regarding the substance and application of careless operation of motor vehicle ordinances. It is my understanding that rather than writing motorists speeding tickets or other applicable violations, officers offer to write the motorist a ticket under a careless operation ordinance which carries, in some circumstances, a much higher fine than would be provided under the applicable state violation. Further, the motorists are told that if they pay the higher fine under the ordinance, the violation will not affect their insurance.¹ This long-standing practice of municipalities and counties in regards to passing local ordinances against careless or negligent operation of motor vehicles, as well as the creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act.² However, the propriety of those ordinances can only be determined by a court upon proper challenge by a defendant so charged.³ Due to the "benefits" defendants are told they are receiving, such a challenge is unlikely. Of course, this matter could be considered by our legislature and, if determined to be inappropriate, rectified by legislative enactment.

I am also aware of your concerns regarding the application of state-mandated assessments and surcharges to local ordinances, so I asked Ms. Frierson to look into that issue as well. After discussions with the individuals who actually perform the court audits for the State Auditor's Office, as well as reviewing the results of those audits,⁴ I do have a reasonable degree of confidence that the majority of our summary courts are correctly imposing assessments and surcharges to state laws, as well as municipal and county ordinances. With the increasing complexity of our State's fees and assessments schedule, some mistakes will inevitably happen. The audit results indicate that most errors are made by smaller jurisdictions, which are generally not large contributors to those court generated revenues which are transferred to the State Treasurer for distribution to the statutory recipients of those funds. However, I can assure you that the Judicial

¹ While the South Carolina Department of Motor Vehicles may not assess points for violations of the careless or negligent operation of a motor vehicle ordinances, I have been informed that some of our sister states' Department of Motor Vehicles interpret those ordinances as reckless driving and those motorists' insurance premiums and their ability to maintain a driver's license may well be affected when the record of such a conviction is received by their home state.

² See Code §§5-7-30 (municipalities) and 4-9-30 (counties).

³ See a Foothill's Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008); Beachfront Entertainment, Inc. v. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912 (2008).

⁴ The final reports on all court engagements conducted by the Office of the State Auditor since fiscal year 2006 can be accessed under "Court Engagements" on the homepage of their website at <http://www.osa.sc.gov>.

Department will continue to educate and monitor all levels of court on the proper imposition, collection and distribution of court generated revenue. I am sure that the Offices of the State Auditor and Treasurer will echo that sentiment.

If there is anything that me or my staff can do to further assist you with this matter, please do not hesitate to contact us.

With kindest personal regards, I am

Sincerely yours,

Jean Hoefer Toal

JHT/mhb

Cc: Senator Mike L. Fair
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Columbia, SC 29201

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Lisa Catalanotto, Esquire
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Columbia, SC 29201

Exhibit E



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WIS Investigates: Town uses own speeding law, drivers could face up to \$500 fines or jail time

CLARENDON COUNTY, SC (WIS) - A months-long WIS investigation into how the town of Turbeville is charging speeders is finished.

What we discovered is that Turbeville created its own speeding law with penalties the chief there said "Should shock the conscience," of the public. But many legal experts think the town could be liable for a lawsuit and potentially millions of dollars.

We drove to Turbeville, a small town along Highway 378 between Interstate 95 and Myrtle Beach, and watched the town's police chief issue nearly 10 traffic tickets within a span of a few hours on Labor Day. Each ticket carried fines of either \$288 or \$388.

But, there is a "benefit" the town promises drivers: If they pay the fine, the town won't give any license points.

TURBEVILLE'S SPECIAL SPEEDING LAW

Speeding is a traffic crime in South Carolina and the General Assembly decided, if convicted, drivers would pay a fine and the DMV would add a point penalty to a South Carolina driver's license. After six points, the DMV sends a driver a letter, notifying him his license could be suspended. Too many points, and the state will suspend your driving privileges.

Lawmakers wanted the purpose of the point penalty to punish and to deter bad driving; the intention is to make the state's roads safer.

On May 13, 2003, Turbeville town council decided the state's speeding laws weren't tough enough and passed 13-22, the Town Traffic Ordinance. The ordinance states, "It shall be unlawful for any person to operate any vehicle without care, caution and full regard for safety of persons and property." The language in the ordinance gives town officers the discretion to interpret whether a driver is being careless, which the town determined speeding would fit that definition.

If convicted of speeding in Turbeville, the town has the right to charge a driver up to \$500 and if the driver doesn't pay the fine, the ordinance provides a jail sentence of up to 30 days. The \$500 could be much higher once the town includes court costs and state assessments.

HOW IT WORKS

Labor Day is one of the busiest days of the year in Turbeville. The police force there doesn't tolerate speeding.

"I got a speeding ticket for doing 53 in a 35, \$388," Margie Wierenga told WIS as she showed us the ticket she got in June.

"I was getting off I-95 and drove into town and the next thing I know, a cop is pulling me over," Wierenga said.

The speed limit drops from 70 on the interstate, to 60 on the four-lane Highway 378 into Turbeville. The limit drops to 45 miles-per-hour in town, then to 35 within a few hundred feet.

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"I kind of expected \$150 or \$120, something like that, but \$388 just blew my mind," Wierenga said.

Turbeville Police Sgt. Robert Carter issued Wierenga the ticket and she said Carter told her it wasn't as bad as it sounded; if she paid the fine, she wouldn't lose any points. Days later, Wierenga called Turbeville court clerk Deborah Welch and asked for a break.

"I called Mrs. Welch at the clerk of court's office and she reduced it to \$255," said Wierenga.

"Did it feel like a break?" Barr asked.

"Well, I was glad it wasn't \$388," Wierenga said.

We first met Wierenga nearly two months ago and got on the subject of speeding tickets. That's when she told us about the ticket and the fine she paid Turbeville. The violation lists "Traffic Ordinance" and the charge and where the state speeding code should be is the town's ordinance number, 13-22.

When we went to Turbeville to investigate the town's ticketing process, we immediately spotted Chief David Jones writing a ticket to the driver of a van. When the chief let the van go, we flagged its driver down to find out what he was charged with and to take a look at his ticket.

Hudson Marques was driving the van, which had Massachusetts license plates. The chief charged Marques with speeding and driving without a license. The chief handed two pieces of copy paper with his tickets printed on it.

"Where did he pull these pieces of paper from?" Barr asked.

"From his car," Marques answered. "He printed it. He has a little computer, he writes it and prints the ticket for me."

The officer didn't arrest Hudson for driving without a license, instead he made Marques an offer.

"He asked me for \$488, so they can let me go," he said.

"So, it was either you pay the money or go to jail?" Barr asked.

"Or go to jail, yep," Marques said.

The chief gave Marques a receipt for the bond he posted, then allowed one of the other men in the van to drive away from the scene.

"At the end though, you decided: either you comply, pay the ticket or you go to jail?" Barr asked.

"Yeah, I pay the ticket, I don't want to go to jail because I'm working, so I just pay him cash," Marques told WIS.

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As soon as we left Marques and headed back into town, the chief had two women in two separate cars, pulled over in almost the same spot he stopped the van. One of the women was from New York state, and the other was from Georgia. The chief issued both women \$288 speeding tickets. Again, the charges were violations of the town's speeding ordinance and not the state's speeding law.

Julia Lucas' ticket was for driving 48 in a 35.

"That ticket he wrote you—anything suspicious about that?" Barr asked.

"It doesn't look like a normal ticket," Lucas said. "He told me that he didn't charge me for speeding, he charged me for a traffic ordinance because if he charged me for speeding, they would take four points off my license in New York," Lucas said.

"As soon as I rounded that curve right down there, he threw his lights on and I pulled over and he said I was going 50 in a 35," Danny Long of Greenville said. Long, who was on his way home from Myrtle Beach, said he'd never seen a ticket printed from an officer's car before, especially one that didn't carry a points violation in lieu of a potential \$500 fine or up to 30 days in jail.

"It just seems like they kind of make up their own rules. They found some ways to get around the system and it's a shame that they're cheating people; they're really cheating people out of money here," Long said. "That's ridiculous."

We were in Turbeville for a little more than 2 hours and watched the chief ticket eight drivers. Every ticket was written under the town's own speeding law. Every driver, except Danny Long, was from out of state and none of the drivers lived in the town of Turbeville.

Every driver we interviewed expressed concerns over the validity of the tickets the chief issued that day, especially with the "benefit" of paying up to a \$500 fine in exchange for not getting any license points.

"I've never seen a citation printed out of a computer printer," Mike Dion from Miami said.

Dion was driving a Jeep Grand Cherokee with Florida plates. Dion got one of the town's \$388 tickets. We flagged Dion down just a few blocks from where Chief Jones handed him the ticket, which Dion said, he felt the chief was almost "talking him into" accepting the town's ticket.

"That he was doing me a favor by making it a traffic ordinance versus a speeding ticket. He told me I have to appear in court or I could just mail the ticket in," Dion said.

At about noon, the chief was stopped and talking with a friend in a parking lot. That's when we decided to ask him about the tickets and the cash bond we watched him accept that morning.

"Chief, can we have a word with you?" Barr asked. "We want to talk to you about these municipal tickets you've been writing." Jones would not acknowledge our questioning.

"Excuse me sir, did you take a cash bond this morning from a Hispanic male? Chief, we'd like to talk to you about these municipal tickets you guys have been writing out here. Any comment from you?" Barr asked.

"Go to Court Administration in the state of South Carolina," Jones said as he closed his patrol car's door.

Wierenga told WIS she paid her \$255 using a debt consolidation loan she'd taken out weeks before.

"If you had an opportunity to sit down with the people in power in the town of Turbeville, what would you tell them in regards to these tickets and the financial burden that's coming with these fines?" Barr asked.

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"Maybe they should have a bake sale or something, but I don't feel like it's a good way for people to find out about South Carolina," Wierenga said.

IS THIS LEGAL?

State law requires all law enforcement officers to issue traffic citations on a Uniform Traffic Ticket. This is a charging document that must include a defendant's name, address, driver's license number, date of birth, vehicle owner's identification, the state law being broken, as well as the section number that identifies the specific law that's being charged.

In Turbeville, the town's police force is using the UTT to charge drivers, but there is no state law on the ticket.

In Turbeville, you won't be charged for speeding under the state's speeding laws. Since 2003, drivers have been charged under the town speeding ordinance, 13-22. That ordinance provides a fine structure that is much higher than fines provided under state law, but the town promises not to give license points from the people charged under this ordinance.

When we went to Turbeville on Sept. 2, we watched Chief David Jones issue multiple drivers town tickets, which he prints from a printer installed in his police cruiser. Jones patrols the town's 45 and 35 mile an hour speed zones, which are enforced at the town limits.

The state-mandated speed limit outside of the town limits on Highway 378 is 60 miles an hour. Many drivers we spoke with described the sudden speed reduction through Turbeville as a "speed trap."

Once TPD officers stop vehicles, they enter the driver's license information into a laptop inside the cruiser, then print the UTT. The officer types "Town Ordinance" into the section provided for the violation description, and enters the town's ordinance number "13-22" where the state's speeding code should go. Since the ordinance doesn't specify "speeding" as the crime, officers hand write the speed on the ticket with black marker.

Some legal experts think Turbeville could be stepping outside the powers afforded to local government with the way it's chosen to charge speeders inside town limits.

"Turbeville's like a troll at a bridge, you've got to write a big ol' check to just get on by," Columbia attorney Todd Kincannon said.

Kincannon's arguments before the state Supreme Court in 2010 helped defeat a helmet law the city of Myrtle Beach passed. The state already had a helmet law on the books, but Myrtle Beach city council enacted an ordinance to modify the state's law to require all bikers to wear helmets inside the city limits.

The state's top justices struck Myrtle Beach's helmet law down and the city had to refund fines paid under the city's ordinance.

"You guys are writing these municipal ordinances every day of the week?" Barr asked Chief David Jones.

"Yes, sir, that's correct," Jones said.

"Why not just stick with the state law?" WIS asked.

"Because it's a town ordinance," Jones said.

"So, you're saying I need to set aside one law to enforce another? What's the difference?" Jones asked.

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"So, what's stopping the city from going in and saying we'll have our own DUI law, we'll have our own seat belt law?" Barr asked.

"State law stops that," Jones explained.

Kincannon has harsh words to describe the ticket process in the town.

"It tells me it's a scam. It tells me the city of Turbeville has come up with a revenue-generating scheme as opposed to enforcing traffic laws; that's what's going on here," Kincannon said.

The state Attorney General's Office told WIS there has never been a case in South Carolina challenging ticketing practices like what we found in Turbeville. No public official has ever asked for an opinion from the attorney general about Turbeville's ticket practice, either.

We were able to track down an April 23, 2013 letter from South Carolina Supreme Court Chief Justice Jean Toal addressing town's with ordinances similar to what's going on in Turbeville. The letter is from Toal to the chief of the state's Criminal Justice Academy, Hubert Harrell. In the letter Toal wrote, "The creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act."

The letter indicated that if someone chose to sue Turbeville over the municipal ticketing practice, a court could decide whether the town is justified in charging drivers with a law that's already enforced by state statute.

But, Toal recognized because of Turbeville's no point promise, those charged may never speak up, "Due to the 'benefits' defendants are told they are receiving, such a challenge is unlikely."

So what would Kincannon argue in the Supreme Court if this case ever came up?

"I would tell the justices that South Carolina state law has a standard here and Turbeville and every other city and county in this state has to follow that," he said.

So is Turbeville's police chief prepared to face a lawsuit?

"We don't have any choice but to face it, if someone files a lawsuit we've got to answer it, is that correct?" Jones said.

But what would be the chief's answer to the court?

"I don't know, sir," Jones said.

TURBEVILLE'S REASON EXPLAINED

Jones told WIS the reason his town council passed its own speeding law was to "shock the conscience" of the people they charge. Jones further explained the impacts of fines as high as \$500 and potential jail time would make the streets inside the town of Turbeville safer.

"If you knew on the way down from Columbia if you got stopped, you were looking at a fine of \$288 or \$388 and that was it, I guarantee you wouldn't be so quick to push down on that accelerator pedal," Jones said. "It should shock the conscience, shouldn't it?"

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When questioned as whether Turbeville's ticketing practices were strictly a way to generate money, Jones denied it.

"We're trying to make these roads safer," said Jones. "Just like I told you, should it be something reasonable or should it shock your conscience?"

WHAT'S NEXT FOR TURBEVILLE?

Several drivers we spoke with during this investigation told us they would consider filing a lawsuit against the town to challenge the authority of the town's speeding ordinance.

The state's chief justice has warned towns like Turbeville, which may be issuing similar tickets, they could be in violation of the state's Home Rule Act. The act went in to effect in 1975, which gives municipalities and counties the right to self govern.

The Attorney General's Office could also issue an opinion in the Turbeville case, which would offer analysis of similar court decisions, coupled with analyzing the state's constitution for municipalities and counties that have attempted to create similar laws. The opinion has no legal binding, but could offer the office's legal analysis of whether Turbeville has the power to do what it's doing.

A third option would be for the legislature to investigate whether Turbeville has the power to issue speeding tickets outside of the state's speeding laws, then possibly create a law banning the practice across the state.

In Chief Justice Jean Toal's April 2013 letter to the state's police academy, Toal alluded to the fact that there may currently be no legal answer right now as to the ticketing practices in Turbeville, "Of course, this matter could be considered by our legislature and, if determined to be inappropriate, rectified by legislative enactment."

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[This Is The Before Photo. You Won't Believe The After](#)
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[In first interview since indictment, James Metts expresses regret](#)



[How To: Fix Crepey Skin \[Watch\]](#)
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[Town of North hires two officers to rebuild police force](#)



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[Parents publicly share daughter's losing battle with heroin addiction](#)

Exhibit F

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF TURBEVILLE		VERSUS	
FIRST NAME REBECCA J		LAST NAME ROBBINS	
STREET AND NO 375 SILVER WOOD LN		CITY STATE ZIP CODE LEXINGTON SC 29072	
STATE LICENSED SC	DRIVER'S LICENSE NO. [REDACTED]	CDL ☐ YES ☒ NO	ORV LIC. CLASS D
VEH. LIC. NO. DFJ884	STATE SC	MAKE OF VEH. VOLV	YEAR 2003
TYPE OF VEH. AUTO		HAZ. MAT. ☐	MOPED ☐
MOTORCYCLE ☐			
OTHER ☐			
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT TURBEVILLE MUNICIPAL		STREET AND NO. P O BOX 70 1400 MAIN ST	
DATE OF TRIAL 11/20/2014	TIME OF TRIAL 1400	CITY TURBEVILLE, SC	STATE ZIP CODE 29162
VIOLATION - COURT APPEARANCE REQUIRED YES		VIOLATION SECTION NO. DO-00-0000 / 13.22	
TRAFFIC ORDINANCE			
OWNER OF VEHICLE REBECCA J ROBBINS		DATE OF ARREST 10/28/2014	
ADDRESS OF OWNER 375 SILVER WOOD LN LEXINGTON SC 29072		DATE OF VIOLATION 10/28/2014	
BAIL DEPOSITED	NAME OF ARRESTING OFFICER LT. PHILIP C WILKES		RANK LT.
PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE			
Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.			
SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET			
COUNTY CLARENDON		NUMBER 14	
BADGE 63		TROOP 1	
DAY 1		TIME 1440	
MONTH 10		YEAR 2014	
WEDNESDAY W		THURSDAY TH	
FRIDAY F		SATURDAY S	
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Exhibit G

RECEIVED
JUL 07 2015

STATE VS. REBECCA ROBINS
TOWN OF TURBEVILLE MUNICIPAL COURT
UNIFORM TRAFFIC TICKET NO. 66918GS
ON DECEMBER 18, 2014

Transcription of Hearing held before the Honorable
Lucy Coleman, on December 18, 2014, and prepared by Doris
Tompkins Brown, Certified Verbatim Reporter and Notary
Public in and for the State of South Carolina

APPEARANCE

ON BEHALF OF MS. ROBINS: Mr. Hamilton

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-7434

COPY

1 MR. HAMILTON: Your Honor, Ms. Robbins
2 brought a tape recorder in case the Court didn't
3 have one. I told her (inaudible).

4 THE COURT: All right. Thank you.
5 (Inaudible).

6 MR. HAMILTON: Yes, Your Honor.

7 THE COURT: Thank you. (Inaudible). You
8 may be seated, sir.

9 MR. HAMILTON: Thank you for considering our
10 Motion. If the Court would just enter into the
11 record the documents filed.

12 THE COURT: Yes, sir. All those ---

13 MR. HAMILTON: And I've got a copy of the
14 Motion.

15 THE COURT: I understand. Normally what we
16 do, Mr. Hamilton, is we would afford the
17 Lieutenant an opportunity to speak to you, but
18 that's totally up to you as to whether or not you
19 wish to speak to him before I begin. And as well
20 as you know, the reason for the traffic stop was
21 for a speeding violation and that speeding was
22 sixty (60) in a forty-five (45); so, therefore
23 when this case goes to trial, it will be for a
24 speeding violation. A traffic ordinance is only
25 a courtesy that the town can afford the Defendant

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELCTRONICALLY FILED - 2016 May 09 9:40 AM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 to keep that person from losing points as you
2 well know that, sir.

3 MR. HAMILTON: Yes. Yes, I do wish to speak
4 to the officer briefly.

5 THE COURT: Okay. All right. Lieutenant
6 Wilts, if you would please go and speak to -- go
7 to the back to speak to the officer.

8 (OFF THE RECORD).

9 THE COURT: The decision that on the
10 roadside, he would change it to a traffic
11 ordinance by which Ms. Robins will be going to
12 trial for the sixty (60) in a forty-five (45)
13 which is a four point violation. In Court is
14 Lieutenant Phillip Wilts, the arresting officer,
15 myself, Judge Lucy Coleman and my clerk, Ms.
16 Debra Wells. I'm sorry. Is the State ready to
17 proceed at this time?

18 OFFICER WILTS: Yes, Your Honor.

19 THE COURT: Is the Defense ready to proceed
20 at this time?

21 MR. HAMILTON: We are, Your Honor.

22 THE COURT: Lieutenant, you may call your
23 first witness or you may come forward and I'll
24 swear you in to present your testimony at this
25 time.

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELECTRONICALLY FILED - 2016 May 09 9:40 AM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 MR. HAMILTON: Are we proceeding with the
2 charge for the (inaudible)

3 THE COURT: No, sir, we are not. We have to
4 proceed with the speeding violation because that's the
5 reason for the stop was for a speeding violation. I
6 understand, but the reason why he observed it was for
7 the speeding violation, sir, so the law requires me to
8 go back to the reason for the traffic stop.

9 MR. HAMILTON: All right. Thank you, Your
10 Honor.

11 THE COURT: Thank you. Do you need to do --
12 do you need to speak to your client before I
13 proceed? You have one last opportunity, sir.
14 I've explained it to Mr. Hamilton who is the
15 attorney for Ms. Robbins. Therefore, they
16 understand. Do you swear the testimony and
17 evidence that you're about to present on your
18 case will be the truth, the whole truth and
19 nothing but the truth so help you God?

20 OFFICER WILTS: I do. I am Lieutenant
21 Phillip Wilts. I work for the Town of Turbeville
22 as a police officer. This incident occurred on
23 October 28th, 2014 at approximately 2:40 p.m.
24 running at a high rate of speed, once we verified
25 it was sixty (60) in a forty-five (45). When I

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

1 pulled out, she stopped the vehicle. She was
2 running 50 (inaudible) Main Street (inaudible)
3 she was still approximately 48.

4 EXAMINATION BY MR. HAMILTON:

5 Q. Was Ms. Robbins cooperative when you stopped her?

6 A. Yes, sir, she was fully cooperative.

7 Q. The stop was for a speeding violation?

8 A. Yes, sir.

9 Q. (Inaudible)?

10 A. All I have is the video of the stop where I narrated.

11 THE COURT: Do you wish to view that at this
12 time?

13 MR. HAMILTON: Yes, ma'am. (Inaudible).

14 THE COURT: Any questions that you have once
15 you viewed the video, Mr. Hamilton?

16 MR. HAMILTON: Your Honor, I would merely
17 ask that it be preserved as part of the record.

18 THE COURT: Okay.

19 MR. HAMILTON: The Defendant has no
20 witnesses, Your Honor. The Defense rests.

21 THE COURT: Okay. You will not be calling
22 the Defendant?

23 MR. HAMILTON: No.

24 THE COURT: Okay. You're going to present,
25 Mr. Hamilton?

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELCTRONICALLY FILED - 2016 May 09 9:40 AM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 MR. HAMILTON: No. No, Your Honor.

2 THE COURT: You're not going to present
3 anything? Any kind of testimony, no rebuttal?

4 MR. HAMILTON: No.

5 THE COURT: Okay. All right.

6 MR. HAMILTON: We just have our Motion that
7 I filed but we stand (inaudible). We'd like to
8 thank the Court for its courtesy and
9 consideration of our case today and the material
10 we provided.

11 THE COURT: (inaudible) find Ms. Robins
12 guilty of the violation of speeding sixty (60) in
13 a forty-five (45). While that is a four point
14 violation, the sentence of the Court is
15 (inaudible) Okay. The bond amount has been
16 posted. It's in the envelope, I guess. I guess
17 we have it. There it is right there. Posted a
18 bond amount of Two Hundred and Eighty-eight
19 Dollars (\$288.00). The remainder of the balance
20 of that will be refunded back, Fifty-one Dollars
21 (\$51.00). You will receive that in the mail when
22 we have your correct address, Ms. Robins. Thank
23 you all very much.

24

1 STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) CERTIFICATE

I, Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I have prepared the within transcript from a recording provided to me to the best of my ability from the recording furnished without the opportunity of having been present. I further certify that the foregoing pages constitute a true and accurate transcript of the testimony based on my limitations as I was not present at the time of the recorded trial and several places are shown as inaudible. Therefore, I have prepared this transcript to the best of my ability.

I hereby certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of July, 2015.

Doris Tompkins Brown, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4-02-2025

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELECTRONICALLY FILED - 2016 May 09 9:40 AM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

Exhibit H

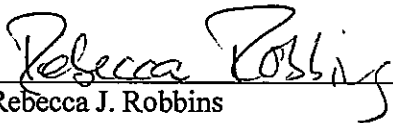
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.:
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	AFFIDAVIT OF
	)	REBECCA J. ROBBINS
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY
SWORN, STATES AS FOLLOWS:

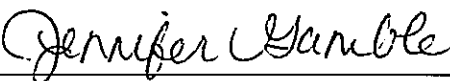
1. I, Rebecca J. Robbins, am a resident of Lexington County, South Carolina.
2. On October 28, 2014, I was driving through the Town of Turbeville and was stopped by Lt. Philip C. Wilkes of the Turbeville Police Department.
3. Lt. Wilkes issued me a citation for violating Turbeville Town Ordinance 13-22.
4. The recommended bond amount on my ticket was \$288.
5. I retained counsel and filed a motion to dismiss the charge based on the invalidity of Turbeville Town Ordinance 13-22.
6. Judge Luci Coleman held a hearing in the Town of Turbeville Municipal Court on December 18, 2014.
7. When I refused to pay a fine that I believed to be unlawful, Judge Coleman amended my charges to a speeding violation under South Carolina State law.
8. I was convicted of a State law speeding violation in a bench trial.
9. I have appealed that ruling to the Clarendon County Court of Common Pleas. That case is pending.

10. I frequently travel and, in the future, will drive through the Town of Turbeville.
11. Although I do my best to ensure that I comply with all laws, I may unintentionally speed during my travels through the Town of Turbeville.
12. This scenario will subject me to an additional citation for violating Turbeville Town Ordinance 13-22.

FURTHER AFFIANT SAYETH NAUGHT.


Rebecca J. Robbins

Sworn to and signed before me
this 6 day of May 2016.


Notary Public SC

My Commission Expires: 8/28/16

Exhibit I

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF TURBEVILLE		VERSUS	
FIRST NAME MARIE		LAST NAME BABAYAN	
MIDDLE NAME			
STREET AND NO. 12530 CARA CARA LOOP		CITY BRADENTON STATE FL ZIP CODE 34212	
STATE LICENSED FL	DRIVER'S LICENSE NO.	CDL ☐ YES ☐ NO	DRL LIC. CLASS E
VEH. LIC. NO. 202XNQ	STATE FL MAKE OF VEH. NISS YEAR 2013	COMM VEH ☐ AUTO ☐ HAZ. MAT ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐	18 PSGR VEH COMB.
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT TURBEVILLE MUNICIPAL		STREET AND NO. P O BOX 70 1400 MAIN ST	
DATE OF TRIAL 09/17/2015	TIME OF TRIAL 1400	CITY TURBEVILLE STATE SC ZIP CODE 29162	
VIOLATION - COURT APPEARANCE REQUIRED YES ☒ NO ☐		VIOLATION SECTION NO. 00-00-0000 / 13-22	
TRAFFIC ORDINANCE 55/35			
OWNER OF VEHICLE MARIE BABAYAN		DATE OF ARREST 08/16/2015	
ADDRESS OF OWNER 12530 CARA CARA LOOP BRADENTON FL 342		DATE OF VIOLATION 08/16/2015	
BAIL DEPOSITED	NAME OF ARRESTING OFFICER SGT ROBERT HASKELL CARTER		RANK SGT
PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE			
Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.			
SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET			
		72194HB	

VIOLATOR'S COPY

NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO REDUCE TRAFFIC ACCIDENTS, INJURIES AND DEATHS THROUGH FAIR, IMPARTIAL, AND REASONABLE ENFORCEMENT OF TRAFFIC LAWS.

You must settle the case hereby made against you in one of three ways:

- 1) You must appear in court at the appointed time with your South Carolina drivers license if indicated in the violation block on the front side of this summons.
- 2) You may post a cash bond with the appropriate Trial Court prior to the assigned date of trial. If you decide to mail in your bond rather than go to the office, MAIL MONEY ORDER, CASHIER'S CHECK OR CERTIFIED CHECK DIRECTLY TO THE TRIAL COURT OFFICE BEFORE WHOM YOU ARE SUMMONED TO APPEAR. The Trial Court name and address is shown on the front side of this summons. DO NOT MAIL CASH OR PERSONAL CHECK. Be sure to enclose with the bond the arresting officer's name and the summons number.
- 3) If a court appearance is not mandatory, you may pay your fine online with a credit card for citations issued in participating counties. Go to <http://www.sc.gov/pages/courtpayments.aspx> to determine if online payments are available in the county the citation was issued.
- 4) You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

THE POSTING OF BOND BEFORE YOUR ASSIGNED TRIAL DATE IN NO WAY AFFECTS YOUR RIGHT TO HAVE A FAIR TRIAL BY THE JUDGE OR, IF YOU MAKE A WRITTEN REQUEST BEFORE YOUR SCHEDULED TRIAL, BY JURY.

However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date, your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, your home state's Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to \$200.00 or imprisonment of up to 30 days.

Recommended Bond Amount: 388.00

Exhibit J


FOOD LION

Food Lion #0916 (843) 347-8652
1904 Hwy 544 Conway, SC

SERVICE CENTER

Money Order 188.46
TOTAL TAX 0.00

1 BALANCE DUE 188.46
Debit Card \$188.46

Auth# 073099 Ref# 305379

CHANGE 0.00

+++++

We value your opinion!
Tell us about your visit for a chance
to win \$500 in free groceries.

Within the next 5 days please visit:
www.TalkToFoodLion.com

También disponible en español.
10 winners each quarter
See website for complete rules.

PIN: +++++

CASHIER NAME: Mary
STORE: 00916 REGISTER: 030 CASHIER: 0111
TICKET#: 0026 15SEP2015 12:38:49

www.foodlion.com
CUSTOMER SERVICE 1-800-210-9569

THANK YOU FOR SHOPPING AT FOOD LION

CUSTOMER USE ONLY FROM: Maive Babayon 630 HWY 544 APT. C38 207B CONWAY, SC 29526 PHONE: 843-244-4857		UNITED STATES POSTAL SERVICE PRIORITY MAIL EXPRESS EK 342725722 US	
PAYMENT BY ACCOUNT (if applicable) USPS Corporate Acct. No.		ORIGIN (POSTAL SERVICE USE ONLY) Scheduled Delivery Date: 9-16-15 Scheduled Delivery Time: 10:30 AM - 12:00 PM Scheduled Delivery Fee: \$19.99 Insurance Fee: \$ Return Receipt Fee: \$ Use of Mailbox: \$ Total Postage & Fees: \$19.99	
DELIVERY OPTIONS (Customer Use Only) ☐ Signature Required (The mailer must check the "Signature Required" box if the mailer: 1) Requests the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery. ☐ No Saturday Delivery (delivered next business day) ☐ Sunday/Holiday Delivery Required (additional fee, where available) ☐ 10:30 AM Delivery Required (additional fee, where available) ☐ Refer to USPS.com or local Post Office for availability.		DELIVERY (POSTAL SERVICE USE ONLY) Delivery Stamp (MM/DD/YYYY) Time: 9-15-15 10:30 AM Delivery Stamp (MM/DD/YYYY) Time: 9-15-15 10:30 AM Delivery Stamp (MM/DD/YYYY) Time: 9-15-15 10:30 AM	
TO: addressee Turbeville Multiple P.O. Box 70 Turbeville, SC 29162 SEP 15 2015 ZIP + 4 (U.S. ADDRESSES ONLY) 29162		2-CUSTOMER COPY LABEL 11-B, JANUARY 2014 PSN 7290-02-000-9954	

Instructions:

- This request is to be completed by the purchaser only. A stop payment is placed on the original Money Order when refund is made to purchaser.
- The original of the Money Order receipt must accompany each request. If the original of the Purchaser's Copy Money Order receipt is not enclosed, your request will be delayed and may be denied.
- Please make a photocopy of the request and the receipt for your own records.
- Enclose a \$15.00 non-refundable processing fee for each photocopy or refund request.
- A photocopy will not be processed until the \$15.00 is received. Notice: At its discretion Western Union Financial Services, Inc. may deduct the fee from your refund if it is not enclosed with your request.
- Please allow 30 days for processing. All requests for refunds and photocopies must be in writing.

Purchaser's Name First Last (Please Print)		SEND REQUEST TO: Western Union Financial Services, Inc. P.O. Box 7030 Englewood, CO 80155-7030 Money Order was Payable to:		MONEY ORDER DATE PURCHASED AM DD YY 11 23 00 09 15 15
Mailing Address (Please Print)		Reason for Request:		Money Order must be purchased at (same S. address)
City State Zip Code		BEFORE MAILING, BE SURE THAT THIS FORM HAS BEEN SIGNED BY DR.		PHONE NUMBER

Exhibit K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
Rebecca J. Robbins and Marie Babayan,	)	Case No.:
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	AFFIDAVIT OF
	)	MARIE BABAYAN
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY
SWORN, STATES AS FOLLOWS:

1. I, Marie Babayan, am a resident of the State of Florida.
2. I am currently a student at Coastal Carolina University.
3. On August 16, 2015, I was driving through the Town of Turbeville and was stopped by Sgt. Robert Haskell Carter of the Turbeville Police Department.
4. Sgt. Carter issued me a citation for violating Turbeville Town Ordinance 13-22.
5. The recommended bond amount on my ticket was \$388.
6. I retained counsel and paid a reduced fine of \$188.
7. I frequently travel and, in the future, will drive through the Town of Turbeville.
8. Although I do my best to ensure that I comply with all laws, I may unintentionally speed during my travels through the Town of Turbeville.
9. This scenario will subject me to an additional citation for violating Turbeville Town Ordinance 13-22.

FURTHER AFFIANT SAYETH NAUGHT.

Marie Babayan
Marie Babayan

Sworn to and signed before me
this 28 day of April 2016.

[Signature]
Notary Public

My Commission Expires: 9-11-2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.: 2016-CP-14-00198
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	AMENDED COMPLAINT
capacity as Chief of the Turbeville Police	)	(Jury Trial Demanded)
Department,	)	
	)	
Defendants/Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
The State of South Carolina,	)	
	)	
<u>Third-Party Defendants.</u>	)	

**AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

The Plaintiffs, Rebecca J. Robbins and Marie Babayan, individually, and on behalf of all persons similarly situated, by and through their undersigned counsel will respectfully show unto this Honorable Court:

NATURE OF THE CASE

1. This is a class action against the Town of Turbeville and the Turbeville Police Department (collectively, "Defendants").¹ Plaintiffs file this Complaint on behalf of a proposed Class of people

¹ David Jones, in his official capacity as Chief of the Turbeville Police Department was initially named as a Defendant. He has been dismissed from the case without prejudice.

who have been charged with violating, or who have paid fines for violating, Turbeville Town Ordinances 13-22 and/or 13-23 from May 9, 2013 to present and a proposed Subclass of people who have paid fines to Defendants for violating Turbeville Town Ordinances 13-22 and/or 13-23 from May 9, 2013 to present. Plaintiffs and the Class members seek declaratory relief and injunctive relief holding that Turbeville Town Ordinances 13-22 and 13-23 are preempted by State law and illegal, and Plaintiff Marie Babayan seeks monetary relief on behalf of herself and the proposed Subclass as a result of Defendants' illegal enactment and application of these ordinances.

PARTIES

2. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

3. Plaintiff Rebecca J. Robbins is, and was at all times material to this action, a resident of the County of Lexington, State of South Carolina.

4. Plaintiff Marie Babayan is, and was at all times material to this action, a resident of the State of Florida.

5. Defendant Town of Turbeville is a political subdivision of the State of South Carolina located in Clarendon County, South Carolina.

6. Defendant Turbeville Police Department is the law enforcement agency in charge of supervising the streets and citizens of Defendant Town of Turbeville.

JURISDICTION AND VENUE

7. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

8. The jurisdiction of this Court is founded upon S.C. Const. Ann. art. V, § 11, which grants the Circuit Court general jurisdiction over civil actions.

9. Additionally, jurisdiction is founded on the South Carolina Uniform Declaratory Judgments Act, South Carolina Code Ann. §§ 15-53-10 to -140, and the State's equity jurisdiction for injunctive relief.

10. Plaintiffs and members of the Class and Subclass have each suffered an individual injury by virtue of Defendants' unconstitutional actions within the County of Clarendon.

11. Venue is appropriate under South Carolina Code Ann. §§ 15-7-20 through -30.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

12. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

The Uniform Traffic Act

13. The South Carolina General Assembly has enacted Chapter 5 of Title 56, entitled the "Uniform Act Regulating Traffic on Highways" (hereinafter, "Uniform Traffic Act").

14. The Uniform Traffic Act provides that:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

S.C. Code Ann. § 56-5-30.

15. The Uniform Traffic Act further provides limitations on maximum and minimum speed limits, and provides that a person violating the speed limits is guilty of a misdemeanor and subject to various fines. S.C. Code Ann. § 56-5-1520(G).

16. A person convicted of exceeding the speed limit by less than ten miles per hour is subject to a fine of not less than fifteen dollars nor more than twenty-five dollars. S.C. Code Ann. § 56-5-1520(G)(1).

17. A person convicted of exceeding the speed limit by between ten and fifteen miles per hour is subject to a fine of between twenty-five and fifty dollars. S.C. Code Ann. § 56-5-1520(G)(2).

18. A person convicted of exceeding the speed limit by between fifteen and twenty-five miles per hour is subject to a fine of between fifty and seventy-five dollars. S.C. Code Ann. § 56-5-1520(G)(3).

19. Finally, a person convicted of exceeding the speed limit by more than twenty-five miles per hour is subject to a fine of between seventy-five and two-hundred dollars or imprisonment for not more than thirty days. S.C. Code Ann. § 56-5-1520(G)(4).

20. Additionally, the Uniform Traffic Act “establishe[s] a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles.” S.C. Code Ann. § 56-1-720.

21. A person convicted of exceeding the speed limit by less than ten miles per hour is to be assessed two points. *Id.*

22. A person convicted of exceeding the speed limit by between ten and twenty-five miles per hour is to be assessed four points. *Id.*

23. A person convicted of exceeding the speed limit by more than twenty-five miles per hour is to be assessed six points. *Id.*

24. The South Carolina Department of Motor Vehicles may suspend, for not more than six months, the driver’s license and privileges of a person who has accumulated a total of twelve points. S.C. Code Ann. § 56-1-740.

25. South Carolina State law also requires that law enforcement officers use a Uniform Traffic Ticket (hereinafter, “UTT”) when citing drivers for traffic offenses. S.C. Code Ann. § 56-7-10(A),

(C); *see also* S.C. Code Ann. § 56-7-80(B) (“No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.”).

The Turbeville Town Traffic Ordinance

26. Upon information and belief, on May 13, 2003, the Turbeville Town Council enacted Section 13-22 (“the Town Traffic Ordinance”). (Turbeville Town Ordinances, attached as Exhibit A).

27. Upon information and belief, on August 11, 2009, the Turbeville Town Council amended the Town Traffic Ordinance, which now states:

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do (sic) shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

(Ex. A).

28. Upon information and belief, on August 11, 2009, the Turbeville Town Council adopted Section 13-23 (“the Penalty Ordinance”), which states:

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

(Ex. A).

29. Upon information and belief, the Turbeville Police Department has stopped tens of thousands drivers for allegedly speeding and issued tickets to those drivers for violating the Town Traffic Ordinance. Upon information and belief, the Defendants have then imposed penalties under

the Penalty Ordinance far in excess of the penalties authorized by Section 56-5-1520(G) of the South Carolina Code.

30. Upon information and belief, the Turbeville Police Department has also issued numerous tickets under the Town Traffic Ordinance and/or the Penalty Ordinance to drivers who allegedly violated other portions of the Uniform Traffic Act. For example, upon information and belief, the Turbeville Police Department has issued Town Traffic Ordinance and/or Penalty Ordinance tickets to motorists stopped for driving without a driver's license.

31. Upon information and belief, the Turbeville Police Department coerces drivers to pay these unlawful and excessive fines by not assessing the points required under the Uniform Traffic Act or by not charging motorists with other traffic related criminal offenses.

Attorney General Advisory Opinions

32. On November 18, 2013, the South Carolina Attorney General's Office issued two advisory opinions relevant to this litigation.

Treasurer Loftis Advisory Opinion

33. First, the Attorney General issued an opinion requested by State Treasurer Loftis. (Loftis Opinion, attached as Exhibit B).

34. Treasurer Loftis noted in his request to the Attorney General's Office that the Treasury Office had noticed a decrease in the amount of court fines and fees remitted in recent years. (Ex. B at 1).

35. Treasurer Loftis also noted that South Carolina Court Administration suggested that the "decline may be the result of jurisdictions writing traffic and other tickets under recently adopted local . . . ordinances rather than under the [Uniform Traffic Act]. The end result being that the

court fines and fees may not be reported and remitted to the [Treasurer's Office] but rather are retained by the local jurisdictions." (Ex. B at 1).

36. Treasurer Loftis requested the Attorney General's opinion whether such local traffic ordinances were legal under State Law and what action might be taken to collect those unlawfully obtained fines from municipalities and counties. (Ex. B at 1).

37. In a thoroughly reasoned opinion, the Attorney General discussed a variety of prior Advisory Opinions and concluded that "local ordinances attempting to regulate traffic in the same manner as any provision under the [Uniform Traffic Act], unless expressly authorized, are likely invalid." (Ex. B at 5).

38. The Attorney General also cited an earlier Advisory Opinion and noted that "Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy." (Ex. B at 5) (quoting Op. S.C. Att'y Gen., 2006 WL 422574 (Feb. 1, 2006)).

39. Specifically, that earlier Advisory Opinion held:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance. Furthermore, it appears that there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violations tracked or points assessed against the driver but, instead, there would be a civil penalty imposed. As a result, in my opinion, such a speeding ordinance would not be authorized.

(Ex. B at 5–6) (quoting Op. S.C. Att'y Gen., 2006 WL 422574 (Feb. 1, 2006)).

Rep. Jimmy C. Bales Advisory Opinion

40. The Attorney General also issued a related Advisory Opinion requested by Representative Jimmy C. Bales (Bales Opinion, attached as Exhibit C).

41. In that Advisory Opinion, the Attorney General similarly concluded that municipal ordinances setting their own penalties for speeding and other traffic violations were invalid as they conflict with State law. (Ex. C at 4–5).

42. The Attorney General also reaffirmed “the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State of local law using a local ordinance summons.” (Ex. C at 6).

Chief Justice Toal’s Letter

43. Upon information and belief, on April 2, 2013, Chief Justice Jean Toal sent a letter to Director Hubert F. Harrell of the South Carolina Criminal Justice Academy addressing concerns with officers writing unlawful tickets. (Toal Letter, attached as Ex. D).

44. Upon information and belief, Chief Justice Toal stated that she was “concerned with information [she has] received regarding the substance and application of careless operation of motor vehicle ordinances.” (Ex. D at 2).

45. Upon information and belief, Chief Justice Toal noted:

It is my understanding that rather than writing motorists speeding tickets or other applicable violations, officers offer to write the motorist a ticket under a careless operation ordinance which carries, in some circumstances, a much higher fine that would be provided under the applicable state violation. Further, the motorists are told that if they pay the higher fine under the ordinance, the violation will not affect their insurance. This long-standing practice of municipalities and counties in regards to passing local ordinances against careless or negligent operation of motor vehicles, as well as the creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act.

(Ex. D at 2).

Turbeville’s Pattern of Unlawful Conduct

46. Upon information and belief, despite these letters and opinions from the Chief Justice and Attorney General, the Turbeville Police Department continued to issue tickets under the Town Traffic Ordinance and the Penalty Ordinance.

47. Defendants' actions have piqued the interest of various news outlets, including Columbia NBC affiliate, WIS TV, which conducted a months-long investigation into Defendants' practices in 2013 and observed the Turbeville Police Department write "nearly 10 traffic tickets within the span of a few hours on Labor Day. Each ticket carried fines of either \$288 or \$388." (WIS Report, attached as Exhibit E).

48. WIS journalists observed Turbeville Police Chief David Jones stop Hudson Marques for speeding and driving without a license. "[Jones] didn't arrest Hudson for driving without a license, instead he made Marques an offer. 'He asked me for \$488, so they can let me go.' [Marques] said. . . . The chief gave Marques a receipt for the bond he posted, then allowed one of the other men in the van to drive away from the scene." (Ex. E).

49. In an interview, Chief Jones confirmed that the Turbeville Police Department "[is] writing these municipal ordinances every day of the week." (Ex. E).

50. When asked how Defendants would defend a lawsuit challenging the validity of the Town Traffic Ordinance, Chief Jones responded, "I don't know, sir." (Ex. E).

Plaintiff Robbins' Traffic Stop

51. On October 28, 2014, Plaintiff Robbins was stopped by Lt. Philip C. Wilkes of the Turbeville Police Department and cited for violating the Town Traffic Ordinance.

52. Plaintiff Robbins was issued a ticket with a recommended bond amount of \$288. (Robbins Ticket, attached as Exhibit F).

53. Plaintiff Robbins, represented by counsel, challenged her ticket by filing a Motion to Dismiss, in which she contended that the Town Traffic Ordinance was illegal and preempted by State law. (Trial Transcript, attached as Exhibit G).

54. According to the trial transcript, Plaintiff Robbins was stopped for going sixty miles per hour in a forty-five mile per hour zone. (Ex. G at 2).

55. At trial, Judge Luci Coleman apparently converted Plaintiff Robbins' ticket to a UTT for violating the State speeding law, effectively prohibiting Plaintiff Robbins from challenging the validity of the Town Traffic Ordinance. (Ex. G at 4).

56. The arresting officer did not move for the charge to be changed to a violation of the State speeding law, nor did he rewrite a ticket for violation of that statute. Instead, the Judge *sua sponte* changed the charge.

57. This practice essentially insulates the Town Traffic Ordinance and the Penalty Ordinance from any meaningful judicial review.

58. Plaintiff Robbins was convicted of violating the State speeding law, and has appealed that conviction on the ground that the Judge clearly cannot change a defendant's charge; only a prosecuting officer may do that.

