THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No: 2018-001262

Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler and South Carolina Public Interest Foundation, ...Appellants,

v.

Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Town of Summerville, Summerville Town Council, William E. McIntosh, III, in his official capacity, Dorchester County Sheriff, Luther C. Knight, in his official capacity, Dorchester School District Two, Dorchester School District Two Board of Trustees, Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in the official capacities, Dorchester School District Four, Dorchester School District Four Board of Trustees, Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees,.....Respondents.

RECORD ON APPEAL
VOLUME II OF II

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$25

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE FAMILY COURT FIRST JUDICIAL CIRCUIT
Dorchester County Taxpayers Assocation, et al. Plaintiff, vs. Dorchester County, et al. Defendant.	)	**MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET** Docket No. 2016-CP-18-838

Plaintiff's Attorney:	Defendant's Attorney:
W. Andrew Gowder, Jr., Esq., Bar No. _____ Address: P.O. Drawer 22247, Charleston SC 29413 Phone: 843-727-2229 Fax _____ E-mail: _____Other: _____	Adam J. Mandell, Esq. , Bar No. 102309 Address: P.O. Box 11844, Columbia SC 29211 Phone: 803-254-0707 Fax803-254-5609 E-mail: amandell@boykinlawsc.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ June 19, 2017
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

FILED
CLERK OF COURT
DORCHESTER COUNTY
2017 JUN 21 AM 11:29
RECORDED

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiff(s)

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey. Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Famsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANTS DORCHESTER COUNTY SCHOOL DISTRICT FOUR AND DORCHESTER COUNTY SCHOOL DISTRICT FOUR BOARD

TO: W. ANDREW GOWDER, JR., ESQUIRE, AND MICHAEL T. ROSE, ESQUIRE, ATTORNEYS FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Dorchester County School District Four

and Dorchester County School District Four Board ("Defendants"), by and through their undersigned counsel, hereby move the Court to dismiss with prejudice Plaintiffs' Complaint against Defendants. The grounds for this Motion are:

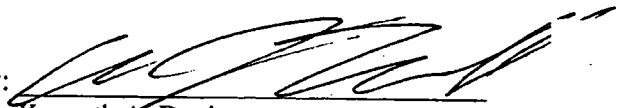
1. This Court lacks subject matter jurisdiction over Plaintiffs' claims concerning property taxes; and

2. Plaintiffs fail to state facts sufficient to constitute a cause of action for double taxation because Defendants lack taxing authority as a matter of law.

Thus, as set forth in the supporting Memorandum of Law, to be filed at a later date and incorporated herein, and the Motion to Dismiss filed by Dorchester County Council, et al., on January 23, 2017, Defendants move the Court for an Order dismissing the case. This motion is based upon the pleadings in this action together with all applicable statutory and case law.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: 

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Attorneys for Defendants Dorchester County School District Four & Dorchester County School District Four Board

June 19, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

CERTIFICATE OF SERVICE

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey. Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Countil; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Famsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

The undersigned of Boykin & Davis, LLC, hereby certifies that she has served the following counsel of record with the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANTS DORCHESTER COUNTY SCHOOL DISTRICT FOUR AND DORCHESTER COUNTY SCHOOL DISTRICT FOUR BOARD**, in the above-

captioned action by mailing a copy of the same, postage prepaid and return address clearly indicated, to the following on this 19th day of June 2017:

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Cheryl L. McWay, Paralegal

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT Civil Action No.: 2016-CP-18-838
Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all pothers similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger, and South Carolina Public Interest Foundation; Plaintiffs, v. Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, individually and in his official capacity as a member of Summerville Town Council; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Captain Tony Phinney, individually and in his official capacity as an employee of the Dorchester County Sheriff; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Evan Guthrie, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, Defendants.	)	Motion to Dismiss the Plaintiffs' Second Amended Complaint, Filed By Defendant Captain Tony Phinney, individually and in his official capacity as an employee of the Dorchester County Sheriff And Subject to His Motion to Dismiss, An Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure and the other authorities cited or otherwise referenced herein, Defendant Tony Phinney ("Phinney"), individually and in his official capacity as an employee of the Dorchester County Sheriff, respectfully files this Motion to Dismiss the Plaintiffs' Second Amended Complaint and, in the alternative, a Protective Motion to Strike the Plaintiffs' Jury Demand. In support thereof, Phinney would show the Court the following:

I. Phinney Joins in the County Defendants' Motions

On January 23, 2017, the "County Defendants" filed a Motion to Dismiss the Plaintiffs' Second Amended Complaint and, in the alternative, a Protective Motion to Strike the Plaintiffs' Jury Demand.[1] Phinney joins in the Motions of the County Defendants, urges the arguments they raised, and adopts all statements and authorities included in their Motions as if fully set forth herein.

II. Causes of Action Asserted Against Phinney

The Plaintiffs have asserted five causes of action in this case. The third cause of action, alleging that Dorchester School District Two failed to comply with Act No. 98 of 2009, is not directed at Phinney or any the County Defendants. Of the remaining four causes of action, just two (both of which are asserted by Plaintiff David Messinger only) appear to be directed against Phinney: the fourth cause of action, alleging violations of Article I, Section 2, of the South Carolina Constitution, and the fifth cause of action, alleging violations of the first and fourteenth amendments of the United States Constitution and corresponding violations of 42 U.S.C. § 1983.[2] In addition to points raised in the County Defendants' Motions in response to the fourth and fifth causes of action, Phinney submits the following arguments and authorities in further support of this Motion, to address those allegations in the Second Amended Complaint that mention him by name.

III. Summary of the Allegations Mentioning Phinney

The allegations regarding Phinney are set forth in Paragraph 61 of the Second Amended Complaint. They fall into two categories: (1) allegations concerning a May 1, 2012 email (the

[1]The "County Defendants" include Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of the County Council; and Dorchester County Sheriff, Luther C. Knight, in his official capacity.

[2]To the extent (if any) that the Plaintiffs contend that the first and second causes of action are directed against Phinney, he relies on the arguments and authorities set forth in the County Defendants' Motion, as previously noted.

"Email Allegations") and (2) allegations concerning an unspecified number of telephone calls, on unspecified dates, during which Phinney "made statements" (the "Phone Call Allegations").

A. The Email Allegations

Messinger alleges that Phinney sent a May 1, 2012 email to Anthony Dunbar concerning Rowland Turner.[3] Neither Dunbar nor Turner is a party to this case and Messinger never alleges how or when he came into possession of that email. The email, moreover, does not mention or refer to Messinger, or any of the other Plaintiffs, and says nothing about the employment/funding of School Resource Officers ("SROs"), or the May 15, 2015 "Tidwell Report" recommending the use of private SROs, both of which are the crux of the Plaintiffs' Second Amended Complaint. In fact, the email does not even mention or reference SROs in any way, which comes as no surprise since it reflects that it was sent on May 1, 2012, more than four years and seven months before Phinney was named as a party to this case, more than four years before this case was filed, and more than three years before issuance of the "Tidwell Report" which is featured so prominently throughout the Second Amended Complaint.

B. The Phone Call Allegations

Messinger alleges that Phinney "repeatedly called" the Chief of the Mt. Pleasant Police Department and "made statements" trying to get the Chief to terminate Messinger's employment. Second Amended Complaint p. 21 at ¶ 61. According to Messinger, the calls were "similar" to the May 1, 2012 email that Phinney allegedly sent to non-party Dunbar regarding non-party Turner. Id. The Phone Call allegations are also "similar," to use Messinger's terminology, in the sense that the Second Amended Complaint never once alleges that these calls concerned SROs. In addition, the date of the alleged calls is never specified.

