RECEIVED
Nov 15 2021
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

R. Kirk Griffin, Circuit Court Judge

Supreme Court Case No. 2021-000472

Court of Appeals Case No. 2021-000343

Lower Court Case No. 2020-CP-40-04063

South Carolina Public Interest Foundation, and John Crangle, Individually and on behalf of all others similarly situated, Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A., Respondents.

FINAL BRIEF OF APPELLANTS

November 15, 2021

s/ James M. Griffin
James M. Griffin (SC Bar # 9995)
Badge Humphries (SC Bar #72904)
Margaret N. Fox (SC Bar # 76228)
GRIFFIN HUMPHRIES LLC
4408 Forest Drive, Suite 300
Columbia, South Carolina 29206
803-744-0800

James G. Carpenter (SC Bar #1136)
THE CARPENTER LAW FIRM
819 East North Street
Greenville, South Carolina 29601
864-235-1269

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

CODES

STATEMENT OF ISSUES ON APPEAL

1. When the Attorney General pays $75 million of public funds to private law firms without authorization from a court, the General Assembly, or any public authority, and for many years, has made similar payments, and Appellants challenge the legality of the payment, does his unreviewed expenditure of public funds raise an issue of great public importance, requiring judicial guidance, and supporting the grant of public importance standing to Appellants?

2. When attorneys take a case on a contingency, and lose in the US District Court, lose in the Court of Claims, lose in the Court of Appeals for the Federal Circuit, and lose a petition for writ of certiorari to the United States Supreme Court; but elected officials pressure the federal government to settle the case, is a payment of $75 million in attorneys' fees excessive and patently unreasonable for the work done?

3. Was the Attorney General's payment of $75 million of public funds to private attorneys, without authorization from a Court or the General Assembly unlawful?

4. Is a ruling on a temporary injunction considered the law of the case?

STATEMENT OF THE CASE

Former Governor James H. Hodges brokered an agreement pertaining to the storage of weapons-grade plutonium at the Savannah River Site ("SRS"). Governor Hodges's brokered settlement is codified at Title 50, United States Code, Section 2566 ("Section 2566"). Under Section 2566, the United States Department of Energy ("DOE") must pay the State of South Carolina "economic impact and assistance payments" of $100 million per year from appropriated funds starting in 2016 for each year it fails to comply with deadlines relating to the disposition of the plutonium. 50 U.S.C. § 2566. The DOE failed to comply with the terms of the agreement. The DOE has not met the deadlines set forth in Section 2566, and as of 2020 was liable to the State of South Carolina for at least $400 million in economic impact and assistance payments (R. pp. 529-531).

On August 28, 2020, Attorney General Alan Wilson ("Wilson") entered into a settlement agreement with the United States (the "Settlement Agreement") regarding the DOE's failure to abide by the Hodges agreement. Wilson agreed on behalf of the Citizens of this State to refrain from instituting any action to collect economic impact and assistance payments for an additional 15 years. In exchange, the DOE agreed to pay the State of South Carolina a substantially reduced economic impact and assistance payment of $600 million. The Settlement Agreement requires the DOE to make "immediate payment . . . to the State of South Carolina . . . with each party to bear its own costs, attorneys' fees and expenses." (R. p. 534).

At an August 31, 2020 press conference, Wilson announced that he intended to pay two law firms, Willoughby & Hoefer, P.A. ("WH") and Davidson, Wren & DeMasters ("DWD") [collectively the "Law Firms"], $75 million from the proceeds of the DOE settlement. Wilson stated this settlement payment was expected on or after October 1, 2020.

Upon learning of Wilson's intent, Governor Henry McMaster wrote Wilson objecting to the attorneys' fee. The Governor had "concerns regarding the payment of attorneys' fees" because the settlement resulted from "the zealous advocacy and coordination with members of [the State's] Congressional delegation." (R. pp. 541-42). Governor McMaster concluded by stating that he "cannot endorse the payment of $75 million in attorneys' fees under the circumstances." (R. p. 542). David Pascoe, First Circuit Solicitor, likewise wrote Wilson objecting to the use of these settlement proceeds for attorneys' fees on the grounds that the entire amount must be deposited into the State's General Fund. (R. pp. 544-47).

On September 25, 2020, Appellants South Carolina Public Interest Foundation ("SCPIF") and John Crangle ("Crangle") [collectively "Appellants"] filed this action against Wilson seeking a declaratory judgment that Wilson lacked authority to pay $75 Million from a DOE settlement to private law firms as attorneys' fees absent a court order, authorization from the General Assembly, or provision in the Settlement Agreement providing that the DOE was paying the fees. (R. pp. 44-56).

Appellants contend that the payment of $75 million to the Law Firms from a settlement intended solely for the benefit of the State is unconstitutional, in violation of the Separation of Powers Clause of the South Carolina Constitution. Even if the United States had agreed to pay the State's attorneys' fees, the $75 million for the work in this case seems patently unreasonable.

With the Complaint, on September 25, 2020, Appellants filed a motion for a temporary restraining order and preliminary injunction, seeking to enjoin Wilson's payment of $75,000,000 to the law firms (Plaintiffs' "Initial Motion") (R. pp. 57-66). That afternoon, Appellants' counsel provided Wilson copies of Appellants' filings and asked the circuit court to schedule a hearing on Appellants' Initial Motion. (R. p. 659).

Wilson's counsel emailed the circuit court requesting that the hearing on Appellants' Initial Motion not be held until Thursday, October 1, 2020. (R. p. 664). The circuit court responded that Appellants' Initial Motion could be heard on Tuesday, September 29, 2020 at 3:00 p.m., over Wilson's objections. (R. p. 663). On the afternoon of September 28, 2020, Appellants' counsel emailed counsel for Wilson asking that Wilson agree not to disburse the disputed funds until the case could be decided on the merits. (R. pp. 670-71). Counsel for Wilson ultimately responded, "I am checking w/ Bob Cook and this is what I am authorized to say. I have conveyed your request to him." (R. p. 669).