59. Upon information and belief, Defendant Turbeville consented to the reversal of Plaintiff Robbins' conviction. Therefore, upon information and belief, the Honorable Thomas W. Cooper issued an order reversing Plaintiff Robbins' conviction and remanding the case to the Turbeville Municipal Court on September 1, 2016.

60. Upon information and belief, on November 17, 2016, Defendant Turbeville nolle prossed Plaintiff Robbins' pending charge, purportedly at the request of the arresting officer. Upon

information and belief, Defendant Turbeville returned Plaintiff Robbins' original money order for \$288.

61. Plaintiff Robbins still drives through Turbeville and is subject to being charged again with the illegal Town Traffic Ordinance should she speed within the city limits, which she attests she may unintentionally do. (Affidavit of Rebecca Robins, attached as Exhibit H).

Plaintiff Marie Babayan's Traffic Stop

62. On August 16, 2015, Plaintiff Babayan was stopped by Sgt. Robert Haskell Carter of the Turbeville Police Department and cited for violating the Town Traffic Ordinance.

63. Plaintiff Babayan was issued a ticket with a recommended bond amount of \$388. (Babayan Ticket, attached as Exhibit I).

64. Plaintiff Babayan paid a reduced fine of \$188. (Money Order Records, attached as Exhibit J).

65. Plaintiff Babayan still drives through Turbeville and is subject to being charged again with the illegal Town Traffic Ordinance should she speed within the city limits, which she attests she may unintentionally do. (Affidavit of Marie Babayan, attached as Exhibit K).

CLASS ACTION ALLEGATIONS

66. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

67. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, as representatives of a Class defined as follows:

All persons who have been charged with violating, or who have paid fines for violating, the Town Traffic Ordinance and/or the Penalty Ordinance from May 9, 2013 to present ("the Injunctive Class").

Plaintiff Babayan also brings this action on behalf of a Subclass of similarly situated individuals defined as follows:

All persons who have paid fines for violating the Town Traffic Ordinance and/or the Penalty Ordinance from May 9, 2013 to present (“the Damages Subclass”).

68. Plaintiffs reserve the right to amend the Injunctive Class and/or the Damages Subclass definition if further investigation and discovery indicates that the Injunctive Class and/or the Damages Subclass definition should be narrowed, expanded, or otherwise modified.

69. Upon information and belief, the exact number of Injunctive Class and Damages Subclass members is unknown and is not available to Plaintiffs at this time as this information is within the exclusive control of the Defendants, but Plaintiffs believe that the Injunctive Class and Damages Subclass likely consists of thousands of individuals. The sheer size of the Injunctive Class and the Damages Subclass make joinder of all members in this case impracticable, if not impossible.

70. In addition to the large number of individuals who are members of the Injunctive Class and the Damages Subclass, there are several questions of law and fact common to the claims of Plaintiffs and members of the Injunctive Class and the Damages Subclass. Those questions predominate over any questions that may affect individual Injunctive Class and Damages Subclass members. Common questions include, but are not limited to, the following:

- a. Whether the Defendants have violated the law in adopting and enforcing the Town Traffic Ordinance and Penalty Ordinance;
- b. Whether the Town Traffic Ordinance and Penalty Ordinance are preempted by State law;
- c. Whether the Defendants should be permanently enjoined from citing drivers for violating the Town Traffic Ordinance and assessing fines under the Penalty Ordinance;
- d. Whether Defendants were unjustly enriched by keeping the illegal fines paid by drivers for violating the Town Traffic Ordinance and Penalty Ordinance;

- e. Whether Plaintiff Babayan and members of the Damages Subclass are entitled to a refund; and
- f. The amount of damages suffered by Plaintiff Babayan and members of the Damages Subclass

71. The claims of the representative parties are typical of the claims of the Injunctive Class and the Damages Subclass members. All are based on the same legal and factual issues. Plaintiffs and each of the Injunctive Class members were issued citations pursuant to the Town Traffic Ordinance and/or Penalty Ordinance. Plaintiff Babayan and each of the Damages Subclass members paid fines for violating the Town Traffic Ordinance and/or Penalty Ordinance.

72. Plaintiffs, as named representatives, have common interests with members of the Injunctive Class and Damages Subclass and will vigorously prosecute the interests of the Injunctive Class and the Damages Subclass through qualified legal counsel, and do not have any identifiable legal conflicts with any potential Injunctive Class or Damages Subclass member, and thus, the Plaintiffs, as named representatives, will fairly and adequately represent and protect the interests of the whole Injunctive Class and Damages Subclass.

73. Plaintiffs seek declaratory relief and injunctive relief on behalf of themselves and the Injunctive Class. Additionally, Plaintiff Babayan seeks damages on behalf of herself and the Damages Subclass. Upon information and belief, all citations for violating the Town Traffic Ordinance exceeded \$100 per violation. Thus, to the extent the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the Damages Subclass.

74. Plaintiffs have retained competent legal counsel who have extensive experience with class action litigation and are experienced attorneys well versed in South Carolina constitutional, statutory, and common law.

75. Class action treatment of the matters in issue in this controversy is superior to the alternatives, if any, for the fair and efficient adjudication of such issues, because such treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would entail. Class action treatment in this case will have the added virtue of permitting the adjudication of relatively small claims by certain members of the Injunctive Class and the Damages Subclass, for whom it would otherwise not be financially feasible to litigate their claims as individual actions against Defendants.

76. Plaintiffs are aware of no difficulty in the management of this action that would preclude it from being maintained as a class action.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Against All Defendants)**

77. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

78. In contravention of South Carolina's Constitution, and in violation of South Carolina statutory laws, Defendants have issued illegal citations to Plaintiffs and members of the Injunctive Class for violating the illegal Town Traffic Ordinance and Penalty Ordinance.

79. For the reasons stated above, Plaintiffs ask the Court to declare the following:

- a. It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which are in conflict with, and preempted by, State law.
- b. It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which impose greater or lesser penalties for traffic violations than those set forth by the South Carolina General Assembly in the Uniform Traffic Act and related statutes.

**FOR A SECOND CAUSE OF ACTION
(Injunctive Relief Against All Defendants)**

80. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

81. By virtue of the foregoing, Plaintiffs have demonstrated a likelihood of success on the merits in this case.

82. Plaintiffs and members of the Injunctive Class travel through the Town of Turbeville. Unless Defendants are enjoined from the foregoing conduct, Plaintiffs and members of the Injunctive Class will suffer irreparable harm, including but not limited to being subjected to illegal and unconstitutional fines and penalties under the Town Traffic Ordinance and the Penalty Ordinance.

83. Plaintiffs and members of the Injunctive Class have no adequate remedy at law.

84. Plaintiffs therefore seek the entry of a permanent injunction prohibiting Defendants from enforcing the Town Traffic Ordinance or Penalty Ordinance.

**FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment Against All Defendants)**

85. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

86. The South Carolina Constitution, common law, and statutory law create a contract implied in law between the Plaintiffs and the Defendants. The quasi-contract conferred upon the Defendants a duty and obligation not to collect or accept illegally charged fines and penalties.

87. Defendants breached this obligation and accepted these illegal fines and penalties from Plaintiff Babayan and the Damages Subclass, receiving a pecuniary benefit.

88. Defendants have realized that pecuniary benefit by retaining said monies and designing a system that makes it impossible for an individual charged with violating the Town Traffic Ordinance and Penalty Ordinance to judicially challenge the validity of that charge.

89. Defendants retained that pecuniary benefit under circumstances that make it inequitable for them to retain it.

90. Defendants have been unjustly enriched through the receipt of these monies, to the detriment of Plaintiff Babayan and members of the Damages Subclass.

91. Plaintiff Babayan and members of the Damages Subclass are entitled to restitution of the illegally collected fines and penalties.

**FOR A FOURTH CAUSE OF ACTION
(Refund Against All Defendants)**

92. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

93. It is a constitutional right of due process that a citizen who has paid an illegal fine or penalty to the government has a remedy for refund.

94. As set forth above, the Plaintiff Babayan and members of the Damages Subclass have paid fines and penalties pursuant to the illegal Town Traffic Ordinance and Penalty Ordinance.

95. Plaintiff Babayan and members of the Damages Subclass are entitled to a refund with interest of all such payments.

WHEREFORE, Plaintiffs and all those similarly situated pray:

- A. That this Court certify the Injunctive Class and the Damages Subclass;
- B. That the Court declare the Town Traffic Ordinance and/or Penalty Ordinance illegal and enjoin Defendants from enforcing either ordinance;
- C. That the Court require Defendants to refund with interest all fines collected under the Town Traffic and/or Penalty Ordinance;

- D. That the Court require Defendants to pay restitution with interest for all fines collected under the Town Traffic and/or Penalty Ordinance;
- E. That Plaintiff Babayan and members of the Damages Subclass be awarded such actual damages as the jury should allow;
- F. That the Defendants be required to pay attorneys' fees, including but not limited to attorneys' fees under South Carolina Code Ann. § 15-77-300 as Defendants were not substantially justified in enacting and enforcing the Town Traffic Ordinance;
- G. That the Defendants be required to pay costs, including but not limited to costs under South Carolina Code Ann. § 15-53-100;
- H. That the Court grant such other and further relief as shall be just and proper, including but not limited to prejudgment and postjudgment interest.

(Signature Page Follows)

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July 27, 2017

Exhibit A

ARTICLE II. MOVING TRAFFIC

Sec. 13-20 Using Vehicle for Advertising

No person shall operate or park on any street any vehicle for the primary purpose of advertising.

Sec. 13-21 Driving Across Private Property

It shall be unlawful for any person driving a vehicle to use the driveway of any service station in the Town as a roadway or thoroughfare.

It shall be unlawful for any person driving a vehicle to make any "U" turn or other turn prohibited at any point where such turn is prohibited, and it shall be unlawful to accomplish a "U" turn by deviously going into or through private property adjoining the street where such turn is prohibited.

Sec. 13-22 Town Traffic Ordinance

Sec. 13-22 adopted May 13, 2003
 Sec. 13-22 Amended November 08, 2005
 Sec. 13-22 Amended July 8, 2008
 Sec. 13-22 Amended August 11, 2009

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

Sec. 13-23 Town Traffic Ordinance Penalty

Sec. 13-23 adopted by council August 11, 2009

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

Sec. 13-24 Loading Zones

Sec. 13-24 moved to Article II by council on August 11, 2009

No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious unloading or loading of passengers in any place marked as a

Exhibit B



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Curtis M. Loftis, Jr.
South Carolina State Treasurer
P.O. Box 11778
Columbia, S.C. 29211

Dear Treasurer Loftis,

You seek an opinion of this Office concerning the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 et seq. By way of background, you state:

The amounts of court fines and fees submitted to the STO by the jurisdictions are self-reported and remitted to the STO. The STO has no way of knowing what a jurisdiction has actually collected in court fines and fees versus what amount of court fines and fees are remitted to the STO by that jurisdiction. The STO has to accept the amount the jurisdiction reports and remits. The STO distributes the amounts received from court fines and fees to a number of court and public safety related agencies as prescribed by the Code.

The STO has noticed a decline in the total amounts of reported and remitted court fines and fees in recent years. Court Administration staff has proffered the thought that the decline may be the result of jurisdictions writing traffic and other tickets under recently adopted local ... ordinances rather than under the [UTA]. The end result being that the court fines and fees may not be reported and remitted to the STO but rather are retained by the local jurisdiction.

Assuming such a practice is occurring, you specifically ask the following questions:

- (1) Is it legal?
- (2) If not legal, which State agency has the responsibility to bring the matter to the attention of the local jurisdiction?
- (3) Is an amendment to the Code necessary to clarify that this practice is wrong or to require all jurisdictions to write traffic and other tickets under the [UTA]?
- (4) Please advise of any other corrective action you believe may be appropriate.

We have also received an opinion request from Representative Jimmy C. Bales as to the legality of local jurisdictions issuing their own tickets and setting their own fines for speeding violations as opposed to issuing a uniform traffic ticket ("UTT") for a violation under the UTA. If such a practice is not permitted

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under State law, you ask whether local jurisdictions can be held accountable and forced "to refund fines levied in violation of state law?" As both opinion requests address the same subject matter, we will address them together.

Law/Analysis

When considering the validity of any local ordinance, we begin with the principle that "[a]n ordinance is a legislative enactment and is presumed to be constitutional." Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). The burden of proving the invalidity of a local ordinance rests with the party attacking it. Id. Furthermore:

A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general laws of the State.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted).

Our State Constitution gives the Legislature the power to establish by general law the powers and duties of local governments. S.C. Const. art. VIII, §§ 7, 9. The powers of local governments are to be liberally construed in their favor. See S.C. Const. art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."). However, the Constitution also provides that ordinances enacted by local governments shall not set aside general law provisions applicable to, *inter alia*: "(5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the ... administration of any governmental service or function ... which requires statewide uniformity." S.C. Const. art. VIII, § 14.

Looking to the provisions of the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 et seq., the Legislature has provided as follows:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

§ 56-5-30 (emphasis added). Accordingly, the Legislature has expressly declared that local governments are only authorized to enact traffic regulations *in addition to* those set forth in the UTA to the extent such ordinances do not conflict with the provisions of the UTA unless expressly authorized.

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Particularly instructive here is the case of Aaker v. City of Myrtle Beach, 388 S.C. 129, 694 S.E.2d 213 (2010) in which our State Supreme Court held a local ordinance requiring motorcycle riders to wear a protective helmet and eyewear was invalid in light of §§ 56-6-3660 and -3670 of the Uniform Traffic Act which already addressed such matters. In reaching this conclusion, the Court stated:

In S.C.Code Ann. § 56-5-30 (2009) the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act. Even assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear. Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fail under the doctrine of implied preemption.¹

Id. at 134, 694 S.E.2d at 215.

In a recent opinion we addressed the authority of a local government to enact an ordinance imposing a fine of anywhere between \$100 and \$300 for certain traffic violations, including speeding, which are already unlawful under the UTA. Op. S.C. Att'y Gen., 2013 WL 2450878 (May 29, 2013). In concluding such an ordinance would be invalid, we explained that local governments lack the authority to enact ordinances which impose lesser or greater penalties for traffic violations than those imposed by the UTA: .

The UTA sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to [§ 56-5-1520(G)] may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer "must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years." § 56-5-750(B)(1). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable "by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days." § 56-5-6190.

¹ The Court explained that "[a]n ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." Aaker, 388 S.C. at 133, 694 S.E.2d at 215.

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Numerous opinions of this Office have concluded that a local ordinance which imposes greater or lesser penalties than that provided for identical unlawful acts under State law are invalid. See, e.g., Ops. S.C. Att'y Gen., 2008 WL 317749 (Jan. 15, 2008) ("municipalities lack the authority to adopt ordinances and provide penalties ... that either increase or decrease the penalty provided for the same offense by the general law"); 2003 WL 164476 (Jan. 3, 2003) ("local ordinances which impose lesser penalties than State law for the possession and sale of drugs and narcotics are void"); 2001 WL 957755 (Aug. 15, 2001) (noting Article VIII, § 14 has been construed by the S.C. Supreme Court as providing that "local governments may not enact ordinances that impose greater or lesser penalties than those established by state law") (citations omitted).

Our Supreme Court addressed a situation analogous to the one at hand in City of N. Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991). In that case, the City enacted an ordinance making simple possession of marijuana an offense for which the person convicted "*shall be sentenced to thirty (30) days in jail*" Id. at 155, 410 S.E.2d at 570 (emphasis in original). On other hand, the same offense was punishable under State law by up to thirty days in prison or a fine of a one hundred to two hundred dollars. Id. (citing § 44-53-370(c), (d)). The Court found the City lacked the authority to enact the ordinance, stating:

The legislature has provided parameters within which local governments may enact ordinances dealing with the criminal offense of simple possession of marijuana. This legislation occupies the field as far as penalties for this offense are concerned. Local governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. City Code § 13-3 exceeds the parameters established under state law by denying offenders the opportunity to pay a fine and thus avoid a jail sentence. The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons guilty of simple possession. Accordingly, we hold City Code § 13-3 violates the strictures of Article VIII, § 14 of the South Carolina Constitution.

Id. at 156, 410 S.E.2d at 570-71.

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. See § 56-5-30, supra; see also Aakier v. City of Myrtle Beach, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) ("In S.C. Code Ann. § 56-5-30 ... the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act"). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted, would violate Article

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VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Id.

In that same opinion, we went even further and concluded that, as a general matter, local ordinances attempting to regulate traffic in the same manner as any provision under the UTA, unless expressly authorized, are likely invalid:

[T]he proposed ordinance, if enacted, would conflict with the various provisions of the UTA referenced therein. The UTA authorizes local governments to adopt “*additional* traffic regulations which are not in conflict with the provisions of this chapter.” § 56-5-30 (emphasis added). Local governments are not authorized to adopt traffic regulations which are *duplicative* of, or *identical* to, the regulations imposed by the UTA. See 56 Am. Jur. 2d Municipal Corporations, Etc. § 316 (“A conflict between state law and a local ordinance exists if the ordinance *duplicates*, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication”) (emphasis added); 6 McQuillin Mun. Corp. § 26:11 (3d. ed.) (“In various jurisdictions, where a subject is covered by statute, a municipal corporation cannot deal with it by ordinance, unless expressly authorized”). Therefore, we believe local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the UTA [unless expressly authorized]. Thus, it is our opinion that the proposed ordinance in question, if enacted, would be void as in conflict with the UTA.

Id. (emphasis in original).

In a 2006 opinion, we specifically addressed whether a local jurisdiction may enact an ordinance regulating speeding where a violation thereof would be punishable only by a civil penalty. Op. S.C. Att’y Gen., 2006 WL 422574 (Feb. 1, 2006). Quoting a prior opinion addressing the validity of local ordinances, we stated:

[P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law **Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy....**

Id. (quoting Op. S.C. Att’y Gen., 1988 WL 383550 (Sept. 1, 1988)) (emphasis added). We concluded such a speeding ordinance would be invalid for several reasons, stating:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance.

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Furthermore, it appears that there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violation tracked or points assessed² against the driver but, instead, there would be a civil penalty imposed. As a result, in my opinion, such a speeding ordinance would not be authorized.

Id. (emphasis added).

Even assuming a local traffic ordinance is valid, it cannot be enforced using a local ordinance summons. Pursuant to § 56-7-10:

(A) There will be a uniform traffic ticket ["UTT"] used by all law enforcement officers in arrests for traffic offenses

....

(C) No other ticket may be used for these offenses....

§ 56-7-10(A) (Supp. 2013) (emphasis added).³

As for local ordinances, § 56-7-80 provides:

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. **No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.**

....

§ 56-7-80(A), (B) (emphasis added).

In light of § 56-7-10's mandate that only a UTT be used by all law enforcement officers for the enforcement of traffic offenses, and § 56-7-80's express prohibition against counties and municipalities

² See § 56-1-720 (establishing "point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles....").

³ Although amended in 2013, § 56-7-10 contained the same language quoted prior to amendment.

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using an ordinance summons to enforce local traffic ordinances, it is abundantly clear that a local ordinance summons may never be used to enforce a local ordinance regulating traffic. See Op. S.C. Att'y Gen., 2006 WL 3522438 (Nov. 14, 2006) ("[A] municipality is required to use the uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses It may not use a municipal ordinance summons").

In addition, it is expressly unlawful under § 56-7-40 to use anything other than a UTT for traffic offenses, with the punishment for such a violation being dependent on whether the use of a nonuniform ticket is intentional or inadvertent:

Any person intentionally violating the provisions of § 56-7-10 or 56-7-30 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate's court and upon conviction shall be punishable by a fine of not more than one hundred dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate's court and upon conviction shall be fined not more than one hundred dollars.

§ 56-7-40.

The above language of § 56-7-40 reaffirms the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State or local law using a local ordinance summons. Since the statute also makes the "unintentional" misuse of a nonuniform ticket unlawful, we advise local law enforcement to ensure that only UTTs are issued for traffic violations, whether under the UTA or a local ordinance.

Questions are also presented concerning court fines and fees which you assert local jurisdictions may not be reporting and remitting to the State Treasurer's Office. Since fines paid as penalties for traffic or criminal offenses are generally retained by the county or municipality with jurisdiction over the offense, we assume such questions specifically concern the additional assessments, surcharges, and other fees imposed by statute. See, e.g., §§ 14-1-207, -208 (imposing assessment on fines paid in magistrates and municipal court for certain offenses); § 14-1-212 (imposing surcharge on all fines or penalties imposed in any court for misdemeanor traffic offenses or nontraffic violations). Such assessments and surcharges are generally paid over to the treasurer of the county or municipality who remits a specific portion thereof to the county or municipality and the remainder to the State Treasurer to allocate amongst certain agencies and entities as set forth in these statutes. As we concluded in a recent opinion, such assessments and surcharges must be imposed, and the relevant portions thereof remitted to the State Treasurer, even where the offense committed was a violation of a county ordinance. Op. S.C. Att'y Gen., 2013 WL 3243062 (June 13, 2013). Court Administration has likewise issued a memorandum to

The Honorable Curtis M. Loftis, Jr.
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summary court judges advising that such statutory assessments and surcharges must be imposed on convictions for violations of county or municipal ordinances.⁴

To ensure that court assessments are properly collected and remitted to the State Treasurer, § 14-1-207(E) and § 14-1-208(E) provide that the annual, external audit required to be performed for each county and municipality pursuant to § 4-9-150 and § 5-7-240 must include a detailed review of the collection, reporting, and distribution of the assessments imposed pursuant to those sections. The auditor's report must be submitted to the State Treasurer within thirty days of its issuance. § 14-1-207(E)(3); § 14-208(E)(3). As for surcharges under § 14-1-212, subsection (C) states that "[t]he State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer" § 14-1-212(C). That subsection also provides that "[t]he State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination." Id.

Other statutory provisions generally provide that the State Auditor is responsible for ensuring that court assessments have been properly collected and the appropriate portion remitted to the State Treasurer and notifying the local jurisdiction of any errors or deficiencies. As stated in § 14-1-210(A):

(A) Based upon a random selection process, the State Auditor shall periodically examine the books, accounts, receipts, disbursements, vouchers, and any records considered necessary of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated, or both, by law in family court, circuit court, magistrates court, and municipal court are properly collected and remitted to the State. In addition, these audits shall determine if the proper amount of funds have been reported, retained, and allocated for victim services in accordance with the law.... If the State Auditor finds that a jurisdiction has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds collected by the jurisdiction, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the State Office of Victim Assistance for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211.

If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the responsible office, their

⁴ This memorandum can be downloaded at:
www.sccourts.org/trial/feeAssess2012/summaryCourt/Summary%20Court%20Memo.docm.

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supervising authority, and the chief justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to be the state's portion or the crime victim fund portion within ninety days of the audit notification.

§ 14-1-210(A).

Likewise, § 11-7-25 provides:

To the extent practicable and consistent with his overall responsibility, the State Auditor periodically shall audit or cause to be audited the financial records of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report if fines and assessments imposed pursuant to Sections 14-1-205 through 14-1-208 are collected properly and remitted to the State Treasurer. Upon the issuance of an audit report, the State Auditor immediately shall notify the State Treasurer, Division of Court Administration, and the chief administrator of the affected agency, department, county, or municipality.

§ 11-7-25.

In the event a local jurisdiction is found to have not properly collected and remitted the assessments, surcharges, and fees required by statute, several legislative provisions authorize the State Treasurer to deduct the amount owed to the State from certain State funds that jurisdiction would normally receive or withhold a certain amount of State funds from that jurisdiction until the amount owed is paid. As previously mentioned, § 14-1-210(A) provides that if the State Auditor finds a local jurisdiction has failed to collect and remit the appropriate portion of such assessments, surcharges, and fees to the State, and that jurisdiction fails to make full payment within ninety days of notice, "the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211." In the event a local jurisdiction's audit report "contains a significant finding related to court fine reports or remittances to the Office of the State Treasurer," the State Treasurer may withhold twenty-five percent of all State payments to that local jurisdiction until the deficiency is satisfied. 2013-2014 Appropriations Act, Act No. 101, Part IB § 97.9; 2012-2013 Appropriations Act, Act No. 288, Part IB § 76.9.

Conclusion

The determination of whether a local jurisdiction is improperly writing tickets for violations of local ordinances as opposed to violations of the UTA is a factual question which must be answered on a case-by-case basis; thus, such a question is beyond the scope of an opinion of this Office. That being said, we note the Legislature, through the provisions of the UTA, has enacted comprehensive legislation regulating traffic which is to be uniformly applied across this State. As our Supreme Court recognized in Aakjer, supra, the field of traffic regulation is a unique one requiring statewide uniformity. While the General Assembly has "authorized local authorities to act in the field of traffic regulation," the ordinance may not "conflict with the provisions of the Uniform Traffic Act." Aakjer, 388 S.C. at 134, 694 S.E.2d at

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215. As the Court further recognized in Aakjer, local traffic regulations which conflict with the UTA impose burdens upon and "unduly limit a citizen's freedom of movement throughout the State."

Furthermore, prior opinions of this Office have concluded various local traffic regulations are invalid for a number of reasons. Relying on § 56-5-30 of the UTA which authorizes local governments to adopt *additional* traffic regulations which do not conflict with the provisions of the UTA, we have advised that local authorities lack the power to adopt ordinances regulating traffic in a manner which is *duplicative* of, or *identical* to, the provisions of the UTA unless expressly authorized. In consideration of Article VIII, § 14 of the S.C. Constitution which prohibits local governments from enacting ordinances that set aside general law provisions applicable to criminal laws and penalties for violations thereof, we have previously concluded that local ordinances imposing greater or lesser penalties for traffic violations than those set forth by the UTA are invalid. Finally, prior opinions of this Office have advised that local traffic regulations which relax the statutory standards applicable to a violation of the UTA, or which impose a mere civil penalty for a traffic offense thereby circumventing the criminal tracking and point system the Legislature intended to be imposed against persons who commit traffic violations, would be void as in conflict with State law.

Accordingly, consistent with case law, Article VIII, § 14, and prior opinions of this Office, we believe local ordinances regulating traffic are void as in conflict with State law if such ordinances: regulate traffic in the same manner as any provision of the UTA without express statutory authorization to do so; impose greater or lesser penalties for traffic violations than those set forth by the UTA; or impose a civil fine as opposed to the criminal penalties prescribed by the UTA, thereby circumventing the criminal tracking and point system the Legislature intended to be used for traffic violations.

Applying the above principles to the particular offense of speeding, it is our opinion local jurisdictions are prohibited from regulating the matter by express ordinance or the manner in which any ordinance under any designation is enforced. Speeding is specifically regulated by § 56-5-1520 of the UTA which sets forth the penalties for violations thereof, and § 56-1-720 sets forth the number of points which are to be assessed against the license of any person convicted of speeding. Furthermore, no statutory provision expressly authorizes local jurisdictions to enact ordinances or rules regulating speeding. Thus, we believe local ordinances regulating speeding are void as in conflict with State law.

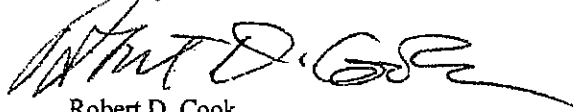
Even assuming a local ordinance regulating traffic is valid, §§ 56-7-10 and -80 expressly prohibit the use of a local ordinance summons for the enforcement of a traffic violation in any circumstance; only a UTT may be used to enforce traffic offenses regardless of whether the ticket is written for a violation of a local ordinance or the UTA. Since § 56-7-40 expressly makes the intentional or inadvertent use of a nonuniform ticket for traffic offenses unlawful, we advise law enforcement to ensure that only UTTs are issued for any and all traffic violations. As to the questions concerning whether legislative clarification or some other corrective action is necessary to address the above matters, we believe it is not. It is our opinion the provisions of the UTA are sufficiently clear to support the above conclusions. However, such a determination is ultimately in the hands of the Legislature which may, if it deems it necessary, provide further clarification on these issues.

Finally, assessments, surcharges, and fees which courts are statutorily required to impose in addition to fines paid as penalties for criminal and traffic offenses, a portion of which local treasurers are required to remit to the State Treasurer to allocate amongst certain agencies and entities, must be imposed regardless of whether the offense is a violation of State law or a local ordinance. Thus, even if a local

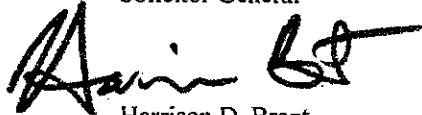
The Honorable Curtis M. Loftis, Jr.
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jurisdiction improperly imposes and accepts a fine for a violation of a local traffic ordinance as opposed to the proper provision of the UTA, the same assessments and surcharges should still be imposed and the appropriate portions thereof remitted to the State Treasurer. The State Auditor is generally designated by statute as the officer responsible for ensuring that local jurisdictions properly collect such assessments and surcharges and remit the appropriate portions to the State Treasurer. Furthermore, local jurisdictions are annually required to conduct an independent external audit to review such matters. If a finding is made that a local jurisdiction has failed to properly collect such assessments, surcharges, and fees and remit them to the State, the State Treasurer is authorized to adjust the amount of State funds the local jurisdiction would normally receive under the State Aid to Subdivisions Act or withhold twenty-five percent of all State funds to that jurisdiction until the deficiency is satisfied.

Sincerely,



Robert D. Cook
Solicitor General



Harrison D. Brant
Assistant Attorney General

Exhibit C



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Jimmy C. Bales, Ed.D.
Representative, District No. 80
1515 Crossing Creek Road
Eastover, S.C. 29044

Dear Representative Bales,

You seek an opinion of this Office concerning the legality of municipalities setting their own fines for speeding violations as opposed to the penalties set forth in the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 *et seq.* If such a practice is not allowed under State law, you ask whether such municipalities can be held accountable for fines levied in violation of State law.

In addition, we have received an opinion request from State Treasurer Curtis Loftis concerning the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the UTA. The specific questions and background information relevant to that request are set forth the opinion we issued to Treasurer Loftis which is also dated November 18, 2013. As both opinion requests address the same subject matter, we will address them together.

Law/Analysis

When considering the validity of any local ordinance, we begin with the principle that "[a]n ordinance is a legislative enactment and is presumed to be constitutional." Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). The burden of proving the invalidity of a local ordinance rests with the party attacking it. *Id.* Furthermore:

A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general laws of the State.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted).

Our State Constitution gives the Legislature the power to establish by general law the powers and duties of local governments. S.C. Const. art. VIII, §§ 7, 9. The powers of local governments are to be liberally construed in their favor. *See* S.C. Const. art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and

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responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."). However, the Constitution also provides that ordinances enacted by local governments shall not set aside general law provisions applicable to, *inter alia*: "(5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the ... administration of any governmental service or function ... which requires statewide uniformity." S.C. Const. art. VIII, § 14.

Looking to the provisions of the Uniform Act Regulating Traffic on Highways (the "UTA"), S.C. Code §§ 56-5-10 et seq., the Legislature has provided as follows:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930, adopt **additional** traffic regulations which are not in conflict with the provisions of this chapter.

§ 56-5-30 (emphasis added). Accordingly, the Legislature has expressly declared that local governments are only authorized to enact traffic regulations *in addition to* those set forth in the UTA to the extent such ordinances do not conflict with the provisions of the UTA unless expressly authorized.

Particularly instructive here is the case of Aakjer v. City of Myrtle Beach, 388 S.C. 129, 694 S.E.2d 213 (2010) in which our State Supreme Court held a local ordinance requiring motorcycle riders to wear a protective helmet and eyewear was invalid in light of §§ 56-6-3660 and -3670 of the Uniform Traffic Act which already addressed such matters. In reaching this conclusion, the Court stated:

In S.C.Code Ann. § 56-5-30 (2009) the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act. Even assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear. Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. Riders opting not to wear helmets or eyewear in other areas of the state would be obliged to carry the equipment with them if they intended to pass through a city with a helmet ordinance. Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fail under the doctrine of implied preemption.¹

Id. at 134, 694 S.E.2d at 215.

¹ The Court explained that "[a]n ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." Aaker, 388 S.C. at 133, 694 S.E.2d at 215.

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In a recent opinion we addressed the authority of a local government to enact an ordinance imposing a fine of anywhere between \$100 and \$300 for certain traffic violations, including speeding, which are already unlawful under the UTA. Op. S.C. Att'y Gen., 2013 WL 2450878 (May 29, 2013). In concluding such an ordinance would be invalid, we explained that local governments lack the authority to enact ordinances which impose lesser or greater penalties for traffic violations than those imposed by the UTA:

The UTA sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to [§ 56-5-1520(G)] may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer “must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years.” § 56-5-750(B)(1). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable “by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.” § 56-5-6190.

Numerous opinions of this Office have concluded that a local ordinance which imposes greater or lesser penalties than that provided for identical unlawful acts under State law are invalid. See, e.g., Ops. S.C. Att'y Gen., 2008 WL 317749 (Jan. 15, 2008) (“municipalities lack the authority to adopt ordinances and provide penalties ... that either increase or decrease the penalty provided for the same offense by the general law”); 2003 WL 164476 (Jan. 3, 2003) (“local ordinances which impose lesser penalties than State law for the possession and sale of drugs and narcotics are void”); 2001 WL 957755 (Aug. 15, 2001) (noting Article VIII, § 14 has been construed by the S.C. Supreme Court as providing that “local governments may not enact ordinances that impose greater or lesser penalties than those established by state law”) (citations omitted).

Our Supreme Court addressed a situation analogous to the one at hand in City of N. Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991). In that case, the City enacted an ordinance making simple possession of marijuana an offense for which the person convicted “*shall be sentenced to thirty (30) days in jail*” Id. at 155, 410 S.E.2d at 570 (emphasis in original). On other hand, the same offense was punishable under State law by up to thirty days in prison or a fine of a one hundred to two hundred dollars. Id. (citing § 44-53-370(c), (d)). The Court found the City lacked the authority to enact the ordinance, stating:

The legislature has provided parameters within which local governments may enact ordinances dealing with the criminal offense of simple possession of marijuana. This legislation occupies the field as far as penalties for this offense are concerned. Local governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. City Code § 13-3 exceeds the parameters established under state law by denying offenders the opportunity to pay a fine and thus avoid a jail sentence. The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons guilty of simple possession.

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Accordingly, we hold City Code § 13-3 violates the strictures of Article VIII, § 14 of the South Carolina Constitution.

Id. at 156, 410 S.E.2d at 570-71.

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. See § 56-5-30, *supra*; see also *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) (“In S.C. Code Ann. § 56-5-30 ... the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act”). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted, would violate Article VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Id.

In that same opinion, we went even further and concluded that, as a general matter, local ordinances attempting to regulate traffic in the same manner as any provision under the UTA, unless expressly authorized, are likely invalid:

[T]he proposed ordinance, if enacted, would conflict with the various provisions of the UTA referenced therein. The UTA authorizes local governments to adopt “*additional* traffic regulations which are not in conflict with the provisions of this chapter.” § 56-5-30 (emphasis added). Local governments are not authorized to adopt traffic regulations which are *duplicative* of, or *identical* to, the regulations imposed by the UTA. See 56 Am. Jur. 2d Municipal Corporations, Etc. § 316 (“A conflict between state law and a local ordinance exists if the ordinance *duplicates*, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication”) (emphasis added); 6 McQuillin Mun. Corp. § 26:11 (3d. ed.) (“In various jurisdictions, where a subject is covered by statute, a municipal corporation cannot deal with it by ordinance, unless expressly authorized”). Therefore, we believe local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the UTA [unless expressly authorized]. Thus, it is our opinion that the proposed ordinance in question, if enacted, would be void as in conflict with the UTA.

Id. (emphasis in original).

In a 2006 opinion, we specifically addressed whether a local jurisdiction may enact an ordinance regulating speeding where a violation thereof would be punishable only by a civil penalty. *Op. S.C. Att’y Gen.*, 2006 WL 422574 (Feb. 1, 2006). Quoting a prior opinion addressing the validity of local ordinances, we stated:

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[P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law **Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy....**

Id. (quoting Op. S.C. Att'y Gen., 1988 WL 383550 (Sept. 1, 1988)) (emphasis added). We concluded such a speeding ordinance would be invalid for several reasons, stating:

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance. Furthermore, it appears that **there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violation tracked or points assessed² against the driver but, instead, there would be a civil penalty imposed.** As a result, in my opinion, such a speeding ordinance would not be authorized.

Id. (emphasis added).

Even assuming a local traffic ordinance is valid, it cannot be enforced using a local ordinance summons. Pursuant to § 56-7-10:

(A) There will be a uniform traffic ticket ["UTT"] used by all law enforcement officers in arrests for traffic offenses

....

(C) **No other ticket may be used for these offenses....**

§ 56-7-10(A) (Supp. 2013) (emphasis added).³

As for local ordinances, § 56-7-80 provides:

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

² See § 56-1-720 (establishing "point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles....").

³ Although amended in 2013, § 56-7-10 contained the same language quoted prior to amendment.

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(B) The uniform ordinance summons may not be used to perform a custodial arrest. **No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.**

....

§ 56-7-80(A), (B) (emphasis added).

In light of § 56-7-10's mandate that only a UTT be used by all law enforcement officers for the enforcement of traffic offenses, and § 56-7-80's express prohibition against counties and municipalities using an ordinance summons to enforce local traffic ordinances, it is abundantly clear that a local ordinance summons may never be used to enforce a local ordinance regulating traffic. See Op. S.C. Att'y Gen., 2006 WL 3522438 (Nov. 14, 2006) ("[A] municipality is required to use the uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses It may not use a municipal ordinance summons").

In addition, it is expressly unlawful under § 56-7-40 to use anything other than a UTT for traffic offenses, with the punishment for such a violation being dependent on whether the use of a nonuniform ticket is intentional or inadvertent:

Any person intentionally violating the provisions of § 56-7-10 or 56-7-30 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate's court and upon conviction shall be punishable by a fine of not more than one hundred dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate's court and upon conviction shall be fined not more than one hundred dollars.

§ 56-7-40.

The above language of § 56-7-40 reaffirms the already indisputable conclusion that local authorities are absolutely prohibited from enforcing any traffic offense pursuant to State or local law using a local ordinance summons. Since the statute also makes the "unintentional" misuse of a nonuniform ticket unlawful, we advise local law enforcement to ensure that only UTTs are issued for traffic violations, whether under the UTA or a local ordinance.

Questions are also presented concerning court fines and fees which you assert local jurisdictions may not be reporting and remitting to the State Treasurer's Office. Since fines paid as penalties for traffic or criminal offenses are generally retained by the county or municipality with jurisdiction over the offense, we assume such questions specifically concern the additional assessments, surcharges, and other fees imposed by statute. See, e.g., §§ 14-1-207, -208 (imposing assessment on fines paid in magistrates and municipal court for certain offenses); § 14-1-212 (imposing surcharge on all fines or penalties imposed in any court for misdemeanor traffic offenses or nontraffic violations). Such assessments and

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surcharges are generally paid over to the treasurer of the county or municipality who remits a specific portion thereof to the county or municipality and the remainder to the State Treasurer to allocate amongst certain agencies and entities as set forth in these statutes. As we concluded in a recent opinion, such assessments and surcharges must be imposed, and the relevant portions thereof remitted to the State Treasurer, even where the offense committed was a violation of a county ordinance. Op. S.C. Att'y Gen., 2013 WL 3243062 (June 13, 2013). Court Administration has likewise issued a memorandum to summary court judges advising that such statutory assessments and surcharges must be imposed on convictions for violations of county or municipal ordinances.⁴

To ensure that court assessments are properly collected and remitted to the State Treasurer, § 14-1-207(E) and § 14-1-208(E) provide that the annual, external audit required to be performed for each county and municipality pursuant to § 4-9-150 and § 5-7-240 must include a detailed review of the collection, reporting, and distribution of the assessments imposed pursuant to those sections. The auditor's report must be submitted to the State Treasurer within thirty days of its issuance. § 14-1-207(E)(3); § 14-208(E)(3). As for surcharges under § 14-1-212, subsection (C) states that "[t]he State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer" § 14-1-212(C). That subsection also provides that "[t]he State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination." Id.

Other statutory provisions generally provide that the State Auditor is responsible for ensuring that court assessments have been properly collected and the appropriate portion remitted to the State Treasurer and notifying the local jurisdiction of any errors or deficiencies. As stated in § 14-1-210(A):

(A) Based upon a random selection process, the State Auditor shall periodically examine the books, accounts, receipts, disbursements, vouchers, and any records considered necessary of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated, or both, by law in family court, circuit court, magistrates court, and municipal court are properly collected and remitted to the State. In addition, these audits shall determine if the proper amount of funds have been reported, retained, and allocated for victim services in accordance with the law.... If the State Auditor finds that a jurisdiction has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds collected by the jurisdiction, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the State Office of Victim Assistance for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211.

⁴ This memorandum can be downloaded at:
www.sccourts.org/trial/feeAssess2012/summaryCourt/Summary%20Court%20Memo.docm.

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If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the responsible office, their supervising authority, and the chief justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to be the state's portion or the crime victim fund portion within ninety days of the audit notification.

§ 14-1-210(A).

Likewise, § 11-7-25 provides:

To the extent practicable and consistent with his overall responsibility, the State Auditor periodically shall audit or cause to be audited the financial records of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report if fines and assessments imposed pursuant to Sections 14-1-205 through 14-1-208 are collected properly and remitted to the State Treasurer. Upon the issuance of an audit report, the State Auditor immediately shall notify the State Treasurer, Division of Court Administration, and the chief administrator of the affected agency, department, county, or municipality.

§ 11-7-25.

In the event a local jurisdiction is found to have not properly collected and remitted the assessments, surcharges, and fees required by statute, several legislative provisions authorize the State Treasurer to deduct the amount owed to the State from certain State funds that jurisdiction would normally receive or withhold a certain amount of State funds from that jurisdiction until the amount owed is paid. As previously mentioned, § 14-1-210(A) provides that if the State Auditor finds a local jurisdiction has failed to collect and remit the appropriate portion of such assessments, surcharges, and fees to the State, and that jurisdiction fails to make full payment within ninety days of notice, "the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211." In the event a local jurisdiction's audit report "contains a significant finding related to court fine reports or remittances to the Office of the State Treasurer," the State Treasurer may withhold twenty-five percent of all State payments to that local jurisdiction until the deficiency is satisfied. 2013-2014 Appropriations Act, Act No. 101, Part IB § 97.9; 2012-2013 Appropriations Act, Act No. 288, Part IB § 76.9.

Conclusion

The determination of whether a local jurisdiction is improperly writing tickets for violations of local ordinances as opposed to violations of the UTA is a factual question which must be answered on a case-by-case basis; thus, such a question is beyond the scope of an opinion of this Office. That being said, we note the Legislature, through the provisions of the UTA, has enacted comprehensive legislation regulating traffic which is to be uniformly applied across this State. As our Supreme Court recognized in Aakjer, supra, the field of traffic regulation is a unique one requiring statewide uniformity. While the General Assembly has "authorized local authorities to act in the field of traffic regulation," the ordinance may not "conflict with the provisions of the Uniform Traffic Act." Aakjer, 388 S.C. at 134, 694 S.E.2d at

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215. As the Court further recognized in Aakjer, local traffic regulations which conflict with the UTA impose burdens upon and "unduly limit a citizen's freedom of movement throughout the State."

Furthermore, prior opinions of this Office have concluded various local traffic regulations are invalid for a number of reasons. Relying on § 56-5-30 of the UTA which authorizes local governments to adopt *additional* traffic regulations which do not conflict with the provisions of the UTA, we have advised that local authorities lack the power to adopt ordinances regulating traffic in a manner which is *duplicative* of, or *identical* to, the provisions of the UTA unless expressly authorized. In consideration of Article VIII, § 14 of the S.C. Constitution which prohibits local governments from enacting ordinances that set aside general law provisions applicable to criminal laws and penalties for violations thereof, we have previously concluded that local ordinances imposing greater or lesser penalties for traffic violations than those set forth by the UTA are invalid. Finally, prior opinions of this Office have advised that local traffic regulations which relax the statutory standards applicable to a violation of the UTA, or which impose a mere civil penalty for a traffic offense thereby circumventing the criminal tracking and point system the Legislature intended to be imposed against persons who commit traffic violations, would be void as in conflict with State law.

Accordingly, consistent with case law, Article VIII, § 14, and prior opinions of this Office, we believe local ordinances regulating traffic are void as in conflict with State law if such ordinances: regulate traffic in the same manner as any provision of the UTA without express statutory authorization to do so; impose greater or lesser penalties for traffic violations than those set forth by the UTA; or impose a civil fine as opposed to the criminal penalties prescribed by the UTA, thereby circumventing the criminal tracking and point system the Legislature intended to be used for traffic violations.

Applying the above principles to the particular offense of speeding, it is our opinion local jurisdictions are prohibited from regulating the matter by express ordinance or the manner in which any ordinance under any designation is enforced. Speeding is specifically regulated by § 56-5-1520 of the UTA which sets forth the penalties for violations thereof, and § 56-1-720 sets forth the number of points which are to be assessed against the license of any person convicted of speeding. Furthermore, no statutory provision expressly authorizes local jurisdictions to enact ordinances or rules regulating speeding. Thus, we believe local ordinances regulating speeding are void as in conflict with State law.

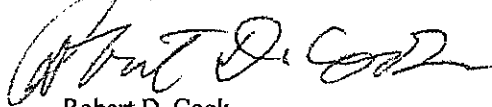
Even assuming a local ordinance regulating traffic is valid, §§ 56-7-10 and -80 expressly prohibit the use of a local ordinance summons for the enforcement of a traffic violation in any circumstance; only a UTT may be used to enforce traffic offenses regardless of whether the ticket is written for a violation of a local ordinance or the UTA. Since § 56-7-40 expressly makes the intentional or inadvertent use of a nonuniform ticket for traffic offenses unlawful, we advise law enforcement to ensure that only UTTs are issued for any and all traffic violations. As to the questions concerning whether legislative clarification or some other corrective action is necessary to address the above matters, we believe it is not. It is our opinion the provisions of the UTA are sufficiently clear to support the above conclusions. However, such a determination is ultimately in the hands of the Legislature which may, if it deems it necessary, provide further clarification on these issues.