IV. The Claims Against Phinney Are Deficient on Their Face

A. Messinger Lacks Standing With Respect to the Email Allegations

Messinger never alleges how, or when, or under what circumstances he came into possession of the May 1, 2012 email. Yet, even if one were to assume, arguendo, that Phinney sent the email about a non-party (i.e., Turner) to yet another non-party (i.e., Dunbar) about a topic unrelated to SROs, Messinger complains about five-year-old remarks that were sent to someone else and alleges that they amounted to a violation of constitutional rights. Messinger,

[3]The email is attached as Exhibit 2 to the Second Amended Complaint.

however, plainly lacks standing to assert the violation of someone else's constitutional rights. See Rosenthal v. Unarco Industries, Inc., 297 S.E.2d 638, 642 (S.C. 1982)(citing State v. McDonald, 230 S.E.2d 617 (S.C. 1976)("one may not assert a violation of another's constitutional rights"). Accordingly, to the extent that Messinger's fourth and fifth causes of action are based on the Email Allegations, they must be dismissed.[4]

B. In Any Event, Both the Email Allegations and the Phone Call Allegations Are Insufficient

"While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). Here, Messinger's Email Allegations are deficient when measured against that required standard, because they do not specify how or when he came into the possession of the May 1, 2012 email and they do not relate to the gravamen of the claims asserted in this case concerning the funding of SROs. Similarly, Messinger's Phone Call Allegations—that Phinney "made statements" to the Chief of Police—are also factually deficient, even if we assume that the Second Amended Complaint correctly characterizes the unspecified number of "statements" as "similar" to the ones that Phinney allegedly made in the more-than-five-year-old email he sent to a non-party about matters having nothing to do with SROs.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter[.]" Iqbal, 556 U.S. at 678. Here, however, the allegations about Phinney amount to insufficient, conclusory allegations and, as such, fail to provide him with "fair notice of what the... claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)(ellipsis in original)(citation and quotation marks omitted). As a result, the claims made against Phinney in the fourth and fifth causes of action must be dismissed.[5]

---

[4]Even if Messinger could somehow assert a claim for Turner (which he cannot), claims arising out of the Email Allegations would be time-barred in any event. See Owens v. Okure, 488 U.S. 235, 240-41 (1989)(holding that a state's general or residual statute of limitations should be applied to § 1983 claims). Here, the alleged email is more than five years old and, in South Carolina, the statute of limitations would be two years, or three years at the most. See S.C. Code Ann. S.C. Code Ann. § 15-78-110, setting a two-year statute of limitations for claims arising under the Tort Claims Act, and § 15-3-530(5), setting a three-year residual personal injury statute of limitations.

[5]Messinger's failure to allege any dates for the Phone Call Allegations suggests that, as with the Email Allegations, the "statements" in question were made in 2012 and are therefore time-barred. See footnote 4 herein. However, that issue need not be determined for purposes of this Motion to Dismiss for the reasons discussed in the text.

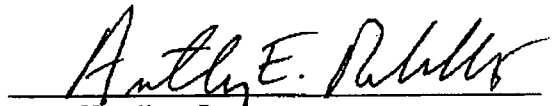
V.
In Any Event, Injunctive Relief Against Phinney is Unavailable Under § 1983

For the reasons discussed in the County Defendants' Motion (as well as those discussed above), Messinger's claims against Phinney are deficient for a number of independent, alternative reasons. For example (but not by way of limitation), claimed injuries to reputation arising out of allegedly false and defamatory statements, such as those Messinger asserts here, are not cognizable in an action under 42 U.S.C. § 1983. See County Defendants' Motion at p. 26-27. This is significant because, in the absence of a constitutional violation, neither Messinger nor any of the other Plaintiffs can obtain any type of relief—injunctive or otherwise—on the constitutionally-based claims asserted in the Second Amended Complaint.

In any event, Phinney would also point out, for the sake of completeness, that dismissal would also required here to the extent (if any) that claims for injunctive relief have been asserted against him, in his individual capacity, under 42 U.S.C. § 1983. See, e.g., Greenawalt v. Ind. Dep't of Corr., 397 F.3d 587, 589 (7th Cir. 2005)(§ 1983 does not permit injunctive relief against state officials sued in their individual capacities).

Prayer For Relief

WHEREFORE, Phinney respectfully request that the Court dismiss this action or, in the alternative, that it grant his protective Motion to Strike the Plaintiffs' jury demand. Finally, Phinney respectfully request that the court award him such other and further relief for which he may show himself entitled.



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Anthony E. Rebollo
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P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE COUNTY
DEFENDANTS

February 1, 2017

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Defendant Tony Phinney, individually and in his official capacity as an employee of the Dorchester County Sheriff, do hereby certify that I have served the foregoing Motion to Dismiss the Plaintiffs' Second Amended Complaint and, Subject to His Motion to Dismiss, Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the following attorney(s):

W. Andrew Gowder, Jr., Esq.
Austen & Gowder, LLC
1629 Meeting Street
Charleston, SC 29405

Michael T. Rose
Mike Rose Law Firm, PC
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Attorneys for the Plaintiffs

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Attorney for Defendants Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity

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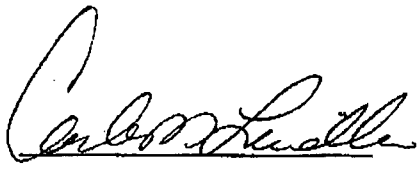
Attorneys for Defendants Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Evan Guthrie, Barbara Crosby and Lisa Tupper, in their official capacities, Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees



Carla Linder

February 1, 2017

$25 MD Sht V

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER DORCHESTER COUNTY TAXPAYERS ASSOCIATION, ET AL. ☐ Plaintiff v. DORCHESTER COUNTY; DORCHESTER COUNTYCOUNCIL, ET AL. ☐ Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2016-CP-18-838 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Fod,odd
Estimated Time Needed:20 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Anthony E Rebollo — February 1, 2017
Signature of Attorney for Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

FILED-RECORDED
2017 FEB -3 PM 12:18
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:
Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	FIRST JUDICIAL CIRCUIT
Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation, Plaintiffs, v. Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity; Dorchester County Sherriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities, Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, Defendants.	Civil Action No.: 2016-CP-18-838 Motion to Dismiss Plaintiffs' Second Amended Complaint (By: Defendants Town of Summerville; Summerville Town Council; and William E. McIntosh) and Subject to Their Motion to Dismiss, An Alternative Motion to Strike the Plaintiffs' Jury Demand Applicable to Property-Tax Related Claims

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure ("SCRCP") and the authorities cited herein, Defendants Town of Summerville (the "Town"); Summerville Town

Council ("Town Council"); and William E. McIntosh, individually and in his official capacity as a member of Town Council (with the Town, Town Council and William E. McIntosh together as the "Town Defendants") respectfully file this Motion to Dismiss Plaintiffs' Second Amended Complaint and, in the alternative, a Motion to Strike the Plaintiffs' Jury Demand Applicable to Property-Tax Related Claims. The Town Defendants' motion to dismiss the Plaintiffs' property tax-based claims is made under SCRCP Rule 12(b)(1) for lack of subject matter jurisdiction, and the Town Defendants' motion to dismiss the remaining claims of the Plaintiffs is made under SCRCP Rule 12(b)(6) for failure to state sufficient facts to constitute causes of action. In support thereof, the Town Defendants would show the Court the following:

I. Preliminary Statement

Dorchester County (the "County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sheriff, Luther C. Knight, in his official capacity (together, the "County Defendants") have collectively filed a motion to dismiss the Plaintiffs' Second Amended Complaint under SCRCP Rule 12 and the other authorities cited in therein, and, in the alternative, to strike the Plaintiffs' jury demand applicable to the property-tax related claims. The Town Defendants join these motions of the County Defendants, adopt all statements and authorities in the County Defendants' motions as if fully set forth herein, and provide the following additional facts and authorities in support of the Town Defendants' motions.

The focus of Plaintiffs' lawsuit involves the funding of local "School Resource Officers", where the services of County Deputy Sheriffs and Town Police Officers are provided by the County and Town to local schools, under contract, for the safety and security of students and faculty. Based apparently on an "independent review of efficiency" report prepared for

Dorchester County School District Two, which recommended cost-savings "opportunities" for the school district, including hiring private security guards to replace the County Deputy Sheriffs and Town Police Officers serving as School Resource Officers, the Plaintiffs challenge the "use and allocation of tax receipts by the County and School Districts", and believe they are being "double-taxed" through the School Districts' use of, and payment for, School Resource Officers. Plaintiffs also add claims against individual members of County Council and Town Council, stating these officials made statements for the "purpose and with the effect of undermining those proponents credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the" recommendations of the school district's efficiency review report.

In their Second Amended Complaint, Plaintiffs request the Court to issue a declaratory judgment, permanent injunction, a writ of mandamus, and other relief to remedy their perceived property tax claims, and Plaintiff David Messinger seeks personal damages for perceived violations of his constitutional rights. For the reasons identified in the motions of the County Defendants and the Town Defendants herein, all of the Plaintiffs' claims against the Town Defendants must be dismissed.