Unbeknownst to Appellants and the circuit court, Wilson had already received the $600 million in settlement proceeds. Moreover, Wilson expedited the $75 million transfer to the Law Firms on Tuesday morning, September 29, 2020, just hours before the scheduled hearing. Moments before the 3:00 p.m. hearing on Tuesday, September 29, 2020, the circuit court and Appellants first learned that the disputed $75 million had been disbursed to Appellant. (R. p. 368). Wilson announced in his memorandum in opposition to the Appellants' request for a temporary restraining order, circulated at 2:12 p.m., that the disputed funds had been transferred to the Law Firms, and therefore Wilson contended Appellants' entire case was moot. (R. pp. 68-69).

Following the hearing, Appellant Crangle contacted the South Carolina Office of the State Treasurer and was informed that the funds had not been transferred to the Law Firms. Appellants' counsel informed the Court of this purported fact. (R. p. 674). The circuit court set another hearing for 7:00 p.m. on September 29, 2020. Prior to and during that hearing, counsel for Wilson stated that his office had confirmed that the Law Firms had received the disputed funds. (R. p. 673). During the hearing, out of an abundance of caution, the circuit court announced its intent to enter a temporary restraining order preventing the State from transferring funds to the Law Firms, in the

event the funds had not been transferred. Following the hearing, the Court entered such order (R. pp. 35-38). That order expired at 5:00 p.m. on Friday, October 2, 2020.

On the morning of September 30, 2020, the Treasurer confirmed that the proceeds had been wired to the law firm on September 29, 2020, just hours before the 3:00 p.m. hearing: "[t]he Treasurer's office received a warrant for payment from the Comptrollers' Office Monday night [September 28, 2020]." Therefore, the Treasurer's Office "processed and wired the funds on Tuesday morning [September 29, 2020] to the law firm's account." (R. p. 681).

Later in the morning of September 30, 2020, Appellants filed their amended complaint (R. pp. 76-94) naming the Law Firms as additional defendants. At the same time, Appellants filed their second Motion for Temporary Restraining Order and Preliminary Injunction, (R. p. 95-108). Thereafter, the circuit court, Honorable Alison R. Lee, entered an Ex Parte Temporary Restraining Order (TRO) restraining Law Firms from dispersing the proceeds (R. pp. 39-41).

On October 2, 2020, the Law Firms filed a Petition for Writ of Supersedeas with the South Carolina Court of Appeals seeking to vacate Judge Lee's TRO. Appellants filed their response to the Petition on October 5, 2020. Appellants also filed a Petition for Original Jurisdiction in the South Carolina Supreme Court on October 5, 2020. On October 6, 2020 Respondents filed a Motion to Certify Respondents' Petition for Writ of Supersedeas with the South Carolina Supreme Court. Also, on October 6, 2020 the Court of Appeals entered an order denying the Petition.[1] On October 26, 2020 the Law Firms' appeal from the entry of a TRO was dismissed.

On October 7, 2020, Judge Lee conducted a hearing on Appellants' Motion for Preliminary Injunction. On October 14, 2020, Judge Lee denied Appellants' motion. (R. pp. 14-28). On

[1] On November 18, 2020, the Supreme Court entered an order denying the Motion to Certify as moot.

October 23, 2020, Appellants filed a motion to alter or amend Judge Lee's order denying the motion for preliminary injunction (R. pp. 273-80). The Law Firms filed oppositions to the motion to alter or amend on November 20, 2020 and November 23, 2020 (R. pp. 304-12; 315-16). Wilson also filed an opposition on November 23, 2020 (R. pp. 313-14). On December 17, 2020, Judge Lee denied the motion to alter or amend (R. pp. 11-13).

The Law Firms filed separate motions to dismiss the Amended Complaint on October 20, 2020 (R. pp. 267-69; 270-72). Wilson filed a Motion to Dismiss the Amended Complaint on October 27, 2020 (R. pp. 281-82). Appellants filed a memorandum in opposition to the motions to dismiss on January 20, 2021 (R. pp. 364-91). The Honorable R. Kirk Griffin conducted a hearing on the motion to dismiss on January 27, 2021.

Judge Griffin granted the Motion to Dismiss on March 5, 2021, ruling that the Plaintiffs lacked standing, and declined to rule on the merits (R. pp. 3-8).

Appellants filed a timely Notice of Appeal on March 29, 2021 (R. pp. 397-99).

STANDARD OF REVIEW

On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court. *Freemantle v. Preston*, 728 S.E.2d 40, 43 (S.C. 2012); *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* (internal quotations omitted). If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

ARGUMENT

I. APPELLANTS POSSESS STANDING.

A. Appellants Have Public Importance Standing.

The South Carolina Supreme Court recently addressed public importance standing in *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020). *Adams* addressed a one-time federal payment to the state of $48,467,924 in coronavirus relief funds for educational purposes. Governor McMaster decided to make $32,000,000 of the funds available for grants to students attending private schools. Petitioners challenged that decision, and Governor McMaster challenged their standing to bring suit. The Court ruled that the petitioners had public importance standing. The Court discussed the nature of the coronavirus pandemic and concluded that "[a] resolution for future guidance is needed here because **this case involves the conduct of government entities and the expenditure of public funds**, a prompt decision is necessary, and it is **likely the situation will occur** in the future if and when Congress approves additional education funding in response to the continued COVID-19 pandemic." *Id*. at 236, 851 S.E.2d at 707 (emphasis added). Under *Adams*, "[t]he key to the public importance analysis is whether a resolution is needed for future guidance." *Id.* (quoting *ATC S., Inc. v. Charleston Cnty*., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008)).