Finally, assessments, surcharges, and fees which courts are statutorily required to impose in addition to fines paid as penalties for criminal and traffic offenses, a portion of which local treasurers are required to remit to the State Treasurer to allocate amongst certain agencies and entities, must be imposed regardless of whether the offense is a violation of State law or a local ordinance. Thus, even if a local jurisdiction improperly imposes and accepts a fine for a violation of a local traffic ordinance as opposed to the proper provision of the UTA, the same assessments and surcharges should still be imposed and the appropriate portions thereof remitted to the State Treasurer. The State Auditor is generally designated by

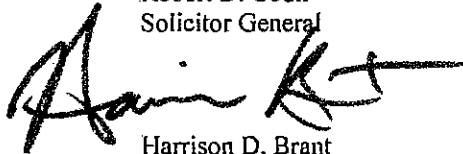
The Honorable Jimmy C. Bales, Ed.D.
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statute as the officer responsible for ensuring that local jurisdictions properly collect such assessments and surcharges and remit the appropriate portions to the State Treasurer. Furthermore, local jurisdictions are annually required to conduct an independent external audit to review such matters. If a finding is made that a local jurisdiction has failed to properly collect such assessments, surcharges, and fees and remit them to the State, the State Treasurer is authorized to adjust the amount of State funds the local jurisdiction would normally receive under the State Aid to Subdivisions Act or withhold twenty-five percent of all State funds to that jurisdiction until the deficiency is satisfied.

Sincerely,

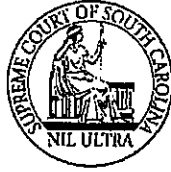


Robert D. Cook
Solicitor General



Harrison D. Brant
Assistant Attorney General

Exhibit D



The Supreme Court of South Carolina

JEAN HOFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1584
FAX: (803) 734-1167

April 2, 2013

Director Hubert F. Harrell
South Carolina Criminal Justice Academy
5400 Broad River Rd.
Columbia, SC 29212

Dear Director Harrell:

I am writing in response to your letter dated March 18, 2013, to our State Treasurer and Auditor, in which you requested that an audit be conducted on a municipality based on their use of citing a charge of "careless driving" on a uniform traffic ticket (UTT). Since my Court Administrator, Rosalyn Frierson, and myself, were copied on the letter, I asked that she explore the issues you raised. She provided me with the following information.

By opinion dated November 14, 2006, the Attorney General concluded that municipal law enforcement is "required" to use a UTT when citing municipal ordinance violations dealing with traffic offenses, such as careless operation of a motor vehicle. The opinion referenced a prior opinion of that Office dated October 15, 2003, which concluded that the plain language of Code §56-7-10 provides that the uniform traffic ticket be used by all law enforcement officers in arrests for traffic offenses, as well as the clear language contained in Code §56-7-80 prohibiting the use of the uniform ordinance summons for citing local ordinances regulating the use of motor vehicles on the public roads of this State, requiring that any local ordinance such as careless or negligent operation of a motor vehicle must be written on a UTT. Finally, by opinion dated June 15, 2011, that Office reaffirmed that, consistent with Code §§56-7-10 and 56-7-80, a municipality is required to use a uniform traffic ticket when citing municipal ordinance violations dealing with traffic offenses, and may not use a municipal ordinance summons in such situation.

While I am satisfied local ordinances regarding traffic violations can be written on a UTT, I am concerned with information I have received regarding the substance and application of careless operation of motor vehicle ordinances. It is my understanding that rather than writing motorists speeding tickets or other applicable violations, officers offer to write the motorist a ticket under a careless operation ordinance which carries, in some circumstances, a much higher fine than would be provided under the applicable state violation. Further, the motorists are told that if they pay the higher fine under the ordinance, the violation will not affect their insurance.¹ This long-standing practice of municipalities and counties in regards to passing local ordinances against careless or negligent operation of motor vehicles, as well as the creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act.² However, the propriety of those ordinances can only be determined by a court upon proper challenge by a defendant so charged.³ Due to the "benefits" defendants are told they are receiving, such a challenge is unlikely. Of course, this matter could be considered by our legislature and, if determined to be inappropriate, rectified by legislative enactment.

I am also aware of your concerns regarding the application of state-mandated assessments and surcharges to local ordinances, so I asked Ms. Frierson to look into that issue as well. After discussions with the individuals who actually perform the court audits for the State Auditor's Office, as well as reviewing the results of those audits,⁴ I do have a reasonable degree of confidence that the majority of our summary courts are correctly imposing assessments and surcharges to state laws, as well as municipal and county ordinances. With the increasing complexity of our State's fees and assessments schedule, some mistakes will inevitably happen. The audit results indicate that most errors are made by smaller jurisdictions, which are generally not large contributors to those court generated revenues which are transferred to the State Treasurer for distribution to the statutory recipients of those funds. However, I can assure you that the Judicial

¹ While the South Carolina Department of Motor Vehicles may not assess points for violations of the careless or negligent operation of a motor vehicle ordinances, I have been informed that some of our sister states' Department of Motor Vehicles interpret those ordinances as reckless driving and those motorists' insurance premiums and their ability to maintain a driver's license may well be affected when the record of such a conviction is received by their home state.

² See Code §§5-7-30 (municipalities) and 4-9-30 (counties).

³ See a Foothill's Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008); Beachfront Entertainment, Inc. v. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912 (2008).

⁴ The final reports on all court engagements conducted by the Office of the State Auditor since fiscal year 2006 can be accessed under "Court Engagements" on the homepage of their website at <http://www.osa.sc.gov>.

Department will continue to educate and monitor all levels of court on the proper imposition, collection and distribution of court generated revenue. I am sure that the Offices of the State Auditor and Treasurer will echo that sentiment.

If there is anything that me or my staff can do to further assist you with this matter, please do not hesitate to contact us.

With kindest personal regards, I am

Sincerely yours,

Jean Hoefer Toal

JHT/mhb

Cc: Senator Mike L. Fair
211 Gressette Building
Columbia, SC 29201

Representative Mike A. Pitts
327C Blatt Building
Columbia, SC 29201

Director Rosalyn W. Frierson
SC Court Administration
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, SC 29201

Attorney General Alan Wilson
SC Attorney General's Office
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Columbia, SC 29211-1549

Chief Mike Keel
SC State Law Enforcement Division
4400 Broad River Road
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Director Kela Thomas
SC Probation, Parole and Pardon
Services
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Director William R. Byars
SC Department of Corrections
4444 Broad River Road
Columbia, SC 29210

Director Alvin A. Taylor
SC Department of Natural Resources
1000 Assembly Street
Columbia, SC 29202

Director Leroy Smith
SC Department of Public Safety
10311 Wilson Boulevard
Blythewood, SC 29016

Sheriff J. Edward Darnell
Bamberg County Sheriff's Office
P.O. Box 210
Bamberg, SC 29003-0210

Director Ronaldo Myers
Alvin S. Glenn Detention Center
201 John Mark Dial Drive
Columbia, SC 29209

Katie Owens, Esquire
1105 Pendleton Street, Suite 525
Columbia, SC 29211

Chief Richard A. Nagy
Hardeeville Police Department
36 Main Street
Hardeeville, SC 29927

Sheriff Bruce M. Bryant
York County Sheriff's Office
Moss Judicial Center
1675-2A York Highway
York, SC 29745-7430

Lisa Catalanotto, Esquire
111 Gressette Building
Columbia, SC 29201

Exhibit E



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WIS Investigates: Town uses own speeding law, drivers could face up to \$500 fines or jail time

CLARENDON COUNTY, SC (WIS) - A months-long WIS investigation into how the town of Turbeville is charging speeders is finished.

What we discovered is that Turbeville created its own speeding law with penalties the chief there said "Should shock the conscience," of the public.

But many legal experts think the town could be liable for a lawsuit and potentially millions of dollars.

We drove to Turbeville, a small town along Highway 378 between Interstate 95 and Myrtle Beach, and watched the town's police chief issue nearly 10 traffic tickets within a span of a few hours on Labor Day. Each ticket carried fines of either \$288 or \$388.

But, there is a "benefit" the town promises drivers: If they pay the fine, the town won't give any license points.

TURBEVILLE'S SPECIAL SPEEDING LAW

Speeding is a traffic crime in South Carolina and the General Assembly decided, if convicted, drivers would pay a fine and the DMV would add a point penalty to a South Carolina driver's license. After six points, the DMV sends a driver a letter, notifying him his license could be suspended. Too many points, and the state will suspend your driving privileges.

Lawmakers wanted the purpose of the point penalty to punish and to deter bad driving; the intention is to make the state's roads safer.

On May 13, 2003, Turbeville town council decided the state's speeding laws weren't tough enough and passed 13-22, the Town Traffic Ordinance. The ordinance states, "It shall be unlawful for any person to operate any vehicle without care, caution and full regard for safety of persons and property." The language in the ordinance gives town officers the discretion to interpret whether a driver is being careless, which the town determined speeding would fit that definition.

If convicted of speeding in Turbeville, the town has the right to charge a driver up to \$500 and if the driver doesn't pay the fine, the ordinance provides a jail sentence of up to 30 days. The \$500 could be much higher once the town includes court costs and state assessments.

HOW IT WORKS

Labor Day is one of the busiest days of the year in Turbeville. The police force there doesn't tolerate speeding.

"I got a speeding ticket for doing 53 in a 35, \$388," Margie Wierenga told WIS as she showed us the ticket she got in June.

"I was getting off I-95 and drove into town and the next thing I know, a cop is pulling me over," Wierenga said.

The speed limit drops from 70 on the interstate, to 60 on the four-lane Highway 378 into Turbeville. The limit drops to 45 miles-per-hour in town, then to 35 within a few hundred feet.

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WIS Investigates: Town uses own speeding law, drivers could face up to \$500 fines or jail time

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"I kind of expected \$150 or \$120, something like that, but \$388 just blew my mind," Wierenga said.

Turbeville Police Sgt. Robert Carter issued Wierenga the ticket and she said Carter told her it wasn't as bad as it sounded; if she paid the fine, she wouldn't lose any points. Days later, Wierenga called Turbeville court clerk Deborah Welch and asked for a break.

"I called Mrs. Welch at the clerk of court's office and she reduced it to \$255," said Wierenga.

"Did it feel like a break?" Barr asked.

"Well, I was glad it wasn't \$388," Wierenga said.

We first met Wierenga nearly two months ago and got on the subject of speeding tickets. That's when she told us about the ticket and the fine she paid Turbeville. The violation lists "Traffic Ordinance" and the charge and where the state speeding code should be is the town's ordinance number, 13-22.

When we went to Turbeville to investigate the town's ticketing process, we immediately spotted Chief David Jones writing a ticket to the driver of a van. When the chief let the van go, we flagged its driver down to find out what he was charged with and to take a look at his ticket.

Hudson Marques was driving the van, which had Massachusetts license plates. The chief charged Marques with speeding and driving without a license. The chief handed two pieces of copy paper with his tickets printed on it.

"Where did he pull these pieces of paper from?" Barr asked.

"From his car," Marques answered. "He printed it. He has a little computer, he writes it and prints the ticket for me."

The officer didn't arrest Hudson for driving without a license, instead he made Marques an offer.

"He asked me for \$488, so they can let me go," he said.

"So, it was either you pay the money or go to jail?" Barr asked.

"Or go to jail, yep," Marques said.

The chief gave Marques a receipt for the bond he posted, then allowed one of the other men in the van to drive away from the scene.

"At the end though, you decided: either you comply, pay the ticket or you go to jail?" Barr asked.

"Yeah, I pay the ticket, I don't want to go to jail because I'm working, so I just pay him cash," Marques told WIS.

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WIS Investigates: Town uses own speeding law, drivers could face up to \$500 fines or jail time

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As soon as we left Marques and headed back into town, the chief had two women in two separate cars, pulled over in almost the same spot he stopped the van. One of the women was from New York state, and the other was from Georgia. The chief issued both women \$288 speeding tickets. Again, the charges were violations of the town's speeding ordinance and not the state's speeding law.

Julia Lucas' ticket was for driving 48 in a 35.

"That ticket he wrote you--anything suspicious about that?" Barr asked.

"It doesn't look like a normal ticket," Lucas said. "He told me that he didn't charge me for speeding, he charged me for a traffic ordinance because if he charged me for speeding, they would take four points off my license in New York," Lucas said.

"As soon as I rounded that curve right down there, he threw his lights on and I pulled over and he said I was going 50 in a 35," Danny Long of Greenville said. Long, who was on his way home from Myrtle Beach, said he'd never seen a ticket printed from an officer's car before, especially one that didn't carry a points violation in lieu of a potential \$500 fine or up to 30 days in jail.

"It just seems like they kind of make up their own rules. They found some ways to get around the system and it's a shame that they're cheating people; they're really cheating people out of money here," Long said. "That's ridiculous."

We were in Turbeville for a little more than 2 hours and watched the chief ticket eight drivers. Every ticket was written under the town's own speeding law. Every driver, except Danny Long, was from out of state and none of the drivers lived in the town of Turbeville.

Every driver we interviewed expressed concerns over the validity of the tickets the chief issued that day, especially with the "benefit" of paying up to a \$500 fine in exchange for not getting any license points.

"I've never seen a citation printed out of a computer printer," Mike Dion from Miami said.

Dion was driving a Jeep Grand Cherokee with Florida plates. Dion got one of the town's \$388 tickets. We flagged Dion down just a few blocks from where Chief Jones handed him the ticket, which Dion said, he felt the chief was almost "talking him into" accepting the town's ticket.

"That he was doing me a favor by making it a traffic ordinance versus a speeding ticket. He told me I have to appear in court or I could just mail the ticket in," Dion said.

At about noon, the chief was stopped and talking with a friend in a parking lot. That's when we decided to ask him about the tickets and the cash bond we watched him accept that morning.

"Chief, can we have a word with you?" Barr asked. "We want to talk to you about these municipal tickets you've been writing." Jones would not acknowledge our questioning.

"Excuse me sir, did you take a cash bond this morning from a Hispanic male? Chief, we'd like to talk to you about these municipal tickets you guys have been writing out here. Any comment from you?" Barr asked.

"Go to Court Administration in the state of South Carolina," Jones said as he closed his patrol car's door.

Wierenga told WIS she paid her \$255 using a debt consolidation loan she'd taken out weeks before.

"If you had an opportunity to sit down with the people in power in the town of Turbeville, what would you tell them in regards to these tickets and the financial burden that's coming with these fines?" Barr asked.

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"Maybe they should have a bake sale or something, but I don't feel like it's a good way for people to find out about South Carolina," Wierenga said.

IS THIS LEGAL?

State law requires all law enforcement officers to issue traffic citations on a Uniform Traffic Ticket. This is a charging document that must include a defendant's name, address, driver's license number, date of birth, vehicle owner's identification, the state law being broken, as well as the section number that identifies the specific law that's being charged.

In Turbeville, the town's police force is using the UTT to charge drivers, but there is no state law on the ticket.

In Turbeville, you won't be charged for speeding under the state's speeding laws. Since 2003, drivers have been charged under the town speeding ordinance, 13-22. That ordinance provides a fine structure that is much higher than fines provided under state law, but the town promises not to give license points from the people charged under this ordinance.

When we went to Turbeville on Sept. 2, we watched Chief David Jones issue multiple drivers town tickets, which he prints from a printer installed in his police cruiser. Jones patrols the town's 45 and 35 mile an hour speed zones, which are enforced at the town limits.

The state-mandated speed limit outside of the town limits on Highway 378 is 60 miles an hour. Many drivers we spoke with described the sudden speed reduction through Turbeville as a "speed trap."

Once TPD officers stop vehicles, they enter the driver's license information into a laptop inside the cruiser, then print the UTT. The officer types "Town Ordinance" into the section provided for the violation description, and enters the town's ordinance number "13-22" where the state's speeding code should go. Since the ordinance doesn't specify "speeding" as the crime, officers hand write the speed on the ticket with black marker.

Some legal experts think Turbeville could be stepping outside the powers afforded to local government with the way it's chosen to charge speeders inside town limits.

"Turbeville's like a troll at a bridge, you've got to write a big ol' check to just get on by," Columbia attorney Todd Kincannon said.

Kincannon's arguments before the state Supreme Court in 2010 helped defeat a helmet law the city of Myrtle Beach passed. The state already had a helmet law on the books, but Myrtle Beach city council enacted an ordinance to modify the state's law to require all bikers to wear helmets inside the city limits.

The state's top justices struck Myrtle Beach's helmet law down and the city had to refund fines paid under the city's ordinance.

"You guys are writing these municipal ordinances every day of the week?" Barr asked Chief David Jones.

"Yes, sir, that's correct," Jones said.

"Why not just stick with the state law?" WIS asked.

"Because it's a town ordinance," Jones said.

"So, you're saying I need to set aside one law to enforce another? What's the difference?" Jones asked.

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"So, what's stopping the city from going in and saying we'll have our own DUI law, we'll have our own seat belt law?" Barr asked.

"State law stops that," Jones explained.

Kincannon has harsh words to describe the ticket process in the town.

"It tells me it's a scam. It tells me the city of Turbeville has come up with a revenue-generating scheme as opposed to enforcing traffic laws; that's what's going on here," Kincannon said.

The state Attorney General's Office told WIS there has never been a case in South Carolina challenging ticketing practices like what we found in Turbeville. No public official has ever asked for an opinion from the attorney general about Turbeville's ticket practice, either.

We were able to track down an April 23, 2013 letter from South Carolina Supreme Court Chief Justice Jean Toal addressing town's with ordinances similar to what's going on in Turbeville. The letter is from Toal to the chief of the state's Criminal Justice Academy, Hubert Harrell. In the letter Toal wrote, "The creation of other criminal ordinances which address acts that are already addressed by state law, could possibly run afoul of the authority delegated to them under the Home Rule Act."

The letter indicated that if someone chose to sue Turbeville over the municipal ticketing practice, a court could decide whether the town is justified in charging drivers with a law that's already enforced by state statute.

But, Toal recognized because of Turbeville's no point promise, those charged may never speak up, "Due to the 'benefits' defendants are told they are receiving, such a challenge is unlikely."

So what would Kincannon argue in the Supreme Court if this case ever came up?

"I would tell the justices that South Carolina state law has a standard here and Turbeville and every other city and county in this state has to follow that," he said.

So is Turbeville's police chief prepared to face a lawsuit?

"We don't have any choice but to face it, if someone files a lawsuit we've got to answer it, is that correct?" Jones said.

But what would be the chief's answer to the court?

"I don't know, sir," Jones said.

TURBEVILLE'S REASON EXPLAINED

Jones told WIS the reason his town council passed its own speeding law was to "shock the conscience" of the people they charge. Jones further explained the impacts of fines as high as \$500 and potential jail time would make the streets inside the town of Turbeville safer.

"If you knew on the way down from Columbia if you got stopped, you were looking at a fine of \$288 or \$388 and that was it, I guarantee you wouldn't be so quick to push down on that accelerator pedal," Jones said. "It should shock the conscience, shouldn't it?"

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When questioned as whether Turbeville's ticketing practices were strictly a way to generate money, Jones denied it.

"We're trying to make these roads safer," said Jones. "Just like I told you, should it be something reasonable or should it shock your conscience?"

WHAT'S NEXT FOR TURBEVILLE?

Several drivers we spoke with during this investigation told us they would consider filing a lawsuit against the town to challenge the authority of the town's speeding ordinance.

The state's chief justice has warned towns like Turbeville, which may be issuing similar tickets, they could be in violation of the state's Home Rule Act. The act went in to effect in 1975, which gives municipalities and counties the right to self govern.

The Attorney General's Office could also issue an opinion in the Turbeville case, which would offer analysis of similar court decisions, coupled with analyzing the state's constitution for municipalities and counties that have attempted to create similar laws. The opinion has no legal binding, but could offer the office's legal analysis of whether Turbeville has the power to do what it's doing.

A third option would be for the legislature to investigate whether Turbeville has the power to issue speeding tickets outside of the state's speeding laws, then possibly create a law banning the practice across the state.

In Chief Justice Jean Toal's April 2013 letter to the state's police academy, Toal alluded to the fact that there may currently be no legal answer right now as to the ticketing practices in Turbeville, "Of course, this matter could be considered by our legislature and, if determined to be inappropriate, rectified by legislative enactment."

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Exhibit F

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF TURBEVILLE		VERSUS																						
FIRST NAME REBECCA J		LAST NAME ROBBINS																						
STREET AND NO 375 SILVER WOOD LN		CITY LEXINGTON STATE SC ZIP CODE 29072																						
STATE LICENSED SC	DRIVER'S LICENSE NO.	CDL ☐ YES ☒ NO	DR. LIC. CLASS D																					
VEH. LIC. NO DFJ884	STATE SC MAKE OF VEH VOLV YEAR 2003	COMM. VEH. AUTO HAZ. MAT. ☐ W/PROP. ☐ OTHER ☐																						
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT																								
NAME OF TRIAL COURT TURBEVILLE MUNICIPAL		STREET AND NO. P O BOX 70 1400 MAIN ST																						
DATE OF TRIAL 11/20/2014	TIME OF TRIAL 1400	CITY TURBEVILLE STATE SC ZIP CODE 29162																						
VIOLATION - COURT APPEARANCE REQUIRED YES ☒ NO ☐		VIOLATION SECTION NO.																						
TRAFFIC ORDINANCE		DO-00-0000 / 13-22																						
OWNER OF VEHICLE REBECCA J ROBBINS		DATE OF ARREST 10/28/2014																						
ADDRESS OF OWNER 375 SILVER WOOD LN LEXINGTON SC 29072		DATE OF VIOLATION 10/28/2014																						
BAK. DEPOSITED	NAME OF ARRESTING OFFICER LT. PHILIP C WILKES		RANK LT.																					
PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE		COUNTY CLARENDON NUMBER 14																						
Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES. SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET		TRUCK 1																						
		PLATE 83																						
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		Y						7																
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		AND COLE MILL RD																						
		MAJCC 0 N 1 E 2 S 3 W 4																						
HWY NO. 375 CITY TURBEVILLE																								
LONG																								
OFFENSE CODE 04 B.A. LEVEL																								
66918GS																								

VIOLATOR'S COPY

NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO REDUCE TRAFFIC ACCIDENTS, INJURIES AND DEATHS THROUGH FAIR, IMPARTIAL, AND REASONABLE ENFORCEMENT OF TRAFFIC LAWS.

You must settle the case hereby made against you in one of three ways:

- 1) You must appear in court at the appointed time with your South Carolina drivers license if indicated in the violation block on the front side of this summons.
- 2) You may post a cash bond with the appropriate Trial Court prior to the assigned date of trial. If you decide to mail in your bond rather than to the office, MAIL MONEY ORDER, CASHIER'S CHECK OR CERTIFIED CHECK DIRECTLY TO THE TRIAL COURT OFFICE BEFORE WHOM YOU ARE SUMMONED TO APPEAR. The Trial Court name and address is shown on the front side of this summons. DO NOT MAIL CASH OR PERSONAL CHECK. Be sure to enclose with the bond the arresting officer's name and the summons number.
- 4) You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

THE POSTING OF BOND BEFORE YOUR ASSIGNED TRIAL DATE IN NO WAY AFFECTS YOUR RIGHT TO HAVE A FAIR TRIAL BY THE JUDGE OR, IF YOU MAKE A WRITTEN REQUEST BEFORE YOUR SCHEDULED TRIAL, BY JURY.

However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, your home state's Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to \$200.00 or imprisonment of up to 30 days.

LT

Recommended Bond Amount: 288.00

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60/45

50/35

Exhibit G

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STATE VS. REBECCA ROBINS
TOWN OF TURBEVILLE MUNICIPAL COURT
UNIFORM TRAFFIC TICKET NO. 66918GS
ON DECEMBER 18, 2014

Transcription of Hearing held before the Honorable
Lucy Coleman, on December 18, 2014, and prepared by Doris
Tompkins Brown, Certified Verbatim Reporter and Notary
Public in and for the State of South Carolina

APPEARANCE

ON BEHALF OF MS. ROBINS: Mr. Hamilton

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-7434

COPY

1 MR. HAMILTON: Your Honor, Ms. Robbins
2 brought a tape recorder in case the Court didn't
3 have one. I told her (inaudible).

4 THE COURT: All right. Thank you.
5 (Inaudible).

6 MR. HAMILTON: Yes, Your Honor.

7 THE COURT: Thank you. (Inaudible). You
8 may be seated, sir.

9 MR. HAMILTON: Thank you for considering our
10 Motion. If the Court would just enter into the
11 record the documents filed.

12 THE COURT: Yes, sir. All those ---

13 MR. HAMILTON: And I've got a copy of the
14 Motion.

15 THE COURT: I understand. Normally what we
16 do, Mr. Hamilton, is we would afford the
17 Lieutenant an opportunity to speak to you, but
18 that's totally up to you as to whether or not you
19 wish to speak to him before I begin. And as well
20 as you know, the reason for the traffic stop was
21 for a speeding violation and that speeding was
22 sixty (60) in a forty-five (45); so, therefore
23 when this case goes to trial, it will be for a
24 speeding violation. A traffic ordinance is only
25 a courtesy that the town can afford the Defendant

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELECTRONICALLY FILED - 2017 JUL 27 5:40 PM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 to keep that person from losing points as you
2 well know that, sir.

3 MR. HAMILTON: Yes. Yes, I do wish to speak
4 to the officer briefly.

5 THE COURT: Okay. All right. Lieutenant
6 Wilts, if you would please go and speak to -- go
7 to the back to speak to the officer.

8 (OFF THE RECORD).

9 THE COURT: The decision that on the
10 roadside, he would change it to a traffic
11 ordinance by which Ms. Robins will be going to
12 trial for the sixty (60) in a forty-five (45)
13 which is a four point violation. In Court is
14 Lieutenant Phillip Wilts, the arresting officer,
15 myself, Judge Lucy Coleman and my clerk, Ms.
16 Debra Wells. I'm sorry. Is the State ready to
17 proceed at this time?

18 OFFICER WILTS: Yes, Your Honor.

19 THE COURT: Is the Defense ready to proceed
20 at this time?

21 MR. HAMILTON: We are, Your Honor.

22 THE COURT: Lieutenant, you may call your
23 first witness or you may come forward and I'll
24 swear you in to present your testimony at this
25 time.

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELECTRONICALLY FILED - 2017 Jul 27 5:40 PM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 MR. HAMILTON: Are we proceeding with the
2 charge for the (inaudible)

3 THE COURT: No, sir, we are not. We have to
4 proceed with the speeding violation because that's the
5 reason for the stop was for a speeding violation. I
6 understand, but the reason why he observed it was for
7 the speeding violation, sir, so the law requires me to
8 go back to the reason for the traffic stop.

9 MR. HAMILTON: All right. Thank you, Your
10 Honor.

11 THE COURT: Thank you. Do you need to do --
12 do you need to speak to your client before I
13 proceed? You have one last opportunity, sir.
14 I've explained it to Mr. Hamilton who is the
15 attorney for Ms. Robbins. Therefore, they
16 understand. Do you swear the testimony and
17 evidence that you're about to present on your
18 case will be the truth, the whole truth and
19 nothing but the truth so help you God?

20 OFFICER WILTS: I do. I am Lieutenant
21 Phillip Wilts. I work for the Town of Turbeville
22 as a police officer. This incident occurred on
23 October 28th, 2014 at approximately 2:40 p.m.
24 running at a high rate of speed, once we verified
25 it was sixty (60) in a forty-five (45). When I

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

1 pulled out, she stopped the vehicle. She was
2 running 50 (inaudible) Main Street (inaudible)
3 she was still approximately 48.

4 EXAMINATION BY MR. HAMILTON:

5 Q. Was Ms. Robbins cooperative when you stopped her?

6 A. Yes, sir, she was fully cooperative.

7 Q. The stop was for a speeding violation?

8 A. Yes, sir.

9 Q. (Inaudible)?

10 A. All I have is the video of the stop where I narrated.

11 THE COURT: Do you wish to view that at this
12 time?

13 MR. HAMILTON: Yes, ma'am. (Inaudible).

14 THE COURT: Any questions that you have once
15 you viewed the video, Mr. Hamilton?

16 MR. HAMILTON: Your Honor, I would merely
17 ask that it be preserved as part of the record.

18 THE COURT: Okay.

19 MR. HAMILTON: The Defendant has no
20 witnesses, Your Honor. The Defense rests.

21 THE COURT: Okay. You will not be calling
22 the Defendant?

23 MR. HAMILTON: No.

24 THE COURT: Okay. You're going to present,
25 Mr. Hamilton?

STATE VS. REBECCA ROBINS
TICKET NO. 66918GS

ELI ELECTRONICALLY FILED - 2017 Jul 27 5:40 PM - CLARENDON - COMMON PLEAS - CASE#2016CP1400198

1 MR. HAMILTON: No. No, Your Honor.

2 THE COURT: You're not going to present
3 anything? Any kind of testimony, no rebuttal?

4 MR. HAMILTON: No.

5 THE COURT: Okay. All right.

6 MR. HAMILTON: We just have our Motion that
7 I filed but we stand (inaudible). We'd like to
8 thank the Court for its courtesy and
9 consideration of our case today and the material
10 we provided.

11 THE COURT: (inaudible) find Ms. Robins
12 guilty of the violation of speeding sixty (60) in
13 a forty-five (45). While that is a four point
14 violation, the sentence of the Court is
15 (inaudible) Okay. The bond amount has been
16 posted. It's in the envelope, I guess. I guess
17 we have it. There it is right there. Posted a
18 bond amount of Two Hundred and Eighty-eight
19 Dollars (\$288.00). The remainder of the balance
20 of that will be refunded back, Fifty-one Dollars
21 (\$51.00). You will receive that in the mail when
22 we have your correct address, Ms. Robins. Thank
23 you all very much.
24

1 STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) CERTIFICATE

I, Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I have prepared the within transcript from a recording provided to me to the best of my ability from the recording furnished without the opportunity of having been present. I further certify that the foregoing pages constitute a true and accurate transcript of the testimony based on my limitations as I was not present at the time of the recorded trial and several places are shown as inaudible. Therefore, I have prepared this transcript to the best of my ability.

I hereby certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of July, 2015.

Doris Tompkins Brown CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4-02-2025

Exhibit H

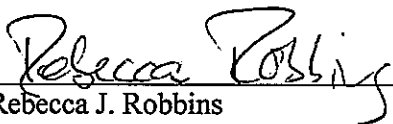
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.:
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	AFFIDAVIT OF
	)	REBECCA J. ROBBINS
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY
SWORN, STATES AS FOLLOWS:

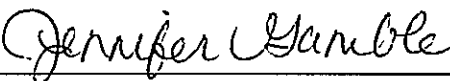
1. I, Rebecca J. Robbins, am a resident of Lexington County, South Carolina.
2. On October 28, 2014, I was driving through the Town of Turbeville and was stopped by Lt. Philip C. Wilkes of the Turbeville Police Department.
3. Lt. Wilkes issued me a citation for violating Turbeville Town Ordinance 13-22.
4. The recommended bond amount on my ticket was \$288.
5. I retained counsel and filed a motion to dismiss the charge based on the invalidity of Turbeville Town Ordinance 13-22.
6. Judge Luci Coleman held a hearing in the Town of Turbeville Municipal Court on December 18, 2014.
7. When I refused to pay a fine that I believed to be unlawful, Judge Coleman amended my charges to a speeding violation under South Carolina State law.
8. I was convicted of a State law speeding violation in a bench trial.
9. I have appealed that ruling to the Clarendon County Court of Common Pleas. That case is pending.

10. I frequently travel and, in the future, will drive through the Town of Turbeville.
11. Although I do my best to ensure that I comply with all laws, I may unintentionally speed during my travels through the Town of Turbeville.
12. This scenario will subject me to an additional citation for violating Turbeville Town Ordinance 13-22.

FURTHER AFFLIANT SAYETH NAUGHT.


Rebecca J. Robbins

Sworn to and signed before me
this 6 day of May 2016.


Notary Public SC

My Commission Expires: 8/28/16

Exhibit I

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF TURBEVILLE		VERSUS	
FIRST NAME MARIE		LAST NAME BABAYAN	
STREET AND NO. 12530 CARA CARA LOOP		CITY BRADENTON	STATE FL
STATE LICENSED FL		DRIVER'S LICENSE NO. [REDACTED]	COL ☐ YES ☐ NO
VEH. LIC. NO. 202XNQ	STATE FL	MAKE OF VEH. NISS	YEAR 2013
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT		DRL LIC. CLASS E	
NAME OF TRIAL COURT TURBEVILLE MUNICIPAL		STREET AND NO. P.O. BOX 70 1400 MAIN ST	
DATE OF TRIAL 08/17/2015	TIME OF TRIAL 1400	CITY TURBEVILLE	STATE SC
VIOLATION - COURT APPEARANCE REQUIRED YES ☒ NO ☐		VIOLATION SECTION NO. 00-00-0000 / 13-22	
TRAFFIC ORDINANCE SS/35		DATE OF ARREST 08/16/2015	
OWNER OF VEHICLE MARIE BABAYAN		DATE OF VIOLATION 08/16/2015	
ADDRESS OF OWNER 12530 CARA CARA LOOP BRADENTON FL 342		BAIL DEPOSITED	
NAME OF ARRESTING OFFICER SGT ROBERT HASKELL CARTER		RANK SGT	
PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE		COUNTY CLARENDON	
Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.		BADGE 3984-7677	
SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET		TROOP 1	
VIOLATOR'S COPY		D A Y 1 2 3 4 5 6 7	
		TIME OF VIOLATION 1405	
		WEATHER CLDY	
		DISTANCE IN FEET FROM INTERSECTION 0	
		AND OLANTA HWY	
		MILES 0	
		N 1 E 2 S 3 W 4	
		HWY. NO. 378	
		CITY TURBEVILLE	
		Lat	
		Long	
		OFFENSE CODE 84	
		S.A. LEVEL	
		72194HB	

NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO REDUCE TRAFFIC ACCIDENTS, INJURIES AND DEATHS THROUGH FAIR, IMPARTIAL, AND REASONABLE ENFORCEMENT OF TRAFFIC LAWS.

You must settle the case hereby made against you in one of three ways:

- 1) You must appear in court at the appointed time with your South Carolina drivers license if indicated in the violation block on the front side of this summons.
- 2) You may post a cash bond with the appropriate Trial Court prior to the assigned date of trial. If you decide to mail in your bond rather than go to the office, MAIL MONEY ORDER, CASHIER'S CHECK OR CERTIFIED CHECK DIRECTLY TO THE TRIAL COURT OFFICE BEFORE WHOM YOU ARE SUMMONED TO APPEAR. The Trial Court name and address is shown on the front side of this summons. DO NOT MAIL CASH OR PERSONAL CHECK. Be sure to enclose with the bond the arresting officer's name and the summons number.
- 3) If a court appearance is not mandatory, you may pay your fine online with a credit card for citations issued in participating counties. Go to <http://www.sc.gov/pages/courtpayments.aspx> to determine if online payments are available in the county the citation was issued.
- 4) You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

THE POSTING OF BOND BEFORE YOUR ASSIGNED TRIAL DATE IN NO WAY AFFECTS YOUR RIGHT TO HAVE A FAIR TRIAL BY THE JUDGE OR, IF YOU MAKE A WRITTEN REQUEST BEFORE YOUR SCHEDULED TRIAL, BY JURY.

However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date, your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, your home state's Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to \$200.00 or imprisonment of up to 30 days.

LT

Recommended Bond Amount: **388.00**

Exhibit J


FOOD LION

 Food Lion #0916 (843) 347-8652
 1904 Hwy 544 Conway, SC

SERVICE CENTER

 Money Order 188.46
 TOTAL TAX 0.00

 1 BALANCE DUE 188.46
 Debit Card \$188.46

Auth# 073099 Ref# 305379

CHANGE 0.00

+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+

 We value your opinion!
 Tell us about your visit for a chance
 to win \$500 in free groceries.

 Within the next 5 days please visit:
www.TalkToFoodLion.com

 También disponible en español.
 10 winners each quarter
 See website for complete rules.

PIN: +-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+

 CASHIER NAME: Mary
 STORE: 00916 REGISTER: 030 CASHIER: 0111
 TICKET#: 0026 15SEP2015 12:38:49

www.foodlion.com
 CUSTOMER SERVICE 1-800-210-9569

THANK YOU FOR SHOPPING AT FOOD LION



EK 342725922 US

**PRIORITY
★ MAIL ★
EXPRESS™**
**UNITED STATES
POSTAL SERVICE®**


ORIGIN (POSTAL SERVICE USE ONLY)		DELIVERY (POSTAL SERVICE USE ONLY)	
PO ZIP Code	29526	Scheduled Delivery Date (MM/DD/YYYY)	9-16-15
Date Accepted (MM/DD/YYYY)	9-15-15	Scheduled Delivery Time	10:30 AM - 12:00 PM
Time Accepted	AM	Return Receipt Fee	\$
Flat Rate	X	Live Animal Transportation Fee	\$
Weight	15.00	Total Postage & Fees	19.99
USPS Stamp (MM/DD/YYYY)	29526	Employee Signature	
Delivery Stamp (MM/DD/YYYY)	29526	Employee Signature	

2-CUSTOMER COPY

PSN 7090-02-000-8936

LABEL 11-B, JANUARY 2014

CUSTOMER USE ONLY

FROM: customer
 PHONE: 945-224-4857
 MOBILE Babayon
 630 HWY 544
 APT. C38 207B
 CONWAY, SC 29526

PAYMENT BY ACCOUNT (if applicable)
 US\$ Corporate Acct. No. Federal Money Acct. No. or Postal Service® Acct. No.

DELIVERY OPTIONS (Customer Use Only)

☐ SIGNATURE REQUIRED (R) The maker must check the "Signature Required" box if the maker: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item to the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

Delivery Options

☐ No Saturday Delivery (delivered next business day)
☐ Sunday/Holiday Delivery Required (additional fee, when available)
☐ 10:30 AM Delivery Required (additional fee, when available)
 *Refer to USPS.com® for local Post Office® for availability.

TO: PLEASE PRINT:

Turbeville Multiple
 P.O. Box 70
 Turbeville, SC 29162 SEP 15 2015
 29162

ZIP + 4 (U.S. ADDRESSES ONLY)
 29162

For pickup or USPS Tracking®, visit USPS.com or call 800-222-1811.
 \$100.00 Insurance included.

Instructions:

- This request is to be completed by the purchaser only. A stop payment is placed on the original Money Order when refund is made to purchaser.
- The original of the Money Order receipt must accompany each request. If the original of the Purchaser's Copy Money Order receipt is not enclosed, your request will be delayed and may be denied.
- Please make a photocopy of the request and the receipt for your own records.
- Enclose a \$15.00 non-refundable processing fee for each photocopy or refund request.
- A photocopy will not be processed until the \$15.00 is received. **Notice:** At the discretion of Western Union Financial Services, Inc. may deduct the fee from your refund if it is not enclosed with your request.
- Please allow 30 days for processing. All requests for refunds and photocopies must be in writing.

Purchaser's Name First	Last (Please Print)	SEND REQUEST TO:	MONEY ORDER AMOUNT	DATE PURCHASED
		Western Union Financial Services, Inc. P.O. Box 7000 Englewood, CO 80155-7000	188.46	MM/DD/YYYY
Mailing Address (Please Print)		Money Order was Payable to:	Money Order was purchased at (Name & address)	
City	State Zip Code	Reason for Request:		

*To induce Western Union Financial Services, Inc. (WUFSI) to refund to me the face amount of the above Money Order, and in consideration of that payment, I authorize WUFSI to stop payment on this Money Order, and agree to release WUFSI from this refund and to hold WUFSI harmless against any and all expenses and/or liability to which it may be subject by reason of this refund to me, by reason of my alleged loss of the Money Order, or by reason of the negotiation of the Money Order.

PURCHASER SIGN HERE (IN INK): _____

BEFORE MAILING, BE SURE THAT THIS FORM HAS BEEN SIGNED IN INK. DATE: _____ PHONE NUMBER: _____

Exhibit K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.:
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	AFFIDAVIT OF
	)	MARIE BABAYAN
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY
SWORN, STATES AS FOLLOWS:

1. I, Marie Babayan, am a resident of the State of Florida.
2. I am currently a student at Coastal Carolina University.
3. On August 16, 2015, I was driving through the Town of Turbeville and was stopped by Sgt. Robert Haskell Carter of the Turbeville Police Department.
4. Sgt. Carter issued me a citation for violating Turbeville Town Ordinance 13-22.
5. The recommended bond amount on my ticket was \$388.
6. I retained counsel and paid a reduced fine of \$188.
7. I frequently travel and, in the future, will drive through the Town of Turbeville.
8. Although I do my best to ensure that I comply with all laws, I may unintentionally speed during my travels through the Town of Turbeville.
9. This scenario will subject me to an additional citation for violating Turbeville Town Ordinance 13-22.

FURTHER AFFIANT SAYETH NAUGHT.

Marie Babayan
Marie Babayan

Sworn to and signed before me
this 28 day of April 2016.

[Signature]
Notary Public

My Commission Expires: 9-11-2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,
and DAVID JONES, in his official capacity as
Chief of the Turbeville Police Department,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina

Third Party Defendants

**ANSWER AND THIRD-PARTY CLAIM
OF DEFENDANTS**

NOW COME, remaining Defendants, Town of Turbeville and the Turbeville Police
Department, who answer the Complaint as follows:

FOR A FIRST DEFENSE

1. By way of answer to the allegations contained in Paragraph 1, Defendants admit
only that Plaintiffs seek relief on behalf of themselves and others as set forth in the Paragraph.
Defendants deny all factual allegations contained in Paragraph 1 and deny that Plaintiffs are
entitled to any relief sought. Defendants further deny all remaining allegations contained in
Paragraph 1.

PARTIES

2. Defendants incorporate by reference Paragraph 1, above as if restated fully herein.
3. Admitted upon information and belief.
4. Admitted upon information and belief.
5. Admitted.
6. Admitted.
7. Inasmuch as Chief David Jones has been dismissed from this case, Paragraph 7 is no longer applicable and requires no response.

JURISDICTION AND VENUE

8. By way of answer to the allegations contained in Paragraph 8, Defendants incorporate by reference Paragraphs 1 through 7 above as if restated fully herein.
9. Defendants admit only that this matter falls within the general jurisdiction of the Circuit Courts of this state.
10. Defendants deny that an action brought pursuant to the Declaratory Judgment Act is appropriate and deny that the Declaratory Judgment Act vests this Court with subject matter jurisdiction over this case.
11. Defendants deny the allegations contained in Paragraph 11.
12. Defendants admit only that venue appears to be proper.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

13. By way of answer to the allegations contained in Paragraph 13, Defendants incorporate by reference Paragraphs 1 through 12 above as if restated fully herein.

The Uniform Traffic Act

14. Defendants admit only that the South Carolina Uniform Traffic Act speaks for itself and deny any remaining allegations contained in Paragraph 14.

15. Defendants admit only that S.C. CODE ANN. 56-5-30 speaks for itself and deny any remaining allegations contained in Paragraph 15.

16. Defendants admit only that S.C. CODE ANN. 56-5-1520 speaks for itself and deny any remaining allegations contained in Paragraph 16. By way of further answer to Paragraph 16, State law also imposes mandatory surcharges and assessments for the Victim's Compensation Fund (\$25)(S.C. CODE ANN. § 14-1-211); the conviction charge (\$25)(S.C. CODE ANN. § 14-1-212); the Criminal Justice Academy fee (\$5)(S.C. CODE ANN. § 14-1-240); and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208).

17. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(2) speaks for itself and deny any remaining allegations contained in Paragraph 17.

18. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(3) speaks for itself and deny any remaining allegations contained in Paragraph 18.

19. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(3) speaks for itself and deny any remaining allegations contained in Paragraph 19.

20. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 20.

21. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 21.

22. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 22.

23. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 23.

24. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 24.

25. Defendants admit only that S.C. CODE ANN. 56-7-10 and -80 speaks for themselves and deny any remaining allegations contained in Paragraph 25.

The Turbeville Town Traffic Ordinance

26. Admitted.

27. Admitted.

28. Admitted

29. Defendants deny the allegations contained in Paragraph 29.

30. By way of answer to the allegations contained in Paragraph 30, Defendants admit only that they properly enforced the Town Traffic Ordinance. All remaining allegations contained in Paragraph 30 are denied.

31. By way of answer to the allegations contained in Paragraph 31, Defendants admit only that they properly enforced the Town Traffic Ordinance. All remaining allegations contained in Paragraph 31 are denied.

Attorney General Advisory Opinions

32. Defendants deny that the referenced Attorney General opinions are relevant or even applicable to any issue in this case. On that basis all allegations contained in Paragraph 32 are denied.

Treasurer Loftis Advisory Opinion

33. Defendants admit only that the Office of the Attorney General did in fact issue an advisory opinion. Defendants deny that that opinion is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

34. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 34 are denied.

35. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 35 are denied.

36. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 36 are denied.

37. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 37 are denied.

38. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 38 are denied.

39. Defendants aver that the Attorney General's letter speaks for itself. Defendants deny such letter carries any binding legal effect on any Court, and is not a "holding." All remaining allegations contained in Paragraph 37 are denied.

Rep. Jimmy C. Bales Advisory Opinion

40. Defendants admit only that the Office of the Attorney General did in fact issue an advisory opinion. Defendants deny that that opinion is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

41. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 41 are denied.

42. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 41 are denied.

Chief Justice Toal's Letter

43. Defendants admit only that, upon information and belief, Chief Justice Toal did in fact send the referenced letter. Defendants deny that that letter is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

44. Defendants aver that the Chief Justice's letter speaks for itself. All remaining allegations contained in Paragraph 44 are denied.

45. Defendants aver that the Chief Justice's letter speaks for itself. All remaining allegations contained in Paragraph 45 are denied.