II. Procedural Background

The Plaintiffs filed an initial Complaint in this action that was never served. The Plaintiffs then filed and served an Amended Complaint. Both the County Defendants and the Town Defendants filed motions to dismiss the Amended Complaint, largely on the same grounds raised in the pending motions of the County Defendants and the Town Defendants related now to the Second Amended Complaint. Plaintiffs then served discovery requests on the Defendants. In response, the County Defendants filed a Motion to Stay Discovery, and which was joined by

the other defendants in the case. The motions to dismiss filed by the County Defendants and the Town Defendants, and the Motion to Stay Discovery filed by the County Defendants, were scheduled for hearing before the Honorable Deadre L. Jefferson. Shortly before the scheduled hearing on these motions, the parties submitted a proposed "*Consent Order Concerning the Pending Motions to Dismiss, the Pending Motion to Stay Discovery and Leave to File a Second Amended Complaint*" and which was signed by Judge Jefferson and filed in the case (the "Consent Order"). The Consent Order (1) memorialized the withdrawal (without prejudice) of the motions to dismiss filed by the County Defendants and the Town Defendants; (2) granted Plaintiffs leave to file a second amended complaint by December 7, 2016, but if the Plaintiffs failed to do so, the Amended Complaint would be dismissed; (3) prohibited discovery in the case until the later of when all defendants filed answers to any second amended complaint or until the Court ruled on any motions to dismiss a second amended complaint; and (4) memorialized Plaintiffs' consent and agreement applicable to any second amended complaint to be filed in the case such that in any second amended complaint *"[p]laintiffs agree to withdraw, and to not assert in these proceedings, any claim or cause of action based on the refund, assessment and/or collection of South Carolina taxes.*"

The Plaintiffs have now filed their Second Amended Complaint, and the County Defendants and the Town Defendants have now filed their instant motions to dismiss the Second Amended Complaint.

III. Factual Background Applicable to the Town Defendants

As with the Amended Complaint, the Second Amended Complaint (the "Complaint") alleges that Weatherstone Property Owners Association ("Weatherstone POA") is a non-profit South Carolina corporation, and has its principal place of business and owns real property in

Berkeley County and the Town. (¶5, Complaint). Weatherstone POA does not allege that it pays property taxes to the County, Town, or any other political subdivision of the State of South Carolina. (¶ 5, Complaint). The Complaint also alleges that William A. Harbeson, James Stephen Green, Jr., and Homer P. Gonzalez are residents of and own property located in the Town, and on which these individual plaintiffs pay property taxes on their owner-occupied residences. (¶¶ 7 – 9, Complaint). The Complaint alleges that the Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation organized in South Carolina in 1998, and that DCTA is suing "as a representative of itself and its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts". (¶ 12, Complaint). DCTA alleges that it "brings this action individually on its behalf, its members and on behalf of all others similarly situated." (¶ 12, Complaint). The Complaint does not identify any members of DCTA. (Entire Complaint). The Complaint alleges that the South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit South Carolina corporation, and that SCPIF "brings this action individually, on its behalf and on behalf of all others similarly situated". (¶ 13, Complaint). Other than William A. Harbeson, James Stephen Green, Jr., and Homer P. Gonzalez, none of the other named plaintiffs in this action, including George Resnick, Gerald E. Ziegler, David Messinger, DCTA, and SCPIF specifically allege any direct contact with, that they own property in, or pay property taxes to, the Town. (¶¶ 6 – 13 Complaint).

As alleged in the Complaint, the Town is a body corporate and a municipal corporation of the State of South Carolina located in the County. (¶ 21, Complaint). Town Council is the elected governing body of the Town created and operating under the laws of the State of South Carolina. (¶ 22, Complaint). William E. McIntosh III is a member of Town Council. (¶ 39, Complaint).

Plaintiffs allege in the Complaint that the County provides the services of Deputy Sheriffs as School Resource Officers to Dorchester County School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center (collectively, the "School Defendants"), under written agreements, copies of which are appended to the Complaint. (¶¶ 63 – 68, 69 – 72, Ex. 3, 4, and 5, Complaint). Plaintiffs do not allege that the Town has entered into any contracts or agreements with any of the School Defendants to provide the services of Town police officers as School Resource Officers. (Entire Complaint).

One or more Plaintiffs allege that they pay local property taxes to the County and/or Town on their owner-occupied residence located in the County and/or Town. (¶¶ 6 - 11, Complaint). Plaintiffs allege that the local property taxes they pay to the County and/or Town are used by the School Defendants to pay or reimburse the County and/or Town for the use of County Sheriffs and Town Police Officers to serve as School Resource Officers in the schools of the School Defendants. (¶¶ 50, 63, 69, 71, 73 – 77, 80 , 82 89, Complaint). Plaintiffs allege that the County has increased the property taxes on local owner-occupied homes in the County to provide the School Defendants with additional funds necessary to pay for the cost of School Resource Officers provided by the County and/or Town in the schools of the School Defendants. (¶¶ 78, 85 – 89, Complaint).

Plaintiffs allege that Dorchester County School District Two commissioned an "independent review of the efficiency" of operating costs in the schools in this district. (¶ 55, Complaint). A report was prepared by the firm that performed this cost review, Tidwell and Associates (the "Tidwell Report"). (¶ 56, Complaint). The Tidwell Report recommended that Dorchester County School District Two "take several actions to increase [the school district's] efficiency and save [the school district] money", and which include "contracting with private

security services for the School Resource Officer Program, or directly hire district security officers." (¶ 56 - 57, Complaint). The Tidwell Report noted that contracting with a private security company or directly employing security guards to serve as School Resource Officers, as opposed to the present use of County Sheriffs and Town Police Officers, would save the school district money. (¶ 57, Complaint). Dorchester County School District Two, and other School Defendants, declined to adopt the recommendations in the Tidwell Report to contract with private security guards or hire direct security guards in their schools. (Entire Complaint).

Plaintiffs allege that support for implementing "*cost-savings recommendations in the Tidwell Report...was squelched and impeded by intimidating and threatening actions and communications made by officials of...Summerville Town Council.*" (¶ 59, Complaint). Plaintiffs allege that McIntosh "*published on Facebook false and defamatory statements about Plaintiff Messinger and Michael Turner ("Turner"), two proponents of the recommendations in the Tidwell Report and opponents to the Council's, the Town's and the School Districts unlawful expenditures for SROs, for the purpose and with the effect of undermining their credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs*". (¶ 59, Complaint). Specifically, Plaintiffs allege that in October 2015, McIntosh made the following post on Facebook:

> *Mr. Messinger is just sore that the county didn't go along with his and Mike Turner's hare-brained scheme to create a taxpayer-financed private security force for washed out police officers....*
>
> *The truth is you were part of a group of unemployed and barely employed law enforcement officers and former (and with good reason former) law enforcement officers who rallied behind Mike Turner to hoo-doo District 2 into supporting the creation of private security force for our schools. It was nothing more than a full employment scheme for washed-out cops. The county saw right*

> *through it, and now you're mad at the county council chairman. You are right – I do have a sense of humor. Hopefully, your chief in Mt. Pleasant has one too...*
>
> *[Messinger} spent countless hours emailing folks to support this hare-brained private security scheme for our schools, and he is spitting nails at the county for quashing it.* (¶ 59, Complaint).

Plaintiffs also allege that McIntosh repeatedly threatened to interfere with the employment of David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding SRO funding matters. (¶ 60, Complaint). Specifically, Messinger asserts that McIntosh gratuitously questioned Messinger about whether Messinger's current boss at the Mt. Pleasant Police Department would disapprove of McIntosh's statements and opposition to the "SRO funding scheme McIntosh supported." (¶ 61, Complaint). Plaintiffs allege that McIntosh made the statements and took the actions to help the Town, Dorchester County Sheriff and other defendants continue the current method of funding School Resource Officers and to avoid implementing the recommendations in the Tidwell Report. (¶ 60, Complaint). Plaintiffs do not identify the specific "threats" that were alleged to have been made by McIntosh to Messinger's employer, or that McIntosh followed through and initiated any actions or conduct to implement these "threats". (Entire Complaint). Plaintiffs make these claims against McIntosh "both in his individual and official capacity." (¶ 39, Complaint).

IV. Plaintiffs' Continued Property Tax-Related Claims Must be Dismissed For Lack of Subject Matter Jurisdiction

The focus of the nine Plaintiffs in this case, some of whom are individual residents in the County and Town, some of whom are individuals who do not allege residency in the County and/or Town, and others who are non-profit entities who do not allege any specific connection with the County and/or Town, is on property taxes assessed by the County and/or Town, and the

use of these property taxes to fund school district operating expenses, namely the payment for services of School Resource Officers. It is well-settled that claims such as these cannot be brought in this Court, and must be brought in the South Carolina Administrative Law Court, provided required administrative remedies have first been exhausted.

The Plaintiffs, or at least those among the group of the Plaintiffs alleged to be "qualified electors", disagree with the judgment and decisions of the elected officials of the School Defendants (the "Board of Trustees") to continue to use Deputy Sheriffs and Police Officers in their schools as School Resource Officers. SROs provide security and protection for students and faculty, and Deputy Sheriffs and Police Offices are trained and experienced law enforcement officials. Dorchester County School District Two commissioned an "cost review" by an independent consulting firm, and which prepared a report containing its recommendations - the "Tidwell Report". The Tidwell Report recommended a litany of cost-saving reductions for the schools, including changing over to private security contractors to act as SROs. The Board of Trustees for Dorchester County School District Two declined to adopt this specific recommendation of the Tidwell Report, and now the Plaintiffs have sued, seeking to interpose their judgment in place of that of their elected officials.