As in *Adams*, this case involves the conduct of government entities. It also involves the expenditure of public funds. A prompt decision is necessary in this case as it was in *Adams*. It is likely that the same situation will recur. Wilson has issued several contingency fee contracts, similar to the one here, and upon information and belief, he plans to continue to issue them. *See* Alan Wilson, South Carolina Attorney General, Contingency Fee Litigation Retention Agreements, http://www.scag.gov/litigation-retention-agreements.

Appellants should have public importance standing because this dispute involves a challenge to the unauthorize expenditure of government funds by the Attorney General, and a resolution of this dispute is needed for future guidance. *See S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017); *S.C. Pub. Interest Found. v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013); *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011); *Am. Petroleum Inst. v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *S.C. Pub. Interest Found. v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Dep't of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee Cnty.*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Richland Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Newman v. Richland Cnty. Historic Pres. Comm'n*, 325 S.C. 79, 480 S.E.2d 72 (1997).

B. Appellants Have Adequately Alleged Standing to Pursue the Equitable Claims.

The Amended Complaint alleges an equitable claim of restitution and the imposition of a constructive trust over the disputed attorneys' fees that were transferred to the Law Firms after the commencement of this lawsuit, just hours before the Circuit Court conducted a hearing on Appellants' motion for a preliminary injunction. A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation

of a fiduciary duty." *SSI Medical Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990); *McNair v. Rainsford*, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (S.C. App. 1998); *see also, Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987) (constructive trust will arise whenever circumstances under which property was acquired make it inequitable that property should be retained by one holding legal title). *Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995) (constructive trust results from fraud, bad faith, abuse of confidence, or violation of fiduciary duty which gives rise to obligation in equity to make restitution).

In addition, that the recipient of funds paid under a mistake of law is required to make restitution to the lawful title holder. *Trotter v. Merchants & Farmers Bank*, 180 SC 449, 186 S.E. 371 (1936). *Trotter* involved the improper payment of funds by a court appointed receiver to a creditor of an insolvent corporation. The trial judge explained,

> I do not think a receiver can make a voluntary payment of money under a mistake of law when he had no title to the money, and it is not his own and he has no beneficial interest in same. The receiver paid the money to the defendant, but title to same did not pass, and his successor is entitled to restitution of the amount so paid with interest from the date on which demand for return of same was made.

Id. *See also*, *United States v. Wurts*, 303 U.S. 414, 58 S. Ct. 637, 82 L. Ed. 932 (1938) ("It is a well-established principle that the Government generally can "recover funds which its agents have wrongfully, erroneously or illegally paid); *Alsco-Harvard Fraud Litig.*, 523 F. Supp. 790, 806 (D.D.C. 1981) (This common law basis for recovery of funds runs against a person "who received them by mistake and without rights).

As established above, Appellants have public importance standing to challenge Wilson's unauthorized expenditure of government funds. Wilson cannot defeat the Court's jurisdiction over this matter simply by transferring the disputed funds to the Law Firms during the pendency of this action. Under these circumstances, Appellants' public importance standing permits the enforcement of a constructive trust over these funds.

The South Carolina Supreme Court first addressed the ability of a citizen to assert claims for the recoupment of money on behalf of a governmental entity in *Ex Parte Hart*:

> The question under discussion appears to be a novel one in this state, but it has been held in quite a number of jurisdictions, and correctly so, in our opinion, that if a county has a cause of action for an injury sustained, which should be enforced for the protection of its citizens or taxpayers, and its governing board unjustifiably refuses to assert such cause of action, any citizen, because of his indirect interest, may sue, in behalf of himself and others similarly situated, the person against whom the cause of action exists, and thereby enforce the rights of the county. . . .
>
> Generally it should be shown by allegation and proof that the corporate authorities have neglected or refused to proceed, after being requested so to do, or that a request to them to proceed by judicial remedies would be unavailing.

Ex Parte Hart, 190 S.C. 473, 2 S.E.2d 52 at 53-54 (1939).

Accordingly, Plaintiffs have standing to assert claims on behalf of the State of South Carolina under the facts and circumstances of this case, particularly because derivative lawsuits sound in equity. *See Straight v. Goss*, 383 S.C. 180, 191, 678 S.E.2d 443, 449 (Ct. App. 2009) (explaining that shareholder derivative actions sound in equity); *see also Richardson v. Blackburn*, 41 Del. Ch. 54, 55-56, 187 A.2d 823, 823-24 (1963); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (2009) ("The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other" (internal quotation marks omitted)); *Taff v. Smith*, 114 S.C. 306, 103 S.E. 551, 553 (1920) (describing as well-settled the equitable maxim that "[e]quity will not suffer a wrong without a remedy"). Indeed, "[t]he requirement of standing is not an inflexible one." *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. at 524, 537 S.E.2d at 304 (internal quotation marks omitted).

As shown by affidavit, Wilson refused repeated demands to assert the State of South Carolina's rights vis-à-vis the Defendant and has instead violated the South Carolina Constitution

in an attempt to overpay the Law Firms for their services. First, Wilson refused to act in response to Governor McMaster's August 30, 2020 letter questioning the attorneys' fees Wilson intended to pay. (*See* R. pp. 541-42). Next, Wilson refused to act in response to the September 10, 2020 letter from First Circuit Solicitor David Pascoe. (*See* R. pp. 544-47). Then, Wilson refused to act in response to Plaintiffs' Initial Complaint and Initial Motion, filed and provided to Defendant Wilson on September 25, 2020. Instead of acting accordingly in response to these demands to prevent payment of the disputed $75,000,000 to the Law Firms, Wilson expedited payment to the Law Firms via wire transfer on the afternoon of September 28, 2020, after the Court had set a hearing on Plaintiffs' Initial Motion for the following afternoon at 3:00 p.m. (*See* R. pp. 690-99). Finally, Wilson argued to the circuit court that this wire transfer made Plaintiffs' claims moot.