Turbeville's Pattern of Unlawful Conduct

46. Defendants deny any unlawful conduct on their parts. By way of answer to Paragraph 46, Defendants enforced the Town Traffic Ordinance properly. All remaining allegations contained in Paragraph 46 are denied.

47. Admitted upon information and belief. Defendants deny any implication from any such press stories.

48. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 48 are denied.

49. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 49 are denied.

50. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 50 are denied.

51. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 51 are denied.

Plaintiff Robbins' Traffic Stop

52. Admitted.

53. Admitted.

54. Admitted.

55. Defendants admit that Plaintiff Robbins was violating the law by driving above the posted speed limit.

56. Denied.

57. Admitted upon information and belief, though Robbins' conviction has now been vacated by the Circuit Court judge.

58. Denied.

59. Denied insofar as Plaintiff Robbins' conviction has now been vacated.

60. Denied.

61. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 61 and, on that basis, deny same.

Plaintiff Marie Babayan's Traffic Stop

62. Admitted.

63. Admitted.

64. Admitted.

65. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 65 and, on that basis, deny same.

CLASS ACTION ALLEGATIONS

66. By way of answer to the allegations contained in Paragraph 66, Defendants incorporate by reference Paragraphs 1 through 65 above as if restated fully herein.

67. Defendants deny the allegations contained in Paragraph 67 and deny that either individual Plaintiff may assert claims on behalf of any class of absent individuals. Defendants further deny that class treatment is appropriate in any respect.

68. Denied.

69. Denied.

70. Denied, including all subparts thereto.

71. Denied.

72. Denied.

73. Denied.

74. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 74 and, on that basis, denies same.

75. Denied.

76. Denied.

FOR A FIRST CAUSE OF ACTION **(Declaratory Judgment against All Defendants)**

77. By way of answer to the allegations contained in Paragraph 77, Defendants incorporate by reference Paragraphs 1 through 76 above as if restated fully herein.

78. Denied.

79. Denied including all subparts thereto.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief against All Defendants)

80. By way of answer to the allegations contained in Paragraph 80, Defendants incorporate by reference Paragraphs 1 through 79 above as if restated fully herein.

81. Denied.

82. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 82 and, on that basis, deny same.

83. Denied.

84. Denied.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment against All Defendants)

85. By way of answer to the allegations contained in Paragraph 85, Defendants incorporate Paragraphs 1 through 84 above as if restated fully herein.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

FOR A FOURTH CAUSE OF ACTION
(Refund against All Defendants)

92. By way of answer to the allegations contained in Paragraph 92, Defendants incorporate by reference Paragraphs 1 through 91 above as if restated fully herein.

93. Denied.

94. Denied.

95. Denied.

Defendants deny the allegations contained in the unnumbered paragraph beginning “Wherefore” together with all subparts thereto.

FOR A SECOND DEFENSE

Plaintiffs have failed to state a claim for which relief may be granted.

FOR A THIRD DEFENSE

Plaintiffs are without standing to assert the claims pled in the Complaint.

FOR A FOURTH DEFENSE

Plaintiff Babayan’s claims are barred pursuant to the voluntary payment doctrine.

FOR A FIFTH DEFENSE

Plaintiff Robbins’ claims are barred inasmuch as her conviction for speeding has been vacated on appeal.

FOR A SIXTH DEFENSE

Plaintiffs' claims are barred because they have not been damaged.

FOR A SEVENTH DEFENSE

Plaintiff Babayan's claims are barred by the clear terms of the Post-Conviction Relief Act.

FOR AN EIGHTH DEFENSE

Plaintiffs' equitable claims are barred in their entirety under the doctrine of unclean hands.

FOR A NINTH DEFENSE

Plaintiffs' claims are barred based upon their own illegal conduct.

FOR A TENTH DEFENSE

Plaintiffs have failed to join an indispensable party.

FOR AN ELEVENTH DEFENSE

Plaintiffs' claims are barred by res judicata or collateral estoppel.

FOR A TWELFTH DEFENSE

Plaintiffs' claims constitute an impermissible collateral attack on a judgment and should be dismissed.

FOR A THIRTEENTH DEFENSE

Plaintiffs' claims are barred pursuant the doctrine of waiver.

FOR A FOURTEENTH DEFENSE

Discovery is just beginning in this case and Defendants expressly reserve the right to assert additional defenses should such become apparent or warranted.

FOR A FIFTEENTH DEFENSE AND FOR A FIRST THIRD-PARTY CLAIM

(Indemnification)

1. Defendants incorporate by reference all paragraphs above as if restated fully herein.

2. Venue is proper inasmuch as the actions giving rise to this claim took place in Clarendon County.

3. The Court has jurisdiction over the Third-Party Defendant.

4. In compliance with State law, the Town of Turbeville remits payment for mandatory surcharges and assessments for the Victim's Compensation Fund (\$25)(S.C. CODE ANN. § 14-1-211); the conviction charge (\$25)(S.C. CODE ANN. § 14-1-212); the Criminal Justice Academy fee (\$5)(S.C. CODE ANN. § 14-1-240); and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208) from the fine paid by each person ticketed for violation of the Town Traffic Ordinance.

5. To the extent Defendants are held liable to refund or repay all or part of any fine collected for violations of the Town Traffic Ordinance, the State of South Carolina will be liable

to the Town for all amounts paid to the State Treasurer in compliance with the above-cited code sections.

WHEREFORE, Defendants / Third Party Plaintiffs demand that, if they held liable to plaintiffs or plaintiffs' class for any damages resulting from the enforcement of the Town Traffic Ordinance, then the State of South Carolina is liable to the Town for all amounts remitted to the State from those tickets.

s/Richard D. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS

December 8, 2016

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

VS.

TOWN OF TURBEVILLE, and THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs,

VS.

The State of South Carolina

Third Party Defendants.

**ANSWER TO AMENDED COMPLAINT
AND FIRST AMENDED THIRD-PARTY
CLAIM OF DEFENDANTS**

NOW COME, Defendants, Town of Turbeville and the Turbeville Police Department,
who answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. By way of answer to the allegations contained in Paragraph 1, Defendants admit only that Plaintiffs seek relief on behalf of themselves and others as set forth in the Paragraph. Defendants deny all factual allegations contained in Paragraph 1 and deny that Plaintiffs are entitled to any relief sought. Defendants further deny all remaining allegations contained in Paragraph 1.

PARTIES

2. Defendants incorporate by reference Paragraph 1, above as if restated fully herein.

3. Admitted upon information and belief.
4. Admitted upon information and belief.
5. Admitted.
6. Admitted.

JURISDICTION AND VENUE

7. By way of answer to the allegations contained in Paragraph 8, Defendants incorporate by reference Paragraphs 1 through 7 above as if restated fully herein.

8. Defendants admit only that this matter falls within the general jurisdiction of the Circuit Courts of this state.

9. Defendants deny that an action brought pursuant to the Declaratory Judgment Act is appropriate and deny that the Declaratory Judgment Act vests this Court with subject matter jurisdiction over this case.

10. Defendants deny the allegations contained in Paragraph 10.
11. Defendants admit only that venue appears to be proper.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

12. By way of answer to the allegations contained in Paragraph 12, Defendants incorporate by reference Paragraphs 1 through 11 above as if restated fully herein.

The Uniform Traffic Act

13. Defendants admit only that the South Carolina Uniform Traffic Act speaks for itself and deny any remaining allegations contained in Paragraph 13.

14. Defendants admit only that S.C. CODE ANN. 56-5-30 speaks for itself and deny any remaining allegations contained in Paragraph 14.

15. Defendants admit only that S.C. CODE ANN. 56-5-1520 speaks for itself and deny any remaining allegations contained in Paragraph 15. By way of further answer to Paragraph 15, State law also imposes mandatory surcharges and assessments for the Victim's Compensation Fund (\$25) (S.C. CODE ANN. § 14-1-211); the conviction charge (\$25) (S.C. CODE ANN. § 14-1-212); the Criminal Justice Academy fee (\$5) (S.C. CODE ANN. § 14-1-240); and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208).

16. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(2) speaks for itself and deny any remaining allegations contained in Paragraph 16.

17. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(3) speaks for itself and deny any remaining allegations contained in Paragraph 17.

18. Defendants admit only that S.C. CODE ANN. 56-5-1520(G)(3) speaks for itself and deny any remaining allegations contained in Paragraph 18.

19. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 19.

20. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 20.

21. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 21.

22. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 22.

23. Defendants admit only that S.C. CODE ANN. 56-1-720 speaks for itself and deny any remaining allegations contained in Paragraph 23.

24. Defendants admit only that S.C. CODE ANN. 56-7-10 and -80 speaks for themselves and deny any remaining allegations contained in Paragraph 24.

The Turbeville Town Traffic Ordinance

25. Admitted.

26. Admitted.

27. Admitted

28. Defendants deny the allegations contained in Paragraph 28.

29. By way of answer to the allegations contained in Paragraph 29, Defendants admit only that they properly enforced the Town Traffic Ordinance. All remaining allegations contained in Paragraph 29 are denied.

30. By way of answer to the allegations contained in Paragraph 30, Defendants admit only that they properly enforced the Town Traffic Ordinance. All remaining allegations contained in Paragraph 30 are denied.

Attorney General Advisory Opinions

31. Defendants deny that the referenced Attorney General opinions are relevant or even applicable to any issue in this case. On that basis all allegations contained in Paragraph 31 are denied.

Treasurer Loftis Advisory Opinion

32. Defendants admit only that the Office of the Attorney General did in fact issue an advisory opinion. Defendants deny that that opinion is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

33. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 33 are denied.

34. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 34 are denied.

35. Defendants aver that the State Treasurer's request to the Attorney General speaks for itself. All remaining allegations contained in Paragraph 35 are denied.

36. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 36 are denied.

37. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 37 are denied.

38. Defendants aver that the Attorney General's letter speaks for itself. Defendants deny such letter carries any binding legal effect on any Court, and is not a "holding." All remaining allegations contained in Paragraph 38 are denied.

Rep. Jimmy C. Bales Advisory Opinion

39. Defendants admit only that the Office of the Attorney General did in fact issue an advisory opinion. Defendants deny that that opinion is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

40. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 40 are denied.

41. Defendants aver that the Attorney General's letter speaks for itself. All remaining allegations contained in Paragraph 41 are denied.

Chief Justice Toal's Letter

42. Defendants admit only that, upon information and belief, Chief Justice Toal did in fact send the referenced letter. Defendants deny that that letter is relevant or applicable in any way to the Town of Turbeville's enforcement of the Town Traffic Ordinance.

43. Defendants aver that the Chief Justice's letter speaks for itself. All remaining allegations contained in Paragraph 43 are denied.

44. Defendants aver that the Chief Justice's letter speaks for itself. All remaining allegations contained in Paragraph 44 are denied.

Turbeville's Pattern of Unlawful Conduct

45. Defendants deny any unlawful conduct on their parts. By way of answer to Paragraph 46, Defendants enforced the Town Traffic Ordinance properly. All remaining allegations contained in Paragraph 45 are denied.

46. Admitted upon information and belief. Defendants deny any implication from any such press stories.

47. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 47 are denied.

48. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 48 are denied.

49. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 49 are denied.

50. Defendants admit only that WIS aired such a story. All remaining allegations in Paragraph 50 are denied.

Plaintiff Robbins' Traffic Stop

51. Admitted.

52. Admitted.

53. Admitted.

54. Defendants admit that Plaintiff Robbins was violating the law by driving above the posted speed limit.

55. Denied.

56. Admitted upon information and belief, though Robbins' conviction has now been vacated by the Circuit Court judge.

57. Denied.

58. Denied insofar as Plaintiff Robbins' conviction has now been vacated.

59. Defendants admit only that Judge Cooper reversed Plaintiff Robbins' conviction under the state statute and remanded her case to the Magistrate for rehearing. Defendants deny all remaining allegations contained in Paragraph 59.

60. Defendants admit only that Plaintiff Robbins' speeding charge was *nolle prossed* by the prosecuting officer. After the charge was dismissed, the Municipal Court returned Plaintiff Robbins' \$288 bond that she tendered in expectation of trial. Defendants deny all remaining allegations contained in Paragraph 60.

61. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 61 and, on that basis, deny same.

Plaintiff Marie Babayan's Traffic Stop

62. Admitted.

63. Admitted.

64. Admitted.

65. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 65 and, on that basis, deny same.

CLASS ACTION ALLEGATIONS

66. By way of answer to the allegations contained in Paragraph 66, Defendants incorporate by reference Paragraphs 1 through 65 above as if restated fully herein.

67. Defendants deny the allegations contained in Paragraph 67 and deny that either individual Plaintiff may assert claims on behalf of any class of absent individuals. Defendants further deny that class treatment is appropriate in any respect.

68. Denied.

69. Denied.

70. Denied, including all subparts thereto.

71. Denied.

72. Denied.

73. Denied.

74. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 74 and, on that basis, denies same.

75. Denied.

76. Denied.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment against All Defendants)

77. By way of answer to the allegations contained in Paragraph 77, Defendants incorporate by reference Paragraphs 1 through 76 above as if restated fully herein.

78. Denied.

79. Denied including all subparts thereto.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief against All Defendants)

80. By way of answer to the allegations contained in Paragraph 80, Defendants incorporate by reference Paragraphs 1 through 79 above as if restated fully herein.

81. Denied.

82. Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 82 and, on that basis, deny same.

83. Denied.

84. Denied.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment against All Defendants)

85. By way of answer to the allegations contained in Paragraph 85, Defendants incorporate Paragraphs 1 through 84 above as if restated fully herein.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

FOR A FOURTH CAUSE OF ACTION
(Refund against All Defendants)

92. By way of answer to the allegations contained in Paragraph 92, Defendants incorporate by reference Paragraphs 1 through 91 above as if restated fully herein.

93. Denied.

94. Denied.

95. Denied.

Defendants deny the allegations contained in the unnumbered paragraph beginning “Wherefore” together with all subparts thereto.

FOR A SECOND DEFENSE

Plaintiffs have failed to state a claim for which relief may be granted.

FOR A THIRD DEFENSE

Plaintiffs are without standing to assert the claims pled in the Complaint.

FOR A FOURTH DEFENSE

Plaintiff Babayan’s claims are barred pursuant to the voluntary payment doctrine.

FOR A FIFTH DEFENSE

Plaintiff Robbins’ claims are barred inasmuch as her conviction for speeding has been vacated on appeal.

FOR A SIXTH DEFENSE

Plaintiffs’ claims are barred because they have not been damaged.

FOR A SEVENTH DEFENSE

Plaintiff Babayan’s claims are barred by the clear terms of the Post-Conviction Relief Act.

FOR AN EIGHTH DEFENSE

Plaintiffs’ equitable claims are barred in their entirety under the doctrine of unclean hands.

FOR A NINTH DEFENSE

Plaintiffs’ claims are barred based upon their own illegal conduct.

FOR A TENTH DEFENSE

Plaintiffs have failed to join an indispensable party.

FOR AN ELEVENTH DEFENSE

Plaintiffs' claims are barred by res judicata or collateral estoppel.

FOR A TWELFTH DEFENSE

Plaintiffs' claims constitute an impermissible collateral attack on a judgment and should be dismissed.

FOR A THIRTEENTH DEFENSE

Plaintiffs' claims are barred pursuant the doctrine of waiver.

FOR A FOURTEENTH DEFENSE

Plaintiffs' claims, or any of them, are barred by the South Carolina Tort Claims Act and must be dismissed.

FOR A FIFTEENTH DEFENSE

Defendants assert Sovereign Immunity as a complete bar to Plaintiffs' claims.

FOR A SIXTEENTH DEFENSE

Plaintiffs cannot require a governmental entity to disburse money absent an appropriation approved by the appropriate legislative body and, in the absence of an appropriation, Plaintiffs cannot recover.

FOR A SEVENTEENTH DEFENSE

Defendants claim a right of set off in an amount equal to the fine, together with all State-mandated fees, assessments, surcharges, or other required add-ons for each and every violation Plaintiffs, and any individual they seek to represent, would have faced.

FOR AN EIGHTEENTH DEFENSE

Discovery is just beginning in this case and Defendants expressly reserve the right to assert additional defenses should such become apparent or warranted.

FOR A NINETEETH DEFENSE AND FOR A FIRST THIRD-PARTY CLAIM
(Indemnification)

1. Defendants incorporate by reference all paragraphs above as if restated fully herein.

2. Venue is proper inasmuch as the actions giving rise to this claim took place in Clarendon County.

3. The Court has jurisdiction over the Third-Party Defendant.

4. In compliance with State law, the Town of Turbeville remits payment for mandatory surcharges and assessments for the Victim's Compensation Fund (\$25) (S.C. CODE ANN. § 14-1-211); the conviction charge (\$25) (S.C. CODE ANN. § 14-1-212); the Criminal Justice Academy fee (\$5) (S.C. CODE ANN. § 14-1-240); and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208) from the fine paid by each person ticketed for violation of the Town Traffic Ordinance.

5. To the extent Defendants are held liable to refund or repay all or part of any fine collected for violations of the Town Traffic Ordinance, the State of South Carolina will be liable to the Town for all amounts paid to the State Treasurer in compliance with the above-cited code sections.

FOR A TWENTIETH DEFENSE AND A SECOND THIRD-PARTY CLAIM
(Refund or Restitution)

6. Defendants incorporate by reference Paragraphs 1 through 5 above as if restated fully herein.

7. As set forth above, the Town of Turbeville has complied with State law and has remitted to the State various statutory fees and assessments from the proceeds of each and every citation under the Town Traffic Ordinance, now under challenge by Plaintiffs.

8. In the event it is determined that Turbeville erroneously collected fines from Plaintiff Babayan, or any person she seeks to represent, then Turbeville is entitled to a refund or restitution of all funds paid over to the State.

WHEREFORE, Defendants/Third Party Plaintiffs demand that, if they held liable to plaintiffs or plaintiffs' class for any damages resulting from the enforcement of the Town Traffic Ordinance, then the State of South Carolina is liable to the Town for all amounts remitted to the State from those tickets.

s/Richard D. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS

August 11, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
REBECCA J. ROBBINS and MARIE	)	Case No. 2016-CP-14-00198
BABAYAN, individually and on behalf	)	
of all those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	MOTION TO DISMISS
	)	THIRD-PARTY CLAIM
TOWN OF TURBEVILLE, THE	)	
TURBEVILLE POLICE DEPARTMENT,	)	
And DAVID JONES, in his official capacity)	)	
As Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants / Third Party Plaintiffs	)	
	)	
vs.	)	
	)	
The State of South Carolina,	)	
	)	
Third Party Defendants	)	
	)	

The Third Party Defendant State of South Carolina moves for the dismissal of the Third Party Claim herein pursuant to Rules 12(b)(1) and(6), SCRCP, in that, for reasons that include but are not limited to those set forth below, this Court lacks subject matter jurisdiction of the Third Party Claim and Third Party Plaintiffs have failed to state facts sufficient to constitute a cause of action:

1. No authority exists under State law requiring the State to indemnify or otherwise return to the Defendants, any assessments, surcharges, and fees remitted to the State Treasurer related to the Town Traffic Ordinance. Rules 12(b)(1) and(6).
2. Any return of amounts of money remitted to the State Treasurer would require an

appropriation by the General Assembly which cannot be judicially compelled. Rules 12(b)(1) and(6).

3. Third Party Plaintiffs' claims are barred by sovereign immunity. Rules 12(b)(1) and(6).
4. Third Party Plaintiffs' claims present no justiciable controversy. Rules 12(b)(1) and(6).
5. Third Party Plaintiffs' claims are barred by the doctrine of unclean hands. Rule 12(b)(6).
6. Third Party Plaintiffs' claims are barred by the doctrines of waiver and abandonment. Rule 12(b)(6).
7. Third Party Plaintiffs' claims are barred by laches. Rule 12(b)(6).
8. Third Party Plaintiffs' claims are barred in whole or in part by the statute of limitations. Rule 12(b)(6).

For the foregoing reasons, the Third Party Defendant State of South Carolina respectfully requests that the Third –Party Claim against it be dismissed.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

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February 17, 2017

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina

Third Party Defendants

**DEFENDANTS/THIRD PARTY
PLAINTIFFS' OPPOSITION TO THE
STATE'S MOTION TO DISMISS**

NOW COME the Town of Turbeville and the Turbeville Police Department, who submit
this Opposition to the State's Motion to Dismiss as follows:

As alleged in the Third-Party Complaint, Turbeville complies with State law and remits
payment for mandatory surcharges and assessments for the Victim's Compensation Fund
(\$25)(S.C. CODE ANN. § 14-1-211); the conviction charge (\$25)(S.C. CODE ANN. § 14-1-212);
the Criminal Justice Academy fee (\$5)(S.C. CODE ANN. § 14-1-240); and the mandatory
Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208) from the fine paid by each
person ticketed for violation of the Town Traffic Ordinance. These State-mandated fees and
assessments amount to approximately one-half of all amounts collected by the Town in fines for

traffic violations.¹ Plaintiffs seek a refund of all those fines directly from the Town, without regard to whether the Town kept the funds or remitted them to the State.

Turbeville brought its third-party claims seeking refund or restitution of those State-mandated assessments in the event the Town Traffic Ordinance, or the manner in which the Ordinance is enforced, is deemed to be unconstitutional, illegal, or unenforceable. Turbeville has invoked the Court's equitable power to order restitution where the State has been unjustly enriched by Turbeville's payment of fees and assessments. Restitution is an equitable remedy sought to prevent unjust enrichment and the plaintiff must show: (1) that he conferred a nongratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff its value.²

For the Court to exercise its equitable power there must be no adequate remedy at law.³ For a court to justify refusing to exercise equity, the remedy at law must be adequate.⁴ Furthermore, "[i]t is not enough that there is some remedy at law, but that remedy must be as practical, efficient, and prompt as the remedy in equity."⁵ There is no provision in Title 14 of the South Carolina Code for the Clerk of the Municipal Court to recover overpayments or incorrect payments of the mandatory fees and assessments. There is also no provision permitting the Clerk to withhold payment for any reason. For that reason, there clearly is no adequate remedy at law.

¹ See *Affidavit of Deborah Welch, Exhibit 1 to Turbeville's Motion to Dismiss Plaintiffs' Complaint*.

² *Campbell v. Robinson*, 726 S.E.2d 221 (S.C. Ct. App. 2012).

³ *Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n*, 379 S.E.2d 119, 123 (S.C. 1989).

⁴ *Chisolm v. Pryor*, 35 S.E.2d 21, 24 (S.C. 1945).

⁵ *Id.*

The State has based its Motion to Dismiss Third-Party Claims in part on the assertion that this court lacks subject matter jurisdiction.⁶ In their accompanying memorandum, the State bases this contention on the assertion that no actual justiciable controversy exists. These arguments fail, as Turbeville has presented valid third-party claims seeking refund or restitution, for which this court properly has jurisdiction.⁷

1. Turbeville's Third Party Claim sounds in restitution and is not barred by sovereign immunity.

Turbeville's third-party claims seeking refund or restitution are not barred by sovereign immunity or the Tort Claims Act. These third-party claims do not fall within the definition of a tort claim. The Tort Claims Act defines "claim" as "any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty."⁸ An equitable claim against the government is not barred because the claim is based in contract rather than in statute.⁹ The theory of unjust enrichment and restitution arises out of a quasi-contract, or a contract the court recognizes based upon equitable notions and natural justice.¹⁰ Turbeville's third-party claim does not seek compensation from the State; rather, it seeks a refund of assessments, surcharges, and fees. Its action is one for money had and received; therefore, sovereign immunity and the Tort Claims Act do not bar the third-party

⁶ See SCRCF Rule 12(b)(1).

⁷ *Sholer v. State ex rel. Dep't of Pub. Safety*, 1995 OK 150, ¶¶ 2-3, 945 P.2d 469, 478, as corrected (June 26, 1997), as supplemented on reh'g (July 1, 1997), as corrected (Aug. 14, 1997) (finding the trial court properly had jurisdiction because plaintiff's claim was a claim for restitution of overpaid license fees, rather than a challenge to the statute under which the fees were paid).

⁸ S.C. Code Ann. § 15-78-30(b).

⁹ *Burnside-Ott Aviation Training Ctr., Inc. v. United States*, 985 F.2d 1574, 1581 (Fed. Cir. 1993).

¹⁰ 12 S.C. Jur. Equity § 23.

claims. An action to recover for payment of excess fees is not barred by sovereign immunity as plaintiffs are seeking a refund of overpayments rather than compensation.¹¹

The State's position is at odds with any concept of equity. In essence, the State is making a "heads-I-win, tails-you-lose" argument – saying on the one hand, the clerks of court are required to pay the fees and assessments on citations, and to submit to annual audits by the State to confirm they had done so; while at the same time saying if the basis for the citation turns out to have been legally incorrect, then the State cannot be compelled to return the money paid in compliance with State law. By the same token, were a conviction of any sort to be overturned on appeal or in Post-Conviction Relief proceedings, the State cannot justifiably retain any fines or fees paid as part of that sentence.

This case is directly analogous to the situation where, because of a mistake, a person or entity overpays some tax. As provided in the Restatement (Third) of Restitution and Unjust Enrichment, § 19, there is a *prima facie* claim in restitution to recover any payment of assessment by the government where the payment was made by mistake or error.¹² The State has received the state-mandated fee and assessment payments from the fines paid by each person ticketed; therefore, if the bases for the citations are ultimately determined to have been legally incorrect, an implied contract arises on the part of the State to make restitution to the rightful owner.¹³ "When the Government has illegally received money which is the property of an

¹¹ *Sholer v. State ex rel. Dep't of Pub. Safety*, 945 P.2d 469 (Okla. 1995) (finding plaintiff's action to recover after being charged multiple times for driver's license fees was not barred by sovereign immunity or the Governmental Tort Claims Act, as plaintiffs were seeking a refund for overpayments rather than seeking compensation).

¹² Restatement (Third) of Restitution and Unjust Enrichment, § 19 (2011), Comment a.

¹³ *Kirkendall v. United States*, 31 F. Supp. 766, 769 (Ct. Cl. 1940). It must be noted that Plaintiffs do not seek a refund of only the Town's portion of the fines paid by either of them, or

innocent citizen and when this money has gone into the Treasury . . . , there arises an implied contract on the part of the Government to make restitution to the rightful owner”¹⁴ “An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity-to refund. The form of the indebtedness or the mode in which it was incurred is immaterial.”¹⁵ It ought to require neither argument nor authority to support the proposition, that, where the money of an innocent person like the Town has gone into the coffers of the State, such money or property cannot be held by the State without recourse.¹⁶ As the State has taken the money collected by the Town, “it is only common honesty that it should be returned,” as the State “is required to be honest with its citizens just as much as its citizens are required to exercise common honesty with their Government.”¹⁷

2. The State’s other grounds for dismissal are inappropriate at this early stage and should be denied.

Grounds Five through Eight of the State’s Motion to Dismiss Third-Party Claim are all based upon affirmative defenses, none of which are proper grounds for dismissal under Rule 12(b)(6). “[A]n affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense.”¹⁸ Affirmative defenses normally must be asserted in an answer.¹⁹ A Rule 12(b)(6), SCRCPP, motion to dismiss for failure to state a cause of action must be resolved by the trial

by the putative class. Plaintiffs seek a complete refund of all the money collected by Turbeville for violations of the Town traffic ordinance.

¹⁴ *Id.*

¹⁵ *Id.* (quoting *United States v. State Bank*, 96 U.S. 30, 35).

¹⁶ *Id.* (internal citation omitted).

¹⁷ *Id.*

¹⁸ *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).

¹⁹ Rule 8(c), SCRCPP.

judge based solely on the allegations in the complaint.²⁰ Unclean hands, waiver, abandonment, and laches are all affirmative defenses that should be pled in an answer rather than a motion to dismiss under Rule 12(b)(6).²¹

The State's purported defenses are not readily apparent from Turbeville's Third-Party Complaint and therefore cannot be the basis of a dismissal on a Rule 12 motion. Similarly, the State's assertion that the third-party claims are barred in whole or in part by the statute of limitations are not apparent from the allegations of the third-party complaint.²² Therefore, none of the State's affirmative defenses can be proper grounds upon which a dismissal is granted.

CONCLUSION

The State's motion to dismiss must be denied. First, sovereign immunity cannot act as a bar to a claim for restitution or money had and received. Rather, the government cannot lawfully retain money paid to it in error or based upon an illegal statute or ordinance. Such a result would be profoundly unfair to towns and municipalities, and taxpayers also. By the State's reasoning, it could well and truly use the power to impose fines, assessments, and taxes with impunity and would be impervious to constitutional review and reversal – or, if the tax is found to be unconstitutional, immune from being required to return money received based upon an unconstitutional act. Such is the very tyranny that shook the hearts of our nation's Founders. It

²⁰ *Woodell v. Marion Sch. Dist. One*, 414 S.E.2d 794, 794 (S.C. Ct. App. 1992).

²¹ *Allendale Cty. Bank v. Cadle*, 559 S.E.2d 342, 348 (S.C. Ct. App. 2001) (noting the doctrine of "unclean hands" is an affirmative defense); *Provident Life & Acc. Ins. Co. v. Driver*, 451 S.E.2d 924, 929 (S.C. Ct. App. 1994) ("Waiver, like estoppel, is an affirmative defense and the burden of proof is upon the party who asserts it."); *City of Myrtle Beach v. Parker*, 197 S.E.2d 290, 292 (S.C. 1973) (noting that abandonment is an affirmative defense); *Emery v. Smith*, 603 S.E.2d 598, 602 (S.C. Ct. App. 2004) ("[L]aches is an affirmative defense and must be pled.").

²² *Brown v. Leverette*, 353 S.E.2d 697, 699 (S.C. 1987) (reversing the circuit court's grant of a motion to dismiss based upon the statute of limitations where the defense was not apparent from the face of the complaint).

is clear that sovereign immunity will not bar claims for restitution, and the State's motion must be denied.

The remainder of the State's motion looks beyond the four corners of the Third-Party Complaint and requires proof on the State's part that is not yet developed. Waiver, estoppel, laches, unclean hands, and the statute of limitations are all defenses upon which the State will have the burden of proof, and there is no proof in the record.

For the foregoing reasons, and for such other reasons as may be argued, the State's Motion to Dismiss Turbeville's Third-Party Complaint must be denied.

s/Richard D. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS

March 17, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No.: 2016-CP-14-00198
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
Town of Turbeville, the Turbeville Police	)	PLAINTIFFS' MOTION FOR CLASS
Department, and David Jones, in his official	)	CERTIFICATION, FOR PARTIAL
capacity as Chief of the Turbeville Police	)	SUMMARY JUDGMENT, AND TO
Department,	)	DEFER CLASS NOTICE
	)	
Defendants/Third Party Plaintiffs,	)	
	)	
The State of South Carolina,	)	
	)	
<u>Third Party Defendants.</u>	)	

INTRODUCTION

Plaintiffs initiated this case seeking relief on their own behalf and on behalf of all others similarly situated. Plaintiff's Amended Complaint seeks four forms of relief: (1) a declaration that Turbeville Town Ordinances 13-22 ("the Town Traffic Ordinance") and 13-23 ("the Penalty Ordinance") are unconstitutional and in violation of State law; (2) a permanent injunction prohibiting Defendants from enforcing either ordinance; (3) restitution of the illegally collected fines and penalties; and (4) refund of the illegally collected fines and penalties.

The first two causes of action were brought on behalf of both named Plaintiffs and a proposed Class, which is defined as follows:

All persons who have been charged with violating, or who have paid fines for violating, the Town Traffic Ordinance and/or the Penalty Ordinance from May 9, 2013 to present ("the Injunctive Class").

(Am. Compl. ¶¶ 67, 77-84).

The latter two causes of action were brought on behalf of Plaintiff Babayan and a proposed Subclass, which is defined as follows:

All persons who have paid fines for violating the Town Traffic Ordinance and/or the Penalty Ordinance from May 9, 2013 to present ("the Damages Subclass").

(Am. Compl. ¶¶ 67, 85–95).

Plaintiffs seek three forms of relief in this motion. First, Plaintiffs seek certification of the Injunctive Class and the Damages Subclass. Second, Plaintiffs seek partial summary judgment for the Injunctive Class on the claim that the Town Traffic Ordinance and Penalty Ordinance are unconstitutional and in violation of State law. Finally, Plaintiffs ask the Court to defer providing class notice to class members until the conclusion of the likely appeal of the Court's decision with respect to the constitutionality and legality of the Town Traffic Ordinance and the Penalty Ordinance.

Prior to addressing the merits of these arguments, Plaintiffs will provide the Court with a brief factual and procedural history of the case.

FACTUAL AND PROCEDURAL HISTORY

The Ordinances. On May 13, 2003, the Turbeville Town Council enacted the Town Traffic Ordinance. (Am. Compl. ¶ 26; Answer ¶ 26). On August 11, 2009, the Turbeville Town Council amended the Town Traffic Ordinance, which now states:

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

(Am. Compl. ¶ 27; Answer ¶ 27). The Turbeville Town Council also adopted the Penalty Ordinance, which states:

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

(Am. Compl. ¶ 28; Answer ¶ 28).

Defendant Turbeville Police Department has aggressively enforced the Town Traffic Ordinance and the Penalty Ordinance, which generate substantial revenue for Defendant Town of Turbeville. (*See, e.g.*, Defendants' Responses to Plaintiff's First Requests to Admit at 5 (admitting that at least 5,000 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present), attached as Exhibit A).

South Carolina Attorney General Advisory Opinions. On November 18, 2013, the South Carolina Attorney General's Office issued two advisory opinions relevant to the Traffic Ordinances. First, the Attorney General issued an opinion requested by State Treasurer Loftis that addressed a decrease in court fines and fees remitted by municipalities in recent years. (*See* Am. Compl. at Ex. B). Treasurer Loftis inquired about the legality of local traffic ordinances, which may have a net effect of decreasing money sent to the State by municipalities. (*Id.*) In a thorough opinion, the Attorney General discussed a variety of prior Advisory Opinions and concluded that "local ordinances attempting to regulate traffic in the same manner as any provision under the [Uniform Traffic Act], unless expressly authorized, are likely invalid." (*Id.* at 5). The Attorney General also cited an earlier Advisory Opinion and noted that "[o]rdinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy." (*Id.* (quoting Op. S.C. Att'y Gen., 2006 WL 422574 (Feb. 1, 2006))).

The Attorney General also issued a related Advisory Opinion requested by Representative Jimmy C. Bales.¹ (*See* Am. Compl. at Ex. C). In that Advisory Opinion, the Attorney General similarly concluded that municipal ordinances setting their own penalties for speeding and other traffic violations were invalid as they conflict with State law. (*Id.* at 4–5).

Despite these clear pronouncements from the South Carolina Attorney General's Office, Defendants took **no action** to cease enforcing their unlawful traffic ordinance or otherwise remediate their unlawful conduct. (*See* Defendant Town of Turbeville's Responses to Plaintiffs' First Set of Continuing Interrogatories at 9 (admitting that Turbeville took no action in response to the Attorney General's Opinions), attached as Ex. B). Indeed, Defendants continued to write tickets under the Traffic Ordinances, including to both of the named Plaintiffs in this case.

Plaintiff Robbins' Traffic Stop. On October 28, 2014, Plaintiff Robbins was stopped by Lt. Philip C. Wilkes of the Turbeville Police Department and cited with violating the Town Traffic Ordinance. (Am. Compl. ¶ 52; Answer ¶ 52). Lt. Wilkes issued Plaintiff Robbins a ticket with a recommended bond amount of \$288. (Am. Compl. ¶ 53; Answer ¶ 53). Plaintiff Robbins challenged her ticket by filing a Motion to Dismiss, in which she contended that the Town Traffic Ordinance was illegal and preempted by State law. (Am. Compl. ¶ 54; Answer ¶ 54). At trial, the municipal judge *sua sponte* converted Plaintiff Robbins' charge to a violation of the State speeding statutes. (Am. Compl. ¶ 57; Answer ¶ 57). Plaintiff Robbins was convicted of violating the State speeding statutes and appealed that conviction on the ground that a judge cannot change a defendant's charge. Judge Thomas W. Cooper reversed and remanded Plaintiff Robbins' conviction.²

¹ Rep. Bales has undertaken several efforts to put a stop to the Defendants' unlawful traffic enforcement scheme.

² When the Complaint in this case was filed, Plaintiff Robbins' appeal was still pending. On September 1, 2016, Judge Cooper entered a Form 4 Order reversing Plaintiff Robbins' conviction. The

Plaintiff Babayan's Traffic Stop. On August 16, 2015, Plaintiff Babayan was stopped by Sgt. Robert Haskell Carter of the Turbeville Police Department and cited for violating the Town Traffic Ordinance. (Am. Compl. ¶ 62; Answer ¶ 62). Sgt. Carter issued Plaintiff Babayan a ticket with a recommended bond amount of \$388. (Am. Compl. ¶ 63; Answer ¶ 63). Plaintiff Babayan paid a reduced fine of \$188 to resolve her ticket. (Am. Compl. ¶ 64; Answer ¶ 64).

ARGUMENT AND AUTHORITIES

I. The Court should certify the Injunctive Class and the Damages Subclass.

Certification of class actions in South Carolina State Court is governed by Rule 23 of the South Carolina Rules of Civil Procedure. That rule provides:

- (a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a), SCRCP. As our supreme court has acknowledged, the state rule for determining if an action should proceed as a class action is significantly different from its federal counterpart.

Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart.

Court can take judicial notice of that Order for purposes of this Motion for Summary Judgment. *See* Rule 201(f) ("Judicial notice may be taken at *any stage* of the proceeding." (emphasis added)); *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 N.2, 754 S.E.2d 494, 497 n.2 (2014) (holding that it is appropriate for courts to take judicial notice of prior, related court orders and filings).

Grazia v. S.C. State Plastering, 390 S.C. 562, 576–77, 703 S.E.2d 197, 204 (2010). The *Grazia* Court reiterated that class actions are favored in South Carolina: “The class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.” *Id.* It is within a trial court’s discretion whether a class should be certified. *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 42, 508 S.E.2d 16, 21 (1998).

The first four criteria are often referred to as the requirements for numerosity, commonality, typicality and adequacy of representation. *Gardner v. S.C. Dep’t Rev.*, 353 S.C. 1, 577 S.E.2d 190 (2003). There is no magic number to establish numerosity, instead the Court must consider the number of class members and whether joinder is impractical under the circumstances. Rule 23(a), SCRCF. To establish commonality, a party must show “questions of law or fact common to the class.” Rule 23(a)(2), SCRCF. Commonality does not require every issue in the case to be common to all class members. *Gardner*, 353 S.C. at 21, 577 S.E.2d at 200–01. Rather, commonality is met when the class shares a determinative issue. *Id.*; *see also, McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157–58 (Ct.App.1986) (discussing the commonality requirement of Rule 23 and stating it is not necessary that all questions of law and fact be common, only that common issues exist among the class). “To establish the typicality requirement, the ‘claims or defenses of the representative parties [must be] typical of the claims or defenses of the class.’ Rule 23(a)(3).” *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 421–22, 717 S.E.2d 765, 774–75 (Ct. App. 2011).

Precedent explains:

In determining whether a particular named plaintiff will adequately represent a proposed class pursuant to Rule 23(a)(4) one factor we must consider is whether the named plaintiff has interests that are antagonistic or adverse to those of the rest of the class The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the

class. The issue of whether a named plaintiff will adequately protect the interests of the class members is a question of fact which depends upon the circumstances of each case.

Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (citations omitted).

The Plaintiffs seek certification of a class consisting of “all persons who have been charged with violating, or who have paid fines for violating, the Town Ordinance and/or the Penalty Ordinance from May 9, 2013 to present (“the Injunctive Class”).” Plaintiffs further seek certification of a subclass of “all persons who have paid fines for violating the Town Traffic Ordinance and/or Penalty Ordinance from May 9, 2013 to present (the Damages Subclass).” (*See* Am. Compl. ¶ 67).

Turning first to numerosity, the number of persons who received tickets under the Town Ordinance and not under the South Carolina Uniform Traffic Act during the applicable time period makes joinder not only impracticable but virtually impossible. The Town acknowledges in its discovery responses that over 5,000 drivers received tickets under the Town Ordinance since May 9, 2013. (Ex. A at 5). While the undersigned has found no South Carolina case establishing a bright-line test for what number of claimants makes joinder impracticable there can be no real argument that the number of tickets written here fails to satisfy the numerosity requirement of Rule 23(a), SCRPC.

The commonality requirement is also satisfied. The named Plaintiffs and all members of the Injunctive Class received traffic tickets issued pursuant to the Town Ordinances, not the Uniform Traffic Act. Plaintiffs allege all of these tickets were issued in contravention of State law. In addition, Plaintiffs allege the Town Traffic Ordinance and Penalty Ordinance are preempted by State law. These two determinations predominate over any questions unique to any single class member

and the answer to these questions is determinative of the Plaintiffs' individual claims as well as the claims of all Injunctive Class members.

The claims of Plaintiff Babayan and the Damages Subclass are likewise determined by common inquiries: Are Plaintiff Babayan and the Damages Subclass entitled to a refund of some or all of the fine money these individuals remitted to the Town of Turbeville? Was the Town of Turbeville unjustly enriched by reason of keeping Plaintiff Babayan's fine payment and the similar payments from other class members? The answers to these questions determines Plaintiff Babayan's right to recover an award of money damages from the Defendants, and these answers also determine the Damages Subclass members' entitlement to recover money damages. The fact that members of the Damages Subclass may have paid different fine amounts should not defeat certification where the amount of those fines can be determined by reviewing the Town's own records. A single individual inquiry does not defeat certification where the questions in common with the Plaintiff and subclass are determinative, as they are here.

The Plaintiffs' claims are also typical to those of the class and subclass members, as are the Defendants' legal defenses to those claims. The Plaintiffs and all Injunctive Class members received traffic tickets issued pursuant to the Traffic Ordinances. Plaintiff Babayan and the Damages Subclass all paid fines pursuant to the Traffic Ordinances. The Plaintiffs allege the traffic citations were issued in violation of State law and that the Traffic Ordinances under which they were written are preempted by State law. The Defendants deny any violation of State law and contend the Town Ordinances are not preempted by the Uniform Traffic Act. The Defendants further deny that Plaintiff Babayan or any other person who paid a fine is entitled to a refund. The claims of the Plaintiffs and class members are virtually identical as are the town's defenses. The typicality prong of Rule 23(a), SCRCF is satisfied.

Then named Plaintiffs will fairly and adequately represent the interests of the absent class members. Neither of the named Plaintiffs has interests—economic or otherwise—antagonistic or adverse to those of the rest of the Injunctive Class and Damages Subclass members. Specifically, the named Plaintiffs seek a declaration that the Ordinances are legally unenforceable and an injunction against future attempts to enforce the Ordinances. They have retained competent and experienced counsel to assist in this endeavor.³ Additionally, Plaintiff Babayan seeks a return of the fine money she paid the Town of Turbeville based on the Town's enforcement of the challenged Traffic Ordinances. She additionally seeks refunds to all members of the Damages Subclass who remitted fines that should have never been imposed. The Plaintiffs' interests do not conflict, but instead overlap, with the interests of the Injunctive Class and Damages Subclass they seek to represent.

Additionally, the requirements of Rule 23(a)(5) are met in this case. The claims of the Injunctive Class are injunctive and declaratory. Thus, there is no amount in controversy requirement. While the claims of the Damages Subclass may fall within the requirement that the amount in controversy exceed one hundred dollars for each class member, that requirement is easily met here. Plaintiffs allege in their Amended Complaint that the amount of each fine exceeds one hundred dollars. (*See* Am. Compl. ¶ 73). In their Answer, Defendants denied these allegations. Notwithstanding this denial, in response to Plaintiffs' discovery requests, the Turbeville Police Department provided documentation that the minimum fine charged for violation of the Town Ordinance was one hundred fifty-five dollars (\$155). (*See* Defendant Turbeville Police Department's Responses

³ Courts have held that "[t]he burden is on Defendants to establish inadequate representation." *McGlothlin v. Connors*, 142 F.R.D. 626, 633–34 (W.D. Va. 1992).

to Plaintiffs' First Requests for Production (Memo from Judge Coleman to Chief Chappell), attached as Exhibit C). Based on this response, each class members' individual damages would exceed one hundred dollars, as Plaintiffs seek restitution and refund of the entire amount paid to the Town of Turbeville.

Finally, South Carolina's Rule 23 does not contain the express requirement of the federal rule that a class action is a superior procedure for adjudicating the issues involved. However, the Court may consider this in ruling on class certification. J. Flanagan, *South Carolina Civil Procedure* at 179. If this Court is inclined to look to this consideration, the relevant factors to be considered are: "(1) that the individual interests are insignificant when weighed against the benefits of having all claims adjudicated in a single forum and proceeding; (2) that there is no pending litigation involving the issue in another forum; (3) that there are substantial benefits in terms of the conservation of judicial resources; and (4) there are no substantial management difficulties." *Id.* Here, these factors preponderate strongly in favor of certification. The benefits of adjudicating the declaratory, injunctive, and damages claims in one forum are self-evident. Many individuals drive through the Town of Turbeville on a daily basis and are subject to citation under ordinances that are unconstitutional and the Town of Turbeville is exploiting this illegality for pecuniary gain. A class action is the most efficient mechanism to redress these problems. Moreover, there is no pending litigation involving the issue in other forums, nor are there substantial management difficulties because the case has been designated as complex and has a specific judge assigned to preside over any disputes. Finally, judicial economy is well-served by adopting the approach set forth by Plaintiffs—certification, summary adjudication of the legal issues, possible appeals, class notice, and adjudication of the damages claims.

In conclusion, South Carolina courts favor class actions as a means of saving the resources of both the courts and the parties by permitting litigation to proceed in an economical fashion. *See e.g., Grazia*, 390 S.C. at 576–77, 703 S.E.2d at 204. The Plaintiffs here have satisfied all requirements of Rule 23(a), SCRPC. They respectfully ask the Court to certify an Injunctive Class as well as a Damages Subclass as classes defined in the Amended Complaint at Paragraph 67.