Plaintiffs now seek to use this lawsuit as a means to reverse the judgment of the Board of Trustees of Dorchester County School District Two, and also Dorchester County District Four and Dorchester County Career and Technology Center, to continue to use County Sheriffs and Police Officers as SROs in their schools. The legal means employed here by the Plaintiffs is to challenge how funds are raised through local property tax revenues to pay for the County Sheriffs and Police Officers serving as SROs. Plaintiffs contend that the funds used by the School Defendants to pay the County and Town for the cost of Sheriff Deputies and Police

Officers is from local property taxes that have been assessed and collected illegally in violation of S.C. Code Ann. § 12-37-220(B)(47) – adopted by the General Assembly as "Act 388".

While Plaintiffs in the Consent Order specifically agreed to not assert any claim or cause of action in their Second Amended Complaint based on the refund, assessment and/or collection of South Carolina taxes, the Second Amended Complaint continues to be replete with these assertions. Notwithstanding Plaintiffs' allegation in the Second Amended Complaint that *"[t]his action is not brought to challenge the collection of or to request a refund of any tax"* (¶ 2, Complaint), the Second Amended Complaint alleges:

- Each Individual plaintiff "*owns property, including an owner-occupied residence, located and being taxed in the County... and has paid and will continue to pay taxes, including property taxes on his owner-occupied residence, which fund the County.*" (¶¶ 6 - 11, Complaint).
- The Plaintiffs each have "standing" in this case "*regarding the proper use, expenditure and allocation of receipts by the County, the Town, and the School Districts named in this action*". (¶ 16, Complaint).
- The lawsuit involves "*the prevention of the unlawful expenditure of money raised by taxation*". (¶ 16, Complaint).
- Beginning under the heading "SRO Funding – Act 388 and Double Taxation Violations", "*Plaintiffs dispute that the County and the Town may spend funds obtained by taxing owner-occupied homes to fund SROs, because doing so would violate S.C. Code Ann. § 12-37-220(B)(47)(a)(c)*". (¶ 50, Complaint).

- *"Dorchester County is required to tax all property owners, including owners of owner-occupied home, to subsidize the salaries and other DD2 operating expenses for SROs working at DD2 schools."* (¶ 69, Complaint).
- *"Dorchester County is required to tax all property owners, including owners of owner-occupied home, to subsidize the salaries and other DD4 operating expenses for SROs working at DD4 schools."* (¶ 71, Complaint).
- *"Dorchester County is required to tax all property owners, including owners of owner-occupied home, to subsidize the salaries and other DCCTC operating expenses for SROs working at DCCTC schools."* (¶ 73, Complaint).
- *"SROs have been furnished and will be furnished to one or more of the School Districts and funded with taxes on owner-occupied homes by the Town and by the County"*. (¶ 74, Complaint).
- *"[a]dditional property taxes have been paid or are obligated to be paid and will be paid (a) by one or more of these School Districts to reimburse Dorchester County and/or the Town of Summerville for monies Dorchester County or the Town paid or will pay for SROs at one or more of the School Districts"*. (¶ 75, Complaint).
- *"At all times pertinent all monies paid or obligated to be paid by Dorchester County or the Town of Summerville to any of the School Districts for SROs have been paid or will be paid with property taxes raised, inter alia, on owner-occupied homes in the County and/or the Town, in violation of Act"*. (¶ 76, Complaint) [emphasis in original].

- "Dorchester County and the Town of Summerville have been and will continue to spend taxes on 'owner-occupied residential property' for 'school operating purposes' to finance police protection and other services with SROs at DD2, DD$ and/or DCCTC in violation of Act 388". (¶ 80, Complaint).
- Beginning under the heading "*Double Taxation County Or Town, and School Districts*", "*[p]roperty owners who live in Dorchester County and in a School District but not in the Town are being taxed twice*", and "*[p]roperty owners who live in Town and in a School District but not in the Town are being taxed twice*". (¶¶ 82-83, Complaint).
- "*This illegal double taxation and these illegal violations of Act 388 would be avoided completely if the School Districts simply spend their tax revenues for the expenses of SROs in accordance with Act 388, and Dorchester County and the Town refrained from spending any of it taxe [sic] revenues for the same expenses of the same SROs in violation of act 388.*" (¶ 89, Complaint).
- Plaintiffs have violated Act 388 "*by expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense*". (¶ 100, Complaint).
- Plaintiffs have been damaged because of "*Defendants' violations of Act 388...and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other taxpayers having to compensate the County treasury for those losses.*" (¶ 101, Complaint).

The South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et. seq., ("RPA") was adopted by the General Assembly to "provide the people of this state with a

straightforward procedure to determine a ... dispute concerning property taxes." S.C. Code Ann. § 12-60-20. The RPA "must be interpreted and construed in accordance with, and in furtherance of", this purpose. *Id.* With limited exceptions, the RPA is the exclusive remedy for taxpayers seeking to contest perceived "illegal or wrongful" taxes. S.C. Code Ann. § 12-60-80(A).

If a taxpayer has a dispute concerning his real property taxes assessed or collected by county or local government, the RPA provides the resident taxpayer with the remedy of seeking a refund of these property taxes with the applicable county or local government, including judicial review by the South Carolina Administrative Law Court, provided the following prerequisites are satisfied:

1. The taxpayer files a refund claim with the County Assessor;
2. The County Assessor, County Treasurer and the County Auditor render a decision on the refund claim;
3. The Taxpayer has thirty days to appeal that decision to the County Board of Assessment Appeals; and
4. After appeal, the County Board of Assessment Appeals renders a decision on the taxpayer's refund claim.

S.C. Code Ann. § 12-60-2560(A) – (C).

After these steps are taken, if the refund claim is denied by the County Board of Assessment Appeals, the taxpayer may then seek judicial review through the Administrative Law Court. *See* S.C. Code Ann. § 12-60-2560(C). If a taxpayer seeking a refund of property taxes does not follow these required statutory steps, the RPA requires the Administrative Law Court to dismiss the action without prejudice. S.C. Code Ann. § 12-60-2560(C). Edward D. Sloan, Jr. South Carolina Public Interest Foundation, et. al. v. Greenville County Assessor, ALC Case Nos. 08-ALJ-17-0243, et. al. (opinion attached).

The RPA importantly contains express prohibitions against taxpayers seeking to circumvent its provisions by providing:

> (A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes. (emphasis supplied).
>
> (B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.
>
> (C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.
>
> S.C. Code Ann. § 12-60-80.

For purposes of RPA Section 12-60-80(B), and the exception for declaratory judgment actions that may be brought in circuit court where the sole issue is whether a statute is unconstitutional, this limited exception to the RPA refund remedy does not apply where the claim is that the statute is unconstitutional as applied to the particular plaintiffs. S.C. Code Ann. § 12-60-80(B); B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007); *see also* Ward v. State, 538 S.E.2d 245 (S.C. 2000).

In two important decisions, the South Carolina Supreme Court has ruled that taxpayers may not challenge local property taxes through lawsuits filed in the circuit court, and which would circumvent the requirements and prohibitions of the RPA. In Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d 39 (S.C. 2004), a group of taxpayers filed suit in circuit court, seeking a writ of mandamus, and declaratory and injunctive relief, concerning perceived higher millage rates applicable to non-owner occupied residences. In

B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007), *aff'g as modified* 605 S.E.2d 551 (S.C. Ct. App. 2004), a group of taxpayers sued the county, county council, school district, and individual county officers in circuit court concerning the assessment of county property taxes and the funding of local schools. In both decisions, the South Carolina Supreme Court squarely ruled that the RPA refund claim procedure was the taxpayer's exclusive remedy, and the circuit court actions were dismissed.

As with the taxpayers in Brackenbrook and B&A Development, the Plaintiffs here seek to challenge their local property taxes, and how these property taxes are used to fund school operating expenses, in particular, the payment for services of School Resource Officers in the county high schools and the technical center. The Plaintiffs have improvidently filed this case in this Court, which lacks jurisdiction to hear their property tax-based claims. While the Plaintiffs contend their Second Amended Complaint does not involve challenges or causes of action related to their property taxes, and that perhaps they are challenging only the "expenditure" of funds for the SROs and not the property taxes raised which are the source of these funds, their Second Amended Complaint is replete with references about the local property taxes they pay, perceived "double taxation", and how the taxes raised and used to fund SROs here are illegal and violate "Act 388". These are just the sort of property tax-related claims that must be adjudicated under the RPA and, as such, Plaintiffs' property tax-related claims in this case must be dismissed for lack of jurisdiction.