Under these circumstances, where the Attorney General has repeatedly refused to assert the State's claims against the Law Firms and instead has taken drastic unconstitutional and inequitable actions to make a patently unreasonable $75 million payment to the Law Firms, Plaintiffs have standing to assert the State of South Carolina's claims against Defendants. *See Ex Parte Hart*, 190 S.C. 473, 2 S.E.2d at 53-54; *see also Berry v. McLeod*, 328 S.C. 435, 447-48, 492 S.E.2d 794, 800-01 (Ct. App. 1997) (citing and quoting *Ex Parte Hart* with approval); *Richardson*, 41 Del. Ch. at 55-56, 187 A.2d at 823-24.

II. THE AMOUNT OF THE FEE IS PATENTLY UNREASONABLE AND CANNOT BE PAID UNTIL APPROVED BY COURT ORDER.[2]

A "lawyer shall not make an agreement for, charge, or collect an unreasonable fee. . . ." Rule 1.5(a), RPC, Rule 407, SCACR. Contingency fees are not exempt from this reasonableness

[2] Appellants request that this Court address the merits of their claim in the interest of justice and judicial economy. *See e.g.*, *Widdicombe v. TuckerCales,* 366 S.C. 75, 85, 620 S.E.2d 333, 338-39 (Ct. App. 2005) ("[T]he issues raised by [the m]other on appeal have been the subject of much contention in this case. They will inevitably be raised to the family court again in the future, and because they have been fully briefed by the parties, we find that it would be in the interest of

standard. *Id.*, Cmt. 3. Fee agreements that run afoul of Rule 1.5 are unenforceable. *See, e.g., Getzen v. Law Offices of James M. Russ, P.A.*, 323 S.C. 377, 475 S.E.2d 743 (2006). Attorneys' fees totaling $75 million for the work performed in this case appears to be patently unreasonable.

In 2016,[3] the Law Firms first sued in United States District Court for the District of South Carolina (D.S.C.) for an injunction to enforce the provisions of Section 2566 and to collect the $100 million assistance payment owed for failing to comply with Section 2566. The federal court dismissed the claim for damages,[4] ruling that such a claim must be filed in the United States Court of Federal Claims. (R. pp. 549-551). The Law Firms refiled the same suit before the Court of Federal Claims, this time seeking $200 million in economic impact and assistance payments because the DOE had not complied with Section 2566 for 2017. Once again, the Law Firms lost the case. The Court of Federal Claims ruled with the DOE. (R. pp. 553-67). The Law Firms then appealed the ruling to the U.S. Court of Appeals for the Federal Circuit. While the appeal was pending, the State of South Carolina reached this settlement with the DOE. (R. pp. 533-39).

Upon information and belief, the Law Firms engaged in no discovery: no interrogatories, no depositions, no experts, no document requests. Instead, they drafted pleadings and wrote briefs arguing the DOE must pay South Carolina the statutory penalty from funds appropriated by Congress. (*See* R. pp. 569-92). Wilson had no need to hire private counsel to address a relatively straightforward issue that elected leaders ultimately negotiated. The Settlement Agreement was a

judicial economy to decide the matters now."), *aff'd in part and vacated in part on other grounds,* 375 S.C. 427, 428, 653 S.E.2d 276, 276 (2007).

[3] Respondents attempt to justify their $75 million fee by providing a summary of work performed prior to January 2016. However, the earliest effective date of Defendant's contingency fee agreement is February 8, 2016. (R. p. 594).

[4] The District Court did not dismiss the State's claim for injunctive relief.

political resolution brokered by elected leaders, including Governor McMaster and Senator Graham. (*See* R. pp. 541-42; 546).

Under similar circumstances, the court in *Cendant Corporation Prides Litigation*, 243 F.3d 722 (3d Cir. 2001), overturned a $19 Million fee award amounting to 5.7% of the total recovery because the settlement resulted from the efforts of public agencies, and the attorneys did very little work, compared to other cases involving settlements over $100 Million. The Third Circuit Court of Appeals noted that there was very little motion practice and discovery was virtually non-existent. Class counsel spent approximately 5,600 hours on the case. The Court compared the fee award to other large class settlements where the common fund exceeded $100 Million. The Court observed that the fee awards in those cases ranged from 2.8% to 36% to the total settlement fund. A fee of 5.7% appeared to be in line when just comparing percentages. However, the attorneys in those other cases spent far more hours (45,000 in one case) and engaged in significantly more complex discovery (reviewing 11 million pages of documents). The Court summarized its review of the other cases involving large fee awards, "in case after case, the same factors recur: complex and/or novel legal issues, extensive discovery, acrimonious litigation, and tens of thousands of hours spent on the case . . . . Because none of these factors which increase the complexity of class litigation was present here, it makes sense that the fee awarded in this case should be far lower than those awarded in the charted cases, which fees ranged from 2.8% to 36% of the total settlement." *Id.* at 741.