II. The Court should grant partial summary judgment for the Plaintiffs' first and second causes of action.

If the Court certifies the Injunctive Class, Plaintiffs respectfully request that this Court grant summary judgment on Plaintiffs' first and second causes of action, which raise questions of law that are ripe for summary adjudication. Early resolution of these claims furthers the South Carolina Rules of Civil Procedure's liberal construction in favor of "the just, speedy, and inexpensive determination of every action." Rule 1, SCRPC.

The first and second cause of action raise issues of law and no factual development is necessary for their resolution. Specifically, Plaintiffs' first cause of action seeks a declaration on behalf of the named Plaintiffs and the Injunctive Class that: (a) It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which are in conflict with, and preempted by, State law; and (b) It was unconstitutional for Defendants to adopt and enforce the Town Traffic Ordinance and Penalty Ordinance, which impose greater or lesser penalties for traffic violations than those set forth by the General Assembly in the Uniform Traffic Act and related statutes. (Am. Compl. ¶ 79). Plaintiff's second cause of action seeks a permanent injunction on behalf of the named Plaintiffs and the Injunctive Class prohibiting Defendants from enforcing the Town Traffic Ordinance or Penalty Ordinance.

As detailed below, the first cause of action raises questions of law about the constitutionality of the Traffic Ordinances. The Traffic Ordinances are either illegal or legal. There is no middle

ground, as Defendants' motives and the circumstances surrounding the adoption of the Traffic Ordinances are irrelevant to the legal questions before the Court. In the interest of judicial economy, this Court should examine the text of the Traffic Ordinances and the relevant law and make a determination about the constitutionality of the Traffic Ordinances. Although Plaintiffs contend that this ruling can be made prior to class certification,⁴ Plaintiffs have simultaneously moved for class certification out of an abundance of caution.

A. Standard of Review

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011) (citations omitted). "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 130, 796 S.E.2d 165, 168 (Ct. App. 2016) (citation omitted). To that end, a plaintiff may seek summary judgment "at any time after the expiration of 30 days from the commencement of the action." Rule 56(a), SCRPC. When a question of law is presented in a summary judgment motion, it is proper for the Court to summarily resolve the legal question. *Mead*, 419 S.C. at 130, 796 S.E.2d at 168; *see, e.g. Oblachinski*, 391 S.C. at 564, 706 S.E.2d at 857 (holding that it was appropriate for the Circuit Court to resolve the question of whether a duty exists at summary judgment); *cf. Wiegand v. U.S. Auto Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) ("Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law.").

⁴ *See, e.g., Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984) ("It is reasonable to consider a Rule 56 motion [prior to class certification] when early resolution of a motion for summary judgment seems likely to protect both the parties and the court from needless and costly further litigation.").

B. The Town Traffic Ordinance and Penalty Ordinance are unconstitutional and in violation of State law.

"An ordinance is a legislative enactment and is presumed to be constitutional." *S. Bell Tel. & Tel. Co. v. City of Spartanburg*, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985). "The burden of proving the invalidity of a municipal ordinance is on the party attacking it." *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010). "Determining whether a local ordinance is valid is a two-step process." *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000). "The first step is to determine whether the municipality had the power to adopt the ordinance." *Id.* "If no power existed, the ordinance is invalid." *Id.* "If the municipality had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the State." *Id.* (citation omitted). As detailed below, the General Assembly has thoroughly legislated in the area of traffic offenses. Thus, the Town of Turbeville did not have the authority to adopt the Traffic Ordinances, and the Traffic Ordinances are inconsistent with the Constitution and general law of the State.

The South Carolina General Assembly has enacted Chapter 5 of Title 56, entitled the "Uniform Act Regulating Traffic on Highways" (hereinafter, "Uniform Traffic Act"). The Uniform Traffic Act provides that:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein.

S.C. Code Ann. § 56-5-30. The Uniform Traffic Act provides limitations on maximum and minimum speed limits and provides that a person violating the speed limits is guilty of a misdemeanor and subject to various fines. S.C. Code Ann. § 56-5-1520(G). To that end, a person convicted of exceeding the speed limit by less than ten miles per hour is subject to a fine of not less than fifteen

dollars nor more than twenty-five dollars, a person convicted of exceeding the speed limit by between ten and fifteen miles per hour is subject to a fine of between twenty-five and fifty dollars, a person convicted of exceeding the speed limit by between fifteen and twenty-five miles per hour is subject to a fine of between fifty and seventy-five dollars, and a person convicted of exceeding the speed limit by more than twenty-five miles per hour is subject to a fine of between seventy-five and two-hundred dollars or imprisonment for not more than thirty days. *Id.* These fines are in addition to assessments imposed by state law.

Additionally, the Uniform Traffic Act "establishe[s] a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. " S.C. Code Ann. § 56-1-720. For example, a person convicted of exceeding the speed limit by less than ten miles per hour is to be assessed two points, a person convicted of exceeding the speed limit by between ten and twenty-five miles per hour is to be assessed four points, and a person convicted of exceeding the speed limit by more than twenty-five miles per hour is to be assessed six points. *Id.* The South Carolina Department of Motor Vehicles may suspend, for not more than six months, the driver's license and privileges of a person who has accumulated a total of twelve points. S.C. Code Ann. § 56-1-740.

This legislation demonstrates how thoroughly the State has occupied the field of regulating traffic. Indeed, the General Assembly has expressly declared that municipalities are only authorized to enact traffic regulations to the extent that the ordinances do not conflict with the provisions of the Uniform Traffic Act. S.C. Code Ann. § 56-5-30.

The Attorney General's Office and the Supreme Court of South Carolina have addressed situations in which municipalities try to overstep this authority. Looking first to the Attorney General's

Advisory Opinions, which Plaintiffs recognize are not binding legal authority, the weight of authority is uniformly against Defendants. For example, on May 29, 2013, the Attorney General addressed the authority of a local government to enact an ordinance that would have imposed a fine of between \$100 and \$300 for certain traffic violations such as speeding. Op. S.C. Att'y Gen., 2013 WL 2450878 (May 29, 2013). In concluding that such an ordinance would be invalid, the Attorney General comprehensively addressed the state of the relevant law:

The UTA [Uniform Traffic Act] sets forth numerous traffic offenses and prescribes the penalties for violations thereof. For example, a person convicted of a first offense speeding violation pursuant to [§ 56-5-1520(G)] may be punished by a fine of fifteen to twenty-five dollars for the least offense under that subsection, and a fine of seventy-five to two hundred dollars or imprisonment for not more than thirty days for the greatest offense. A person convicted of a first offense for failing to stop when signaled by a law enforcement officer "must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years." § 56-5-750(B)(1). A violation of any provision of the UTA for which a penalty is not specifically set forth is punishable "by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days." § 56-5-6190.

...

Here, the Legislature has expressly provided the parameters within which local governments may enact ordinances dealing with the regulation of traffic. *See* § 56-5-30, *supra*; *see also Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 134, 694 S.E.2d 213, 215 (2010) ("In S.C. Code Ann. § 56-6-30 . . . the General Assembly authorized local authorities to act in the field of traffic regulation if the ordinance does not conflict with the provisions of the Uniform Traffic Act"). The UTA has occupied the field of traffic regulation as far as penalties for violations of the UTA are concerned. The proposed ordinance imposes a fine which, in many or most cases, is either greater or less than the penalties permitted for the numerous traffic offenses set forth in the UTA. Consistent with authorities previously mentioned, the proposed ordinance, if enacted would violate Article VIII, § 14 of the S.C. Constitution. Therefore, we believe the City lacks the authority to enact the proposed ordinance.

Id.

Importantly, the Supreme Court of South Carolina has invalidated a municipal ordinance under similar circumstances to those in the case at bar. In *Aakjer v. City of Myrtle Beach*, the Supreme

Court addressed the constitutionality of Myrtle Beach Ordinance 2008-64, "which required that any person riding a motorcycle wear a protective helmet and eyewear (the Helmet Ordinance)." 388 S.C. 129, 131, 694 S.E.2d 213, 214 (2010). The Supreme Court noted the general law applicable to the constitutionality of municipal ordinances, including the presumption of constitutionality. *Id.* at 133, 694 S.E.2d at 215. However, the Supreme Court emphasized that the State had already enacted legislation addressing motorcycle helmet and eyewear requirements. *Id.* (citing S.C. Code Ann. §§ 56-5-3660, 56-5-3670). Referencing the limitation on municipal authority in South Carolina Code Ann. Section 56-5-30, the Supreme Court held that "[e]ven assuming, as the City contends, that the Helmet Ordinance does not conflict with the Uniform Traffic Act, we find that the ordinance may not stand as the need for uniformity is plainly evident in the regulation of motorcycle helmets and eyewear." *Id.* at 134, 694 S.E.2d at 215. "Were local authorities allowed to enforce individual helmet ordinances, riders would need to familiarize themselves with the various ordinances in advance of a trip, so as to ensure compliance. . . . Moreover, local authorities might enact ordinances imposing additional and even conflicting equipment requirements. Such burdens would unduly limit a citizen's freedom of movement throughout the State. Consequently, the Helmet Ordinance must fall under the doctrine of implied preemption." *Id.*

Here, the Town Traffic Ordinance criminalizes the "operat[ion] [of] any vehicle without care, caution, and full regard for safety of persons or property. . . . The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance." Put simply, the Town Traffic Ordinance attempts to regulate in a field that is thoroughly occupied by the Uniform Traffic Act. The State already has a reckless driving statute. *See* S.C. Code Ann. § 56-5-2920 ("Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property

is guilty of reckless driving."). Similarly, the State has a number of laws requiring that a vehicle and its appliances are in proper or safe condition. *See, e.g.*, S.C. Code Ann. § 56-5-4410 ("It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person or property or which does not contain those parts or is not at all times equipped with lights, brakes, steering and other equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article or for any person to do any act forbidden or fail to perform any act required under this article."). In light of the Uniform Traffic Act's regulation in the field of traffic safety, the Town Traffic Ordinance must be declared unconstitutional as it is impliedly field preempted. *See Aakjer*, 388 S.C. at 134, 694 S.E.2d at 215.

Moreover, the Penalty Ordinance imposes a fine of up to \$500 for violating the Town Traffic Ordinance. Thus, the Penalty Ordinance imposes penalties that may be lesser or greater than those prescribed by State law. The Supreme Court has stated that ordinances setting forth greater or lesser penalties than State law are illegal and preempted by the State law. *See, e.g. City of N. Charleston v. Harper*, 306 S.C. 153, 156, 410 S.E.2d 569, 570–71 (1991) ("This legislation occupies the field as far as penalties for this offense are concerned. Local governments may not enact ordinances that impose greater or lesser penalties than those established by these parameters. . . . The City has attempted to set aside a penalty the legislature has found to be appropriate to punish persons . . . ").

In light of the above, Plaintiffs respectfully request that the Court declare that the Town Traffic Ordinance and the Penalty Ordinance are unconstitutional and illegal as they conflict with State law. To the extent the Court declares the Traffic Ordinances illegal, the Court should exercise its

equitable authority and enter an injunction prohibiting Defendants from enforcing the Traffic Ordinances.

III. The Court should defer the issue of class notice.

Plaintiffs recognize that this Court will face the task of fashioning an appropriate means for class notice if the Injunctive Class and Damages Subclass are certified. However, in light of the unique nature of the Injunctive Class's claims, which present issues of law ripe for summary adjudication, Plaintiffs respectfully request that this Court defer the issue of class notice until those claims are litigated. Such an approach is logical and equitable in this case.

The rules regarding class notice require those who wish to maintain a class action to notify the members of the class about the lawsuit. *See* Rule 23(d), SCRPC and accompanying Notes. Providing notice to absent class members is designed to inform them of the suit's pendency and allow them an opportunity to present any objections. *Hospitality Management Associates v. Shell Oil*, 356 S.C. 644, 662, 591 S.E.2d 611, 621 (2004).

Class actions are favored in South Carolina, *Grazia*, 390 S.C. at 576, 703 S.E.2d at 204. This is because the class action procedure allows adequate representative plaintiffs to address issues affecting a large group of citizens, conserving resources. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354, 523 S.E.2d 781, 784 (1999).

Plaintiffs expect Defendants will immediately appeal a decision granting partial summary judgment for Plaintiffs. An appeal will allow the issue of the legality and constitutionality of the Traffic Ordinances to be definitively determined before both parties expend considerable resources

litigating the merits of the monetary claims.⁵ Trial courts have allowed plaintiffs in similar circumstances to defer sending class notice until the conclusion of such an appeal in order to conserve resources, and the Supreme Court has termed such decisions “good” and “practical.” *Tilley*, 355 S.C. at 381-82, 585 S.E.2d at 302-03; *see also Marx v. Centran Corp.*, 747 F.2d 1536, 1552 (6th Cir. 1984) (“To require notice to be sent to all potential plaintiffs in a class action when the underlying claim is without merit is to promote inefficiency for its own sake.”). To that end, commentators have noted that Rule 23’s flexibility “allows the court to consider the posture of the proceedings and flexibility in the timing of the notice. In a case in Richland County Circuit Court, the Honorable James E. Lockemy certified the class, but deferred the determination of proper notice to the class and the manner of notice until the central issue—the constitutionality of a certain statute—had been decided.” *Lewis and Sullivan on Class Actions* (South Carolina Bar 2005) at 63 (citing *Ward v. State*, 98-CP-40-4069 (Order dated May 16, 2001)). There is even an instance where the Supreme Court decertified a class and dispensed with notice in order to conserve resources. *Layman v. State*, 368 S.C. 631, 646-47, 630 S.E.2d 265, 273 (2006). This was after the government indicated it would fully comply with the court’s ruling with respect to all affected individuals. *Id.* at 646-47, 630 S.E.2d at 273.

In sum and substance, adjudicating the Injunctive Class’s claims at an early stage and deferring the issue of notice is a practical decision. Such a decision does not affect the due process rights of absent class members, as there is no due process right to notice in declaratory or injunctive causes

⁵ Additionally, deferring notice serves judicial economy as notice would only have to be sent once, following an appeal.

of action.⁶ Instead, the requirement of notice is only derived from Rule 23, SCRCP, and the accompanying notes, which afford the trial court with great latitude in determining what notice is appropriate. In any event, any declaration or injunction, whether obtained by an individual or class as a whole, would be binding against Defendants in all cases.

CONCLUSION

Plaintiffs respectfully request that the Court certify the Injunctive Class and Damages Subclass, grant Plaintiffs partial summary judgment on their first and second cause of action, and defer the issue of class notice until the resolution of any appeal of the partial summary judgment order.

Respectfully submitted,

SIMMONS LAW FIRM, LLC

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S.C. Bar No. 10260
s/John L. Warren
S.C. Bar No. 101414
s/Derek Shoemake
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LOUTHIAN LAW FIRM, P.A.

s/M. David Scott
S.C. Bar No. 68667

⁶ Indeed, the Federal Courts do not require notice in such cases, which is a tacit acknowledgement that there is no due process requirement of notice. *See* Rule 23(c)(2), FRCP (noting that notice is not required for declaratory or injunctive causes of action).

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November 1, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina

Third Party Defendants

**DEFENDANTS' ANSWERS TO
PLAINTIFFS' FIRST REQUESTS
TO ADMIT TO DEFENDANTS
TURBEVILLE POLICE DEPARTMENT
AND TO TOWN OF TURBEVILLE**

1. Admit that at least 100 individuals have been cited under Turbeville Town Ordinances Sections 13-22 and/or 13-23 ("Traffic Ordinances") from May 9, 2013 to present.

ANSWER:

Admitted

2. Admit that at least 500 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Admitted

3. Admit that at least 1,000 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Admitted

4. Admit that at least 2,500 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Admitted

5. Admit that at least 5,000 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Admitted

6. Admit that at least 10,000 individuals have been cited under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Denied upon information and belief.

7. Admit that, pursuant to the August 10, 2009 memo from Judge Luci Coleman to Chief Edward "Bo" Chappell, the minimum fine for a ticket written under the Traffic Ordinances is \$155.

ANSWER:

Denied.

8. Admit that the Turbeville Police Department has software capable of generating a report, spreadsheet, database, or other written document, which contains the name, address, date

of citation, and disposition/fine paid for all citations written under the Traffic Ordinances from May 9, 2013 to present.

ANSWER:

Defendants deny that any Town employee is capable of generating a spreadsheet as requested, particularly one including addresses of violators and segregating out only those charged with violating the Town Traffic Ordinances. Defendants admit only that the software vendor *may* be capable of generating such a spreadsheet.



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ATTORNEYS FOR DEFENDANTS

August 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina

Third Party Defendants

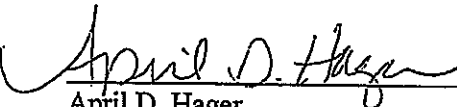
CERTIFICATE OF SERVICE

I hereby certify that this 15th day of August, 2017, a copy of *Defendants' Answers to Plaintiffs' First Set of Requests to Admit to Defendants Turbeville Police Department and Town of Turbeville* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

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John L. Warren
Derek Shoemake
Simmons Law Firm, LLC
1711 Pickens Street
Columbia, SC 29201

Blake Hewitt
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

M. David Scott
Jordan Rauton & Scott, LLC
P.O. Box 948
Lexington, SC 29071



April D. Hager

EXHIBIT B

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Rebecca J. Robbins and Marie Babayan,
individually and on behalf of all those
similarly situated,)

Plaintiffs,)

vs.)

Town of Turbeville, the Turbeville Police
Department, and David Jones, in his official
capacity as Chief of the Turbeville Police
Department,)

Defendants/Third-Party
Plaintiffs,)

vs.)

The State of South Carolina,)

Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
DOCKET NO. 2016-CP-14-00198

**DEFENDANT, TOWN OF
TURBEVILLE'S RESPONSES TO
PLAINTIFFS' FIRST SET OF
CONTINUING INTERROGATORIES**

**TO: THE PLAINTIFFS, REBECCA J. ROBBINS AND MARIE BABAYAN,
INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILAR SITUATED,
AND THEIR ATTORNEYS, JOHN L. WARREN, III, ESQUIRE, JOHN S.
SIMMONS, ESQUIRE, DEREK SHOEMAKER, ESQUIRE, BLAKE HEWITT,
ESQUIRE, AND M. DAVID SCOTT, ESQUIRE:**

INTERROGATORIES

1. Give the names and addresses of persons known to Defendant to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

**Lt. Philip C. Wilkes
Turbeville Police Department
1400 Main Street**

Turbeville, SC 29162

Robert Haskell Carter
Current Address Unknown

Deborah Welch
Turbeville Municipal Court
1400 Main Street
Turbeville, SC 29162

In addition, the Defendants reserve the right to call all witnesses identified by Plaintiffs, together with all putative members of the class as defined. Additionally, pursuant to Rule 33(c), Defendants refer to all citations issued pursuant to the Town Traffic Ordinance for the names of additional persons with knowledge of the facts of the case.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant that relate to the claim or defense in the case.

RESPONSE:

- (A) Disposition sheet entered relating to the ticket issued to the Plaintiff Robbins.
- (B) Citations issued by law enforcement officers.
- (C) South Carolina State Treasurer's Revenue Remittance Forms for relevant citations.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

None. Turbeville put the South Carolina Municipal Insurance Reserve Fund on notice of the claims asserted by Plaintiffs. SMIRF has denied coverage.

4. List the names and addresses of any expert witnesses whom the Defendant proposes to use as a witness at the trial of the case.

RESPONSE:

The Defendant has not retained the services of an expert witness at this time, but reserves the right to do so in the future.

5. For each person known to the Defendant to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

The Police officers and Court personnel are expected to testify regarding the illegal conduct of Plaintiffs and the members of the putative class and that the Plaintiffs and members of the putative class were issued citations for violating the law. The Court personnel are expected to testify regarding the receipt of any payment for the citations and the manner in which those receipts were disbursed in compliance with state law.

The persons identified on each individual traffic citation are expected to testify that each did, in fact, violate the law and that they voluntarily paid the fine resulting from their illegal conduct.

6. If Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

RESPONSE:

The Defendant is properly identified.

7. Identify Defendant's Town Council members, directors, officers, employees, guides, agents, independent contractors, subcontractors, representatives, successors, and assigns whose job function related in any way to the Traffic Ordinances, their enactment, their enforcement, or collecting or disbursing money from violations of the Traffic Ordinances from 2000 to present.

RESPONSE:

A. Enactment:

The following individuals have served on Town Council at some point since January 1, 2000:

L. Dwayne Howell, Mayor
Richard Byrd
Gerald McElveen
Herbert Mims
Kate Smith
Virginia Turbeville, Mayor
Marion Dukes
Larry Gibbons (Deceased)
Ty Green
Jason Newsom

B. Enforcement:

The following individuals have served as Officers for Turbeville since January 1, 2000:

Burgess, Thomas
Cannon, Grant
Carter, R.H.
Chappell, Edward
Coker, John Patrick
Gray, Doyle G
Jones, Francis David
Martin, Linda Lou
Wilkes, Phillip C
Jack, Bobby Rae

C. Collecting or Disbursing:

Deborah Welch

8. Describe in your own words, in full detail, the legal basis for adopting and enforcing the Traffic Ordinances.

RESPONSE:

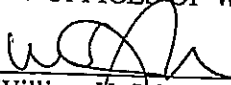
The Defendant objects to this interrogatory on the grounds that the question calls for information outside the scope of discovery as provided in Rule 26(c) of the South Carolina Rules of Civil Procedure, and also that the response would require the divulgence of communications protected by the attorney-client privilege.

9. Please state what action, if any, Defendant took in response to the November 18, 2013 Advisory Opinions of the South Carolina Attorney General that were written in response to inquiries from the Honorable Curtis M. Loftis, Jr. and the Honorable Jimmy C. Bales.

RESPONSE: NONE.

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By:


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ATTORNEYS FOR DEFENDANTS

March 20, 2017

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	DOCKET NO. 2016-CP-14-00198
Rebecca J. Robbins and Marie Babayan,	)	
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs,	)	DEFENDANT, TURBEVILLE POLICE
	)	DEPARTMENT'S RESPONSES TO
vs.	)	PLAINTIFFS' FIRST REQUESTS
	)	FOR PRODUCTION
Town of Turbeville, the Turbeville Police	)	
Department, and David Jones, in his official	)	
capacity as Chief of the Turbeville Police	)	
Department,	)	
	)	
Defendants/Third-Party	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
The State of South Carolina,	)	
	)	
Third-Party Defendants.	)	

TO: THE PLAINTIFFS, REBECCA J. ROBBINS AND MARIE BABAYAN, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILAR SITUATED, AND THEIR ATTORNEYS, JOHN L. WARREN, III, ESQUIRE, JOHN S. SIMMONS, ESQUIRE, DEREK SHOEMAKER, ESQUIRE, BLAKE HEWITT, ESQUIRE, AND M. DAVID SCOTT, ESQUIRE:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all documents identified in response to Plaintiffs' First Set of Continuing Interrogatories.

RESPONSE:

1. The documents identified in Response 2(A) to Interrogatory 2 were produced to the Defendant by the Plaintiffs.
2. As to the documents identified in Response 2(B) to Interrogatory 2, see the Response to Request to Produce #15 propounded to "Turbeville Police Department."

3. As to the documents identified in Response 2(C), these will be produced.
4. Memo from Judge Luci Coleman, dated August 10, 2009, Document #071.

2. Any and all documents used to respond to Plaintiffs' First Set of Continuing Interrogatories.

RESPONSE: NONE.

3. All written or recorded statements which have been taken from the witnesses with regard to the facts and circumstances of the case as outlined in the Complaint.

RESPONSE: NONE

4. Any curriculum vitae for any expert witnesses identified in the above-named Defendant's Responses to the Plaintiffs' First Set of Continuing Interrogatories.

RESPONSE: NONE.

5. Copies of any written reports, memoranda, or other written documents prepared by each of the expert witnesses identified in response to the Plaintiffs' First Set of Continuing Interrogatories.

RESPONSE: NONE.

6. Copies of any and all correspondence between Defendant and/or Defendant's counsel and each of the expert witnesses identified in response to Plaintiffs' First Set of Continuing Interrogatories.

RESPONSE: N/A.

7. Copies of any and all correspondence between Defendants and/or Defendant's counsel and any claims adjuster related to the claims in this case.

RESPONSE:

See Response to Requests for Production To The Town of Turbeville.

8. Copies of any document which will be offered at trial to defend against one or more of the allegations set forth in the Complaint.

RESPONSE:

The Defendant objects to this request on the grounds that a response would require the Defendant to divulge trial strategy and invade the attorney-client privilege. Subject to that objection, the Defendant has not determined which, if any, documents may be used at trial.

9. Copies of any photographs or sketches which you contend are relevant to any of the claims alleged in the Complaint.

RESPONSE: None known at this time.

10. Copies of all exhibits which you intend to introduce into evidence at the trial of this case.

RESPONSE:

The Defendant objects to this request on the grounds that a response would require the Defendant to divulge trial strategy and invade the attorney-client privilege. Subject to that objection, the Defendant has not determined which, if any, documents may be used at trial.

11. Copies of all insurance policies, including but not limited to primary, secondary, umbrella, excess, or aggregate insurance policies (including declaration pages and explanations of benefits), listing the policy dates and the amounts of coverage for all liability, umbrella, and/or other insurance coverage potentially related to this claim.

RESPONSE:

Turbeville put the South Carolina Municipal Insurance Reserve Fund on notice of the claim. SMIRF has denied any coverage for the claims set forth in Plaintiffs' complaint.

12. Copies of all documents received via subpoena.

RESPONSE: NONE.

13. Copies of any and all correspondence to or from Defendant relating to:

a. Section 13-22 of the Turbeville Town Ordinance;

- b. Section 13-23 of the Turbeville Town Ordinance;
- c. The November 18, 2013 Advisory Opinion of the South Carolina Attorney General, which was written in response to an inquiry from the Honorable Curtis M. Loftis, Jr.;
- d. The November 18, 2013 Advisory Opinion of the South Carolina Attorney General, which was written in response to an inquiry from the Honorable Jimmy C. Bales;
- e. Chief Justice Jean Toal's April 2, 2013 letter to Director Hubert F. Harrell of the South Carolina Criminal Justice Academy;
- f. The payment of surcharges and assessments from traffic tickets to the State of South Carolina; and
- g. Media coverage of Turbeville's town traffic ordinances.

RESPONSE:

The Defendant craves reference to the Responses to the Requests for Production to the Town of Turbeville.

- 14. Copies of Defendant's annual budget from 2000 to present.

RESPONSE:

The Defendant craves reference to the Responses to the Requests for Production to the Town of Turbeville.

- 15. Copies of all tickets written under Traffic Ordinances from 2000 to present.

RESPONSE:

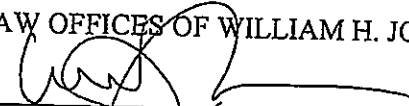
The Defendant objects to the production of citations for which disposition was completed earlier than three (3) years prior to the filing of the Complaint in this action, as not likely to lead to relevant evidence. Subject to that objection, this information may be ascertained by the inspection of the copies of the citations maintained by the Defendant, which will be made available for the Plaintiffs for the purpose of inspection and copying, upon the entry of a Protective Order sufficient to protect the personal information included within the copies of the citations.

16. Copies of any Complaints received by Defendant regarding the adoption or enforcement of the Traffic Ordinances from 2000 to present.

RESPONSE:

The Defendant craves reference to the Responses to the Requests for Production to the Town of Turbeville.

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By: 

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ATTORNEYS FOR DEFENDANTS

March 20, 2017

August 10, 2009

TO: CHIEF EDWARD "BO" CHAPPELL

FROM: JUDGE LUCI M COLEMAN

Cc: Lt David Jones, Lt Linda Martin, Patrol Philip Wilkes, Debra Welch, Court Clerk

After doing research and speaking with other municipal courts I am submitting the schedule of recommended road side bonds. The four (4) municipal courts I spoke with are also using these as guidelines. This list is also published and recommended by the South Carolina Court Administration.

On the traffic and criminal violations I am going to recommend the officers use this list as a guideline when setting roadside bond amounts. I am also recommending that the officers that are issuing a ticket for a two point violation use the amount of \$87.00 as they have been doing in the past and nothing lower. I also spoke with the other courts on this matter and this is also the least amount given to the defendants as a roadside bond when issuing a 2 point violation (56-5-1520).

I will have a copy of the list with me and will make appropriate copies after we discuss this and then will present it to all the officers along with Debra.

STATE LAWS		TRAFFIC ORDINANCE
Speeding 10 mph Or less	\$ 87	\$ 155
Speeding 11-15 mph	237	288
Speeding 16-24 mph	255	388
Speeding 25 mph or greater	468	588
Too Fast for Conditions	255	355
Disregard Traffic Sign/ Signal	255	355
Failure to Give/Improper Signal	255	355

TOT
071

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina,

Third Party Defendants.

**TOWN OF TURBEVILLE'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

The Town of Turbeville opposes Plaintiff Babayan's Motion for Class Certification.¹
Babayan cannot satisfy the requirements of Rule 23, SCRCP, and certification would be improper.

STANDARD FOR CLASS CERTIFICATION²

Under South Carolina's Rule 23, certification of a class requires that Plaintiff establish that (1) the class is so numerous that joinder of all members is impractical ("numerosity"); (2) that

¹ As noted in Turbeville's motion for summary judgment, Plaintiff Robbins is not a proper class representative in any respect – her traffic citation has been dismissed on appeal. Because Turbeville has now repealed the challenged local laws, her purported claim for prospective injunctive and declaratory relief are moot. Mrs. Robbins has no other claims for which she can claim relief. In short, Mrs. Robbins is not a member of any class as defined by the Plaintiffs and cannot be a representative for any putative class in this case.

² With approximately 10,000 traffic citations issued during the class period, Defendants do not discuss the requirement of numerosity. Inasmuch as typicality and commonality have largely merged, the discussion of lack of commonality bridges the gap on the typicality prerequisite.

there are questions of law and fact that are common to the class (“commonality”); (3) that the claims or defenses of the representative parties are typical of the claims or defenses of the class (“typicality”); the representative parties will fairly and adequately represent the interests of the class (“adequacy”).³ In addition, where, as here, the class representative is seeking monetary relief, South Carolina has an additional requirement – the amount in controversy must exceed \$100 for each class member.⁴ The proposed representative Plaintiffs have the burden of establishing each prerequisite for class certification.⁵ The Court is required to conduct and apply a rigorous analysis to assure that Plaintiff has established each of the Rule 23 prerequisites.⁶ Plaintiffs’ failure to establish any one prerequisite is absolutely fatal to class certification.⁷

Rule 23(a)(2) Commonality. The *Gardner* Court explained the nature of commonality. “To establish commonality, [the Plaintiff] must show that there are questions of law or fact common to the class. In practical terms this means the party must articulate the existence of *significant* common legal or factual issues that bind the class together.”⁸ The common issues must be determinative, and most importantly, “a representative plaintiff *cannot* establish commonality if the court must investigate each [class member’s] claim.”⁹ As the Court of

³ Rule 23(a), SCRCPP.

⁴ Rule 23(a)(5), SCRCPP.

⁵ *Waller v. Seabrook Island Property Owners Association*, 388 S.E.2d 799 (S.C. 1990).

⁶ *Gardner v. South Carolina Dep’t of Revenue*, 577 S.E.2d 190, 200 (S.C. 2003); and *Waller*, 388 S.E.2d at 801, citing *General Tel. Co of Southwest v. Falcon*, 457 U.S. 147 (1982). The Court of Appeals blessed the conclusions of the *Gardner* decision in *BLH by Hensley v. South Carolina Dep’t of Social Services*, 814 S.E.2d 638 (Ct. App. 2018) *cert. granted* Nov. 9, 2018.

⁷ *Gardner*, 577 S.E.2d at 200; see also *Ferguson v. Charleston Lincoln/Mercury, Inc.*, 544 S.E.2d 285 (Ct. App. 2001) and *Waller v. Seabrook Island Prop. Owners Ass’n*, 388 S.E.2d 799, 801 (S.C. 1990).

⁸ *Id.*

⁹ *Id.* at 201.

Appeals stated in *BLH v. South Carolina Dep't of Soc. Services*, “the necessity of . . . individualized inquiries ‘negates the benefits of a class action suit.’”¹⁰

Rule 23(a)(4) Adequacy of Representation. The courts have noted one factor to be examined in assessing whether the class representative and class counsel are adequate is to determine whether there is any conflict between the interests of the representative and the class she seeks to represent.¹¹ If there is any antagonism between the interests of the class and the representative, then that person cannot be an adequate representative.¹² More importantly, however, the putative class representative must actually be a member of the class she seeks to represent.¹³ A class representative who is not a member of the class simply cannot be an adequate representative. Further, if a Plaintiff’s claim cannot succeed as a matter of law, the Court should not certify a class on the issue, and the purported class representative should not be considered “adequate.”¹⁴

Rule 23(a)(5) Amount in Controversy. South Carolina’s Rule 23(a)(5) is unique. It requires that Plaintiff establish that the amount in controversy for each plaintiff exceeds \$100. While the Rule does not define the term, the South Carolina Supreme Court held that the Court should look to the “amount to be gained by the lawsuit” to determine whether every class

¹⁰ *BLH v. SCDSS*, 814 S.E.2d at 643 *quoting McGann v. Mungo*, 340 S.E.2d 154, 158 (S.C. 1986).

¹¹ *Waller v. Seabrook Island Prop. Owners Ass’n*, 388 S.E.2d at 801.

¹² *Id.*

¹³ *See Wright, Miller, and Kane Federal Practice and Procedure* § 1761.

¹⁴ *See e.g. Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012). *Also Wright, Miller & Kane, Federal Practice and Procedure*, § 1785.1 (a party must have standing to assert the claim in order to serve as a class representative).

member's claim is for more than \$100.¹⁵ Punitive damages and attorney fees may not be considered when determining the amount in controversy.¹⁶

ARGUMENT

A. Certification of a class seeking prospective injunctive and declaratory relief would be improper because the repeal of the Traffic Ordinance renders Plaintiffs' claims for prospective relief moot.

Plaintiffs' claims for injunctive and declaratory relief are based entirely on the enactment and enforcement of Turbeville's Municipal Traffic Ordinance, 13-22 and 13-23. In their Complaint, Plaintiffs seek a declaration that the Traffic Ordinance is invalid, unconstitutional, and unenforceable, and an injunction prohibiting Turbeville from enforcing the ordinance.¹⁷ On October 10, 2017, Turbeville repealed the Traffic Ordinance. The Town Traffic Ordinance is no longer in effect, and Plaintiffs' claims for injunctive relief and prospective declaratory relief are now moot. On that basis, Plaintiffs' cannot assert claims for themselves, nor can they purport to represent a putative class. There is no class of similarly situated individuals – no one has the prospective claims for relief these Plaintiffs assert.

It is well-settled that when a plaintiff's claim becomes moot prior to the certification of a class, the class claim is likewise mooted.¹⁸ If the claims become moot, the plaintiffs no longer have a personal stake in the controversy, and there is no longer a justiciable controversy for the Court to resolve.¹⁹ If the claim becomes moot, then the predicate for asserting a right to declaratory or injunctive relief fails – with the Ordinance repealed, there is nothing to enjoin, and no rights or legal relations between the parties to determine. A declaratory judgment or an

¹⁵ *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 202 (S.C. 1991).

¹⁶ *Id.*

¹⁷ Amended Complaint, ¶¶ 1, 77-84.

¹⁸ See, e.g. *Dunn v. Dunn*, 148 F.Supp. 3d 1329, 1339 (M.D. Ala. 2015) (internal citations omitted).

¹⁹ *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239-240 (1937).

injunction against enforcing the now-repealed Ordinance would be nothing more than an advisory opinion, a warning to some future Town Council that this Court, on this day, did not think highly of a dead letter. But even that judgment would not be binding, nor would it prevent a future Town Council from enacting a different law – that municipal ordinance would have to face its own challenge in the courts after the law took effect.

In short – there is nothing for the Court to enjoin any longer, and there are no rights and responsibilities for the Court to declare prospectively. The Town’s repeal of the Traffic Ordinance renders Plaintiffs’ prospective claims both moot and non-justiciable. For that reason, certification of any class seeking prospective relief would be incorrect.

B. Plaintiff’s motion for class certification of the proposed Damages Subclass should be denied because all her claims for damages cannot succeed as a matter of law.

1. Plaintiff’s “Damages Subclass” must be denied because her claims are prohibited under the South Carolina Tort Claims Act.

There is no legal or equitable basis for a Court to order a political subdivision of the State to reimburse or provide restitution to those who were cited for violations of the law. As with the State, so too with the towns, municipalities, and other political subdivisions. There is no statute commanding, or even permitting, the government to pay back any fines it has collected. Nor is there any statute waiving the sovereign immunity of the Town of Turbeville for any act alleged in the Complaint. In fact, the clear terms of the Tort Claims Act afford the Town complete immunity from liability to Plaintiff Babayan and her proposed class.

The Tort Claims Act, S.C. CODE ANN. §15-78-60 specifically prohibits Plaintiff’s claim for money damages. The pertinent provisions of the Tort Claims Act are as follows:

The governmental entity *is not liable for a loss resulting from:*

- (1) legislative, judicial, or quasi-judicial action;

- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (23) institution or prosecution of any judicial or administrative proceeding;

S.C. CODE ANN. § 15-78-60.

Thus, the Tort Claims Act specifically prohibits this action against the Town. Issuing the traffic citations themselves falls under the protections of § 15-78-60(4), and it does not matter whether the now-rescinded Traffic Ordinance was valid or invalid. Collecting the fines for violating the Ordinance falls squarely within the immunity afforded under §§15-78-60(3) and 15-78-60(23), for the Town cannot be liable for collecting judicially ordered fines or prosecuting crimes. And, Babayan's claims arising from the Town's enactment of the Ordinance are also entirely barred under § 15-78-60(4). In short, the Tort Claims Act immunizes the Town from all Babayan's claims and immunizes it from any claim for money damages on any theory. Babayan's claims for herself and her putative class must fail as a matter of law.

Notwithstanding the express immunity under the Tort Claims Act, Plaintiff Babayan's claim for damages resulting from an alleged wrongful and unconstitutional conviction still must fail as a matter of law. On April 17, 2019, in *Palmer v. State*, the Court of Appeals held ***there is no civil cause of action based upon a wrongful conviction.***²⁰ After the Supreme Court reversed his conviction, Robert Palmer commenced a civil action for damages and declaratory relief (seeking a declaration that the federal and state constitutions required that there be a remedy for

²⁰ *Palmer v. State*, Op. No. 5641, Shearhouse Advance Sheets April 17, 2019 (Ct. App., April 17, 2019).

damages) against the State. The Court of Appeals held that neither the South Carolina nor federal constitution requires that there be a civil monetary remedy for a wrongful conviction. The Court of Appeals also declined to create an implied right of action for money damages. In doing so, the Court of Appeals declined to legislate from the bench and noted that the General Assembly has refused to enact legislation creating a cause of action for wrongful conviction.²¹ With the Court of Appeals' pronouncement, Babayan's claim for damages fails and the class cannot be certified.

Finally, as the State argued, any refund of fines paid Plaintiff Babayan, or her proposed damages subclass, would require an appropriation by the Town Council. The law is clear that the judicial branch cannot command a legislative body to appropriate money. Neither the Town nor the State can be compelled to refund the fines paid by Babayan or anyone else.²² Irrespective of the Tort Claims Act's clear immunity, Plaintiff's claim must fail as a matter of law and the damages subclass cannot be certified. She simply cannot force the Town to appropriate funds to repay her or her putative class the fines they paid for traffic tickets.

2. Plaintiff's constitutional challenge to Turbeville's Traffic Ordinance is preempted and completely barred by the Post Conviction Relief Act, and, on that basis, class certification must be denied.

Plaintiff Babayan's proposed class-wide claims for a retroactive declaration that the Town Traffic Ordinance was invalid and unenforceable from the time it was adopted constitutes

²¹ The Court of Appeals specifically noted that "[a] bill creating a cause of action for wrongful conviction was introduced in the South Carolina Senate but was not passed. See S. 1037, 119th Gen. Assem., Reg. Sess. (S.C. 2012) to amend Chapter 13, Title 24 of the South Carolina Code to read 'Article XXII Compensation for a Wrongful Conviction.' The bill passed in the senate but did not pass the house of representatives." *Palmer v. State*, Op. 5641 at fn. 2.

²² See *Culberson v. Blatt*, 9 S.E.2d 218, 220 (S.C. 1940) (it is not within the power of the judiciary to impinge upon the power vested in the legislative branch); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 415 S.E.2d 801, 805 (S.C. 1992) (the tripartite system of government precludes the judicial branch from usurping the function of the legislative).

an improper collateral attack on potentially thousands of final judgments. Because neither she, nor any member of the putative class, can mount such a challenge to their convictions, class certification is inappropriate. Babayan's sole and exclusive remedy is under the Post-Conviction Relief Act, not through a civil action for legal or equitable relief. When a claim cannot succeed as a matter of law, the Court should not certify a class on the issue.²³

Throughout the Amended Complaint, Plaintiff alleges that Turbeville Municipal Ordinances 13-22 and 13-23 are unconstitutional and preempted by South Carolina law, and that enforcement of the ordinance was invalid and illegal.²⁴ Plaintiff seeks a declaratory judgment that the Traffic Ordinance was unconstitutional and that enforcement of the Ordinance in the past was likewise unconstitutional.²⁵ But, Babayan essentially requests the Court to declare her conviction, and the convictions of thousands of people she wants to represent, to be void and to order the Town to refund the fine she paid. Babayan did not challenge the Ordinance at the time she was cited for speeding in Turbeville; unlike Plaintiff Robbins, she did not proceed to trial; she did not appeal following a conviction. Rather, she simply paid her ticket. Pursuant to S.C. CODE ANN. 56-5-6220, paying a traffic ticket or forfeiting the bond is the legal equivalent of entering a guilty plea and being convicted of the crime.²⁶ As the South Carolina Court of Appeals has held: "[I]n the case of traffic offenses, South Carolina has a specific statutory

²³ See e.g. *Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012).

²⁴ See, Amended Complaint, ¶¶ 1, 79, 82, 93.

²⁵ Amended Complaint ¶¶ 78-79.

²⁶ A very similar post-conviction challenge was filed in U.S. District Court challenging the validity of traffic tickets issued by the Town of Ridgeland based upon traffic cameras hidden along I-95. Judge Blatt dismissed the claims of all those who had paid their fines because the statutory guilty plea precluded them from challenging the traffic ordinance and the procedures used to issue tickets. See *Ahlum v. Town of Ridgeland*, 10-cv-3227, Transcript of Hearing, pp. 50-54, oral Order on Defendants' Motions to Dismiss (*Exhibit 2*).

provision that payment of bond and the forfeiture of that bond prior to trial for traffic offenses shall have the same effect as a guilty plea and conviction.”²⁷

The only remedy that would have been available to her, and ostensibly to the members of the putative class who likewise pleaded guilty or paid their fines, is under the Post-Conviction Relief Act. The clear language of the PCR statute establishes that bringing a PCR action is the exclusive remedy for challenging the constitutionality of the statute under which one was convicted.²⁸ Babayan (and the putative class) had the right to institute a PCR action regarding their convictions, even though she was not taken into custody, nor did she suffer collateral consequences from her conviction.²⁹ Rather, the fact of her conviction under the Town Ordinance conferred standing on her to challenge the Ordinance through PCR.³⁰ However, all those who were convicted under the Town Ordinance were required to file a PCR action within one year after the entry of judgment of conviction, or within one year after remitter issued from an appeal.³¹ Thus, Babayan cannot now challenge either the fact of her conviction or the constitutionality of the Town Traffic Ordinance.

The retroactive declaratory relief Plaintiff Babayan seeks on behalf of herself and all other recipients of a ticket under the Town Traffic Ordinance is simply not available to her or to

²⁷ *State v. Truesdale*, 548 S.E.2d 896, 899 (Ct. App. 2001).

²⁸ S.C. CODE ANN. § 17-27-10 et seq. provides as follows:

- (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
 - (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

²⁹ *Brown v. State*, 814 S.E.2d 146, 147 (S.C. 2018).

³⁰ *Id.*

³¹ S.C. Code Ann. § 17-27-45(a).

any of the members of the putative class she purports to represent.³² After her guilty plea and conviction by virtue of paying her ticket, the sole available remedy for a Court to overturn a conviction because the statute is unconstitutional would be via post-conviction relief. Even then, the PCR statute requires that an action be brought within 1 year after the entry of judgment and the statute of limitations has long since expired.

Having been ticketed for speeding and having paid the \$188 fine, Marie Babayan's exclusive remedy for challenging the constitutionality of the Town Traffic Ordinance and the amount of the fine, would have been to initiate an action for Post-Conviction Relief within a year of the conviction. An action for retrospective declaratory judgment is no substitute for a PCR action, and is specifically prohibited by the clear terms of the PCR statute. Plaintiff Babayan has no remedy under South Carolina law to challenge an allegedly wrongful conviction other than that provided under the PCR statute. The PCR statute expressly supersedes any right Plaintiff Babayan may have had to bring this civil action, and her sole remedy would have been to seek PCR review. For that reason, Plaintiff Babayan's motion to certify a class must be denied.

C. Plaintiff's motion to certify should be denied because she has failed to establish all the prerequisites for certification under Rule 23.

1. No classes can be certified because the Court will be required to conduct myriad individual inquiries that defeat commonality.