Finally, Plaintiffs devote a substantial amount of length in their Second Amended Complaint to the concept of whether they have "standing" to bring this lawsuit. The concepts of "standing" and "jurisdiction" are, of course, different. Jurisdiction" is the legal authority for a court to hear the case, while "standing" pertains to the ability of a particular plaintiff to file a law

suit in a particular court once it is established that the court has "jurisdiction". As this Court should not have jurisdiction to hear the case under the RPA, the issue of the Plaintiffs' "standing" before this Court need not be adjudicated.

V. Plaintiff Messinger's Claims Against the Town Defendants Must Be Dismissed For Failure to State Facts Sufficient to Constitute a Cause of Action

In addition to the property tax-related claims brought by the Plaintiffs in their case, Plaintiff David Messinger also raises constitutional claims against individual local County and Town officials, specifically William E. McIntosh III ("McIntosh"), a member of Town Council.

Mr. Messinger alleges in the Second Amended Complaint that support for implementing "*cost-savings recommendations in the Tidwell Report...was squelched and impeded by intimidating and threatening actions and communications made by officials of...Summerville Town Council.*" (¶ 59, Complaint). The only allegations concerning "*intimidating and threatening actions and communications made by officials of...Summerville Town Council*" relates to McIntosh. (Entire Complaint). Messinger in the Second Amended Complaint alleges that McIntosh "*published on Facebook false and defamatory statements about Plaintiff Messinger and Michael Turner ("Turner"), two proponents of the recommendations in the Tidwell Report and opponents to the Council's, the Town's and the School Districts unlawful expenditures for SROs, for the purpose and with the effect of undermining their credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs*". (¶ 59, Complaint). Messinger specifically alleges that in October 2015, McIntosh made the following post on Facebook:

> *Mr. Messinger is just sore that the county didn't go along with his and Mike Turner's hare-brained scheme to create a taxpayer-financed private security force for washed out police officers....*

The truth is you were part of a group of unemployed and barely employed law enforcement officers and former (and with good reason former) law enforcement officers who rallied behind Mike Turner to hoo-doo District 2 into supporting the creation of private security force for our schools. It was nothing more than a full employment scheme for washed-out cops. The county saw right through it, and now you're mad at the county council chairman. You are right – I do have a sense of humor. Hopefully, your chief in Mt. Pleasant has one too...

{Messinger} spent countless hours emailing folks to support this hare-brained private security scheme for our schools, and he is spitting nails at the county for quashing it.

(¶ 59, Complaint).

Messinger also makes an additional and general allegation that McIntosh repeatedly threatened to interfere with Messinger's employment, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding SRO funding matters. (¶ 60, Complaint). Specifically, Messinger asserts that McIntosh gratuitously questioned Messinger about whether Messinger's current boss at the Mt. Pleasant Police Department would disapprove of McIntosh's statements and opposition to the "SRO funding scheme McIntosh supported." (¶ 61, Complaint). Messinger alleges that McIntosh made the statements and took the actions to help the Town, Dorchester County Sheriff and other defendants continue the current method of funding School Resource Officers and to avoid implementing the recommendations in the Tidwell Report. (¶ 60, Complaint). Plaintiffs do not identify the specific "threats" that were alleged to have been made by McIntosh to Messinger's employer, the alleged "derogatory information" McIntosh provided to Messinger's employer, and how the alleged actions of McIntosh had the "purpose and with the effect of making Messinger afraid to express his views regarding SRO funding matters". (Entire Complaint).

Messinger claims that the Facebook post by McIntosh and the general and unspecified "threats" made by McIntosh to Messinger have violated Messinger's rights under the First and Fourteenth Amendments of the United States Constitution and that a perceived cause of action exists for these federal constitutional violations under 42 U.S.C. § 1983.[1] Messinger specifically alleges that the actions of McIntosh and others have deprived him of his "rights of free association, to petition for redress of grievances and of speech and expression". (¶ 112, Complaint). Messinger also asserts that this alleged conduct by McIntosh has violated Messinger's rights 'of free association, to petition for redress of grievance and of speech and expression" provided by Article I, Section 2 of the South Carolina Constitution. (¶ 109, Complaint).

Initially, it must be observed that the only factual allegations made against anyone associated with the Town is McIntosh. Despite generalizing that support for the Tidwell cost-savings report was "*squelched and impeded by intimidating and threatening actions made by officials of... Summerville Town Council*", no specific allegations are made against any officer or employee of the Town or Town Council, and the only member of Town Council stated to have engaged in perceived actionable conduct is McIntosh. To the extent any of Messinger's claims may be construed as being against the Town or Town Council as a legal body, including any officer or employee of the Town and any member of Town Council other than McIntosh, these claims must be dismissed. *See also* Moore v. Florence School District No. 1, 314 S.C. 335, 338

[1] While the "Preliminary Statement" in the Second Amended Complaint alleges violations of the "First, Fourteenth, and Fifth Amendments to the United States Constitution" (¶ 1, Complaint), and the Plaintiffs seek a Declaratory Judgment in their "Relief Requested" which includes a request for a declaration that certain defendants have violated Plaintiffs' "First, Fifth, and Fourteenth Amendment rights" ("Relief Requested", pp.39-40, Complaint), Plaintiffs' specific causes of action in their Second Amended Complaint do not allege specific violations of the Fifth Amendment, such as violations of their privilege against self-incrimination or criminal due process rights, nor does the Second Amended Complaint assert specific facts raising a justiciable violation of the Fifth Amendment. (¶ 111 – 113, Complaint). To the extent Plaintiffs raise non-criminal due process claims under the Fifth Amendment, these are addressed herein in response to Plaintiffs' Fourteenth Amendment due process claims.

(S.C. 1994)(a local government cannot be sued under Section 1983 for an injury inflicted by its employee or agent unless the injury was "inflicted pursuant to official government policy". A local government cannot be held liable under Section 1983 under a theory of *respondent superior*).

A. Section 1983 Claim and Federal Constitutional Violations

1. Section 1983

42 U.S.C. § 1983 ("Section 1983") provides "a civil remedy in federal court for deprivation of federal rights under color of state law." Coastline Corp. v. Currituck City, 734 F.3d 175 (4th Cir. 1984). To succeed under a Section 1983 claim, plaintiffs must first identify a cognizable federal right that has been violated, and then "must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). *See also* Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977)(In order to state a claim under Section 1983, the plaintiff must affirmatively show "that the official charged acted personally in the deprivation of the plaintiff['s] rights."). The plaintiff must make specific allegations of fact that indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient. Spear v. Town of West Hartford, 771 F.Supp. 521, 527 (D. Conn. 1991), *aff'd*, 954 F.2d 63, 67 (2nd Cir. 1992).

2. First Amendment Claims

The First Amendment to the United States Constitution protects freedom of speech and expression. Where allegations are made against public officials that their statements or communications have violated First Amendment rights of a plaintiff, it must be observed that the right to speak freely is indispensable to elected officials as well as their constituents. *See* Bond

v. Floyd, 385 U.S. 116 (1966). The function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy. *Id.* at 135-36. The role elected officials play in our society "makes it all the more imperative that they be allowed to freely express themselves on matters of current public importance". Republication Party of Minn. V. White, 536 U.S. 765 (2002), *quoting* Wood v. Georgia, 370 U.S. 375, 395 (1962). The control of government expression "is no more practical and no more appealing, than control of political expression by anyone else." Block v. Messe, 793 F.2d 1303, 1314 (D.C. Cir. 1986).

Plaintiffs have alleged throughout their Second Amended Complaint that there was a great deal of public discourse concerning the decision of the School Defendants, after the issuance of the "Tidwell Report, to continue the schools' use of Deputy Sheriffs and Police Officers as SROs. McIntosh, a Town councilman, weighed into the debate, and in social media. Messinger was apparently employed by the Mt. Pleasant Police Department and was advocating for the School Defendants to begin hiring private security contractors as SROs. When the School Defendants declined to hire private security contractors, and determined to continue with their use of Deputy Sheriffs and Police Officers as SROs for their schools, McIntosh made his Facebook post. While McIntosh's language in his Facebook post may have been callous, it expressed his views – his personal opinion of the goals that Messinger and others sought to advance through "privatizing" SROs at the schools.

Finally, and notably, Messinger has made no allegations of specific conduct by McIntosh or any other of the Town Defendants, other than perceived "threats". If Messinger feared for his employment at the Mt. Pleasant Police Department, he has not alleged or otherwise articulated how McIntosh's Facebook post and other generalized statements has affected his employment or

otherwise harmed him. "[P]oliticians can be expected to take sides on virtually any issue that captures the public's attention...[i]f courts were to treat such pronouncements as threats and were to entertain First Amendment challenges to the type of political theatrics here" virtually every political interchange would be subject to a lawsuit. Int'l Ass'n of Machinists & Aero. Workers v. Haley, 832 F. Supp. 2d 612, 629 (D.S.C. 2011), *aff'd by unpublished opinion* (4th Cir. 2012). For this reason, courts draw a distinction between political rhetoric and actual threats with demonstrable conduct. *Id.* at 832 F. Supp. 2d. 629.