The court concluded that much of the work done to facilitate the settlement was accomplished by regulators, not counsel. The court explained, "allowing private counsel to receive fees based on the benefits created by public agencies would undermine equitable principles which

underlie the concept of the common fund, and would create an incentive for plaintiffs' attorneys to minimize the cost of failure by free riding on the . . . efforts of others." *Id.*

In *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the attorneys' fees were awarded against the State under the fee-shifting "state action" statute (S.C. Code Ann. § 15-77-300), rather than via the common fund doctrine, as in this case, but *Layman* emphasized the requirement of reasonableness using either method:

> Regardless of any theoretical preference for one method of fee calculation over another, **the overriding benchmark for awards of attorneys' fees under both the state action statute and the general premise of the common fund doctrine is that attorneys' fees must be "reasonable."** *See [Pennsylvania v.] Del. Valley Citizens' Council for Clean Air*, 478 U.S. [546,] at 562, 106 S. Ct. 3088[(1986)]. In light of the circumstances of this case, we hold that an award of $8.66 million in attorneys' fees is entirely unreasonable.

Layman, 376 S.C. at 455, 658 S.E.2d at 331 (emphasis added).

In addition, the fee agreement with the Law Firms expressly states that "when possible, the attorneys' fees and costs awarded to Special Counsel shall be approved by a court of competent jurisdiction." (R. p. 602). There is nothing prohibiting Wilson or the Law Firms from seeking judicial approval of the payment of $75 million to the Law Firms through a declaratory judgment action requesting a South Carolina state court determine whether the fee amount is reasonable.[5] However, Wilson and the Law Firms seek to avoid judicial review, and accordingly, Wilson paid the Law Firms $75 million without making any showing of reasonableness.

Wilson entered into an amended fee agreement in June 2019 and agreed to provide WH additional money from any proceeds recovered in the case pending before the Court of Federal

[5] Under South Carolina, the following factors are considered to determine whether an award of attorneys' fees is reasonable: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 26 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

Claims and as compensation for the firm's representation of the State on its claim for injunctive relief that was litigated before the United States District Court for the District of South Carolina. (R. pp. 609-16).

The State prevailed on its claim for injunctive relief before United States District Court Judge Childs. However, on January 8, 2019 the Fourth Circuit Court of Appeals reversed Judge Child's ruling in a published opinion, *South Carolina v. United States*, 912 F.3d 720 (2019). (R. pp. 618-627). On June 7, 2019, WH along with Wilson filed a Petition for Writ of Certiorari to the United States Supreme Court (R. pp. 629-45) and a Reply Brief on September 24, 2019 (R. pp. 647-53).

Under the terms of the amended fee agreement, Wilson agreed to pay WH 2% of the ultimate recovery for representing the State in the United States District Court for the District of South Carolina, plus 1% for representing the State before the Fourth Circuit, plus .5% for filing a Petition for Writ of Certiorari to the United States Supreme Court. (*See* R. p. 613). The amended fee agreement was executed on June 13, 2019 by WH, *after* the State had lost in the Fourth Circuit and *after* the firm had filed the Petition for Writ of Certiorari with the Supreme Court. The Supreme Court denied that Petition on October 15, 2019, *South Carolina v. United States*, 140 S. Ct. 392 (2019). (R. p. 655).

Under the terms of the amended contingency fee agreement, WH is purported to be paid 3.5% of the $600 million, or $21 million, for ultimately losing the case before the District of South Carolina. Wilson was fully aware that WH had lost the State's case for injunctive relief before the Fourth Circuit when he entered into the amended fee agreement.

Moreover, as further evidence of the unreasonableness of this fee, WH is receiving .5% of $600 Million, or $3 million, for writing a Petition for Writ of Certiorari and a Reply Brief filed

with the Supreme Court. The Petition is 33 pages, and the Reply is only 13 pages, for a total of 46 pages. Thus, Wilson intends to pay WH over $65,000 per page for these filings.

Wilson as Attorney General entered into the fee agreement on behalf of the Citizens of South Carolina, who are third party beneficiaries of the contract. Plaintiffs, individually and on behalf of the Citizens of this State, demanded that Wilson seek judicial approval of the amount of any fee awarded to counsel under the fee agreement, if he is permitted to use any portion of the settlement proceeds to pay litigation costs, as required by the express terms of the fee agreement and South Carolina law.

III. WILSON LACKED AUTHORITY TO PAY LAW FIRMS FROM THE DOE SETTLEMENT BECAUSE $75 MILLION WAS NOT AWARDED TO THE LAW FIRMS BY COURT ORDER OR SETTLEMENT.

In litigation over the allocation of the $600 million in settlement proceeds, Wilson acknowledged that as the Attorney General, **he has no authority** to appropriate money that is payable to the State of South Carolina:

> **The Attorney General has no authority to appropriate money**. The money in the settlement was **payable to the State of South Carolina** pursuant to the suit and by federal statute. As such, the General Assembly has the control of the appropriation of those funds, not the Attorney General or this Court. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 246, 562 S.E.2d 623, 631 (2002).
>
> > The General Assembly has the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 244, 562 S.E.2d 623, 631 (2002); *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992) (noting that the appropriation of public funds is a legislative function); *Clarke v. S.C. Pub. Serv. Auth.*, 177 S.C. 427, 437, 181 S.E. 481, 484 (1935) (noting that the General Assembly has full authority to make appropriations as it deems wise in absence of any specific constitutional prohibition against the appropriation). This includes the duty to authorize and/or appropriate the use of all federal funds. S.C. Code Ann. § 11-11-160 (Supp. 2008). In the annual appropriations act, the General Assembly must appropriate all anticipated federal funds and must include any conditions on the

> expenditure of those funds, consistent with federal laws and regulations. S.C. Code Ann. § 2-65-20 (2005). Money may be drawn from the treasury only pursuant to appropriations made by law. S.C. CONST. art. X, § 8. An appropriation may be made by the General Assembly in the annual appropriations act or in a permanent continuing statute. *State v. Cooper*, 342 S.C. 389, 401, 536 S.E.2d 870, 877 (2000).
>
> *Edwards v. State*, 383 S.C. 82, 90-91, 678 S.E.2d 412, 416-17 (2009).