Plaintiff cannot establish that there are common issues of law or fact that bind the class together and ultimately determine the case. Rather, because of the impenetrable morass of individual issues, Plaintiff cannot satisfy her burden of showing sufficiently common issues of

³² Babayan cannot come to Court now and claim innocence when she admitted committing a crime, nor should she be permitted to challenge the Town's Traffic Ordinance in this proceeding – her claims fly in the face of the doctrine of judicial estoppel. Her position is inconsistent with her previous guilty plea to speeding; her previous position was of fact – she was speeding; that position was accepted by the court; and, the decision to pay the fine and accept her guilt was intentional and not accidental. Because Plaintiff Babayan is barred from taking a contrary position to her guilty plea, her claims in this suit can go no farther.

law or fact to support class certification. Based upon the handful of depositions of members of the putative class, it has become clear: the spreadsheet drawn from the Town's citation database does not tell even part of the story – all that can be determined from the digital records are the names and addresses of the cited persons; the date of the arrest; the citation number; the amount of the fine on the citation; and a description of some sort of disposition. However, the data has shown to be inaccurate in many respects, for the disposition and fine actually paid by several of the deponents was different from the amount shown on the citation. In short, there is no reliable way to determine whether any individual should be considered to be part of some class. Only an individual inquiry into all 10,000 files will reveal that information. As the *Gardner* Court made clear – such a detailed individual inquiry will completely undermine any common issues of law or fact that may seem to exist.

a. Guilty plea, *nolo contendere*, or *Alford* plea?

Marie Babayan pleaded guilty, as she admits. The vast majority of deponents who went to Court over their citations pleaded guilty. As noted above, pursuant to S.C. CODE ANN. §56-5-6220, those who simply paid their ticket are deemed to have pleaded guilty and been convicted of violating the law.

- At least one class member deponent testified she pleaded *nolo contendere*.³³
- One other deponent said he asked for a “plea bill.”³⁴
- No deponents testified that they entered an *Alford* plea, but with 10,000 members of the putative class there is no telling how many there are.

But to know whether each individual entered a guilty plea in open court, or are deemed by law to have pleaded guilty; whether they pleaded no contest, or entered an *Alford* plea, the Court will have to conduct an individual inquiry into the files on each person. These individual

³³ Deposition of Charlotte Daniels, 8:6-9.

³⁴ Deposition of Garry Ludwick, 5:25 – 6:17.

circumstances, which are impossible to ascertain, surely call into question whether Plaintiff can establish there are any common issues of law or fact that bind the class together.

b. Did the class member have a lawyer?

At least two of the putative class members whom counsel deposed are active members of the South Carolina Bar and one other sought legal advice.

David Gravely testified that he asked the police officer to reduce his fine. When the officer rebuffed him, and told him only the judge could reduce his fine, he asked to speak with the presiding judge and said “I talk to judges all the time. I’ve been a lawyer for 40-plus years.” Ultimately, Mr. Gravely spoke with the clerk’s office and got his charge reduced to “illegal equipment or something like that. It was a non-point violation.”³⁵ Thus it is not at all clear that Mr. Gravely was even cited for violating the challenged Town Traffic Ordinance.

David Wells also is a practicing attorney. He admitted he was speeding and said he simply mailed in his \$87 fine. He did not contact the Court, nor did he appear for trial. He did not appeal his conviction.³⁶ He did not file a PCR action.

Finally Keith Porter sought legal advice from a friend, attorney Frank Epps. After getting advice from Mr. Epps, Porter paid his \$560 fine. He did not go to court, nor did he seek to have his fine reduced.

Clearly, members of the putative class – perhaps many of them – obtained legal advice or assistance in handling their traffic citations. Whenever and however recipients of citations obtained legal advice, or had a lawyer take action on their behalf, they cannot now attack the Town Traffic Ordinance through this litigation. Their lawyer could have advised them regarding any Constitutional challenge. Instead they might have one of two remedies: either a PCR

³⁵ Deposition of David Gravely, 6:24 – 7:25.

³⁶ Deposition of David Wells, 5:23 – 7:13.

habeas corpus action claiming ineffective assistance of counsel under *Strickland v. Washington*, or by filing a malpractice claim against their attorney.³⁷

Without an extensive individual inquiry, no one can determine which members of the putative class must be excluded because they either are an attorney; whether they had an attorney write or call the Court on their behalf to negotiate plea terms; or whether they had legal assistance at their court appearance. As before, that individual inquiry effectively destroys Plaintiff's claim of commonality.

2. Plaintiff cannot satisfy her burden of showing that every member of her proposed class has an amount in controversy in excess of \$100.

Plaintiff's Complaint seeks restitution or a refund of all the fines levied by the Town of Turbeville for violations of its Ordinance. Yet, neither Marie Babayan, nor nearly any of the class members who were deposed in discovery, denies their guilt. In fact, virtually every person who sat for deposition admitted to their guilt. Further, plaintiff's counsel has repeatedly represented that the class representatives are not saying they were not speeding when they were cited. Because Babayan is not challenging her guilt, only the law under which she was convicted, the only proper measure of the real value of the relief is the difference between the fine that each individual class member paid as part of their guilty plea and conviction under the

³⁷ As before, the PCR statute is all-encompassing on collateral attacks of convictions, as S.C. Code Ann. § 17-27-20(6) provides that a PCR action is the exclusive remedy for any challenge:

That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

Additionally, in vesting jurisdiction over PCR matters, § 17-27-30 specifically refers to *habeas corpus* proceedings.

Town Traffic Ordinance and the fine they would have received under State law.³⁸ In order to determine whether any of the putative class members satisfy the amount in controversy requirement, the Court will have to conduct an impermissible individual inquiry into each and every traffic citation. The Court will have to determine: the speed the person was traveling; the speed limit; where the violation would fit in the Uniform Traffic Act's scheme; what the fine would be for a State citation; and, whether the difference between the Town citation and the State citation is greater than \$100. That individual inquiry alone militates against class certification.

As important, through the depositions of a sampling of members of the putative class members counsel discovered the following fines actually paid:

- -Wayman Goudy \$69³⁹
- David Gravely \$87⁴⁰
- Ursula Hertz Around \$100⁴¹
- William Kellett \$87⁴²
- Delores Lancaster \$50 or \$75⁴³
- Britney Lynn \$80⁴⁴

³⁸ It is important to note that State law mandates a number of assessments that must be added to the uniform traffic statute – Babayan could have been fined between \$50 and \$75 for speeding (S.C. CODE ANN. § 15-5-1520(G)(3), plus the mandatory fee for the Victim's Compensation Fund (\$25) (S.C. CODE ANN. § 14-1-211), the conviction charge (\$25) (S.C. CODE ANN. § 14-1-212), the Criminal Justice Academy fee (\$5) (S.C. CODE ANN. § 14-1-240), and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208). Thus Babayan's State penalty would have ranged between \$158.75 and \$210.63.

³⁹ Goudy deposition, 7:6. Goudy testified that he showed proof that his dashboard gauges were not working properly and all he had to pay was Court costs, without a guilty plea. 6:3-6.

⁴⁰ Gravely deposition, 8:6-10.

⁴¹ Hertz deposition, 7:14-15.

⁴² Kellett deposition, 6:2-4.

⁴³ Lancaster deposition, 9:23-25.

- Jose Padilla \$90⁴⁵
- Mary Pittman \$25⁴⁶

Additionally, many of the deponents testified they went to Court and their fines were greatly reduced to between \$100 and \$155. Again, determining the amount in controversy for each member of the putative class demands an individual inquiry, not just into the amount stated on the citation, but also into the Clerk of Court's records and financial records to determine exactly what fine each recipient of a traffic citation paid at the end of the day. This would require a grueling examination of each individual transaction, and a general individualized reconciling of the Town's accounts.

In any event, Plaintiff *cannot* establish the requisite \$100 amount-in-controversy for each class member. Because of that failure of proof, certification must be denied.

D. Plaintiff Babayan is not an adequate representative of the putative class.

As mentioned above, Rebecca Robbins is not a member of either the proposed retroactive declaratory relief class or the proposed damages class. Miss Babayan is the only class representative appearing on behalf of those proposed groups. As set forth above, because Babayan paid her fine, the law holds her to have entered a guilty plea and been convicted of her offense. For that reason, and because her exclusive remedy would have been to commence a post-conviction relief action, she has no claim against the Town and cannot be an adequate representative for any class.

⁴⁴ Lynn deposition, 8:9-10.

⁴⁵ Padilla deposition, 7:1-3.

⁴⁶ Pittman deposition, 8:1; 12:23 - 13:1.

Notwithstanding that critical issue, of perhaps greater concern regarding her adequacy as a fiduciary and representative of the class, lies in her request in her Motion for Class Certification:

Finally, Plaintiffs ask the Court to defer providing class notice to the class members until the conclusion of the likely appeal of the Court's decision with respect to the constitutionality and legality of the Town Traffic Ordinance and the Penalty Ordinance.⁴⁷

Due process mandates that the class receive notice in the best practicable manner, "including individual notice to all members who can be identified through reasonable effort."⁴⁸ In this case, because the parties know the names and addresses of every putative class member, each must receive actual notice of class certification. Publication notice will not withstand due process scrutiny. As the United States Supreme Court has held:

Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.⁴⁹

Due process and the Fourteenth Amendment mandate that each class member be actually notified of the class action, and Plaintiff's willingness to shirk her duties to the class she wants to represent spotlights her inadequacy as a class representative.

CONCLUSION

Turbeville's repeal of the Town Traffic Ordinance renders the claims of both Plaintiffs seeking injunctive and declaratory relief moot and any class certification would be wholly inappropriate for those claims. It is well-settled that, should a claim become moot prior to an

⁴⁷ Plaintiff's Motion for Class Certification, p. 2.

⁴⁸ See *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173-74 (1974).

⁴⁹ *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 316 (1950) "when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected."

order certifying a class, the claim becomes moot for the proposed class members as well. The repeal of Turbeville's Traffic Ordinance negates any basis for a class to be certified on Plaintiff's declaratory relief and injunction claims.

Plaintiff Babayan's proposed damages sub-class likewise cannot be certified. First, and most importantly, her class cannot be certified because the claims must fail as a matter of law. Turbeville is clearly immune from suit under the clear terms of the Tort Claims Act. Additionally, there is no cause of action for wrongful conviction and neither Babayan nor the members of the putative damages sub-class can recover any damages for any sort of erroneous conviction under the Traffic Ordinance. Finally, Babayan's constitutional challenge to the Ordinance is preempted by the express terms of the Post Conviction Relief Act. Because the underlying claims must fail as a matter of law, it would be inappropriate to certify any class of plaintiffs.

Finally, Plaintiff Babayan cannot establish the essential elements for class certification under Rule 23. In order to determine who is, or is not, part of the class, the Court will have to engage in wide ranging individual inquiries that completely undermine the utility of the class action device. Because of these individual inquiries, Plaintiff cannot establish commonality. Likewise, Babayan cannot establish that each class member's claim is worth at least \$100 – many paid less than \$100 to settle their traffic tickets; still others paid less than \$100 difference between what the State citation would have commanded and that which Turbeville collected. In neither case would their claim be worth more than \$100. Finally, Plaintiff's request that certification be kept secret from the members of her proposed class damns her status as an adequate representative. Babayan's motion for class certification asks the Court to ignore the due process rights of the class members, and that very request makes clear she cannot represent the interests of the class.

For these many reasons, Plaintiffs' Motion for Class Certification should be denied.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard D. Dukes, Jr.

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**ATTORNEYS FOR DEFENDANT TOWN OF
TURBEVILLE**

June 20, 2019
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina

Third Party Defendants

**DEFENDANTS/THIRD PARTY
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
PLAINTIFFS' CLAIMS FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

NOW COME all Defendants, through undersigned counsel, who move for partial summary judgment pursuant to Rule 56, SCRPC.

A. Plaintiffs' claims for prospective declaratory and injunctive relief must be dismissed inasmuch because the repeal of the Traffic Ordinance renders their claims for prospective relief moot.

Plaintiffs' claims are based entirely on the enactment and enforcement of Turbeville's Municipal Traffic Ordinance, 13-22 and 13-23. In their Complaint, Plaintiffs seek a declaration that the Traffic Ordinance is invalid, unconstitutional, and unenforceable, and an injunction prohibiting Turbeville from enforcing the ordinance.¹ On October 10, 2017, Turbeville repealed

¹ Amended Complaint, ¶¶ 1, 77-84.

the Traffic Ordinance (attached as *Exhibit 1*). Because the Traffic Ordinance is no longer in effect, Plaintiffs' claims for injunctive relief and prospective declaratory relief are now moot. On that basis, Plaintiffs' claims for prospective injunctive and declaratory relief are due to be dismissed.

Additionally, Plaintiff Robbins' entire claim is moot and she must be dismissed from the case. Robbins went to trial for her violation and was convicted of violating the State traffic statute.² She then appealed that conviction to Circuit Court, where her conviction was reversed.³ On remand, the Town decided to *nolle prosequere* her charge and the case against Robbins was dismissed. Robbins' only claim in this case, then, would be for injunctive and declaratory relief and, with the repeal of the Ordinance, her claims are entirely moot.

B. Plaintiff Babayan's claims for a retroactive declaratory relief must be dismissed as an impermissible collateral attack on her guilty plea and conviction under the Town Traffic Ordinance.

Marie Babayan's claims for a retroactive declaration that the Town Traffic Ordinance was invalid and unenforceable from the time it was adopted constitutes an improper collateral attack on thousands of judgments and thus must be dismissed. Throughout the Amended Complaint, Plaintiffs allege that Turbeville Municipal Ordinance 13-22 and 13-23 are preempted by South Carolina law and that enforcement of the ordinance was invalid and illegal.⁴ In their First Cause of Action, Plaintiffs seek a declaratory judgment that the Traffic Ordinance was unconstitutional and that enforcement of the Ordinance was likewise unconstitutional.⁵

² Amended Complaint, ¶¶ 53 – 56.

³ Amended Complaint, ¶ 59.

⁴ See, Amended Complaint, ¶¶ 1, 79, 82, 93.

⁵ Amended Complaint ¶¶ 78-79.

Plaintiff Babayan (the only Plaintiff who paid her traffic ticket and forfeited her bond) essentially requests the Court to declare her conviction to be void and to order the Town to refund the fine she voluntarily paid. Yet, Babayan did not challenge the Ordinance at the time she was cited for speeding in Turbeville, nor did she go to trial, nor did she appeal following a conviction. Rather, she paid her ticket and forfeited that bond. Pursuant to S.C. CODE ANN. 56-5-6220, paying a traffic ticket or forfeiting the bond is the equivalent of entering a guilty plea, and she cannot now seek to vacate that guilty plea in a declaratory judgment action.⁶ As the South Carolina Court of Appeals has held: “[I]n the case of traffic offenses, South Carolina has a specific statutory provision that payment of bond and the forfeiture of that bond prior to trial for traffic offenses shall have the same effect as a guilty plea and conviction.”⁷

Plaintiff is not arguing she was not speeding – she is complaining that she got caught and received a citation for breaking the law. Every factual allegation in the Amended Complaint that Plaintiff raises as a challenge to the validity of her ticket is a matter that could have been raised in the criminal proceeding and on appeal from her conviction. Instead, after pleading guilty to the charge, Plaintiff Babayan wants to dress up an impermissible collateral attack on her conviction as a civil action for a retroactive declaratory judgment.

The retroactive declaratory relief Plaintiff Babayan seeks on behalf of herself and all other recipients of a ticket under the Town Traffic Ordinance is simply not available to her or to

⁶ A very similar post conviction challenge was filed in U.S. District Court challenging the validity of traffic tickets issued by the Town of Ridgeland based upon traffic cameras hidden along I-95. Judge Blatt dismissed the claims of all those who had paid their fines because the statutory guilty plea precluded them from challenging the traffic ordinance and the procedures used to issue tickets. *See Ahlum v. Town of Ridgeland*, 10-cv-3227, Transcript of Hearing, pp. 50-54, oral Order on Defendants’ Motions to Dismiss (*Exhibit 2*).

⁷ *State v. Truesdale*, 548 S.E.2d 896, 899 (Ct. App. 2001).

any of the members of the putative class she purports to represent.⁸ At this point, after her guilty plea and conviction by virtue of paying her ticket, the sole available remedy for a Court to overturn a conviction because the statute is unconstitutional would be via post conviction relief. The PCR statute is explicit and unequivocal:

- (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
 - (2) That the court was without jurisdiction to impose sentence;
 - (3) That the sentence exceeds the maximum authorized by law;
 - (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 - (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
 - (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.
- (B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for

⁸ Babayan cannot come to Court now and claim innocence when she admitted committing a crime, nor should she be permitted to challenge the Town's Traffic Ordinance in this proceeding – her claims fly in the face of the doctrine of judicial estoppel. Her position is inconsistent with her previous guilty plea to speeding; her previous position was of fact – she was speeding; that position was accepted by the court; and, the decision to pay the fine and accept her guilt was intentional and not accidental. Because Plaintiff Babayan is barred from taking a contrary position to her guilty plea, her claims in this suit can go no farther.

challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

S.C. Code Ann. § 17-27-20.

Having been ticketed for speeding and having paid the \$188 fine, Marie Babayan's exclusive remedy for challenging the constitutionality of the Town Traffic Ordinance and the amount of the fine, is to initiate an action for Post-Conviction Relief. Simply put, an action for retrospective declaratory judgment is no substitute for a PCR action, and is specifically prohibited by the clear terms of the PCR statute. Plaintiff Babayan has no remedy under South Carolina law to challenge an allegedly wrongful conviction other than that provided under the PCR statute. The PCR statute expressly supersedes any right Plaintiff Babayan may have had to bring this civil action, and her sole remedy is to seek PCR review. For that reason, Plaintiff Babayan's claims for declaratory relief must be dismissed.

CONCLUSION

Turbeville's repeal of the Town Traffic Ordinance renders the claims of both Plaintiffs seeking injunctive relief moot. For that reason, Plaintiffs' Second Cause of Action should be dismissed. For the same reason, both Plaintiffs' petition for prospective declaratory relief is moot and should be dismissed. Finally Plaintiff Robbins' only claim was for prospective relief and she should be dismissed from the case.

Plaintiff Babayan is the only plaintiff who received a ticket for speeding and paid the fine. In paying her fine, pursuant to S.C. Code Ann. § 56-5-6220 requires the Court to treat the payment as a guilty plea and a conviction. Babayan cannot collaterally attack her conviction now through a retrospective attack on the validity of the Ordinance. Rather, her exclusive

remedy is under the Post-Conviction Relief Act and her request for declaratory judgment must also be dismissed.

Inasmuch as the claim for prospective declaratory relief is now moot, and Plaintiff Babayan's claim for retrospective declaratory relief is legally improper, Plaintiffs' First Cause of Action must be dismissed as well.

s/Richard D. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS

February 14, 2018

ARTICLE II. MOVING TRAFFIC

Sec. 13-20 Using Vehicle for Advertising

No person shall operate or park on any street any vehicle for the primary purpose of advertising.

Sec. 13-21 Driving Across Private Property

It shall be unlawful for any person driving a vehicle to use the driveway of any service station in the Town as a roadway or thoroughfare.

It shall be unlawful for any person driving a vehicle to make any "U" turn or other turn prohibited at any point where such turn is prohibited, and it shall be unlawful to accomplish a "U" turn by deviously going into or through private property adjoining the street where such turn is prohibited.

Sec. 13-22 Town Traffic Ordinance

Sec. 13-22 adopted May 13, 2003
Sec. 13-22 Amended November 08, 2005
Sec. 13-22 Amended July 8, 2008
Sec. 13-22 Amended August 11, 2009

It shall be unlawful for any person to operate any vehicle without care, caution, and full regard for safety of persons or property. Any person failing so to do shall be guilty of the Town Traffic Ordinance. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of the violation of the Town Traffic Ordinance.

Sec. 13-23 Town Traffic Ordinance Penalty

Sec. 13-23 adopted by council August 11, 2009

It shall be unlawful for any person to fail to obey the traffic ordinances of the Town of Turbeville and the State of South Carolina while operating a motor vehicle within the town limits. Any person convicted of violating the provisions of this section, shall be fined not more than five hundred and no/100ths (\$500.00) dollars plus the assessments, or imprisoned not more than thirty (30) days.

Sec. 13-24 Loading Zones

Sec. 13-24 moved to Article II by council on August 11, 2009

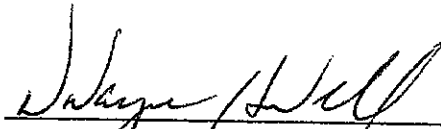
No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious unloading or loading of passengers in any place marked as a

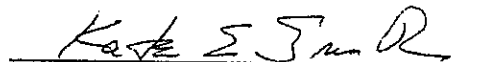
Printed: 12/30/11

Chapter 13: Article II - 1
Adopted December 14, 1999

First Reading September 14, 2017

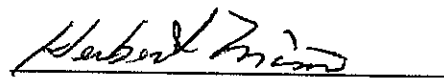
October 10, 2017
Second & Final Reading


Dwayne Howell, Mayor


Kate E Smith


W Gerald McElveen


Richard Byrd


Herbert Mims

Repeal of Section 13-22 & Section 13-23

Ordinance 2017-06

ORDINANCE NUMBER 2017- 6

TOWN OF TURBEVILLE, SOUTH CAROLINA

Ordinance providing for the repeal of Section 13-22 and Section 13-23 of the Code of Ordinances of the Town of Turbeville.

WHEREAS, the Town Council of the Town of Turbeville has determined that the provisions of Sections 13-22 and 13-23 are no longer necessary for the protection of the life and property of the citizens of the Town;

NOW THEREFORE, in accordance with the foregoing, the Code of Ordinances of the Town of Turbeville is hereby amended as follows:

Repeal: Section 13-22 and Section 13-23 are hereby repealed, and the Town Clerk is directed to remove those sections from the Code of Ordinances of the Town of Turbeville.

Effective Date: This ordinance shall be effective as of the date of the second reading.

IT IS SO ORDAINED.

First Reading	<u>9/14/2017</u>
Second Reading	<u>10/10/2017</u>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JEREMY GLENN AHLUM, ET AL. :
 :
 vs. :
 :
 TOWN OF RIDGELAND, ET AL. : 9:10 CV 3227 SB

Motion hearing in the above matter held Thursday,
April 28, 2011, commencing at 10:49 a.m., before the
Hon. Sol Blatt, Jr., in the United States Courthouse,
Courtroom III, 81 Meeting Street, Charleston,
South Carolina, 29401.

APPEARANCES:

MARIO A. PACELLA, ESQUIRE and JOSEPH P. STROM,
JR., ESQUIRE, 2110 Beltline Blvd., Columbia,
SC, appeared for plaintiffs.

TIMOTHY A. DOMIN, ESQUIRE, 126 Seven Farms Dr.,
Charleston, SC, appeared for defendants.

MORGAN S. TEMPLETON, ESQUIRE, 145 King Street,
Charleston, SC, appeared for defendants.

RECORDED BY ANNA LANAHAN, ESR
TRANSCRIBED BY DEBRA L. POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

1 THE COURT: Gentlemen, I've been over your briefs,
2 and I want to talk about standing, to start with; I think
3 that's the best thing to do. And I'd like to ask the
4 plaintiff, whoever is going to speak for the plaintiff, a
5 question. So who is going to handle the argument for the
6 plaintiff?

7 MR. PACELLA: Your Honor, I will.

8 THE COURT: All right. You've got three plaintiffs
9 who sent their money in, the bond money in, and didn't show
10 up, and, of course, the money was forfeited. And you've got
11 two who went down or had a lawyer go down, and their cases
12 were dismissed. And you've got three who asked for a jury
13 trial and proceeding through the state system.

14 MR. PACELLA: Yes, sir.

15 THE COURT: Now, if I were to determine -- I haven't
16 concluded this -- but if I were to determine that the three
17 who forfeited the bond had, in effect, pled guilty to a
18 violation of a traffic law, and that the two who the case were
19 dismissed don't have any constitutional claim, and that the
20 three who are proceeding in the state system, that I shouldn't
21 interfere with the state, and I should let them go up through
22 state system to the Supreme Court or wherever they wanted to
23 go, and then come into this court; if I held that, you
24 wouldn't have any plaintiffs.

25 Do you agree with that?

1 MR. PACELLA: I agree, Your Honor, if those were your
2 conclusions. I will dispute whether those conclusions are
3 appropriate, but that is correct. That would be a correct --
4 Correct, Your Honor.

5 THE COURT: So that's why I think that we need to get
6 the standing before we go into whether or not these different
7 causes of action have any merit or don't have any merit.

8 MR. PACELLA: Yes, sir.

9 THE COURT: So that's what I want to know.

10 Now, since the plaintiffs -- I mean the defendants have --
11 we're here on their motion -- Well, we're here on your motion
12 to amend your amended complaint, and we're here on the
13 defendants' motion to dismiss your complaint. I guess we
14 better get a complaint before any motion to dismiss can be
15 heard, because you've got to decide what the complaint is.

16 As I recall, you filed a complaint, then you filed -- they
17 moved to dismiss, and then you moved to amend your complaint.
18 And I think I'm right; before they moved to -- which they
19 moved to dismiss, but before they could move to dismiss, you
20 filed a motion to amend your amended complaint.

21 MR. PACELLA: Yes, sir. And the reason for that is
22 we received documents --

23 THE COURT: I mean, you didn't add any parties to --
24 the motion to amend your amended complaint only adds facts, as
25 I understand.

1 MR. PACELLA: That's correct.

2 THE COURT: Doesn't add any parties.

3 Well, normally, unless the amendment is futile -- I mean
4 at this stage of the proceedings I always -- normally I would
5 allow an amended complaint, because it's only a few months
6 old. However, if the amendments that you propose are futile,
7 then it wouldn't be any use to allow the amendments. And your
8 big amendment, as I read it, is your first amended complaint
9 where you add these parties. You only had three to start
10 with, didn't you?

11 MR. PACELLA: Yes, sir, then we added five additional
12 parties.

13 THE COURT: That was in your first amended complaint.

14 MR. PACELLA: Yes, sir.

15 THE COURT: You didn't add any parties in your motion
16 to amend your amended complaint.

17 MR. PACELLA: That is correct. At that point we were
18 moving to add additional facts that we discovered through a
19 Freedom of Information Act request.

20 THE COURT: Well, let's discuss these issues, since
21 you're moving to amend to make them parties. Let's discuss
22 these eight people in separate -- the three who forfeited
23 their bond, and the two who were dismissed and the three who
24 have asked for a jury trial and are waiting for the trial.

25 MR. PACELLA: Yes, sir.

1 THE COURT: Now, you tell me why your first three
2 don't fall into those who violated the traffic laws, and,
3 therefore, under the law, a forfeiture is the equivalent of a
4 guilty plea. And, of course, a guilty plea, you waive all
5 your rights. If they fall into that category, then they're
6 not proper parties. And you explain to me why they didn't
7 violate the traffic laws of South Carolina.

8 MR. PACELLA: Thank you, Your Honor. I think there
9 are basically two main arguments, two main reasons why these
10 aren't actually bond forfeitures within the context of South
11 Carolina law that would amount to a guilty conviction, or a
12 conviction that has guilt attached to it for a subsequent
13 civil proceeding.

14 The first reason is that we've alleged that they actually
15 haven't had a bond forfeiture proceeding in the Town of
16 Ridgeland. There was actually no proceeding, this is just
17 merely an entry in the court's docket system, and that the
18 case wasn't called on the record to determine if anyone
19 appeared to challenge that bond. So that's the first and main
20 point that we want to make is that there wasn't a bond
21 forfeiture proceeding. At least that's what we've alleged.
22 And the response filed by iTraffic in their motion to dismiss,
23 their documents that they filed were not transcripts of the
24 court proceedings, rather, docket entries that were made in
25 the computer system 7:00 o'clock at night, when the alleged

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1 conclude from the record that they have, that this is
2 categorically a traffic offense.

3 So the two points --

4 THE COURT: Are you arguing that going anywhere from
5 11 to 15 miles over the speed limit on a public highway or
6 interstate is not a traffic offense?

7 MR. PACELLA: They were charged with careless
8 operation of a motor vehicle. Your Honor, if our clients were
9 charged with speeding under the South Carolina Code, the
10 analysis would be exactly what you just said, Your Honor. But
11 they didn't choose to charge them with the speeding violation
12 that is in the Traffic Code of South Carolina, of the South
13 Carolina Code; they chose this municipal ordinance, which is
14 more inclusive than just on the roadway.

15 And so from a pure factual matter, Your Honor, that may be
16 correct, but from a legal standpoint, this statute is -- this
17 ordinance is more inclusive than just the roadway. So our
18 point is the reason why each of these three individuals have
19 standing to bring an action at this time is because there was
20 no -- the Court did not have a bond forfeiture proceeding.
21 We've alleged that. And there's no evidence of an
22 on-the-record proceeding in court to determine guilt. Or to
23 determine that the bond was actually forfeited, that anyone
24 appeared, or anything that would constitute a prosecution in
25 the court.

1 And then the second argu --

2 THE COURT: Would they have to prosecute them if they
3 didn't show? I mean, what kind of prosecution would you have?

4 MR. PACELLA: Well, the prosecutor -- there has to be
5 an arm of the state to prosecute the action. The Municipal
6 Court itself cannot do the prosecution of the case. Because
7 there is a case, we actually have it cited in our briefing,
8 regarding a Newberry magistrate judge who was actually
9 prosecuting individuals. And the Court said you can't do
10 that. So there has to be a person for the state, in this case
11 an officer from the Town of Ridgeland, to be in the courtroom
12 when these bond forfeiture proceedings take place. And
13 there's no evidence that that actually took place.

14 THE COURT: All right, sir, go ahead.

15 MR. PACELLA: And we were talking about these three
16 plaintiffs. Plaintiff Emery, according to the documents that
17 iTraffic submitted in response -- or in their motion to
18 dismiss, is that his bond was paid a day after court. So he
19 would have had to have been tried in his absence, for that to
20 be a valid bond forfeiture proceeding. For his bond to be
21 forfeited, he would have had to have been tried in his
22 absence, and there's no record that plaintiff Emery was tried
23 in his absence.

24 THE COURT: Is there any record that any of the three
25 were tried in their absence?

1 MR. PACELLA: There is no record that there was a
2 trial in the absence for any of the parties.

3 THE COURT: Well, just those three.

4 MR. PACELLA: Right, right, that's right, for those
5 three. There's no -- any of those three parties. We haven't
6 moved on to any of the other parties, so that's what I'm
7 focusing on at this point.

8 THE COURT: And that's your position about why they
9 didn't violate -- why they don't come under the forfeiture
10 amounting to --

11 MR. PACELLA: Your Honor, the main argument is that
12 there was no forfeiture proceeding in court. That's the main
13 argument. Now, it may be simple as the traffic officer
14 reading the names of the tickets and verifying that no one has
15 appeared, and then for the judge to find bond forfeiture, have
16 a finding of a bond forfeiture, that may be as simple as the
17 proceeding needs to be. But it has to be some proceeding, not
18 just a clerk in the office making an entry in the computer
19 system.

20 THE COURT: Well, I mean, you admitted in the
21 complaint that a bond was posted.

22 MR. PACELLA: Yes, sir. Bond was posted, absolutely
23 correct.

24 THE COURT: All right, sir, let me hear from the
25 defendants about that. We'll just take them one at a time.

1 MR. PACELLA: Okay, thank you, sir.

2 MR. DOMIN: Your Honor, Tim Domin, I'm here on behalf
3 of the Town of Ridgeland, its police chief, Chief Woods,
4 and --

5 THE COURT: You represent everybody but the i
6 whatever it is?

7 MR. DOMIN: I Traffic, that's right. That's right.

8 Your Honor, under South Carolina law, if bond is put up,
9 there's no requirement to conduct a trial in absentia or
10 hearing in absentia. And that is South Carolina Code Section
11 56-5-2660. And what they want to seize on is that applies if
12 it's any traffic violation or traffic law of this state, or
13 political subdivision thereof, which is why they want to get
14 into the strained argument that somehow speeding on I-95 is
15 not a traffic violation. Clearly, that is a traffic
16 violation.

17 And I want to make certain that the Court understands how
18 strained this argument is. Of course, in one instance,
19 driving on I-95 clearly is operating on the roadways of this
20 state. There is no question about it. They want to suggest
21 that the Town of Ridgeland's ordinance is broader, because it
22 states that it is illegal to drive in a careless manner on the
23 public ways of the state.

24 Now, I'm not aware of any situation where Ridgeland's
25 applying that to railroad tracks, is applying that to driving

1 on bike paths or anything of the sort. That applies to
2 careless operation on the roadways.

3 Now, I will say to you, if somebody is drunk driving on
4 our sidewalks, I hope that that is also a violation of the
5 traffic laws of the state. I mean, I don't think that there's
6 any place for that.

7 And state law, state law talks about defining public ways.
8 That's where they get their definition from, is from the Motor
9 Vehicle Code, which says public ways include things like the
10 sidewalks and appurtenances thereof. And again, that makes a
11 lot of sense. Because we don't want people driving drunk on
12 the sidewalks. You don't want people committing traffic
13 offenses using their vehicle on the appurtenances to the
14 roadway. But to somehow turn this whole thing on its head and
15 suggest that those are not -- that the careless operation by
16 driving 81 miles an hour on I-95, that that's not a traffic
17 offense, turns the definition of traffic offense on its head.
18 And I just don't think that any reasonable interpretation can
19 support the view that careless operation of a motor vehicle is
20 not a traffic offense.

21 And, you know, all the municipalities here in South
22 Carolina have enacted these careless operation laws, because
23 it allows them to charge a fine, but the motorist doesn't have
24 points assessed against their driver's license. So by and
25 large, people who got charged with speeding are the ones who

1 would want to come in and ask for a careless operation. So
2 all the towns around here, all the towns in the state for the
3 most part have these careless operation of a motor vehicle
4 ordinances.

5 There is no question, and they're not raising the question
6 that we have the authority to enact that law. We have the
7 authority to enact that law. And the only question is, is
8 that a traffic offense; and clearly it is.

9 THE COURT: Well, they also raise the question that
10 there was no forfeiture proceeding. What's your position
11 about that?

12 MR. DOMIN: If you read South Carolina Code
13 56-5-2660, if a bond is put up, you're not required to try
14 them in absentia, you're not required to have further
15 proceedings. And under the Truesdale case, it's equivalent to
16 a guilty plea.

17 So it is true that certain proceedings would apply to
18 General Sessions offenses, certain bond forfeiture proceedings
19 and/or trials in absentia, that by state law do not apply to
20 traffic offenses. The only question is whether this is a
21 traffic offense. And with due respect, speeding on I-95 is a
22 traffic offense.

23 THE COURT: All right, sir. Have you got anything
24 else you want to --

25 MR. PACELLA: Well, Your Honor, I certainly think

1 it's valuable to realize that there are multiple doctrines
2 which prohibit these folks from relitigating their cases.
3 Res judicata, Heck versus Humphrey, as well as the
4 Rooker-Feldman Doctrine. All of those have been briefed.

5 And I think that Your Honor is keying in on the correct
6 issue. Because these folks who have pled guilty, their case
7 is over. And that is what they've done, they've pled guilty.
8 By putting a bond up, by South Carolina State law, they have
9 pled guilty. And if you plead guilty, you can't then come in
10 with a civil action and attack that guilty plea.

11 THE COURT: Well, how long did they have -- when did
12 the forfeiture change into a guilty plea?

13 MR. DOMIN: Well, under 56-5-2660, it says that the
14 Town is not allowed to set the ticket date any sooner than ten
15 days. Somebody is allowed to appear and voluntarily enter an
16 appearance and say I wish to waive that ten-day requirement.
17 But what the statute does say, if they've paid up their money
18 and so long as more than ten days have passed, that is a
19 forfeiture and a guilty plea for which the Town does not have
20 to conduct a trial. And it only applies to traffic offenses,
21 but it certainly applies to these offenses.

22 So to answer your question, I think it is on the time when
23 they put up the money and ten days has passed, that's when it
24 becomes a guilty plea.

25 THE COURT: All right, sir.

1 MR. TEMPLETON: Morning, Judge Blatt, Morgan
2 Templeton on behalf of iTraffic. I'll be very brief.

3 THE COURT: Take as long as you want.

4 MR. TEMPLETON: That's all right, Judge, I know we
5 have other issues to deal with, and I'll be very succinct. I
6 want to incorporate by reference Mr. Domin's arguments that he
7 has presented already to the Court, because they're equally
8 applicable to iTraffic.

9 The one other point that I would like to highlight for the
10 Court is that the one circuit-level court that has had an
11 opportunity to review this constitutional standing issue which
12 the Court is focusing on, is the Fifth Circuit. And we've
13 cited the two Bell decisions that really -- and they're in the
14 context of a photo traffic enforcement context. Those
15 decisions come down squarely on the side that folks that have
16 pled guilty or had their day in court with respect to their
17 traffic violation, the game is up. They have no
18 constitutional standing because there's been no injury.

19 The Tenth Circuit, in a different factual context, has
20 language in it that talks about activities that make criminal
21 activity more difficult, don't qualify as an injury-in-fact
22 for Article III standing purposes. And that's exactly what we
23 have here, Judge. These folks presumably violated the law,
24 they posted a bond, and under South Carolina state law, the
25 Truesdale case that Mr. Domin cited, that is tantamount to a

1 guilty plea. And so for the three folks that have posted
2 their bond, they had their opportunity to contest, chose not
3 to, and with due respect to those men, their day is up and
4 they need to live by the decision that they made, and can't
5 come to this Court to try to undo that which they voluntarily
6 chose to do. For the additional reasons that Mr. Domin cited,
7 the Heck versus Humphrey argument, under the -- and there's a
8 couple of cases cited in our brief in the RICO context, that
9 you can't take under the premise of a civil lawsuit, and
10 present facts that would necessarily impugn the validity of a
11 criminal conviction. You can't go through the back door, if
12 you can't walk through the front door. And that's what these
13 three are trying to do.

14 THE COURT: All right, sir.

15 MR. TEMPLETON: Thank you, Your Honor.

16 THE COURT: I'll be glad to hear from the plaintiff
17 or anything in reply.

18 MR. PACELLA: Your Honor, the traffic ticket which
19 is -- it's the second page of Exhibit A to each of our
20 versions of the complaint, each of the iterations of the
21 complaint actually tells a different --

22 THE COURT: Wait a minute now, let me get it.

23 MR. PACELLA: Yes, sir.

24 (Brief interruption in proceedings.)

25 THE COURT: All right, sir, I've got it now.

1 MR. PACELLA: There's several paragraphs. This is
2 actually very difficult to read in this document. But the
3 second-to-last paragraph on the right-hand side, the right
4 column states, "However, if you are not required to appear in
5 the court on the assigned trial date and have previously
6 posted bond --"

7 THE COURT: Wait a minute, let me see.

8 MR. PACELLA: Yes, sir.

9 THE COURT: Where are you reading from?

10 MR. PACELLA: The right-hand column, Your Honor.

11 THE COURT: Yes, sir.

12 MR. PACELLA: The second-to-last paragraph, begins
13 with however.

14 THE COURT: However. I see that.

15 MR. PACELLA: "-- if you are not required to appear
16 in court on the assigned trial date and have previously posted
17 bond and do not appear on the trial date, your bond may be
18 forfeited unless the judge has agreed to have your case heard
19 at --" I think that says another time.

20 So the ticket is actually saying there's going to be a
21 proceeding on that date even if you pay your bond. That's
22 what the ticket says.

23 THE COURT: Let's see again how -- Read that again
24 and tell me how you arrive at that conclusion.

25 MR. PACELLA: Yes, Your Honor. "However, if you are

1 not required to appear in court on the assigned trial date and
2 have previously posted bond and do not appear on the trial
3 date, your bond may be forfeited, unless the judge has agreed
4 to have your case heard at another time."

5 THE COURT: Well, and as to these three people, did
6 the judge agree to hear it at another time?

7 MR. PACELLA: That's not the point. That's not the
8 operative language in this paragraph, Your Honor. The
9 operative language is "and do not appear." Well, there has to
10 be a proceeding to determine if someone appeared on the
11 designated trial date, according to the ticket. And that's
12 our understanding of the South Carolina Code.

13 THE COURT: Do you contend that you appeared?

14 MR. PACELLA: Pardon?

15 THE COURT: Do you contend that you appeared?

16 MR. PACELLA: That our clients appeared? Your Honor,
17 that's not what we're contending. What we're contending is
18 there was no bond forfeiture proceeding; therefore, the bond
19 forfeiture doesn't constitute a guilty conviction which would
20 prevent them from litigating the matter here. That's what
21 we're contending.

22 THE COURT: They posted the bond and --

23 MR. PACELLA: Yes, sir.

24 THE COURT: -- this tells them that you may be
25 forfeited, the bond be forfeited unless the judge does

1 something, which wasn't done. And the time expired under
2 South Carolina law, the ten days.

3 MR. PACELLA: Or on the trial date.

4 THE COURT: Sir?

5 MR. PACELLA: It expires from the ten days or on the
6 trial date.

7 THE COURT: Well, I mean, I don't know what the trial
8 date was, but -- I don't know how long it was. But they
9 didn't do anything either within the ten days or within the
10 trial date. They didn't take any action. They posted their
11 bond, but they didn't do anything else.

12 MR. PACELLA: Your Honor, it is our contention that
13 there was no proceeding in court to have a bond forfeiture, as
14 required by South Carolina law.

15 THE COURT: Now, you're taking the position that
16 there's got to be a judge on the bench, and the police officer
17 or whoever is handling it for the Town has got to come in and
18 offer this ticket or whatever it is with the notice, and say
19 that this defendant has never appeared, and, therefore, we
20 move to have the bond forfeited?

21 MR. PACELLA: Your Honor, actually I'm making it even
22 simpler than that, Your Honor. I am arguing that they have to
23 have an officer in the courtroom, they have to read the roll
24 of the people who pay their bonds to ensure that no one is in
25 the courtroom.

1 THE COURT: Where do you get that kind of law from?

2 MR. PACELLA: Well, Your Honor, this is actually --
3 there is a court hearing that date. There has to be a
4 hearing, according to the ticket. And we have to -- where we
5 get that is this is a court of record and this is going to be
6 a determination of an adjudication of guilt.

7 THE COURT: Don't they tell them, if you don't show
8 up, your bond's going to be forfeited?

9 MR. PACELLA: That's right. They actually say that
10 in the ticket. They also say there's going to be a trial that
11 date.

12 THE COURT: No, where did they say trial?

13 MR. PACELLA: Well, if you don't appear on your
14 designated trial date.

15 THE COURT: If you don't appear in court -- Where do
16 you read --

17 MR. PACELLA: Same paragraph, Your Honor.

18 THE COURT: Yes, sir.

19 MR. PACELLA: "However, if you are not required to
20 appear in court on the assigned trial date and have previously
21 posted bond and do not appear on the trial date." So there's
22 an opportunity, you could pay your bond and go to court and
23 have a trial.

24 THE COURT: You can post your bond. You don't pay
25 it. It doesn't become paid unless you don't show up.

1 MR. PACELLA: That's correct terminology, Your Honor,
2 you post your bond, you go to court, and when they call your
3 case, you stand up and say I want a trial.

4 THE COURT: But if you don't do any of that. If you
5 don't go down there, you take the position that they've got
6 to -- what you're taking the position is they've got to call
7 your case, so to speak.

8 MR. PACELLA: Yes, sir.

9 THE COURT: And see if you're in court.

10 MR. PACELLA: Yes, sir.

11 THE COURT: The State against So-and-so, Town against
12 So-and-so, and see if that person is in court. If that person
13 isn't in court, they forfeit the bond; that's your position,
14 as I understand it.

15 MR. PACELLA: Yes, sir.

16 THE COURT: And if that person is in court and he
17 wants a trial, they give him a trial then. If he wants a jury
18 trial, they wait till they have a jury trial.

19 MR. PACELLA: Yes, sir.

20 THE COURT: But you take the position that they've
21 got to call his case, so to speak.

22 MR. PACELLA: Yes, sir.

23 THE COURT: And he can't forfeit his bond -- well,
24 you take the position -- does that mean then that he's got to
25 go -- if he doesn't show up, and they call his case, then they

1 can forfeit, they can forfeit his bond. But your position is
2 they've got to call his case.

3 MR. PACELLA: Yes, that is the position, Your Honor.
4 They have to call the case, and there could be a bond -- and
5 then when the case is called, if the person did not appear,
6 then the bond forfeiture -- then there could be a bond
7 forfeiture under the statute that's been cited by the
8 defendants.

9 THE COURT: And then you take the position that the
10 law requires, the notice requires that or the law requires
11 that, and that wasn't done.

12 MR. PACELLA: Sure, I mean, there's --

13 THE COURT: What happens then if the person just
14 doesn't do anything?

15 MR. PACELLA: Well, Your Honor, that's -- the point
16 of it is, what we're challenging is whether -- what we're
17 arguing is that if they don't have that bond forfeiture
18 proceeding, as simple as I've described it in open court, then
19 this payment of the ticket, the posting of the bond and the
20 subsequent keeping of the money by the Town, does not result
21 in a guilty conviction which would -- and then, therefore --

22 THE COURT: Which they waived all that.

23 MR. PACELLA: -- would include a civil suit. And
24 there's a case, Richland County --

25 THE COURT: Would preclude any kind of suit.

1 MR. PACELLA: That's correct.

2 THE COURT: All right, sir, I think I understand your
3 position. Let me hear what the defendants say about that
4 particular part of the argument.

5 MR. DOMIN: Calling the case is not required.
6 There's no law that says you have to call the case. Second,
7 none of these people allege that they showed up. None of
8 these people alleged that they said I'm here and I want to
9 have my trial.

10 Third, at every Municipal Court in the state there's some
11 process of figuring out who's there and who's not there. I
12 mean it may not be that they have to call every case, but
13 ultimately they determine who's there and who's not there.
14 These people not being there, paid their -- posted their bond,
15 and then ultimately forfeited the bond by virtue of them not
16 being there. There's no factual dispute. They were not
17 there. They don't have an opportunity then to say -- and we
18 think this is very consistent with Section 56-5-2660.

19 THE COURT: What does that section say?

20 MR. DOMIN: Essentially says you're not required to
21 conduct a trial in the event somebody posts a bond. If they
22 post bond --

23 THE COURT: I got all these sections; I'm not sure
24 where they are. Anyway, read me, what does this section
25 you're talking about say?