Here, Messinger has failed to identify an actionable First Amendment claim and his Section 1983 cause of action in this regard must be dismissed.

3. Fourteenth Amendment Claims

Messinger also asserts that McIntosh's Facebook post and comments violates Messinger's Fourteenth Amendment guarantees of due process. It is well-settled, however, that claims such as these by Messinger sounding in defamation and injury to reputation do not give rise to a justiciable due process claim under the Fourteenth (or Fifth) Amendment. *See* Siegert v. Gilley, 500 U.S. 226 (1991); Paul v. Davis, 424 U.S. 693 (1976). Messinger's Fourteenth (and Fifth) Amendment Claims under Section 1983 must therefore be dismissed.

B. State Constitutional Violations

Messinger has also alleged that McIntosh has violated Messinger's rights under Article I, Section 2 of the South Carolina Constitution, which guarantees freedom of speech. To the extent Messinger asserts this state-based claim under Section 1983, it is deficient and must be dismissed because state law claims cannot be brought under Section 1983. Quillan v. Evatt, 445 S.E.2d 639, 640 (S.C. Ct. App. 1994). Even is a state cause of action may be asserted in these

proceedings against McIntosh, legislative immunity and the South Carolina Tort Claims Act bar relief.

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et. seq. (the "TCA"), governs tort claims against South Carolina state, county and local government, is a limited waiver of sovereign immunity, and is the exclusive civil remedy available in any action against a South Carolina governmental entity or its employees. S.C. Code Ann. § 15-78-70(a); S.C. Code Ann. § 15-78-200; *See* Richland County v. Carolina Chloride, 677 S.E.2d 892 (S.C. Ct. App. 2009); Murphy v. Richland Mem'l Hosp., 455 S.E.2d 688, 689 (S.C. 1995); Wells v. City of Lynchburg, 501 S.E.2d 746, 749 (S.C. Ct. App. 1998). The provisions of the TCA establishing limitations and exemptions to the liability of the State, its political subdivisions, and employees "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f); City of Hartsville v. South Carolina Municipal Ins. & Risk Financing Fund, 677 S.E. 574 (S.C. 2009).

The provisions of the TCA provide limited liability for tort-type claims on the part of the State, its political subdivisions, and employees, while acting in the scope of official duty. S.C. Code Ann. §§ 15-78-20(b); 15-78-30(b). The TCA does not create causes of action, but removes otherwise common law bars on a limited basis. Richland County v. Carolina Chlorida, *supra*; Moore v. Florence School District No. 1, *supra*, at 314 S.C. 339 (the TCA does not create a new substantive cause of action against government entities). All other immunities applicable to a government entity, its employees, and agents, are expressly reserved under the TCA. S.C. Code Ann. § 15-78-20(b).

The TCA defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d). A municipality, such as the Town, is a "political subdivision of

the State". S.C. Code Ann. § 5-1-10; S.C. Code Ann. § 15-78-70(a). The TCA's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). Under the TCA, "Scope of official duty" or "scope of state employment" mean (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i)

For alleged individual liability under the TCA, plaintiffs must prove "that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a), (b).

The TCA retains traditional and well-rooted concepts of legislative immunity, and which is recognized by the South Carolina courts. *See e.g.*, Richardson v. McGill, 255 S.E.2d 341 (S.C. 1979); Williams v. Condon, 553 S.E.2d 496 (S.C. Ct. App. 2001). Legislative immunity applies not only to the individual members of local government (such as McIntosh) but to the Town itself. Hollyday v. Rainey, 963 F.2d 1441, 1443 (4th Cir. 1992).

Here, McIntosh, a member of Town Council, expressed his viewed about the SRO debate, and his opinions of Messinger, and Messinger's involvement in unsuccessfully advancing the failed cause. McIntosh, as a local legislator, is immune from Messinger's attacks, and Messinger's state-based constitutional claims must be dismissed.

VI. In the Alternative, Plaintiffs' Demand Applicable to Their Property Tax-Related Claims Must be Stricken.

Plaintiffs in their Second Amended Complaint seek a declaratory judgment, injunction, and request a writ of mandamus related to their property tax-related causes of action. Messinger

seeks monetary damages for his personal constitutional claims. Plaintiffs' property tax-related causes of action, to the extent not dismissed for lack of jurisdiction, are equitable in nature, and Plaintiffs' related remedies sought for violation of these claims – a declaratory judgment, injunction, and mandamus - do not give rise to a jury right for these claims. Plaintiffs' jury demand, applicable to their property tax-related causes of action, must be stricken in the alternative.

Prayer for Relief

WHEREFORE, the Town Defendants respectfully request that the Court dismiss this action for lack of subject matter jurisdiction and for failure to state facts sufficient to constitute causes of action against the Town Defendants; or, in the alternative, the Town Defendants respectfully request that Court grant the Town Defendants' protective Motion to Strike the Plaintiffs' jury demand applicable to Plaintiffs' property tax-related claims. Finally, the Town Defendants respectfully request that the Court award them such other and further relief for which they may show themselves entitled.

McNair Law Firm, P.A.

By: _____

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Attorneys for Defendants
Town of Summerville,
Summerville Town Council, and
William E. McIntosh, III in official capacity

January 19, 2017

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Edward D. Sloan, Jr., South Carolina Public Interest Foundation, and NOLAS Trading Company, Inc. Petitioners, v. Greenville County Assessor, Respondent.

Case Information:

Docket/Court: 08-ALJ-17-0243-CC; 08-ALJ-17-0244-CC; 08-ALJ-17-0245-CC; 08-ALJ-17-0246-CC; 08-ALJ-17-0247-CC; 08-ALJ-17-0248-CC, South Carolina Dept. of Rev. Commission Decisions

Date Issued: 05/18/2009

Tax Type(s): Property

OPINION

ORDER OF DISMISSAL

STATEMENT OF THE CASE

In these consolidated cases the Petitioners Edward D. Sloan, Jr., South Carolina Public Interest Foundation, and NOLAS Trading Company, Inc. (collectively the "Petitioners") seek a refund of real property taxes paid in 2006 and 2007. The Petitioners claim that the millage rates assessed for those years were excessive. The Respondent Greenville County Assessor (the "Assessor") has made a Motion to Dismiss these actions based upon the contention that Petitioners have not exhausted their administrative remedies as required by the South Carolina Revenue Procedures Act (the "RPA" or the "Act"), S.C. Code Ann. § 12-60-10, et. seq. For the reasons that follow, the Court agrees with the Assessor's contention and therefore dismisses the above-captioned cases without prejudice.

FINDINGS OF FACT

On March 1 and 19, 2008, the Petitioners sent correspondence to the Assessor protesting the 2006 and 2007 taxes on its real property. On April 8, 2008, the Petitioners wrote the Board of Assessment Appeals c/o of the Greenville County Assessor and stated that they had "received no response and assumed that is equivalent to denial by the Assessor." On April 21, 2008, the Greenville County Assessor, Auditor and Tax Collector sent a memorandum to the Petitioners stating as follows:

> The Greenville County Assessor, Auditor and Tax Collector met on April 18, 2008 to consider your request for tax refund.... While the Committee believes it has appropriate jurisdiction to consider this request for a refund, they do not have the authority to determine the issue of excess millage levied by a political subdivision.

CONCLUSION:

> Request for refund is denied.

TAX PAYER MAY CONTINUE APPEAL

> SC Code 12-60-2560 (B) provides within thirty days after the decision is mailed to the taxpayer on the claim for refund, a property taxpayer may appeal the decision to the County Board of Assessment Appeals.

Two days later (April 23), the Petitioners sent a letter to the Board of Assessment Appeals c/o the Greenville County Assessor stating: "Supplementing our April 8 to you about refund of overpaid 2006 property taxes, enclosed is a copy of the Assessor's April 21 denial of that claim." The Petitioners sent an identical letter that same date concerning 2007 taxes.

Twenty days later, and before the Board of Assessment Appeals issued any ruling, the Petitioners filed a Notice of Request for Contested Hearing with this Court on May 13, 2008. As of the date of this Order, the Board of Assessment Appeals has not ruled upon the Petitioners' appeal.

CONCLUSIONS OF LAW

A. The RPA Procedures for Protesting Real Property Taxes

When a taxpayer alleges illegal or wrongful collection of real property taxes, the statutory remedy is for the taxpayer to seek a refund under the procedures described in S.C. Code Ann. § 12-60-2560. [1] In summary those procedures are as follows:

1. Taxpayer files a refund claim with the **County** Assessor, id. § 12-602560(A);
2. The **County** Assessor, **County** Treasurer and the **County** Auditor render a decision on the claim, id.;
3. The Taxpayer has thirty days to appeal that decision to the **County** Board of Assessment Appeals, id. § 12-60-2560(B); and
4. The **County** Board of Assessment Appeals renders a decision, id. § 12-60 2560(C).