(R. pp. 890-91 (emphasis added, citation to exhibit omitted)).

Moreover, Wilson stated the General Assembly is the proper body to determine how the $600 million is allocated, not the Attorney General:

> The State of South Carolina is the only Plaintiff in that case and the agreement provides for the payment of the $600 million in settlement money **to the State of South Carolina**. The statute under which settlement was reached provides for payment of funds **to the State of South Carolina** and not any counties. 50 U.S.C. 2566. None of the Plaintiffs to the instant suit are parties to the Court of Claims suit nor are they mentioned as recipients of these funds. The Attorney General does not oppose a share of the settlement proceeds at issue being allocated to Barnwell, Allendale and Aiken Counties, but **the General Assembly is the proper body to determine how the funds at issue in this action should be allocated**, rather than him or this Court.

(R. pp. 887-88).

A. Neither S.C. Code Ann. § 1-7-85 Nor § 1-7-150(b) Authorizes the Attorney General to Make Payment of the Attorneys' Fees at Issue.

Respondents assert that S.C. Code Ann. §§ 1-7-85 and 1-7-150(B) of the South Carolina Code of Laws provide the Attorney General with authority to pay special counsel $75 Million of the $600 million in settlement proceeds. Respondents' contention is not well founded.

Section 1-7-150 of the South Carolina Code of Laws requires that all funds received by judgment or settlement be deposited into the State's General Fund, **except for investigative costs and litigation costs awarded by court order or settlement.** *Id*. (emphasis added). The Law Firms were not awarded attorneys' fees by court order. Furthermore, the DOE Settlement Agreement expressly disclaims any obligation by the DOE to pay the Law Firms attorneys' fees.

Respondents also erroneously rely upon S.C. Code § 1-7-85, which has the same language as § 1-7-150(B) limiting reimbursement to "attorney fees or investigative costs or costs of litigation **awarded by court order or settlement**."

> Notwithstanding any other provision of law, the Office of the Attorney General may obtain reimbursement for its costs in representing the State in criminal proceedings and in representing the State and its officers and agencies in civil and administrative proceedings. These costs may include, but are not limited to, attorney fees or investigative costs or costs of litigation **awarded by court order or settlement**, travel expenditures, depositions, printing, transcripts, and personnel costs. **Reimbursement of these costs may be obtained by the Office of the Attorney General from the budget of an agency or officer that it is representing or from funds generally appropriated for legal expenses, with the approval of the State Budget and Control Board.**

S.C. Code Ann. § 1-7-85 (emphasis added). *See also, Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992) ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.").

These costs may be reimbursed from the "the budget of an agency or officer that it is representing or from funds generally appropriated for legal expenses." S.C. Code Ann. § 1-7-85. This statute does not contemplate that the Attorney General can rely upon § 1-7-85 to ignore the more particular statutory provision in § 1-7-150(B) addressing how the Attorney General must handle recoveries awarded to the State by judgment or settlement. To the extent these statutory provisions are inconsistent, § 1-7-150(B) should control because it is more specific in addressing proceeds of a settlement or judgment. *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (S.C. 2018) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered

an exception to, or a qualifier of, the general statute and given such effect" (internal quotation marks omitted)).

Section 1-7-150 of the South Carolina Code of Laws requires that all funds received by judgment or settlement be deposited into the State's General Fund*, except for investigative costs and litigation costs awarded by court order or settlement*. S.C. Code Ann. § 1-7-150(B). The operative word in Section 1-7-150(b) is the term "awarded."

> All monies, except investigative costs or costs of litigation ***awarded* by court order or settlement**, awarded the State of South Carolina by judgment or settlement in actions or claims brought by the Attorney General on behalf of the State or one of its agencies or departments **must be deposited in the general fund of the State**, except for monies recovered for losses or damages to natural resources, which must be deposited in the Mitigation Trust Fund, or where some other disposition is required by law.

Id. § 1-7-150(B) (emphasis added).

In this matter, neither exception applies because there was not an order awarding attorneys' fees and the Settlement Agreement does not allocate any portion of the $600 million to attorneys' fees. Rather, Section 5(a) the Settlement Agreement provides for the following: "Immediate **payment by the United States to the State of South Carolina** in the amount of $600 Million (Six Hundred Million), inclusive of interest, **with each party to bear its own costs, attorneys fees and expenses**." (R. p. 534 (emphasis added)). Accordingly, Section 5(a) clearly requires that payment of the entire $600 million be made directly to the State of South Carolina. Nevertheless, Respondent Wilson paid private lawyers $75 million out of the $600 million, which was required to be deposited into the State's General Fund pursuant to Section 1-7-150 of the South Carolina Code.

The General Assembly used the verb "awarded" when describing the circumstances in which the Attorney General may use funds recovered in a civil action to pay costs of litigation. Black's Law Dictionary defines awarded as "to grant by formal process or by judicial decree (the

company **awarded** the contract to the low bidder) (the jury **awarded** punitive damages)" Black's Law Dictionary (11th ed. 2019) (emphasis added). Merriam-Webster likewise defines awarded "to give by judicial decree or after careful consideration // The jury *awarded* damages to the defendant. // *award* a contract." Merriam-Webster, https://www.merriam-webster.com/dictionary/awarded (last visited Oct. 19, 2020) (emphasis added).