1 MR. DOMIN: I did not bring the exact -- I did not
2 bring the entire section, Your Honor. It refers to, Your
3 Honor, that the posting of a bond -- if it is a traffic case,
4 the posting of the bond does not then require there to be a
5 trial, in that you must provide at least the ten days, but
6 that after the ten days, that the bond may be forfeited. And
7 so under those circumstances, all the Municipal Courts and the
8 Magistrate's Courts, they don't have to call each case and try
9 it in absentia.

10 And the idea that they need to call the case and say is
11 so-and-so here, is so-and-so here, is so-and-so here, there's
12 no law that says that. There's no law that says they have to
13 go down the list of people who have forfeited bond, in order
14 to see that they're there. I mean, they're trying to impose a
15 requirement that no South Carolina case and no South Carolina
16 statute has, and that no Municipal Courts are doing.

17 THE COURT: Well, these people don't contend that
18 they ever went; these three people don't contend that they
19 ever showed up or anything.

20 MR. DOMIN: Right. If you look, what was their
21 intent, Judge? Obviously they paid their money, and under
22 South Carolina law, posting bond and not showing up,
23 constitutes a guilty plea. And to me, to suggest that they
24 can avoid that by saying that their name was not called out to
25 see if they were there, seems a bit counterintuitive, because

1 they're not claiming that they were there.

2 THE COURT: Okay. Thank you. Do you have anything
3 else you want to add?

4 MR. PACELLA: Not on that issue, Your Honor.

5 THE COURT: Okay, you got anything else?

6 MR. TEMPLETON: No, Your Honor, nothing further.

7 THE COURT: Now let's get then to the two who had --
8 they didn't appear themselves, but they had lawyers who
9 appeared and the case was dismissed. Now, what rights of
10 theirs have been violated? What constitutional rights.

11 MR. PACELLA: What constitutional rights have been
12 violated as to the specific individuals who --

13 THE COURT: The two.

14 MR. PACELLA: -- who have been dismissed, whose cases
15 were dismissed?

16 THE COURT: They go to court, they sent a lawyer to
17 court, they don't go themselves, they sent a lawyer to court.
18 And when he goes there, I don't know what happened, but
19 anyway, the charges were dismissed. I recall the patrolman
20 said there were two tickets or two individuals issued the same
21 ticket number or something like that; I've forgotten what it
22 was.

23 MR. PACELLA: Yeah, after about ten minutes of
24 argument, yes, then the officer ended up --

25 THE COURT: I don't know what happened on the other

1 one.

2 MR. PACELLA: And the other one, Your Honor, was
3 dismissed because the -- just dismissed before court started.
4 By the officer.

5 THE COURT: I see. Now, what rights have they got
6 that have been violated?

7 MR. PACELLA: Well, Your Honor, this is --
8 admittedly, this is not a custodial seizure, a Fourth
9 Amendment arrest, because there's no taking of my clients into
10 custody. But they were arrested. The ticket constitutes an
11 arrest. There's a noncustodial arrest. Which due process,
12 the Fourteenth Amendment due process of law does have --
13 provides some protections.

14 And the question is, does this conduct shock the
15 consciousness of the Court that would make that an
16 unconstitutional arrest that would give them rights under the
17 Fourteenth Amendment.

18 THE COURT: Your position is that under the
19 Fourteenth Amendment it's got to -- and the Fourth -- it's got
20 shock the conscience of the Court, sending them a traffic
21 ticket?

22 MR. PACELLA: Your Honor, actually I think it's a
23 little more involved than that. And I think this goes really
24 to the heart of our case and goes to the heart of what we're
25 contesting. These are municipal officers, Your Honor, they

1 have limited jurisdiction, limited territorial jurisdiction to
2 the municipality. There is a South Carolina case that extends
3 that within three miles for hot pursue and for offenses
4 committed in their presence. It does not give them
5 jurisdiction to make an arrest and effect an arrest out of
6 their jurisdiction.

7 We have a statute, South Carolina Code 5-7-110, which lays
8 out the jurisdiction. There's some exceptions when there's a
9 contract with another jurisdiction, hot pursuit within
10 three miles, or in the investigation in another jurisdiction
11 with an agreement with law enforcement in that other
12 jurisdiction.

13 There are three cases. State versus Morris, State versus
14 McAteer, and then a month ago, month and a half ago,
15 March 14th, 2011, State versus Boswell, that essentially just
16 says exactly that, you can't go outside of your jurisdiction
17 to make an arrest. That's what they're doing. And they're
18 doing it knowing that this statute was in place. These cases
19 came out -- first one came out in '89, that's the Harris case;
20 McAteer came out in 2000. Then they're continuing to do it
21 after State versus Boswell. The officers are exceeding their
22 jurisdiction. And that's not the only problem here, although
23 that is the heart of the problem, that the officers are going
24 beyond their jurisdiction.

25 We have alleged that the officer doesn't even write the

1 ticket. That's being taken -- that's being done by iTraffic,
2 by the private company. The officer doesn't make the
3 determination of probable cause. That determination is also
4 made by iTraffic. The officer doesn't serve the ticket --

5 THE COURT: You don't deny there was probable cause,
6 because you don't admit they -- you don't contest that they
7 were speeding. I mean, I haven't seen any denial that the
8 people weren't violating the law. I mean, is there any of the
9 plaintiffs come in and said -- I haven't seen any of them say
10 I wasn't going 81, I wasn't going 85.

11 MR. PACELLA: Actually, Your Honor, that is in the
12 pleadings, Mr. Leebrecht (phonetic) has alleged that it's not
13 even him. He's not the one of the two that you're focusing on
14 at this point, but he's one of the ones that asked for a jury
15 trial. It's not even -- he's alleged it's not even him.

16 THE COURT: I know, we'll get to the jury trial
17 people later.

18 MR. PACELLA: Right.

19 THE COURT: I'm talking about the ones that we're
20 discussing, the two here, I hadn't seen that they denied they
21 were violating the speed law.

22 MR. PACELLA: Your Honor, that's pretty interesting.
23 It's really something that's kind of difficult to determine
24 whether you were speeding at that time at that location.
25 Because there -- you could have -- because of the way they do

1 this procedure where they're not stopping you, you don't
2 know -- if you had someone with you who could be your witness
3 that -- to say, look, I looked at the speedometer and we were
4 going 72 miles an hour or 71 miles per hour. There's no way
5 for you to -- some GPS systems can capture your speed. If
6 someone turns on some traffic lights, you could push a button
7 and capture your speed to have some evidence that you could
8 present to a jury.

9 So actually, Your Honor, the reason why this is so
10 offensive and so procedurally flawed, is that you are deprived
11 of your opportunity to even defend yourself.

12 So to say -- for our clients to --

13 THE COURT: Wait a minute. Wait a minute. How does
14 it deprive you of an opportunity to defend yourself?

15 MR. PACELLA: To gather the evidence that you would
16 have, if -- If you were stopped immediately for speeding by
17 the officer, you would be able to recognize who was around
18 you, maybe talk to the people in your car about that exact
19 moment versus another moment in time or another location. You
20 would be able to use -- if you have a GPS system that allows
21 you to capture your speed, you'd be able to push a button and
22 it could capture your speed, you could bring that into court
23 as part of a trial. There are a number of things that you
24 could do that you're deprived of in this method of traffic
25 enforcement.

1 But more than that, Judge, the officer doesn't write the
2 ticket. That's being done by iTraffic, by the private
3 company. The officer doesn't make the probable cause
4 determination, the officer doesn't even mail the ticket. The
5 mayor testified before a Senate subcommittee that it's mailed
6 by the Town Hall. So he's not even -- the officer's not even
7 trying to serve the ticket by mail.

8 The letter that they send in conjunction with the ticket
9 conflicts. They say different things. One says that won't go
10 on your traffic record, that's the letter; the other says it
11 will. The letter says that, you know, a bench warrant may be
12 issued, they're threatening different kinds of prosecutions
13 that go along --

14 THE COURT: They dismissed all of this.

15 MR. PACELLA: But that doesn't change the fact that
16 there was an unconstitutional arrest at the time they received
17 the ticket. It doesn't change the offensive conduct that took
18 place. And it was dismissed, which essentially is a finding
19 of not guilty.

20 And they have constitutional rights, just like if -- if
21 there is an unconstitutional arrest and someone goes through
22 trial and wants to bring suit, they have that opportunity to
23 bring suit.

24 You know, in this process they also tell people that when
25 they send you a ticket, they have a web site that you can go

1 to, to actually pay your ticket and give you information.
2 That website says that if it's not you, you still have to pay
3 the fine, or you've got to come to court.

4 And we talked about not holding bond forfeitures in open
5 court. There's actually another point that's not in our
6 pleadings, and I am going to recognize that it's not in our
7 pleadings, but I would like to tell the Court that. We do not
8 believe that there's been any jury trials to date, even though
9 the program's been going on since July. And I think that that
10 is sort of a telling situation, in addition to the two people
11 who were dismissed when we went and appeared in court for
12 them, trying to adjudicate their -- have their rights
13 adjudicated by the judge.

14 So to tell you why these two individuals whose tickets
15 were dismissed have rights, well, they have rights because
16 this is an unconstitutional arrest, not a Fourth Amendment
17 violation, so it's a higher standard that we have to show that
18 that arrest shocks the consciousness. But these factors that
19 I point out, think -- even the officer going outside of his
20 jurisdiction alone should be enough to shock the conscience of
21 the Court, but when you combine all of those factors, that
22 becomes a Fourteenth Amendment violation, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. DOMIN: There's no constitutional violation by
25 mailing a ticket. Your Honor, first of all, the Fourth

1 Amendment protects against unreasonable searches and seizures.
2 This is clearly not a search. They want to argue that it is a
3 noncustodial arrest. Respectfully, under federal
4 jurisprudence, mailing a ticket to someone is not a seizure.
5 I mean, first of all, it defies the common sense notion of
6 what a seizure is. We in no way stopped them or detained
7 them. Under federal law, a seizure is determined to be a
8 situation where a reasonable person would believe they're not
9 free to leave. These people leave; there's no -- there's
10 absolutely no reasonable person who would believe that they
11 are not free to leave, simply because a camera took a picture
12 of them.

13 So we don't think that this qualifies as a federal
14 constitutionally-protected Fourth Amendment seizure. It just
15 does not rise to that level. And, in fact, we have cited to
16 you case law that would indicate that providing a ticket to
17 somebody, even if you're going to detain them for some period
18 of time to give them a ticket, is not a seizure. But clearly,
19 mailing a ticket to them would not constitute a Fourth
20 Amendment seizure.

21 Your Honor, they have cited to you three state law cases
22 that say that officers cannot arrest outside their
23 jurisdiction. All of those are Common Pleas offenses --
24 General Sessions offenses, I should say -- for which the
25 person -- the officer actually was outside -- completely

1 outside the jurisdiction, and made an arrest that was, in some
2 situations, based upon conduct that occurred outside the
3 jurisdiction, but, in part, was triggered by conduct that
4 started in their jurisdiction.

5 In the most recent case, the sheriff found that somebody
6 was going into women's houses and stealing women's clothes,
7 and he tracked it back to another county, and a person had a
8 house in another county, and he saw this person pull up and
9 then start throwing women's clothes in the woods. And he
10 effectuated an arrest, because he knew that this was the same
11 fellow who had been stealing clothes back in his county.
12 Again, he effectuated a custodial arrest.

13 In this situation there's no dispute that the offense is
14 committed within the officer's presence. There is an officer
15 in the van when the photographs are being taken, who is able
16 to exercise his discretion and say, that vehicle was not
17 speeding. Or, more likely, we didn't get a clear picture of
18 that vehicle; we can't tell if it's that truck or that car; so
19 we're able to throw that out. The officer there in the van is
20 able to throw that out before it goes any further.

21 The offense itself is committed within the officer's
22 observation and within the Town of Ridgeland, which is within
23 his jurisdiction. So these cases are not similar to those
24 General Sessions cases that the plaintiffs would cite to you.

25 Your Honor, the folks who receive these tickets are not

1 deprived of any -- any right -- any federally-protected right.

2 And I would submit hypothetically, some 15 states have got
3 these traffic camera type programs. If there's some federal
4 constitutional reason why you're not able to mail tickets to
5 people, then they would be illegal in every single state. It
6 wouldn't be any different in South Carolina versus someplace
7 else.

8 If --

9 THE COURT: Just because there's no law and they
10 haven't raised it somewhere else, doesn't mean it can't be
11 raised.

12 MR. DOMIN: Well, I agree with that, Your Honor.
13 But, in these other states the decisions uphold these traffic
14 cameras. And the key -- really what the plaintiffs are
15 complaining about is that state procedural law has been
16 violated. They are contending that state procedural law
17 requires a ticket to be hand served on somebody. That's not a
18 federal requirement. It's not -- there's nowhere in the
19 United States Constitution where it says that a ticket must be
20 handed to you in person as opposed to being mailed to you.

21 If they want to take that issue to State Court for some
22 kind of a state declaratory judgment, or for that matter, if
23 they want to have one of these tickets appealed up to the
24 South Carolina Supreme Court, they can get a decision of that
25 issue. But it's not a federal constitutional issue.

1 And none of these folks have been deprived of any rights.
2 These folks specifically that we were talking about, the folks
3 who appeared and who their cases are dismissed, they received
4 due process, they got the opportunity to appear in court, and
5 the system worked. The system worked because the tickets were
6 dismissed. They could raise any issues they want. And that
7 there were no fines assessed as a result of them, and there
8 were no collateral consequences as a result of these tickets.

9 So we don't think that we've taken away any rights of any
10 defendants, but surely not this category of defendants.
11 They're the ones who got their day in court, and ultimately
12 those tickets were dismissed. Thank you.

13 MR. TEMPLETON: Again, Judge, for the record, I adopt
14 by reference Mr. Domin's arguments completely, I think he
15 captured the essence of the argument.

16 Focusing back, the three points that I would want to leave
17 the Court for its consideration on these, with this class of
18 person, is, first and foremost, the standing issue.

19 The argument that has been made is that there's been a
20 constitutional challenge, in essence, a due process violation.
21 The due process had worked. They had their day in court, they
22 appeared through counsel. And right, wrong or indifferent,
23 the tickets were dismissed. Thus, there's no damage. That's
24 point two, there's no damage here. Every day across America,
25 across this state people are accused of crimes, they have

1 trials, they have hearings, cases get thrown out all the time.
2 The system works. And it worked in this instance.

3 With respect to the three state cases talking about the
4 custodial arrest, that's a huge point. Those were custodial
5 arrests. This is, at best, a noncustodial arrest. So those
6 three cases have no application.

7 Which takes me to my third point. There is no statute in
8 South Carolina that requires that the ticket be served
9 personally. There is no statute that requires it be mailed by
10 certified mailed or some process server. To the contrary,
11 Section 56-7-20 contemplates and uses the word given,
12 G-I-V-I-N-G. Given. E-N, not I-N-G. Given to the offender
13 in the context of the uniform traffic ticket. These tickets
14 were given. They were given vis-a-vis the United States mail
15 service, but there's no language in that statute that requires
16 it be personally given at the time that the ticket is issued.

17 So with respect to the category of folks whose claims or
18 charges were dismissed, there is no constitutional injury
19 here, there's no violation of any constitutional or state
20 protected claim.

21 Thank you.

22 MR. STROM: Your Honor, can I reply to that?

23 THE COURT: Yes, sir.

24 MR. PACELLA: Your Honor, we talked about shocking
25 the conscience of the Court. I mean, let's think about what

1 we have here. We had a camera system that originally was
2 working without the officers in there. And then there was an
3 Attorney General's opinion that said the officer had to
4 participate, so officers start appearing. This thing is fully
5 automated. Somebody comes down the road, the radar apparently
6 goes off, a flash goes off, it takes a picture of the driver,
7 takes a picture of the back of the car so it can get the
8 license tag. All this is computer generated.

9 What we've alleged in our complaint is the officer is
10 sitting there, and he's then watching, I guess. That
11 information is then taken to what I refer to as the girls at
12 City Hall, who are paid for by the private company. And those
13 women go on line to the various Highway Department websites
14 and pull up pictures of the person who owns the car, based on
15 the license tag. And they look at that picture, and they look
16 at the picture of the person that was captured driving the
17 vehicle, and they make some determination as to whether or not
18 this is the right person. I think. We've alleged in our
19 complaint that the officer does not participate in that. And
20 that's where probable cause lies. You've got to determine
21 whether you are charging the right person. And they have
22 delegated that to a staff person. The officer may be in the
23 vehicle, in the van watching it come by and match up the car
24 and the speed and all of that, but he is not, as it is alleged
25 in our complaint, participating in confirming that that was

1 the person driving the car. And then the girls or someone at
2 Town Hall mails these tickets.

3 So, you know, this is a criminal charge, and this is
4 service. And in all the years I've been practicing law, there
5 are rules on how you serve process. And I've never seen
6 process served by regular mail. It's clearly -- and our
7 complaint alleges that these people, these officers and the
8 girls, I mean, so we've got this camera stop, we've got no
9 probable cause determination by a police officer, we've got it
10 mailed out of the jurisdiction.

11 Further shocking, as our complaint alleges, they get a
12 uniform traffic ticket, but they get a separate letter from
13 the police chief who says it -- the ticket says that a bench
14 warrant will be issued. The letter says that if you pay your
15 bond -- and all these are exhibits in the complaint -- that
16 there won't be any points against you. They're inconsistent.

17 And then you're given a court date. And there's no
18 process at the court date. There's no process. There's no
19 determination, there's -- you know, I've been in hundreds of
20 magistrates courts in this state, everybody has a tape
21 recorder and this stuff is read on the record. You've got a
22 city police department, when they forfeit bonds like this, the
23 clerk calls out the names, and the judge, one by one, checks
24 his list. BF, makes a note on the record, BF, BF, BF, on the
25 docket, that bond forfeiture, bond forfeiture, bond

1 forfeiture. No process here.

2 Then they allege that, well, you ought to just go to State
3 Court and deal with this. Well, we had two clients who came
4 to us, not anything particular, we go down there and they
5 dismiss the cases. And as Mr. Pacella has pointed out, I've
6 called some lawyers from that area -- and if you'll allow us
7 to amend the complaint, I was going to ask you to allow us to
8 add this language. I'm told that there are thousands of jury
9 trial requests pending down there. Thousands. Mr. Lord,
10 sitting right here, my co-counsel, has over 500 himself. Do
11 you know how many jury trials they've given people? That
12 would be zero, Your Honor. That would be zero. And I'm told
13 anecdotally from lawyers down there that there's no way for
14 them to try them. Because the population there is 4000
15 people; 2000 of them are in jail, in the jail facility. So
16 they don't have enough jurors to try these cases.

17 So in effect what's happening here is they've -- shocking
18 the conscience -- they've created what I consider the perfect
19 crime. They write these tickets on a local ordinance so there
20 aren't points. People, many of them, don't have the resources
21 to get a lawyer. They're all out of state, because they're
22 going up and down I-95. They get this ticket in the mail, I
23 mean, you know, talking about a class action, this is one
24 of --

25 THE COURT: I thought one of your plaintiffs was from

1 Gaffney or somewhere in South Carolina.

2 MR. PACELLA: Well, one -- they're all outside the
3 jurisdiction of the Town. We excluded that. So I mean, this
4 thing has just -- it is a for profit operation; we've alleged
5 that in our complaint; if we're wrong about that, if they say
6 it's for safety, let's get an expert and let's have a Daubert
7 hearing about that. I don't think that's the case. But we've
8 alleged that. We've alleged that there's no process at the
9 end of the day in a court that complies with any kind of rules
10 to come up with any kind of determination. We want to amend
11 our complaint to allege they're not giving any of these people
12 jury trials that are part of this class.

13 THE COURT: That's an amendment that you haven't even
14 filed yet.

15 MR. STROM: Yes, sir, but we were going to ask. We
16 just learned about this last night, that's right. But those
17 are the issues that shock the -- that should, I hope, shock
18 the conscience of the Court.

19 And the other standing issue here is all of this is
20 repeatable. Everybody that's a plaintiff of ours, no matter
21 which one of these categories you put them in, they're going
22 to ride down I-95 and be subject to the same thing again. So
23 if they're -- you know, we've got other causes of action
24 listed in here, and that's why all of these people continue to
25 have standing just on that narrow issue, no matter which one

1 of the categories you put them in.

2 THE COURT: You take the position they can ride up
3 and down 95 at 85 miles an hour all they want to.

4 MR. STROM: No, sir, I take the position that a
5 police officer has to stop you --

6 THE COURT: I mean, you take --

7 MR. STROM: -- and serve you with a ticket.

8 THE COURT: Right there.

9 MR. STROM: If he's in hot pursue, he can go tree
10 miles outside the jurisdiction. But I take the position they
11 have to serve you with that ticket, and they have to give you
12 a court date. And if you post your bond and you don't show
13 up, they have to have some type of established proceeding.
14 Now, I'm not saying that it has to be a trial in absence, but
15 I think that the law in this state is that there has to be
16 some established proceeding as to how they handle those cases,
17 other than the girls at 8:00 or 9:00 o'clock at night making
18 some note on a docket.

19 And if they can prove at the summary judgment stage that
20 there is a proceeding in place where there is some uniform
21 compliance as to how they handle that -- We allege in our
22 complaint there's not, because we do not believe that's the
23 case, based on what we have seen and heard. If they can
24 establish that, then Your Honor's probably right to grant
25 summary judgment against us.

1 But at this point we've pled, we've pled that there is no
2 process, at the end of the day, where they legally forfeit
3 these bonds. And that's why that first group still has
4 standing. And we've pled that it is illegal to serve somebody
5 out of state or out of your jurisdiction.

6 You know, those are important points. And we think we've
7 established enough facts, alleged enough facts in this
8 complaint to allow us to look into this thing further. You
9 know, we've moved to amend our complaint because we've got a
10 little bit of a Freedom of Information Act. There's a lot
11 more to dig here. And we think, Your Honor, that we've
12 alleged enough here to be able to continue to proceed.

13 THE COURT: Okay. Thank you. Anything more y'all
14 want to add?

15 MR. DOMIN: Mr. Strom covered a lot of territory,
16 went back to the first category.

17 THE COURT: I don't --

18 MR. DOMIN: I don't know if you're inclined to go
19 back to that.

20 THE COURT: No, I don't want to go back.

21 MR. DOMIN: Okay. I didn't want to go back that far
22 either, frankly.

23 You know, as it relates to these folks in the third
24 category, I call them the third category, but it's the folks
25 who actually appeared and whose tickets are dismissed, clearly

1 they not only received due process, they availed themselves of
2 it, the tickets were dismissed.

3 THE COURT: All right, sir.

4 Now we go to the third group who requested a jury trial
5 and are awaiting a jury trial. Let me hear from you about why
6 I should go in and interfere with a State Court proceeding.

7 MR. PACELLA: Well, Your Honor, as you heard from
8 Mr. Strom, there haven't been any jury trials to date, and
9 there may not be any jury trials. These plaintiffs may
10 ultimately fit into the category of the dismissals. But as
11 they presently stand, Your Honor, they're still victims of the
12 same unconstitutional conduct, the same mail fraud, wire --

13 THE COURT: But you want me to go in and interfere
14 with a pending state matter, that they can, if they don't get
15 justice, if they don't feel they get justice in Ridgeland,
16 that they can go up the state ladder, and then when they
17 finish, come here maybe. But you want this Court to interfere
18 with a pending state proceeding. Isn't that what you're
19 asking me?

20 MR. PACELLA: No, Your Honor, actually we do not
21 believe we'll ever have that opportunity and they'll ever let
22 us go through state proceeding.

23 THE COURT: I don't know that, you don't know that.

24 MR. PACELLA: Well, we've been there twice trying to
25 challenge tickets, and they've dismissed them because they

1 didn't want rulings going up. I mean, that is clear, I
2 believe is clear, from the two dismissals that we've gotten.
3 We've actually been down there for a third ticket, which was
4 dismissed because it's not in the complaint.

5 But, Your Honor, they still have claims for -- because
6 they may be subject to the same conduct again, so they still
7 have claims for injunctive relief as they've been harmed by
8 the initial --

9 THE COURT: They can't get relief in State Court?

10 MR. PACELLA: They cannot get -- the municipal judge
11 cannot give them an injunction to prohibit the Town of
12 Ridgeland and iTraffic from having those cameras on the
13 interstate and serving people tickets.

14 THE COURT: Well, there's nobody, no court in the
15 state system can do that?

16 MR. PACELLA: Well, Your Honor, the question of
17 whether this putative class action could have been in State
18 Court is a Class Action Fairness Act question. The reason why
19 this is filed here is because of the Class Action Fairness
20 Act.

21 THE COURT: I mean, but you're asking me to go in and
22 interfere with the State Court proceeding.

23 MR. PACELLA: No, we actually would like those State
24 Court proceedings to go --

25 THE COURT: I'm talking about in these three cases.

1 MR. PACELLA: Yes, Your Honor. We'd actually -- I
2 think the State Court proceeding certainly can go forward.
3 We're not asking you to enjoin those proceedings and not let
4 those proceedings go forward. We're asking to conduct
5 discovery in this case, and move forward to seek relief for
6 the people who we believe are victims of this enterprise that
7 was generated by the Town of Ridgeland and iTraffic, to make
8 money for their town as town profits, and as corporate profits
9 for iTraffic. And they've been harmed much in the same way,
10 they had to go out and hire attorneys to adjudicate what is --
11 to adjudicate their claims in municipal court, and they
12 haven't.

13 THE COURT: Can't they raise all these issues in the
14 State Court?

15 MR. PACELLA: Certainly, Your Honor, they cannot go
16 in and ask the judge for monetary damages for a RICO claim,
17 they can't ask the judge for monetary damages for their
18 constitutional claims, and they can't ask the judge for any
19 monetary damages. All they can do is ask the judge to dismiss
20 the case. And that's the only authority the judge would have
21 is to dismiss the case, if he found it to be a procedural
22 violation. They can't get any other remedies from the court.
23 And they've been waiting for their trials, been waiting a
24 substantial period of time for their trials. The chief
25 justice of the South Carolina Supreme Court issued an order

1 saying that magistrate and municipal offenses need to be tried
2 within 120 days. We've exceeded that. We're still waiting.

3 At some point, if the case doesn't get called for trial,
4 at some point they have to have right to be able to bring
5 their action to adjudicate their rights. At this point they
6 have pending charges over their head. Pending charges that we
7 contend to be unconstitutional, violate constitutional law,
8 that they've been subjected to injury to their person or
9 property because mail fraud and wire fraud acts that are part
10 of the racketeering conspiracy. And because of that, they
11 should be allowed to adjudicate their rights. And how long
12 they should wait for their jury trial? Wait till the statute
13 of limitations expires? Because the statute of limitations
14 for the unconstitutional arrest, is when they received the
15 ticket. That's when it begins the run. Doesn't begin to run
16 upon the dismissal of the case.

17 Because what we're challenging is the conduct that is
18 involved in the mailing. So the only other alternative is to
19 wait and see. And if the town officer never calls the case
20 for trial, then our clients never get a chance to adjudicate
21 their rights. That's not a rational conclusion. They have to
22 be able to adjudicate their rights if they've been injured.
23 And they have been injured, they've hired counsel, we've pled
24 it, they hired counsel to represent them in those proceedings.

25 THE COURT: All right, sir.

1 MR. PACELLA: Thank you.

2 MR. DOMIN: This category of plaintiffs has all of
3 their rights to assert whatever they want in a State Court
4 proceeding. And under Younger and its progeny, this Court
5 should not interfere with any State Court proceedings.

6 Now, I submit respectfully that is exactly what the
7 plaintiffs are asking for you to do. They're asking for you
8 to make determinations that there was an illegal arrest or
9 that there was illegal processing or that there was some
10 misconduct related to the probable cause in issuing the
11 tickets. Those are all questions that can be raised in the
12 court of the Municipal Court of the Town of Ridgeland.
13 There's a judge, and that appeal goes all the way on up to
14 Columbia. They're able to appeal it all the way to the South
15 Carolina Supreme Court, to address any issues that they have
16 regarding all of those issues. All of those issues, they
17 could raise all the way up to Columbia, if they want.

18 Now, they raise a question as to whether or not jury
19 trial -- if a jury trial is never heard, then what is going to
20 be their right. Well, you know, ultimately all defendants
21 have a right to make a motion for a speedy trial, or, in the
22 alternative, to dismiss the case. There's no question that
23 there are a lot of tickets, and there are some backlogs right
24 now. The chief justice, as was just referenced, Chief Justice
25 Toal came out with an order recently applicable to the

1 Magistrates and Municipal Courts, requesting that we dispose
2 of jury trial Municipal and Magistrate Court offenses within
3 120 days. And that's going to be very hard, and cases could
4 have to be dismissed ultimately as a result of that order.
5 And those people will then fall into a different category.
6 But, for the sake of discussion, if we're talking about a
7 category of people who have cases pending right now, this
8 Court should not interfere.

9 MR. TEMPLETON: Ditto. Judge, exactly. Younger v.
10 Harris, squarely on point for this category. In addition,
11 principles of ripeness are applicable for the Court's
12 consideration, because there's a number of what ifs. You
13 know, what if there's a conviction, what if the jury trial
14 goes forward and there's a conviction, what if there's a jury
15 trial and there's a finding of no fault, no conviction, what
16 if there's a dismissal. All of those things raise question
17 marks as to whether -- putting Younger aside -- whether these
18 claims are actually ripe for this Court to consider. As the
19 Court alluded to, perhaps in the future, if the cases
20 matriculate on up to Columbia, depending on how things shake
21 out, there may be something in the future. But as it stands
22 here today, these defendants have an opportunity to raise any
23 defense they believe to be necessary and applicable.

24 THE COURT: If they can get a trial.

25 MR. TEMPLETON: If they can get a trial. And if they

1 can't get a trial, Mr. Domin's exactly right, motion for
2 speedy trial, and in the alternative, motion for dismissal.
3 Therefore, they're protected that way, and then they fall into
4 the category of defendants that we talked about before.

5 But I would submit, as I did before, in the event that
6 that occurs, the system worked. Perhaps you could say the
7 system failed because defendants weren't tried in a timely
8 fashion, and, therefore, it's an indictment on the system
9 itself.

10 But what these plaintiffs are asking this Court to do is
11 to declare, because they've asked for a declaratory judgment
12 and injunctive relief, to declare this program is
13 unconstitutional, to declare that the actions of these
14 officers and the Town are unconstitutional, and put a stop to
15 it. That's the nature of an injunctive relief. And with due
16 respect to the plaintiffs, that's not the proper forum.

17 THE COURT: Well, the plaintiff says -- I don't know
18 how many thousand cases pending down there. He said he wants
19 to further amend his complaint. I've forgotten the figures,
20 but he says it's impossible to try all those people, with the
21 population down there. Because the penal institution, which
22 surprised me, I learned about the group in Allendale, they
23 count, for voter purposes, you count the people in these penal
24 institutions. And Ridgeland has got -- I guess Jasper County
25 has a big influx for that reason. Now, if they allege the

1 impossibility of or unlikelihood of being able to try them and
2 them getting some decision, I mean, you're taking the position
3 and I'm not saying it's wrong, that this Court shouldn't
4 interfere. But if this Court were to find that -- and he
5 further amends his complaint, and if this Court were to find
6 that it was impossible, it appeared impossible for these
7 people to get a trial to adjudicate their rights, you don't
8 think that might be conduct that would shock the conscience of
9 the Court?

10 MR. TEMPLETON: It might, Your Honor. At this
11 juncture it's the first I heard of it was today's argument on
12 that issue. No --

13 THE COURT: It's not before the Court, nothing --

14 MR. TEMPLETON: Yes.

15 THE COURT: That's not before the Court now.

16 MR. TEMPLETON: Certainly if Your Honor allowed the
17 amendment to occur, we would look at that and see if there's a
18 legitimate basis to contest it under an argument of futility
19 or not. But as we stand here today, it's not before the
20 Court, and I'm not prepared to fully address those questions.

21 THE COURT: All right, sir. Anything else you want
22 to add?

23 MR. TEMPLETON: No, Your Honor, thank you.

24 THE COURT: Anything you want to add in reply?

25 MR. PACELLA: No, sir, not on this issue.

1 THE COURT: Let's take about a ten- or 15-minute
2 break. Let me think about this.

3 (A recess was held at this time.)

4 THE COURT: I've given this -- gave it a lot of
5 consideration before I came today, and I'd been over the
6 briefs. And I think the law might be different, or some of
7 the law might be different as to the third group. And as to
8 the first two -- first, I don't believe that it's any
9 constitutional violation to send somebody a ticket and give
10 them the information they were given. That would apply to all
11 three groups.

12 Now, I think that the first group, I believe that they
13 violated the traffic laws of the state, and that the state law
14 provides for a person who violates the traffic law and
15 forfeits his bond, I don't think there's any constitutional
16 requirement that you've got to hold a special kind of
17 forfeiture procedure.

18 And I think that the first group, the only way, even if it
19 was a constitutional violation to send them a ticket notice
20 the way they did, they couldn't contest it until having been
21 found -- state law making them guilty, equivalent of a guilty
22 plea. I think until they got that guilty plea set aside, they
23 couldn't come into this court, because I think that the Court
24 would not be -- wouldn't act -- I don't think it's a
25 constitutional violation to start with, but if it were as to

1 the first group, since they were, on the face of the matter,
2 legally pled guilty, I think they'd have to do something to
3 get their guilty plea set aside before they could come into
4 this court.

5 Since I don't feel that there was a constitutional
6 violation, I think the second group, just as their case has
7 been dismissed, and I think that's as far as this court need
8 go with that.

9 Now, the third group, while I don't think there was a
10 constitutional violation, I can see that under some of the
11 statements that have been made, I'm going to allow the
12 plaintiffs 20 days, or however long they want, to further
13 amend the complaint. I could see that -- without giving -- I
14 want to give them a chance. I could see -- I'm not passing on
15 it because it's not before me -- but I could see if they make
16 some allegation, and I'm just using the words that there are
17 4000 cases down there ready to be disposed of, and the
18 impossibility of getting a trial, some allegations like that
19 may create a constitutional violation. I could see those
20 people who couldn't get a trial, and then refuse trials.

21 So I'm going to allow the plaintiff to -- How long do you
22 want? You said you wanted to amend your complaint; how long
23 do you want? I'll give you all the time you want, you just
24 tell me.

25 MR. PACELLA: Your Honor, just ask for 30 days

1 instead of 20 days.

2 THE COURT: All right. Then I'll give y'all 30 days
3 to file any motions you want to file. But I just don't
4 believe that sending -- that there's any constitutional
5 violation that this Court should recognize from the fact that
6 the officer didn't stop them right there and give them a
7 ticket, rather than mailing -- sending the notices out that
8 they send.

9 And insofar as the first group is concerned, before they
10 could challenge that, even if it was, and I don't think it
11 was, but even if it was, since I think they clearly fit the
12 statutory state statute that they violated the traffic laws of
13 the state, and that they forfeited their bond, and that
14 amounts to a plea of guilty, and when you plead guilty, you
15 waive all your constitutional rights. You waive all your
16 rights. So they'd have to get that -- even if it was a
17 constitutional violation, they've waived that, as long as that
18 conviction is standing. So I think that applies to the first
19 group; they've got two hurdles. I mean they had two hurdles.
20 One, was it a constitutional violation, and two, did they
21 violate the state traffic law. And I said I don't think it
22 was a constitutional violation, and second, I think they did
23 violate the state traffic laws, and they had the equivalent of
24 a guilty plea, and that they waived all their rights.

25 As I said, the second group, if it was no constitutional

1 violation, then they've had the charges against them
2 dismissed, and they've reached the end of the rope at the
3 present, as alleged presently.

4 And as to the third group, as the pleadings stand now, I
5 don't see that they've had a constitutional violation any more
6 than the other two. But there may be factors that the
7 plaintiff can allege from the argument, that might change that
8 picture, depending on what is in the complaint. And I think
9 it only fair, since this is not an old case, that the
10 plaintiff be given an opportunity to amend the complaint as to
11 that group. Now, I don't think anybody -- I don't know if
12 there are others who have gone down there and had their
13 complaints dismissed. I believe you did mention one other, I
14 thought you said you appeared one other time and had the
15 complaint dismissed. Didn't you say that?

16 MR. PACE: Yes, sir.

17 THE COURT: I thought so. And I don't know, must be
18 hundreds, I guess, who forfeited their bond. And they've got
19 two hurdles to overcome, as I said. Now, they've got the
20 first hurdle of proving it was a constitutional violation,
21 which I don't think it was. But even if they were correct in
22 that, then they've got to overcome my holding that they didn't
23 violate the state traffic law to make that guilty plea -- I
24 mean the forfeiture amount to a guilty plea. Because if the
25 forfeiture amounts to a guilty plea, and then you take the --

1 with a guilty plea, you waive -- or I tell everybody who comes
2 up all the time, if I accept your guilty plea, you waive all
3 your constitutional rights. So even if they had them, they
4 would waive them with a guilty plea. So they've got to
5 overcome that statute, or the statutory law of the state, plus
6 your constitutional violation. Now, I don't think they can do
7 either.

8 And I'll just wait to see as to the third group. I don't
9 think they've alleged a constitutional violation to date. But
10 I don't know what they're going to allege in 30 days. So I'm
11 not going to issue any order any time that's going to confirm
12 in an order what I've stated and the reasons.

13 Now, is there any question, based on what I've said, that
14 any of you have for the Court?

15 MR. PACELLA: Your Honor, just to be clear.

16 THE COURT: If you don't mind, come up here.

17 MR. PACELLA: Yes, sir. Yes, Your Honor, this is
18 more procedural to make sure I understand procedurally. The
19 first three plaintiffs are being dismissed?

20 THE COURT: That's right.

21 MR. PACELLA: The two plaintiffs that had their cases
22 adjudicated and dismissed by the Municipal Court, their motion
23 to be included in the complaint is denied?

24 THE COURT: That's right.

25 MR. PACELLA: Okay. I just wanted to make sure.

1 Because they've never been a party to the action.

2 THE COURT: That's right.

3 MR. PACELLA: Thank you, sir.

4 THE COURT: But the last three, I'm going wait to
5 pass on their claims until I see the amended complaint and the
6 pleadings to that.

7 MR. PACELLA: Yes, sir.

8 THE COURT: Okay. Anything from y'all?

9 MR. DOMIN: No, Your Honor.

10 MR. TEMPLETON: No, Your Honor.

11 THE COURT: We'll be in recess then.

12

13 (Court adjourned at 12:36 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the electronically recorded above proceedings, to the best of my ability.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	
Rebecca J. Robbins and Marie Babayan,	)	Case No. 2016-CP-14-00198
individually and on behalf of all those	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	RESPONSE TO TURBEVILLE'S
Town of Turbeville and the Turbeville	)	MOTION FOR PARTIAL
Police Department,	)	SUMMARY JUDGMENT
	)	
Defendants/Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
The State of South Carolina,	)	
	)	
Third Party Defendants.	)	

This is a return to the Town of Turbeville's motion for partial summary judgment. The Town contends this matter is both moot and barred by the Uniform Post-Conviction Relief Act.

This Court should deny the motion. On mootness, this case presents a question that is easily capable of repetition and evading review. It also presents the important and recurring dilemma of local governments enacting illegal traffic ordinances. As to preemption by the PCR Act, the plaintiffs do not seek to void their convictions. They seek only the equitable remedy of disgorging from the Town any illegal benefit the Town retained from enforcing its invalid ordinances.

ABBREVIATED BACKGROUND

The plaintiffs filed this case in May of 2016 contending the Town was vigorously enforcing local traffic ordinances that were illegal under state law. The plaintiffs alleged the Town was

stopping motorists who were exceeding the speed limit and ticketing those motorists for violating the Town's traffic ordinances instead of ticketing the motorists for violating state law. The allegations were also that the fines for these tickets vastly exceeded the fines set by the applicable state statutes and that officers who issued the tickets often informed motorists that unlike a ticket written under state law, no points would be assessed for this sort of violation.

The plaintiffs sought to certify a class consisting of anyone ticketed under the allegedly illegal ordinances as well as certification of a subclass of anyone fined pursuant to the allegedly illegal ordinances. Both classes limited the period of inclusion to three years prior to the lawsuit.

The plaintiffs ultimately desire declaratory relief, injunctive relief, and a refund of any illegal benefit the Town retained. Plaintiffs have filed a motion for partial summary judgment seeking a declaratory judgment that the ordinances are invalid as well as certification of the classes and the court's permission to defer class notice. That motion is pending.

The Town has filed a motion for summary judgment as well. That motion is based principally on the Town's repeal of the relevant ordinances in October of 2017. The Town contends this makes the declaratory and injunctive claims moot. The Town further argues all claims are barred by the PCR Act, which explains the Act takes the place of all remedies available for challenging the validity of a conviction or sentence. S.C. Code Ann. § 17-27-20(B).

ARGUMENT

I. Plaintiffs' declaratory and injunctive claims are moot but this Court should issue a declaratory judgment based on exceptions to mootness.

As a technical matter, the declaratory and injunctive claims in this case are plainly moot. A lawsuit is moot when a judgment in the case will not have any practical effect and when there is no

longer any existing controversy. Turbeville has repealed the relevant ordinances. There is no further action to enjoin. A declaration that Turbeville's repealed ordinances were illegal would have no immediate practical effect.

Even so, there are situations when the judicial system will nevertheless decide a case even though the controversy is technically moot. Precedent describes three examples of such situations. This situation fits within two of those examples.

First, a court can exercise its jurisdiction in spite of mootness if the issue in controversy is capable of repetition yet evading review. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). Second, a court may exercise jurisdiction over a moot controversy to establish a rule for future conduct in matters of important public interest. *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Both of those exceptions to mootness apply here.

i. This controversy is capable of repetition and evading review.

Though the record in this case is limited, it amply demonstrates efforts by the Town to evade judicial review of its ordinances. When plaintiff Robbins went to traffic court and challenged the validity of her ticket, the Town judge sua sponte changed the charge to a state speeding charge. When plaintiff Robbins appealed and the circuit court reversed her speeding conviction, the Town nolle prossed its illegal ticket. None of this is disputed. Indeed, the Town explicitly cites the ticket's dismissal in support of its argument that Robbins' claims are moot. (Defs' Mot. for Summ. J., p.2).

The fact that the Town repealed the ordinances rather than defend them in court is just as telling. The town responded to this lawsuit by filing a motion to dismiss that claimed there was "no conflict" between its ordinances and state law. That position was short lived. Now, the Town has

conveniently “determined” the traffic ordinances are “no longer necessary[.]” (Defs’ Mot. for Summ. J., Ex.1, p.3). The pattern of behavior seems obvious. When pressed, the Town will do what it can to insulate its ordinances and its conduct from scrutiny.

The obvious response to this argument is that nothing would prevent a plaintiff from challenging the ordinances if the Town re-enacted them. That might be true if there was any reason to think the Town would react differently to a future challenge than it has to the prior challenges the Town has tried to thwart. The reality is that without a judicial declaration of the ordinances’ validity the Town has every incentive to re-enact its ordinance and no good reason not to do so.

This situation is similar, but admittedly not identical, to the situation in *Holden v. Cribb*. That case involved a question about a judicial sale that was rendered moot when the plaintiff withdrew the successful bid. The court considered the case in spite of its mootness based in part on the plaintiff’s claim that the same question would be presented if she bid on the property again. 349 S.C. 132, 137-138, 561 S.E.2d 634, 637-638 (Ct. App. 2002). Here as well, the same issues would be presented if the Town re-enacted its ordinance, which it has every incentive to do.

The situation is also reasonably comparable to the situation in *Vicary v. Town of Adwendaw*, which involved the different concept of standing but discusses a principle that applies here. That case was a challenge to an annexation of property and the key issue was whether the plaintiff had standing to challenge the decision. The Supreme Court held a plaintiff would be conferred with standing if the plaintiff could demonstrate “nefarious conduct” by the annexing body. 425 S.C. 350, 358-359, 822 S.E.2d 600, 604 (2018). Here, though the record is limited, it is hard to see how the Town’s conduct could be characterized as anything other than this. The Town vigorously enforced its ordinances until the last minute. Now, it seeks to avoid judicial review.

ii. Judicial resolution would provide future guidance in a matter of important public interest.

This argument builds on the above argument that without a judicial determination of plaintiffs' declaratory claims nothing prevents or deters the Town from re-enacted its ordinances. Nothing prevents other municipalities from following this same pattern of "enact and evade" as well.

Indeed, the transcript the Town attached to its motion for summary judgment involves another town, with another ordinance, and in that transcript the lawyer for the town argued "And, you know, all the municipalities here in South Carolina have enacted these careless operation laws, because it allows them to charge a fine, but the motorist doesn't have points assessed against their driver's license." (Defs' Mot. for Summ. J. Ex.2, p.11, lines 21-24). The same transcript suggests that town followed the same sort of obstructive conduct Turbeville followed here—it dismissed the illegal tickets of people who challenged the tickets' validity and when people requested jury trials, the town simply never held the trials. That case was a federal case, where jurisdiction is limited. In fact, that town's argument to federal court was that the federal court should decline jurisdiction and that those plaintiffs needed to seek declaratory relief and other relief in state court. *Id.* at 33.

The limited record bolsters the notion that local traffic ordinances are a widespread problem. The plaintiffs attached two advisory opinions and a letter from then-Chief Justice Toal to the complaint. The advisory opinions themselves reference multiple other advisory opinions on this same general topic—local traffic ordinances, fines for local traffic ordinances, and writing speeding tickets under local ordinances. The letter from Chief Justice Toal acknowledged that a judicial challenge to such ordinances and practices are unlikely because the ticketed individuals are often told they will not receive points on their driver's license.