It is only after all of these steps are taken that a claim is ripe to be appealed to this Court. See S.C. Code Ann. § 12-60-2560(C) ("Within thirty days after the [County Board of Assessment Appeals'] decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division."). If a petitioner does not follow these steps, the RPA requires this Court to dismiss the action without prejudice. S.C. Code Ann. § 12-60-2560(C) ("If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice.").

B. The Relevant Case Law

The South Carolina Supreme Court has held in two opinions that under the plain language of the RPA, the administrative remedies and procedures provided by that Act are the exclusive remedy for any claim of "illegal or wrongful collection of taxes." See Brackenbrook N. Charleston, LP v. Charleston **County**, 360 S.C. 390, 398-99, 602 S.E.2d 39, 44 (2004) and B&A Develop., Inc. v. **Georgetown County**, 372 S.C. 261, 265, 641 S.E.2d 888, 890 (2007). As discussed below, those cases also establish that a court must dismiss claims for refunds

without prejudice where taxpayers have not exhausted their administrative remedies. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 ; B&A, 372 S.C. at 266-67, 641 S.E.2d at 891-92 .

In Brackenbrook the taxpayers filed an action against Charleston County seeking a refund of their real property taxes. The taxpayers in that case, like the Petitioners in these cases, alleged that they were subject to excessive millage. Brackenbrook, 360 S.C. at 399 , 602 S.E.2d at 44 . The taxpayers in Brackenbrook filed their action without first exhausting their administrative remedies under the RPA. The lower court held that taxpayers were not required to exhaust their administrative remedies, but the Supreme Court reversed and remanded for the case to be dismissed without prejudice to the petitioners' rights to pursue exhaustion of those remedies. The Court noted that the purpose of the RPA is "to provide the people of this State with a straight forward procedure to determine any disputed revenue liability." Brackenbrook, 360 S.C. at 395, 602 S.E.2d at 42 (quoting S.C. Code Ann. § 12-60-20). See also id. at 398, 602 S.E.2d at 44 ("While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests."). After then recounting the refund procedures established by the Act, and the fact that the taxpayers in Brackenbrook based their claim to a refund on the millage rate, the Court held that the taxpayers' claim for a refund was subject to the RPA. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 . Accordingly, because the taxpayers failed to exhaust their administrative remedies under the RPA, the Supreme Court remanded the case to the trial court to be dismissed without prejudice. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 .

In B&A the taxpayers brought an action seeking a refund of real and personal property taxes without first exhausting their administrative remedies under the RPA. B&A, 372 S.C. at 263, 641 S.E.2d at 889-90 . Just as in Brackenbrook, the taxpayers in B&A "alleged a case of excessive millage." B&A, 372 S.C. at 264, 641 S.E.2d at 890 . This time, having had the guidance of Brackenbrook, the lower courts dismissed the taxpayers' claims for failure to exhaust the RPA processes. B&A, 372 S.C. at 264, 641 S.E.2d at 890 . In the Supreme Court, the taxpayers made several arguments as to why Brackenbrook was either wrong or should not apply to their case, but to no avail. The Court reiterated its holding from Brackenbrook and concluded that:

This case is not distinguishable from Brackenbrook, and thus, the Court of Appeals properly affirmed the circuit court's dismissal of the action pursuant to Section 12-60-3390. [2] Petitioners allege that **Georgetown County** collected both real and personal property taxes based upon an excessive millage rate thereby resulting of an overcollection of taxes allocated to the school district. The RPA provides an administrative remedy in the form of a

refund for both real and personal property taxes. Thus, pursuant to Brackenbrook and the plain language of the RPA, petitioners must exhaust their administrative remedies before proceeding to circuit court.

B&A, 372 S.C. at 266-67, 641 S.E.2d at 891-92 (citations omitted). [3]

Although the requirement to exhaust administrative remedies clearly applies to refund claims based upon arguments of excessive millage, see, e.g., B&A, 372 S.C. at 266, 641 S.E.2d at 891 , Petitioners nevertheless argue that they should be relieved of this obligation because it would be futile to comply with the RPA's required procedures. Specifically, the Petitioners argue that the County Board of Assessment Appeals has no authority to address allegedly excessive millage, and thus requiring exhaustion of the RPA procedures provides no useful purpose. This very argument, however, was raised in Brackenbrook, but it failed. Even the dissent in that case made the same argument about alleged futility, but to no avail: "The county assessor has no authority regarding millage rates and relief under § 12-60-2560 is inappropriate." Brackenbrook, 360 S.C. at 402, 602 S.E.2d at 46 (Moore, J., dissenting) . Notwithstanding the "futility" concern expressed by the dissent, the majority of the Supreme Court required compliance with the procedures set out in the RPA. Thus, this futility argument in the context of the RPA is foreclosed and is not a legally viable argument.

C. Petitioners' Failure to Follow the RPA Procedures, Thus Necessitating Dismissal

Petitioners also argue they exhausted all administrative remedies. The Court disagrees. As the Appendix attached to this order demonstrates, the Petitioners did not follow the steps required to exhaust administrative remedies. Once the Petitioners sent their April 23, 2008 letters to the Board of Assessment Appeals, the next step was to await a decision from that Board, and then pursue review of that decision with this Court. The Petitioners, however, did not wait on that decision. Instead, only twenty days after sending the April 23 letters, the Petitioners filed Notices of Request for Contested Case on May 13, 2008. The Court takes the time to note here that there is no time limit set forth in the RPA for the Board of Assessment Appeals to rule on a protest. The Court further notes that, absent any direction in the Statute, it is not reasonable to require a ruling from this body a mere twenty days after receiving a protest appeal. Moreover, an individual taxpayer does not have the authority to unilaterally impose time restrictions and deadlines under the RPA.

It is thus clear that Petitioners have not exhausted the administrative process and remedies because they did not wait for a ruling from the Board of Assessment Appeals. The RPA very

clearly provides that a decision from the County Board of Assessment Appeals is a prerequisite to initiating an appeal in this Court. See S.C. Code Ann. § 12-60-2560(C) ("Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division.") (emphasis added). See also Brackenbrook, 360 S.C. at 397, 602 S.E.2d at 43 ("After the board's written disposition of an appeal, the aggrieved party (whether taxpayer or assessor) may appeal to the [ALJ] Division."). The RPA is equally clear that, where the administrative processes established by the Act have not been followed, the Court must dismiss any cases prematurely filed in this Court: "If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice." S.C. Code Ann . § 12-60-2560(C) (emphasis added).

Thus, under the plain language of the RPA and the Supreme Court opinions addressing this language, the Petitioners' failure to adhere to the procedures set out in the RPA mandates that this Court dismiss these cases without prejudice.

ORDER

IT IS HEREBY OIRDERED that the above-captioned cases be dismissed without prejudice.

AND IT IS SO ORDERED.

_____

John D. McLeod, Judge

S.C. Administrative Law Court

May 18, 2009

Columbia, SC

[1] S.C. Code Ann. § 12-60-2560 provides:

> (A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of real property taxes assessed by the **county** assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the **county** assessor who

made the property tax assessment for the property for which the tax refund is sought. The assessor, upon receipt of a claim for refund, shall immediately notify the **county** treasurer and the **county** auditor for the **county** from which the refund is sought. The majority of these three officials shall determine the taxpayer's refund, if any, and shall notify the taxpayer in writing of their decision.

(B) Within thirty days after the decision is mailed to the taxpayer on the claim for refund, a property taxpayer may appeal the decision to the county board of assessment appeals.

(C) Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division.... If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice.

[2] S.C. Code Ann. § 12-60-3390 mandates dismissals in cases in which cases are prematurely filed in the circuit court prior to exhaustion of administrative remedies under the RPA. The RPA contains an identical provision requiring dismissal where a taxpayer prematurely initiates a contested case in the ALJ Division prior to exhaustion of the preceding processes. See id. § 12-60-2560(C) (contested cases in the ALC challenging real property taxes must be dismissed without prejudice if RPA procedures have not been exhausted).