A proper construction of Section 1-7-150(B) becomes even clearer when the statute's treatment of litigation costs is examined where litigation concludes with a judgment, instead of a settlement. According to Section 1-7-150(B), all monies "awarded the State of South Carolina by judgment" must be deposited into the General Fund. S.C. Code Ann. § 1-7-150(B). In that case, the Attorney General is only permitted to use monies to pay litigation costs that are "awarded by court order." *Id.* Absent a "court order" awarding litigation costs, the entire amount "awarded the State of South Carolina by judgment" must be deposited into the General Fund. *Id.*

Obviously, a court order is significantly different from, and narrower than, a judgment. There can be a judgment for the State without a court order awarding attorneys' fees. By the phrase "awarded by court order," the General Assembly clearly did not grant the Attorney General authority to obtain reimbursement for litigation costs from the proceeds of every judgment awarded to the State. Instead, the Attorney General's authority is limited to reimbursement of "litigation costs awarded by court order." *Id.*

There is nothing in Section 1-7-150(B) that distinguishes an award by court order from an award by settlement. To interpret this statute to allow the Attorney General to use proceeds from a settlement agreement that lacks any specific provision awarding litigation costs when the Attorney General is clearly prohibited from using proceeds from a judgment to pay litigation costs would lead to an impermissible, absurd result. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529

S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature . . ."). The Court must consider the meaning of Section 1-7-150(B) in light of its full terms and how those terms evidence the General Assembly's intent for costs of litigation to actually be awarded by a court order or settlement.

The plain meaning of the verb "awarded" evidences the General Assembly's intent that there be a grant or decree that specifically provides for the payment of litigation costs in a court order or settlement. Absent an award of attorneys' fees through settlement or court order, Wilson lacks authority to pay fees from the settlement proceeds to the Law Firms.

Executive officers possess no authority to appropriate funds. Such authority lies exclusively with the General Assembly, which has directed that all such funds be deposited in the State's general fund. *See Condon v. Hodges*, 349 S.C. 232, 245, 562 S.E.2d 623, 630 (2002) ("[T]here is no provision in the South Carolina Code or Constitution which provides that members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money"). Expenditures of public funds cannot be controlled "by administration rather than by legislation." *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 317, 295 S.E.2d 633, 638 (1982). Doing so would give the executive branch a "veto" over the General Assembly. *Id.* Wilson's payment of $75 million from the State's $600 million would amount to an appropriation of public funds by a member of the executive branch, rather than the General Assembly, in violation of the separation of powers. S.C. Const. art. I, § 8.

B. Federal Funds Oversight Act Does Not Authorize the Payment of the Attorneys' Fees at Issue.

In an attempt to circumvent Section 1-7-150's requirement that the full $600 million be deposited in the General Fund, Wilson purportedly relied on the South Carolina Federal Funds

Oversight Act, S.C. Code § 2-65-10 *et seq.* However, a careful reading of this statute further supports the Appellants' position that, absent an award of attorneys' fees, only the General Assembly can appropriate funds to pay the Law Firms from these settlement proceeds.

Section 2-65-20 provides that "the General Assembly shall appropriate all anticipated *federal funds* and *other funds*." S.C. Code Ann. § 2-65-20 (emphasis added). Federal funds "means financial assistance made to a state agency by the United States Government in any form." S.C. Code Ann. § 2-65-15(5). Examples of federal funds include "a grant, loan, subsidy, reimbursement, contract, donation, or shared federal revenues, or noncash federal assistance in the form of equipment, buildings, and land." *Id.* The settlement proceeds, although provided by the federal government, do not fall within this definition. Respondent's reliance upon the South Carolina Federal Funds Oversight Act, S.C. Code § 2-65-10 *et seq.* is misplaced. The DOE settlement proceeds were not intended as financial assistance for the South Carolina Attorney General's Office or any other State agency and thus not within the purview of the South Carolina Federal Funds Oversight Act.

The settlement proceeds are payable to the "State of South Carolina" and thus may possibly qualify as "other funds." The term "other funds" means "any revenues received by an agency which are not federal funds and are not general funds appropriated by the General Assembly in the appropriations act." S.C. Code Ann. § 2-65-15(8).

Section 2-65-30 addresses the receipt and expenditure of unanticipated funds received after the passage of the Appropriations Act. S.C. Code Ann. § 2-65-30. This section provides a mechanism by which an agency can apply to the Executive Budge Office ("EBO") for approval to spend unanticipated funds. *Id.* Under Section 2-65-30, the EBO's authorization to approve expenditures of "other funds" is limited to "funds from private foundations or industries which are

not included in the appropriations act." *Id.* Thus, the EBO lacked authority to approve the expenditure of the settlement proceeds because these are not funds received from private foundations or industries. *Id.* Under Section 2-65-20, only the General Assembly can appropriate these settlement funds. S.C. Code Ann. § 2-65-20.

In addition, the EBO did not provide the fee request for review by the Joint Other Funds Oversight Committee as required. The EBO instructions for an application for an increase in other funds expenditures state that "the [EBO] will coordinate requests with the Other Funds Oversight Committee, who will review and make a recommendation relative to the request to the EBO." *See* South Carolina Dept. of Admin. Request for Other Funds Auth. Form (available at https://admin.sc.gov/budget/otherfundsauthorization). The EBO Request submitted on behalf of Wilson requesting authorization for the $75 million fee also provides that approval is subject to review of the Joint Other Funds Oversight Committee. (R. pp. 692-93). Although the application depicts approval by the Director of the EBO, there is no such approval on the portion of the decision made by the Joint Other Funds Oversight Committee. Senator Nikki Setzler, who is Co-Chair of the Joint Other Funds Oversight Committee, has provided an affidavit stating that the Committee has not considered an application for the payment of fees to the Law Firms, nor has the Committee been requested to review any application. (R. pp. 895-96). In short, the EBO Director by-passed the approval process, eliminating any oversight by the General Assembly, to authorize the payment of the $75 million fee from funds that the Director lacks authority to appropriate.

More importantly, the statute dealing with litigation costs from settlements is specific and controls over the general "other funds" provisions. "Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite

manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. at 304, 814 S.E.2d at 518 (quoting *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citation omitted)). The EBO has no authority to authorize the payment of attorneys' fees from this settlement unless and until the conditions in Section 1-7-150 are satisfied.