The public—and particularly local governments—apparently need judicial guidance on the proper scope of local traffic ordinances and what sort of ordinances are pre-empted by the Uniform Traffic Act. This is not like the situation in *Sloan v. Greenville County*, where the Supreme Court said there was no manifest need to review the legality of Greenville’s procurement ordinance after it had been repealed. 361 S.C. 568, 606 S.E.2d 464 (2004). There, parties had the benefit of two previous decisions giving ample guidance for future cases. Here, there appears to be a great need for judicial guidance. As noted above, the transcript attached to the Town’s own motion suggests that the legality of local speeding ordinances is a recurring dilemma throughout the State. See *Evans v. S.C. Dep’t of Soc. Servs.*, 303 S.C. 108, 110 n.1, 399 S.E.2d 156, 157 n.1 (1990) (court reviewed moot issue that presented a recurring dilemma in order to clarify the law).

II. The claim for equitable disgorgement of an unlawfully retained benefit is not preempted by the PCR Act.

The Town believes the plaintiffs are collaterally attacking their convictions, that the plaintiffs are claiming they are innocent, and that the plaintiffs are asking the court to void their convictions. With utmost respect, this is not the correct characterization of the plaintiff’s claims.

Nobody contests the plaintiffs who paid a fine under the Town’s ordinances were speeding. Their payment of the fine necessarily precludes a claim of innocence. This is not a collateral attack on anyone’s conviction.

The disgorgement claim alleges that the Town is unlawfully retaining, through the excessive and illegal fine over and above the amount allowed by law, an unjust benefit that should be forfeited in equity and returned. Plaintiff Babayan seeks nothing more than disgorgement, on her behalf and on behalf of the uncertified Damages Class, of any proceeds Turbeville has retained.

Even if a literal reading of the PCR Act applied to this claim, precedent acknowledges that the Act does not go as far as it advertises. The Act does not preclude *all* remedies. The court still recognizes extraordinary writs as acknowledged in *State v. Butler*. 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). Precedent also recognizes that a court sitting in equity has “the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.” *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

The Town mentions in its argument here that plaintiff Babayan did not challenge the ordinances at the time she was convicted, did not go to trial, did not appeal, and did not file for PCR. All of that is true. Still, it is worth noting that if she had done any of those things, the record shows the Town would likely have illegally converted her ticket or dismissed her ticket to avoid scrutiny of its ordinances and continued collecting fines from people who lacked the information, means, time, or opportunity to assert their rights. Equity has the power to do what should be done. Respectfully, the plaintiffs believe this Court has the power to disgorge any illegally retained benefits from the Town.

CONCLUSION

For the foregoing reasons this Court should deny the Town’s motion for partial summary judgment.

/Signature page attached

Respectfully submitted,

June 27, 2019

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s/John S. Simmons
S.C. Bar No. 10260
1711 Pickens St.
Columbia, SC 29201
Tel: (803) 779-4600
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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: CHARLOTTE ANNE DANIELS

DATE TAKEN: March 15, 2018

TIME: 2:05 p.m.

PLACE: Turner Padgett Graham & Laney
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B

CHARLESTON, SOUTH CAROLINA 29414

kendra.johnston01@gmail.com 843.605.5382

REPRESENTING THE PLAINTIFFS:

REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

bc581589-c257-4a12-886f-54c031b5bb3f

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(No exhibits were marked.)

1 (The deposition commenced at 2:05 p.m.)

2 CHARLOTTE ANNE DANIELS, SWORN.

3 DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. Good afternoon, Miss Daniels. I'm Richard
6 Dukes. We just met. I appreciate your coming in this
7 afternoon.

8 We're here about a case brought by a lady
9 named Marie Babayan and another lady named Rebecca
10 Robbins, and they filed a lawsuit about traffic tickets
11 that were issued in the Town of Turbeville, South
12 Carolina. I represent the Town of Turbeville in this
13 case. Mr. Hewitt represents the plaintiffs.

14 Our best information is that you received a
15 ticket in the Town of Turbeville. Is that correct?

16 A. Yes.

17 Q. Would you tell me about the ticket you
18 received?

19 A. I was coming from Sumter, South Carolina.
20 My uncle, who has now passed away, was there, and my --
21 my mother's brother, and I had my Garmin, and the
22 Garmin tells you your -- the speed, you know, the speed
23 limit, and it was 45 miles an hour. And I had an
24 allergy thing, and I needed to stop and get something
25 to drink. I usually have water in my car. And I was

1 forgot how it went, but my original fine was supposed
2 to be \$288 or something, and it was dropped down to
3 155, which I immediately paid, and we left.

4 Q. And did they ask you to enter a plea, guilty
5 or not guilty?

6 A. No. There's some other kind of thing you
7 could say.

8 Q. Nolo contendere?

9 A. Something like that, yes. And then it was
10 like magic words, and then you just went over and paid
11 your bill and left.

12 Q. Okay. Did you -- did you have a lawyer
13 advising you?

14 A. No. No.

15 Q. And your uncle, Mr. Mallard, is not a
16 lawyer?

17 A. No.

18 Q. Okay. Did you consult with an attorney --

19 A. No.

20 Q. -- at any time about this?

21 A. No.

22 Q. Did you file an appeal --

23 A. No.

24 Q. -- of the court?

25 A. No.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Charlotte Anne Daniels; and that the transcript is a
true record of the testimony given by the witness, and
was sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: DAVID R. GRAVELY
DATE TAKEN: March 15, 2018
TIME: 10:28 a.m.
PLACE: Turner Padgett Graham & Laney
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

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kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

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7 blake@bluesteinattorneys.com

8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

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10 Turner Padget Graham & Laney
11 40 Calhoun Street, Suite 200
12 Charleston, South Carolina 29401
13 rdukes@turnerpadget.com

14 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

15 J. EMORY SMITH, JUNIOR, ESQUIRE
16 Office of the Attorney General
17 Rembert Dennis Building, 5th Floor
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19 Columbia, South Carolina 29201
20 esmith@scag.gov

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I N D E X

Testimony of David R. Gravely

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I N D E X

(No exhibits were marked.)

1 (The deposition commenced at 10:28 a.m.)

2 DAVID R. GRAVELY, SWORN.

3 DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. Mr. Gravelly, I'm Richard Dukes, and I
6 represent the Town of Turbeville in a case that's been
7 brought by a lady named Marie Babayan and another lady,
8 Rebecca Robbins, and the whole case is over traffic
9 tickets that were issued in the Town of Turbeville.
10 And our information is that you received a ticket in
11 Turbeville. Is that correct?

12 A. I was lucky, one of the lucky ones that got
13 one, yes.

14 Q. Okay. When did that happen?

15 A. I have no idea. You've probably got the
16 date.

17 Q. And I'm looking for that now.

18 A. I really don't recall. It's been several
19 years ago, it seems like.

20 Q. Okay. This goes back to 2013.

21 A. Okay. It was -- my friend Patty Jemison's
22 mother died, and we went to a funeral, and I can't
23 remember where it was. It seemed like it was in
24 Sumter, outside of Sumter. But I have no clue
25 whether -- that was probably three or four years ago

1 thought I was being very careful, and when I got to an
2 open area that I thought was outside the city of
3 Turbeville, I increased my speed, which wasn't very
4 much, and I got a ticket around a curve that was in an
5 open field, and two or three police cars were lined up
6 there just checking people out and giving them
7 citations left and right, and I was one of the lucky
8 ones. I did not think I was going very fast, I can
9 tell you that, but I obviously was going faster than, I
10 guess, the speed limit.

11 When I went back and looked at it, it looked
12 like the speed limit had gone from 45 to 35 or
13 something like that when it opened up, and I'm not sure
14 of it, but I was not going very fast, but I obviously
15 was exceeding the speed limit.

16 Q. So you don't doubt you were guilty.

17 A. If -- if speeding -- if going over the
18 posted mileage is speeding, I was speeding, yes, so I'm
19 guilty.

20 Q. Were you offered a choice of the type of
21 ticket you received, either --

22 A. No, I was offered nothing.

23 Q. Do you know whether any points went --

24 A. When I got the ticket, and I don't remember
25 if it was greater than ten or not, I asked the officer

1 if I could get the name of the judge so I could call
2 the judge, and he was not very friendly; he was not
3 inclined to give me any reduction. I asked him -- I
4 think it might have been more than ten. I can't
5 remember what the charge was. But I said, you know, I
6 didn't think I was going that fast, and he made some
7 comment about, Well, how fast do you think you were
8 going? and something, and I said, Well, I said, could
9 you -- I said, Could you reduce it? And I think he
10 said, No. The judge can. I said, Well, who's the
11 judge? He said, Well, you can't talk to the judge. So
12 I said, Well, I talk to judges all the time. I've been
13 a lawyer for 40-some years. And he says, You can't
14 talk to our judge. So I said, Okay. Give me the
15 ticket. I took it.

16 I called -- when I got back to Myrtle Beach,
17 I called Moot Truluck, who's a very close friend of
18 mine, who happens to be on the commission, the highway
19 commission. Moot suggested that I call the clerk's
20 office, and I got that number. Ultimately I spoke to
21 someone at the clerk's office, and whether it was Moot
22 or the clerk that let me know, I ended up pleading
23 guilty to illegal equipment or something like that. It
24 was a non-point violation. And I sent my money in and
25 chalked it up to killing mosquitoes in Turbeville or

1 whatever they used it for.

2 Q. Do you know how much you paid?

3 A. I really don't.

4 Q. And we just have a printout of --

5 A. Yeah.

6 Q. -- dozens and dozens, 10,000 tickets. And
7 it looks like you may have paid \$87.

8 A. I thought I paid more than that, but
9 maybe -- maybe -- if that's what it says, that's what I
10 paid.

11 Q. Okay.

12 A. I thought it was more. I thought the
13 speeding ticket was less than what I paid, as I recall
14 it, but that's been a while back, and, fortunately, I
15 don't think I've had a ticket since then, so I can't --
16 I can't get them confused.

17 Q. And that's what it -- and that's what it may
18 have been, the ticket. Do you know whether they issued
19 you a State citation or a City or a municipal ordinance
20 citation?

21 A. I really do not. I think I -- I'm pretty
22 sure I got rid of the ticket, and I don't remember.

23 Q. Do you think you got any points on your
24 license?

25 A. I did not.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
David R. Gravely; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: WAYMAN DIXON GOUDY
DATE TAKEN: March 16, 2018
TIME: 3:52 p.m.
PLACE: Hyman Law Group
1208 Third Avenue
Conway, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

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kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

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4 Bluestein Nichols Thompson & Delgado
5 Post Office Box 7965
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7 blake@bluesteinattorneys.com

8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

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13 william@whjohnsonlaw.com

14 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

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1 (The deposition commenced at 3:52 p.m.)

2 WAYMAN DIXON GOUDY, SWORN.

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q. Mr. Goudy, will you give us your name on the
6 record.

7 A. Wayman Dixon Goudy.

8 Q. And that's G-o-u-d-y?

9 A. Correct.

10 Q. The Gowdys around us are G-o-w-d-y. I've
11 never heard of a G-o-u-d-y.

12 A. I've seen the signs down there and thought
13 about stopping and checking on my businesses, but...

14 Q. All right. What's your address?

15 A. My mailing address is 730 Main Street,
16 number 335, North Myrtle Beach.

17 Q. And what is that zip?

18 A. 29582.

19 Q. The address from whence you drove or where
20 you live is?

21 A. I drove from my business. That's 1670
22 Highway 17, Little River, South Carolina 29566.

23 Q. What do you do?

24 A. I am a corporate IT.

25 Q. Okay. And if we need to reach you, do you

1 my map, and it was showing my true speed. I hadn't
2 thought of that before. I didn't know that the cluster
3 was bad. So they stopped us. I was speeding. I went
4 back down to court and explained, showed them proof and
5 explained, and they just released me with the cost of
6 court fees. That's it.

7 Q. Okay. So you were issued a citation?

8 A. Uh-huh.

9 Q. And you went to court on the given date?

10 A. I did.

11 Q. All right. And so did you plead guilty
12 or...

13 A. I pleaded guilty under special
14 circumstances.

15 Q. Okay. What were those special
16 circumstances?

17 A. Bad cluster.

18 Q. Help me out. What's a cluster?

19 A. The thing you look at when you're driving
20 your car, all those gauges, it's called cluster.

21 Q. Okay.

22 A. Yeah.

23 Q. All right. And so you had some deficiencies
24 in that?

25 A. It had to be completely replaced, if that

1 gives you any idea how deficient it was.

2 Q. Okay. All right. And you ended up
3 paying --

4 A. \$69.

5 Q. Maybe 87?

6 A. No. 69.

7 Q. Sixty-nine.

8 A. Yeah.

9 Q. Okay. All right. Now, do you know, was
10 there a discussion either between you and the officer
11 on the road or at court about points being assessed
12 against your license?

13 A. I believe he mentioned there may be a
14 possibility -- I needed to go to court, and the judge
15 mentioned that there was a possibility of that being
16 assessed unless we were not found liable for what we
17 did, and, therefore, I was not assessed any points.
18 That was one of the key points.

19 Q. Okay. All right. This lawsuit was brought
20 by these two ladies, and they're seeking some relief.
21 One of the things they're seeking is that the Town
22 ordinance for Turbeville under which you officially
23 pled guilty -- well, actually, according to our
24 records, there was a bench trial and you were found
25 guilty --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Wayman Dixon Goudy; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: URSULA SYRE HERZ
DATE TAKEN: March 16, 2018
TIME: 10:28 a.m.
PLACE: Hyman Law Group
1208 Third Avenue
Conway, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B
CHARLESTON, SOUTH CAROLINA 29414
kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 BLAKE HEWITT, ESQUIRE
4 Bluestein Nichols Thompson & Delgado
5 Post Office Box 7965
6 Columbia, South Carolina 29202
7 blake@bluesteinattorneys.com

8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

9 WILLIAM H. JOHNSON, ESQUIRE
10 Law Offices of William H. Johnson, LLC
11 411 North Brooks Street
12 Manning, South Carolina 29102
13 william@whjohnsonlaw.com

14 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

15 J. EMORY SMITH, JUNIOR, ESQUIRE
16 Office of the Attorney General
17 Rembert Dennis Building, 5th Floor
18 1000 Assembly Street
19 Columbia, South Carolina 29201
20 esmith@scag.gov

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I N D E X

Testimony of Ursula Syre Herz

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INDEX OF EXHIBITS

(No exhibits were marked.)

1 (The deposition commenced at 10:28 a.m.)

2 URSULA SYRE HERZ, SWORN.

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q. Okay. Your name is Ursula Herz?

6 A. Yes.

7 Q. Is that correct? Herz; correct?

8 A. Yes.

9 Q. Ms. Herz, again, my name is William Johnson.
10 I'm an attorney, as I say. I live in Manning. And I
11 represent the Town of Turbeville.

12 What is your address, Miss Herz?

13 A. 4340 Highway 65.

14 Q. 4340 Highway 65?

15 A. Uh-huh.

16 Q. Okay. We had Highway 96 for some reason, so
17 no wonder, but eventually you got the notice,
18 obviously, but that's good.

19 A. Interesting.

20 Q. But it's Highway 65; right?

21 A. Yeah, because other mail I do need to get, I
22 didn't get.

23 Q. Yes, ma'am. All right. Ms. Herz, we're
24 here today in connection with a lawsuit that's been
25 filed by two ladies who are attempting to bring a class

1 Q. Okay. And when the officer pulled you over
2 and spoke to you, did he offer any options about the
3 type of ticket you might receive?

4 A. Well, I had to go to -- excuse me, please.
5 I'm still draining from the hit; tree hit me.

6 Q. Oh, my goodness.

7 A. He gave me a ticket and said I need to go to
8 court a certain date, which I did, and that the judge
9 might reduce the ticket. That was the last that he
10 spoke. I remember that.

11 Q. Okay. And so you did, in fact, go to court.

12 A. Yes.

13 Q. And how much did you end up paying?

14 A. I don't recall. I think maybe a hundred
15 dollars or something.

16 Q. Okay. If our records --

17 A. It was less than what -- about half of what
18 he originally cited.

19 Q. Okay. If our records indicate that you paid
20 \$125, does that sound accurate?

21 A. Yeah. I told you about a hundred dollars is
22 about --

23 Q. Right.

24 A. If that's what your records show, then
25 that's what I did.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Ursula Syre Herz; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
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)
Plaintiffs)
) Civil Action No.:
) 2016-CP-14-198
v.)
)
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendant/Third-Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third-Party Defendants.)

DEPOSITION OF: WILLIAM KELLETT

DATE TAKEN: Tuesday, March 6, 2018

TIME: 11:00 A.M.

PLACE: Turner Padgett Graham & Laney
200 East Broad Street, Suite 250
Greenville, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

1 A P P E A R A N C E S

2
3 REPRESENTING THE PLAINTIFFS (VIA TELEPHONE):

4 M. DAVID SCOTT, ESQUIRE
5 Jordan Rauton & Scott
6 Post Office Box 948
7 Lexington, South Carolina 29071

8
9 REPRESENTING THE DEFENDANTS TOWN OF TURBEVILLE AND
10 TURBEVILLE POLICE DEPARTMENT:

11 RICHARD S. DUKES, JUNIOR, ESQUIRE
12 Turner Padgett Graham & Laney
13 40 Calhoun Street, Suite 200
14 Charleston, South Carolina 29401

15 WILLIAM H. JOHNSON, ESQUIRE
16 Post Office Box 137
17 Manning, South Carolina 29102

18
19 REPRESENTING THE STATE OF SOUTH CAROLINA (VIA
20 TELEPHONE):

21 J. EMORY SMITH, JUNIOR, ESQUIRE
22 Office of the Attorney General
23 Rembert Dennis Building - 5th Floor
24 1000 Assembly Street
25 Columbia, South Carolina 29201

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I N D E X

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INDEX OF EXHIBITS

(No exhibits were offered or marked.)

STIPULATIONS

It is hereby stipulated and agreed by and between
the parties hereto, through their respective counsel,
that the reading and signing of the transcript is
waived by the Deponent.

1 (The deposition commenced at 11:11 a.m.)

2 WILLIAM KELLETT, SWORN.

3 DIRECT EXAMINATION BY MR. DUKES:

4 Q. Good morning, Mr. Kellett.

5 A. Good morning.

6 Q. We appreciate you coming in this morning.

7 A. Uh-huh.

8 Q. As I told you, I'm Richard Dukes. And

9 William Johnson and I represent the Town of Turbeville
10 in a case that's been brought by Rebecca Robbins and
11 Marie Babayan over traffic tickets that were issued in
12 the Town of Turbeville over about the last four years.

13 A. Uh-huh.

14 Q. Our information is that you received a
15 traffic ticket in Turbeville sometime in -- since 2013?

16 A. Uh-huh.

17 Q. Or 2014; is that correct?

18 A. Yep.

19 Q. What were you charged with?

20 A. It was a speeding ticket.

21 Q. How fast were you going?

22 A. 71 in a 45. It was on 5/13/2016.

23 Q. Where in Turbeville were you?

24 A. I can't recall, and it does not say here on
25 this ticket.

1 A. Yeah.

2 Q. What is your -- what did you ultimately have
3 to pay?

4 A. Eighty-seven dollars.

5 MR. SMITH: I'm sorry, how much?

6 MR. DUKES: Eighty-seven dollars.

7 BY MR. DUKES:

8 Q. Were you aware that these two plaintiffs,
9 these two ladies, had filed a class action over traffic
10 tickets issued by the Town of Turbeville?

11 A. No, not until I got this letter.

12 Q. Has anyone contacted you?

13 A. No.

14 Q. Do you know what class action lawsuits are
15 about?

16 A. I got a general idea, yeah.

17 Q. Okay. What's your understanding of class
18 actions?

19 A. Well, I think they're suing the state or town
20 of Turbeville for giving -- that's about all I know.

21 Q. Okay. If the result were if these plaintiffs
22 are successful and people had to get a state-issued
23 traffic ticket that would carry points on their
24 license, would you want to participate in that?

25 A. That would -- that would carry points? What .

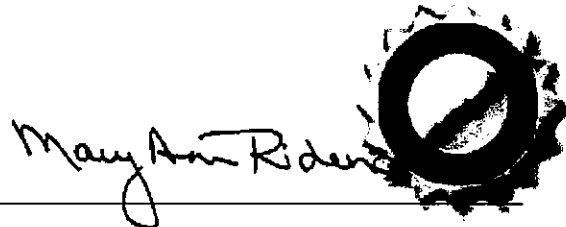
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF DORCHESTER:

I, MARY ANN RIDENOUR, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
William Kellett; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 6th day of
March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.


Mary Ann Ridenour

Mary Ann Ridenour, RPR, CLR
and Notary Public
My commission expires:
March 14, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)

Plaintiffs)

) Civil Action No.:
) 2016-CP-14-198

v.)

Town of Turbeville, The Turbeville)
Police Department,)

Defendant/Third-Party Plaintiffs,)

v.)

The State of South Carolina,)

Third-Party Defendants.)

DEPOSITION OF: DELORES B. LANCASTER

DATE TAKEN: Tuesday, March 6, 2018

TIME: 4:04 P.M.

PLACE: Turner Padgett Graham & Laney
200 East Broad Street, Suite 250
Greenville, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

1 A P P E A R A N C E S

2
3 REPRESENTING THE PLAINTIFFS (VIA TELEPHONE):

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Post Office Box 948
Lexington, South Carolina 29071

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7 REPRESENTING THE DEFENDANTS TOWN OF TURBEVILLE AND
TURBEVILLE POLICE DEPARTMENT:

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Charleston, South Carolina 29401

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Manning, South Carolina 29102

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13 REPRESENTING THE STATE OF SOUTH CAROLINA (VIA
TELEPHONE):

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15 Office of the Attorney General
Rembert Dennis Building - 5th Floor
16 1000 Assembly Street
Columbia, South Carolina 29201

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I N D E X

Testimony of Delores B. Lancaster

Direct Examination by Mr. Dukes.....4

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INDEX OF EXHIBITS

(No exhibits were offered or marked.)

STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

1 (The deposition commenced at 4:04 p.m.)

2 DELORES B. LANCASTER, SWORN.

3 DIRECT EXAMINATION BY MR. DUKES:

4 Q. Good afternoon, Ms. Lancaster. I appreciate
5 your coming out on this nasty day. We have a few
6 questions to ask you. This lawsuit that we're here --
7 and Mr. Johnson and I represent the Town of Turbeville
8 in a lawsuit that's been brought by a lady named
9 Rebecca Robbins and another lady named Marie Babayan
10 over traffic tickets that were issued in the town of
11 Turbeville.

12 A. Yes.

13 Q. Our information is that you received a ticket
14 in Turbeville.

15 A. I did.

16 Q. Is that correct? Do you remember when that
17 was?

18 A. It was roughly 2013, the summer of, going
19 toward the beach. I probably -- I have moved in the
20 process, so I did have a ticket at home because I kept
21 it. And -- but it was -- let's see. My husband died
22 May 5th, and it was after that. So probably the end of
23 June, July, in that area.

24 Q. 2015?

25 A. No, 20 -- '13 or '14.

1 School. And Danny McCatherine (ph) -- yes --
2 well, we'll talk about Danny later.

3 MR. JOHNSTON: Okay, we will.

4 THE WITNESS: Yeah, he's -- he's a good
5 friend. I grew up with him.

6 MR. JOHNSTON: Okay.

7 BY MR. DUKES:

8 Q. But you were you glad that you didn't get any
9 points on your license?

10 A. Yes, I was.

11 Q. And especially glad that your son's friend
12 was able to get --

13 A. My daughter -- it's my son's father-in-law.

14 Q. Son's father-in-law?

15 A. Uh-huh.

16 Q. Was able to get it talked down?

17 A. Well, he said he would talk to somebody. And
18 he said there was a lot -- there were different kinds
19 of -- different kinds of fines. And he said he would
20 see what he could do.

21 Q. Okay. How did you find out that it would be
22 50 or \$75?

23 A. He -- Mr. Pruitt told me. He said, Put in
24 the letter -- I did a letter to them and gave them the
25 \$50 or 75.

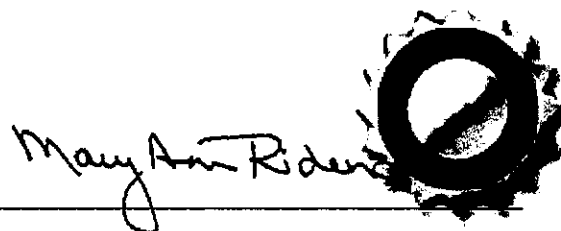
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF DORCHESTER:

I, MARY ANN RIDENOUR, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Delores B. Lancaster; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 20th day of
March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.



Mary Ann Ridenour, RPR, CLR
and Notary Public
My commission expires:
March 14, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: GARRY ROBERT LUDWICK, JR.
DATE TAKEN: March 15, 2018
TIME: 4:12 p.m.
PLACE: Turner Padgett Graham & Laney
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B
CHARLESTON, SOUTH CAROLINA 29414
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8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

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13 rdukes@turnerpadgett.com

14 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

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20 esmith@scag.gov

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I N D E X

Testimony of Garry Robert Ludwick, Jr.
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INDEX OF EXHIBITS

(No exhibits were marked.)

1 (The deposition commenced at 4:12 p.m.)

2 GARRY ROBERT LUDWICK, JR., SWORN.

3 DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. Good afternoon, Mr. Ludwick. I'm Richard
6 Dukes. I'm a lawyer, and I represent the Town of
7 Turbeville, South Carolina, in a lawsuit that's been
8 brought by two ladies, one named Marie Babayan and
9 another named Rebecca Robbins, over traffic tickets
10 issued by the Town of Turbeville or in the Town of
11 Turbeville, and we're going to ask you a few questions.
12 We understand that you may have received a ticket in
13 Turbeville at some point.

14 A. Yes.

15 Q. Okay. If we needed to reach you later on,
16 what would be a good cell phone number to call you on?

17 A. (843)503-9536.

18 Q. And how about an email address?

19 A. Robsworld247@gmail.com.

20 Q. Okay. Where were you -- what were you
21 charged with when you got a ticket in Turbeville?

22 A. Speeding.

23 Q. And how fast were you going?

24 A. I don't recall.

25 Q. Do you remember on your traffic ticket what

1 it said your violation was?

2 A. No, I don't.

3 Q. Do you remember how fast you were going? I
4 may have just asked that.

5 A. No, I don't.

6 Q. How much was the fine on the ticket?

7 A. \$400.

8 Q. Were you offered the choice between a ticket
9 that would carry points on your license and a ticket
10 that would not?

11 A. I don't -- I'm trying to remember. I don't
12 remember if that was -- I couldn't say like a hundred
13 percent sure. I don't know. I remember -- I think I
14 remember asking for something to plea it down, and
15 that's what it ended up being.

16 Q. Okay. So you went to court?

17 A. Yes, I showed up the day that I was assigned
18 to be there.

19 Q. And what -- did you have a lawyer with you?

20 A. No.

21 Q. What -- tell me what happened when you went
22 to court.

23 A. Sat there, waited my turn, for my name to be
24 called, went up, and I think the charges were
25 presented, and I think it was asked guilty or not

1 guilty, and I asked for a plea bill, and whatever they
2 said they would charge me with, I said, Okay. It was
3 reduced from what they originally said, and I don't
4 remember what that was, but they said \$400 would get me
5 out the door, and that's what I did.

6 Q. Did any points go on your license?

7 A. No, not to my knowledge at least.

8 Q. Were points any part of the discussion when
9 you went to court?

10 A. No, I don't think so.

11 Q. Do you know -- do you have any idea how much
12 over the speed limit you were going when you got a
13 ticket?

14 A. No, I don't remember.

15 Q. But when you went to court, you did plead
16 guilty?

17 A. I asked for a plea bill, plea deal.

18 Q. Uh-huh. Okay. But you don't remember
19 saying, "Guilty"?

20 A. No.

21 Q. Okay. Did you file any sort of appeal?

22 A. No.

23 Q. What about an action for post-conviction
24 relief?

25 A. No. I don't even know what that is.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Garry Robert Ludwick, Jr.; and that the transcript is a
true record of the testimony given by the witness, and
was sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

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of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

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CRR and Notary Public
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August 24, 2022.

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) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: BRITNEY LYNN-HARDEE CHAVEZ

DATE TAKEN: March 16, 2018

TIME: 10:07 a.m.

PLACE: Hyman Law Group
1208 Third Avenue
Conway, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B

CHARLESTON, SOUTH CAROLINA 29414

kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 BLAKE HEWITT, ESQUIRE
4 Bluestein Nichols Thompson & Delgado
5 Post Office Box 7965
6 Columbia, South Carolina 29202
7 blake@bluesteinattorneys.com

8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

9 WILLIAM H. JOHNSON, ESQUIRE
10 Law Offices of William H. Johnson, LLC
11 411 North Brooks Street
12 Manning, South Carolina 29102
13 william@whjohnsonlaw.com

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I N D E X

Testimony of Britney Lynn-Hardee Chavez

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REPORTER'S CERTIFICATE.....11

INDEX OF EXHIBITS

(No exhibits were marked.)

1 (The deposition commenced at 10:07 a.m.)

2 BRITNEY LYNN-HARDEE CHAVEZ, SWORN.

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q. Okay. Again, Miss Chavez, my name is
6 William Johnson. I represent the Town of Turbeville.
7 And this -- we've asked you to come today because of a
8 lawsuit that is pending, and it's actually what is
9 called a class action, and it relates to speeding
10 tickets that were issued by the Town. Okay? And I
11 believe you received a subpoena; right?

12 A. I did.

13 Q. Okay. And so this is a deposition. She's
14 taking down everything that you and I or anyone who
15 speaks says. One thing that we need to do to help her
16 is, first of all, not talk at the same time; and then
17 if your responses would be audible, as, of course,
18 you're shaking your head now, but when you say yes,
19 just say yes.

20 A. Okay. Yes.

21 Q. Great. Thank you.

22 First of all, I do have a check for \$25,
23 which is what we, pursuant to the rules by which
24 lawyers work, we are allowed to pay you as a witness
25 fee for appearing today.

1 A. I don't.

2 Q. Okay.

3 A. I just remember thinking, Wow, this is a lot
4 of money.

5 Q. And after Mr. Floyd helped you out, did you
6 have to pay the full amount?

7 A. I did not. I paid \$80, so I took it, I took
8 it and ran.

9 Q. So you paid a total of \$80?

10 A. Yes.

11 Q. All right. And do you know whether or not
12 there was any entry against your driving record as a
13 result of this ticket?

14 A. I don't think there was.

15 Q. All right. So, we're here today; there's a
16 lawsuit that has been brought by two ladies named
17 Miss Robbins and Miss Babayan, and they allege that the
18 Town ordinance that the tickets were written under is
19 not constitutional.

20 A. Uh-huh.

21 Q. And so the question is, I guess, after --
22 and what they -- we believe that what would have to
23 happen is that if your citation and the fine that you
24 paid is reversed, then the Town would have to go back
25 and cite you under the State statute --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Britney Lynn-Hardee Chavez; and that the transcript is a
true record of the testimony given by the witness, and
was sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: JOSE A. PADILLA
DATE TAKEN: March 15, 2018
TIME: 11:17 a.m.
PLACE: Turner Padgett Graham & Laney
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B
CHARLESTON, SOUTH CAROLINA 29414
kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 BLAKE HEWITT, ESQUIRE
 Bluestein Nichols Thompson & Delgado
4 Post Office Box 7965
 Columbia, South Carolina 29202
5 blake@bluesteinattorneys.com

6 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

7 RICHARD S. DUKES, JUNIOR, ESQUIRE
 Turner Padget Graham & Laney
8 40 Calhoun Street, Suite 200
 Charleston, South Carolina 29401
9 rdukes@turnerpadget.com

10 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

11 J. EMORY SMITH, JUNIOR, ESQUIRE
 Office of the Attorney General
12 Rembert Dennis Building, 5th Floor
 1000 Assembly Street
13 Columbia, South Carolina 29201
 esmith@scag.gov
14

15 PRESENT:

16 Natalie Stallings
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I N D E X

Testimony of Jose A. Padilla

Direct Examination by Mr. Dukes.....4

REPORTER'S CERTIFICATE.....11

INDEX OF EXHIBITS

(No exhibits were marked.)

1 (The deposition commenced at 11:17 a.m.)

2 JOSE A. PADILLA, SWORN.

3 DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. Good morning. And I believe it's
6 Mr. Padilla?

7 A. Yes, sir.

8 Q. As we get started, I have lunch money for
9 you.

10 We just met, and I am Richard Dukes. I
11 represent the Town of Turbeville in a case that's been
12 brought by a lady named Marie Babayan and another lady
13 named Rebecca Robbins over traffic tickets that were
14 issued in the Town of Turbeville. Our information is
15 that you received a ticket in Turbeville. Is that
16 correct?

17 A. Yes.

18 Q. Do you remember when that was?

19 A. I want to say about 11 months ago.

20 Q. Okay. We have a spreadsheet that is
21 sometimes correct --

22 A. Uh-huh.

23 Q. -- but sometimes not. Would February 20th,
24 2017, sound about right?

25 A. That sounds about right.

1 \$90.

2 A. Yeah, it was like 80 bucks or something like
3 that.

4 MS. STALLINGS: Because you had to run to
5 the ATM machine.

6 A. It was one of those incidents where it went
7 so flawlessly and smoothly, and I didn't see anything
8 wrong with it, that I don't really remember much about
9 the incident, so a lot of the details of it are vague.
10 But, believe me, I've had enough stops and enough
11 questionable stops, if you look at my history, that I
12 know a bad stop from a good stop, and that was one of
13 the best stops I've ever had, honestly.

14 BY MR. DUKES:

15 Q. You didn't have a lawyer?

16 A. No, huh-uh. Didn't even need one.

17 Q. Did the officer, when he was giving you your
18 ticket, offer you a choice between a moving violation
19 or a non-moving violation?

20 A. Huh-uh.

21 Q. Did he tell you whether he was going to
22 write a ticket under the State speeding statute or a
23 Town ordinance?

24 MS. STALLINGS: I don't remember. It was
25 late. We were tired. Our kids were sleeping. The dog

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of Jose
A. Padilla; and that the transcript is a true record of
the testimony given by the witness, and was sworn as
such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day
of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)

Plaintiffs)

) Civil Action No.:
) 2016-CP-14-198

v.)

Town of Turbeville, The Turbeville)
Police Department,)

Defendant/Third-Party Plaintiffs,)

v.)

The State of South Carolina,)

Third-Party Defendants.)

DEPOSITION OF: MARY CAROLYN PITTMAN

DATE TAKEN: Tuesday, March 6, 2018

TIME: 11:40 A.M.

PLACE: Turner Padgett Graham & Laney
200 East Broad Street, Suite 250
Greenville, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

A P P E A R A N C E S

REPRESENTING THE PLAINTIFFS (VIA TELEPHONE):

M. DAVID SCOTT, ESQUIRE
Jordan Rauton & Scott
Post Office Box 948
Lexington, South Carolina 29071

REPRESENTING THE DEFENDANTS TOWN OF TURBEVILLE AND
TURBEVILLE POLICE DEPARTMENT:

RICHARD S. DUKES, JUNIOR, ESQUIRE
Turner Padgett Graham & Laney
40 Calhoun Street, Suite 200
Charleston, South Carolina 29401

WILLIAM H. JOHNSON, ESQUIRE
Post Office Box 137
Manning, South Carolina 29102

REPRESENTING THE STATE OF SOUTH CAROLINA (VIA
TELEPHONE):

J. EMORY SMITH, JUNIOR, ESQUIRE
Office of the Attorney General
Rembert Dennis Building - 5th Floor
1000 Assembly Street
Columbia, South Carolina 29201

I N D E X

Testimony of Mary Carolyn Pittman

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I N D E X
INDEX OF EXHIBITS

(No exhibits were offered or marked.)

S T I P U L A T I O N S
STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

1 (The deposition commenced at 12:04 p.m.)

2 MARY PITTMAN, SWORN.

3 DIRECT EXAMINATION BY MR. DUKES:

4 Q. Good morning, Ms. Pittman.

5 A. Good morning.

6 Q. I introduced myself a minute ago. I'm

7 Richard Dukes.

8 A. Uh-huh.

9 Q. William Johnson and I represent the Town of
10 Turbeville in a case that's been brought by two ladies,
11 one named Marie Babayan and one named Rebecca Robbins.
12 And it's over traffic tickets that were issued in the
13 Town of Turbeville between 2014 and 2017.

14 You're looking at me kind of questioning?

15 A. Yes, sir, I am. I thought it was May 9th of
16 '13.

17 Q. You're right.

18 A. My husband died 2004, so I wouldn't have been
19 in Turbeville.

20 Q. After 2004?

21 A. No, not even months before.

22 Q. Did you -- so you did not get a ticket in
23 Turbeville?

24 A. I did get a ticket, but I don't -- I don't
25 know if that's the same date.

1 A. I think it was 25, but I'm not sure.

2 Q. Okay. Our -- we're just going from a
3 computer database. We don't know what -- you know,
4 garbage in, garbage out. Somebody could have entered
5 it wrong. Would \$155 sound right?

6 A. Certainly not. If, you know, I had been
7 going, like, 80-something, maybe.

8 Q. Okay.

9 A. That's pretty steep.

10 Q. How much do you think you paid?

11 A. I think I mailed her a check for 25. But
12 that's, like, five years ago. I don't remember.

13 Could the bank pull that up for me on my
14 records?

15 Q. I'm sure they could. But it would take them
16 a while to research it because they'd have to look back
17 over your --

18 A. Well, would that be sufficient to send to
19 them later or --

20 Q. I'm not sure we're going to need it.

21 A. Okay.

22 Q. Did your insurance go up after this ticket?

23 A. No.

24 Q. Okay. Do you think you got a ticket that
25 didn't go on your record?

1 A. Now I'm not going to get locked up or
2 anything, am I?

3 Q. Not if William has anything to do with it.

4 THE WITNESS: You better not. We're about
5 the same size, aren't we?

6 MR. JOHNSTON: I think you could take me.

7 MR. DUKES: These lawyers may have a question
8 or two for you.

9 THE WITNESS: Sorry, forgot.

10 MR. SMITH: Ma'am, this is Emory Smith. I
11 represent the State. And I was having trouble
12 with my phone when we got on and I missed your
13 name. Would you please tell me your name again,
14 please?

15 THE WITNESS: Well, it's Mary Carolyn
16 Pittman. I go by Carolyn.

17 MR. SMITH: Okay. Thank you, Ms. Pittman. I
18 have no questions.

19 THE WITNESS: All right. Thank you.

20 MR. SCOTT: Ms. Pittman, my name is David
21 Scott. I represent the plaintiffs in this case.

22 CROSS-EXAMINATION BY MR. SCOTT:

23 Q. And just so I'm clear, as best you recall,
24 you paid the city of Turbeville \$25 for your ticket; is
25 that right?

1 A. As well as I remember, yes, sir. I'm...

2 Q. Thank you, ma'am. That's the only question.

3 A. Okay. I'm going to go to the bank and get
4 proof of that.

5 MR. DUKES: We don't have any more questions
6 for you. Thank you so much, ma'am.

7 THE WITNESS: Thank you.

8 (The deposition concluded at 12:15 p.m.)

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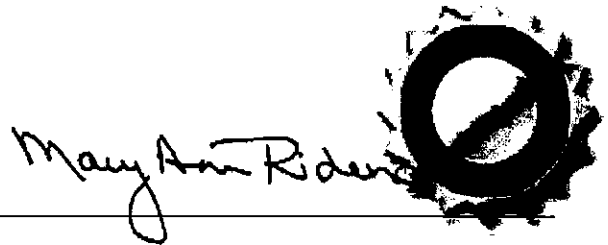
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF DORCHESTER:

I, MARY ANN RIDENOUR, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Mary Carolyn Pittman; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 6th day of
March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.



Mary Ann Ridenour, RPR, CLR
and Notary Public
My commission expires:
March 14, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT

Rebecca J. Robbins and Marie)
Babayan, individually and on behalf)
of all those similarly situated,)
)
Plaintiffs,)
)
v.) Civil Action No.:
) 2016-CP-14-198
Town of Turbeville, The Turbeville)
Police Department,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
The State of South Carolina,)
)
Third Party Defendants.)

DEPOSITION OF: DAVID EDWARD WELLS
DATE TAKEN: March 15, 2018
TIME: 10:46 a.m.
PLACE: Turner Padgett Graham & Laney
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional
Reporter, Certified Realtime
Reporter and Notary Public

2349 TALL SAIL DRIVE - UNIT B
CHARLESTON, SOUTH CAROLINA 29414
kendra.johnston01@gmail.com 843.605.5382

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 BLAKE HEWITT, ESQUIRE
4 Bluestein Nichols Thompson & Delgado
5 Post Office Box 7965
6 Columbia, South Carolina 29202
7 blake@bluesteinattorneys.com

8 REPRESENTING THE DEFENDANTS/THIRD PARTY PLAINTIFFS:

9 RICHARD S. DUKES, JUNIOR, ESQUIRE
10 Turner Padget Graham & Laney
11 40 Calhoun Street, Suite 200
12 Charleston, South Carolina 29401
13 rdukes@turnerpadget.com

14 REPRESENTING THE THIRD PARTY DEFENDANT (VIA TELEPHONE):

15 J. EMORY SMITH, JUNIOR, ESQUIRE
16 Office of the Attorney General
17 Rembert Dennis Building, 5th Floor
18 1000 Assembly Street
19 Columbia, South Carolina 29201
20 esmith@scag.gov

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I N D E X

Testimony of David Edward Wells

Direct Examination by Mr. Dukes.....4

REPORTER'S CERTIFICATE.....8

INDEX OF EXHIBITS

(No exhibits were marked.)

1 (The deposition commenced at 10:46 a.m.)

2 DAVID EDWARD WELLS, SWORN.

3 DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. Good morning, Mr. Wells. I'm Richard Dukes
6 from Turner Padgett down in Charleston. I apologize
7 that I didn't know your name in advance. You're a
8 lawyer, aren't you?

9 A. I am.

10 Q. We appreciate you coming in, and we won't
11 take very long.

12 We're here about a case that's been brought
13 by a lady named Marie Babayan and another lady named
14 Rebecca Robbins over traffic tickets in Turbeville, and
15 I represent Turbeville. Mr. Hewitt represents the
16 plaintiffs. And Mr. Smith, on the phone, is the lawyer
17 for the State of South Carolina.

18 Our information is you received a traffic
19 ticket in Turbeville. Is that correct?

20 A. I did.

21 Q. When was that?

22 A. I don't recall the specific date. The
23 notice of the deposition here says May 9th, 2013.

24 Q. Well, that's when the class period begins.
25 It's all tickets after May of 2013.

1 A. I could probably narrow it down to a
2 Saturday.

3 Q. Okay. Why do you think that?

4 A. Because I recall driving from Myrtle Beach
5 to Columbia to visit with my grandfather, and that was
6 prior to him passing away. And I made a day trip. I
7 drove there and back in the same day. And normally I
8 take 501 to 20, but I took back roads that day, so it's
9 very seldom that I go through Turbeville.

10 Q. And as near as I can figure it, it was
11 probably in July of 2013.

12 A. Do you have the specific date?

13 Q. July 27th, 2013.

14 A. Okay. Let me just get my calendar here.
15 July 27th, 2013?

16 Q. Yes, sir.

17 A. In looking at the calendar, it appears that
18 July 27th, 2013, is a Saturday.

19 Q. Okay.

20 A. And, as I recall, it was raining that day.

21 Q. How fast were you going?

22 A. Extremely fast.

23 Q. And do you remember what your ticket was
24 written for?

25 A. I don't recall. I believe it was for

1 speeding.

2 Q. Do you know whether you were issued a ticket
3 under the State statute or under the Town's traffic
4 ordinance?

5 A. I have no idea.

6 Q. Do you remember whether you were offered a
7 choice between a ticket that would put points on your
8 license or one that wouldn't?

9 A. I don't recall.

10 Q. All right. Do you remember what the fine
11 listed on the ticket was?

12 A. I don't recall.

13 Q. Did you call anybody at Turbeville to try to
14 get it reduced?

15 A. I did not.

16 Q. Our spreadsheet indicates that you may have
17 paid \$87. Does that sound about right?

18 A. If that's what it says.

19 Q. Okay. Did you just pay the fine and be done
20 with it?

21 A. My recollection, yes.

22 Q. Okay. You didn't go to trial or show up at
23 court?

24 A. No. No, I did not.

25 Q. Okay. Any doubt that you were speeding as

1 you went through Turbeville?

2 A. One hundred percent I was speeding. It was
3 well justified. I mean, it was raining. I remember I
4 had to find a bathroom quick, and that's one of the
5 reasons I was speeding, and so probably glad he pulled
6 me over.

7 Q. Okay.

8 A. May have saved my life.

9 Q. Did you get any points on your license?

10 A. I don't recall.

11 Q. And I take it you didn't appeal your
12 conviction or file a post-conviction relief action?

13 A. Not to my recollection.

14 Q. Do you have any interest in reopening this
15 ticket?

16 A. No.

17 MR. HEWITT: I'm going to object to the form
18 of that question.

19 A. As far as I'm concerned, this is behind me.

20 MR. DUKES: That's all I have for you.

21 THE WITNESS: All right. Thank you,
22 gentlemen.

23 MR. HEWITT: Nothing from me.

24 (The deposition concluded at 10:51 a.m.)

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
David Edward Wells; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

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of March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Nov 12 2021

SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Civil Action No. 2016-CP-14-198
Appellate Case No. 2019-001970

Rebecca J. Robbins and Marie Babayan, individually
and on behalf of all those similarly situated, ... Appellants,

v.

Town of Turbeville and the Town of Turbeville Police Department, ... Respondents,

v.

The State of South Carolina, ... Third Party Defendants.

CERTIFICATE OF COUNSEL

In accordance with Rule 210(g), SCACR, the undersigned, as counsel for Appellants, hereby certifies that that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ John S. Simmons
John S. Simmons (SC Bar No. 10260)
Simmons Law Firm, LLC
1711 Pickens Street
Columbia, SC 29201
jsimmons@simmonsllawfirm.com
(803) 779-4600
Counsel for Appellants

November 9, 2021