C. Proviso 59.8 is Immaterial.

Respondents also rely upon Proviso 59.8 of the State's 2020 budget and argue that Plaintiffs' entire argument "is therefore inapplicable." Proviso 59.8 simply states that, for the current fiscal year, any funds received by the Attorney General that would otherwise have been credited to the General Fund shall be deposited first in a special account entitled the "Litigation Recovery Account" and that then those funds "must be expended only as prescribed by law." 2019 S.C. Acts 91, Part 1.B, § 59.8 (2019-2020 fiscal year). It does not otherwise suspend or contradict Section 1-7-150(B). Rather, Section 1-7-150(B) and Proviso 59.8 should be read consistently with one another. Accordingly, Proviso 59.8's requirement that the funds "must be expended only as prescribed by law" should be read in conjunction with Section 1-7-150(B) and not as an exception to Section 1-7-150(B)'s requirements. Accordingly, Proviso 59.8 is immaterial.

When money under a settlement agreement is payable directly to the State, as in the case with the DOE Settlement Agreement, the proceeds must be deposited in the General Fund, and only the General Assembly controls its appropriation.

IV. THE LAW OF THE CASE DOES NOT BAR APPELLANTS' CLAIMS.

Judge Lee's factual findings and legal rulings, when denying Plaintiffs' motion for a preliminary injunction are not binding on the merits of Appellants' claims. In *University of Texas v. Camenish*, 451 U.S. 390 (1981), the United States Supreme Court explained that "given the

haste that is often necessary" when addressing a motion for preliminary injunction, "the findings of fact and conclusions of law made by a court . . . are not binding at trial on the merits."

In *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), the Supreme Court explained that the law of the case doctrine does not apply to interlocutory rulings and that do not finally determine a substantive right. The issue on appeal in *Shirley's Iron Works* was whether plaintiff had a third-party beneficiary claim against a municipality for not requiring a general contractor to be bonded, as required by statute. The circuit court had previously stricken plaintiff's claim for pre-judgment interest and attorneys' fees, concluding that plaintiff's claim sounded in tort only, and that pre-judgment interest and attorneys' fees are not available under the South Carolina Tort Claims Act (TCA). Subsequently, another circuit court judge granted the City of Union summary judgment on all causes of action, concluding that Plaintiff's claims sounded in tort and were barred by the TCA. The Court of Appeals reversed, concluding that the plaintiff has an implied statutory cause of action that sounds in contract, not tort, and is therefore not barred by the TCA. The Supreme Court granted certiorari and affirmed the Court of Appeals. The Supreme Court rejected the City of Union's argument that the law of the case doctrine foreclosed a third-party beneficiary claim. The South Carolina Supreme Court stated:

> The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right . . . . Ordinarily an interlocutory ruling which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits.

403 S.C. at 573.

The Supreme Court further explained that the order "merely granted the City's motion to strike with regard to attorneys' fees and prejudgment interest pursuant to Section 15-7-300 and should not be viewed beyond their intended and limited purpose. *Id.* at fn. 11.

Moreover, Rule 54(b), SCRCP provides "[i]n the absence of [the court directing entry of a final judgment as to one or more but fewer than all the claims], any order or other form of decision, however designated, which adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims . . . , and *the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties*." Rule 54(b), SCRCP (emphasis added).

Here, Judge Lee did not direct entry of a final judgment on the merits of Appellants' claims. In fact, Respondents filed their motions to dismiss after Judge Lee issued the order denying preliminary injunctive relief and requested that she rule upon the same. Judge Lee refused. (R. pp. 956-57). Thus, the preliminary factual findings and legal rulings contained in the order denying Appellants' motion for preliminary injunction are non-binding and subject to revision at any time prior to the entry of a final judgment. Judge Lee's Order should not be viewed beyond its intended and limited purpose.

Finally, the standard for granting a motion to dismiss is significantly different from the standard on motion for preliminary injunction. At the motion to dismiss stage, this Court is required to accept all facts alleged in the Complaint as true. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007). By contrast, in evaluating whether a plaintiff is entitled to a preliminary injunction, the Court must examine the merits of the underlying case to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

CONCLUSION

Appellants respectfully request that this Court reverse the decision of the Circuit Court, rule that the appellants possess standing in this case, rule that that Wilson lacked authority to pay Law Firms and remand the case to the circuit court for further proceedings.

Respectfully submitted,

s/James M. Griffin

James M. Griffin, S.C. Bar No. 9995
Badge Humphries, S.C. Bar No. 72904
GRIFFIN HUMPHRIES LLC
4408 Forest Drive, Suite 300
Columbia, South Carolina 29206
PO Box 999 (29202)
(803) 744-0800

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 East North Street
Greenville, South Carolina 29601
(864) 235-1269

Attorneys for Appellants

Columbia, South Carolina
November 15, 2021

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Nov 15 2021

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

R. Kirk Griffin, Circuit Court Judge

Supreme Court Case No. 2021-000472

Court of Appeals Case No. 2021-000343

Lower Court Case No. 2020-CP-40-04603

South Carolina Public Interest Foundation and John Crangle, individually, and on behalf of all others similarly situated,

Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A.,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Final Brief of Appellants complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted,

s/ James M. Griffin

James M. Griffin, S.C. Bar No. 9995
Badge Humphries, S.C. Bar No. 72904
GRIFFIN HUMPHRIES LLC
4408 Forest Drive, Suite 300
Columbia, South Carolina 29206
PO Box 999 (29202)
(803) 744-0800

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 East North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax (864) 331-3083

November 15, 2021

Attorneys for Appellants