[3] Brackenbrook and B&A are consistent with numerous rulings from this Court dismissing tax refund cases for failure to exhaust administrative remedies. Godfrey v. Lexington **County** Assessor, Docket No. 09-ALJ-17-0055-CC (March 24, 2009) ; Harward v. Newberry **County** Assessor, Docket No. 08-ALJ-170262-CC (November 13, 2008) ; Dinwiddie v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0103CC (September 11, 2006) ; Harper v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0039-CC (September 11, 2006) ; Ilderton v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0031-CC (September 11, 2006) ; Parris v. Beaufort **County** Assessor, Docket No. 05-ALJ-17-00302-CC (August 22, 2005) ; B.V. II v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0368-CC (July 27, 2005) ; L. Williams v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0276-CC (March 9, 2005) ; J. Williams v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0275-CC (March 9, 2005) ; Kelley v. Lexington **County** Assessor, Docket No. 01-ALJ-17-0578-CC (January 18, 2002) ; Middleton v. Horry **County** Assessor, Docket No. 00-ALJ-17-0453-CC (September 14, 2000) ;

Professional Drive Associates, LLC v. Horry **County** Assessor, Docket No. 00-ALJ-17-0482-CC (September 12, 2000) ; Caldwell v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-17-0386-CC (July 25, 2000) ; Brookshire v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-17-0365-CC (July 25, 2000) ; Woodgeard v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-170364-CC (July 25, 2000) ; Stadium Club Partners, LLP v. Richland **County** Tax Assessor, Docket No. 00ALJ-17-0227-CC (July 5, 2000) .

END OF DOCUMENT -

CERTIFICATE OF SERVICE

The undersigned employee of McNair Law Firm, P.A., attorneys for the Defendants Town of Summerville, Summerville Town Council, and William E. McIntosh does hereby certify that service of their Motion to Dismiss was made upon all counsel of record by placing the same in the US Mail, first class postage prepaid on January 19, 2017, addressed as follows:

W. Andrew Gowder, Jr., Esq. Austen & Gowder, LLC 1629 Meeting Street, Suite A Charleston, SC 29405 *Attorneys for Plaintiffs*	Anthony E. Rebollo, Esq. Richardson, Plowden, Carpenter & Robinson, PA 1900 Barnwell St. PO Drawer 7788 Columbia, SC 29202 *Attorneys for Dorchester County Defendants*
Michael T. Rose, Esq. Mike Rose Law Firm, PC 409 Central Ave. Summerville, SC 29483 *Attorneys for Plaintiffs*	David L. Morrison, Esq. Morrison Law Firm, LLC 7453 Irmo Dr., Ste B. Columbia, SC 29212 *Attorneys for Dorchester School District Defendants, Dorchester Co. Career and Technology Center Defendants, and J. Pye*

Jennifer L. Rath, Legal Secretary

1726.00 RB

MB ✓

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) First JUDICIAL CIRCUIT
COUNTY OF Dorchester) CASE NO.: 2016 -CP-18-838

Dorchester County Taxpayers Association et al.)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
Dorchester County et. al.)
Defendant.)

2017 JAN 23 PM 1:09
CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs' Attorney:	Attorney for Defendants Town of Summerville, Summerville Town Council, and William E. McIntosh:
W. Andrew Gowder Jr., Esq., Bar No. _____ Address: 1629 Meeting St, Ste. A, Charleston, SC 29405 Phone: 843-727-2229Fax (843) 727-0060 E-mail: andy@austengowder.com Other: _____	Erik P. Doerring, Esq., Bar No. 1715 Address: McNair Law Firm, PO Box 11390, Columbia, SC 29211 Phone: 803-799-9800 Fax803-753-3278 E-mail: edoerring@mcnair.netOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss/Motion to Strike
Estimated Time Needed: 30 Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — January 19, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-18-838

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all pothers similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger, and South Carolina Public Interest Foundation;

Plaintiffs,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, individually and in his official capacity as a member of Summerville Town Council; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Captain Tony Phinney, individually and in his official capacity as an employee of the Dorchester County Sheriff; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Evan Guthrie, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendants.

Motion to Dismiss the Plaintiffs' Second Amended Complaint, Filed By Defendants Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and the Dorchester County Sheriff, Luther C. Knight in his official capacity

And

Subject to Their Motion to Dismiss, An Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure and the other authorities cited herein, Defendants Dorchester County (the "County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of the County Council; and Dorchester County Sheriff, Luther C. Knight (the "Sheriff"), in his official capacity,[1] respectfully file this Motion to Dismiss the Plaintiffs' Second Amended Complaint and, in the alternative, a Protective Motion to Strike the Plaintiffs' Jury Demand.

As discussed below, the claims asserted against the County Defendants fall into two categories: (1) claims by all of the Plaintiffs concerning property taxes ("Property-Tax-Based Claims") and (2) claims, by Plaintiff David Messinger only, alleging that he is entitled to money damages due to violations of the state and/or federal constitution and 42 U.S.C. § 1983 ("Constitutional Claims"). The County Defendants' Motion to Dismiss the Plaintiffs' Property-Tax-Based Claims is made under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure for lack of subject matter jurisdiction. The County Defendants' Motion to dismiss the Plaintiffs Constitutional claims is made under Rule 12(b)(6) for failure to state sufficient facts to constitute causes of action. In support thereof, the County Defendants would show the Court the following.

I. Introduction

A. Relevant Procedural History

The original Complaint in this case was filed on May 2, 2016, but was never served. A first Amended Complaint was filed on May 6, 2016. Among other things, the first Amended Complaint alleged that the County and the Town of Summerville (the "Town") "have been and will continue taxing 'owner-occupied residential property' 'for school operating purposes' to finance police protection" with School Resource Officers ("SROs") in violation of S.C. Code Ann. § 12-37-220(B)(47)(referred to herein as "Act 388"). First Amended Complaint at ¶ 78.

In response to the first Amended Complaint, the County Defendants timely filed their first Motion to Dismiss on August 19, 2016. Among other things, the first Motion to Dismiss noted that, under the Revenue Procedures Act ("RPA"), the South Carolina Administrative Law Court has exclusive jurisdiction to decide property tax claims and that, as a result, the Circuit Court did not have jurisdiction to decide any such claims asserted by the Plaintiffs. Other

[1] In this Motion, the movants are referred to collectively as the "County Defendants."

Defendants, including the Town, filed Motions to Dismiss asserting the same, or substantially similar, jurisdictional arguments.

The County Defendants' first Motion to Dismiss was scheduled to be heard on November 7, 2016. On November 4, 2016, however, counsel for all of the parties conferred and agreed, among other things, that (1) the Plaintiffs would be permitted to amend their first Amended Complaint, without prejudice of all of the Defendants' right to refile additional Motions to Dismiss in the future, and (2) in any subsequently amended Complaint, the Plaintiffs would not assert any claim or cause of action based on the refund, assessment and/or collection of South Carolina taxes. These agreements were reduced to writing and included in a Consent Order (the "Consent Order") which has since been filed with the Court.

The Plaintiffs' Second Amended Complaint, which is now the live pleading, was filed on December 12, 2016, after the agreement referenced above was submitted to the Court. Overall, the Second Amended Complaint makes the same Property-Tax-Based Claims that were made in the first Amended Complaint, but it uses slightly different wording in that it alleges that one or more of the County Defendants made or authorized improper "expenditures" of tax revenues generated by "double taxation." For example, the Plaintiffs now allege that the County and the Town "have been and will continue to spend taxes on 'owner-occupied residential property' 'for school operating purposes' to finance police protection" with SROs in violation of Act 388. Second Amended Complaint at ¶ 80)(emphasis added). This is exactly the same allegation from Paragraph 78 of the first Amended Complaint (quoted above at p. 2), except that the phrase used in the first Amended Complaint, "have been and will continue taxing," has now been changed to "have been and will continue to spend taxes."

This slight change in wording was obviously employed in an effort to comply with the Consent Order and, at the same time, to avoid the arguments regarding lack of jurisdiction made in the County Defendants' first Motion to Dismiss. However, the wording changes embodied in the Second Amended Complaint do not eliminate the jurisdictional infirmities previously raised by the County Defendants in their first Motion to Dismiss, because the questions now being raised about the propriety of tax expenditures are premised on, and inextricably linked to, allegations concerning revenues generated by allegedly improper property taxation.

While the Plaintiffs now asserts (at ¶ 2) that "[t]his action is not brought to challenge the collection of . . . any tax," even a cursory review of the allegations in the Second Amended

Complaint confirms that the Property-Tax-Based Claims still involve a dispute concerning the allegedly wrongful assessment and collection of property taxes. See, e.g., Second Amended Complaint at ¶ 89 (alleging "illegal double taxation" and "illegal violations of Act 388"); ¶ 95 (citing an Attorney General's Opinion for the principle that "it is illegal for government entities . . . to double tax the same property...."); and the Plaintiffs' prayer for relief at p. 40 (requesting that the County Defendants be "enjoined, restrained and prohibited" from "[e]xpending funds in a manner that constitutes illegal double taxation"). It is clear, therefore, that the Plaintiffs equate the allegedly improper spending of tax revenues with allegedly improper taxation.

In the final analysis, there can be no doubt that the Property-Tax-Based Claims asserted against the County Defendants still depend upon the interpretation and meaning of a property tax statute, Act 388, which statute provides that owner-occupied residential property is exempt from all property taxes imposed "for school operating purposes," other than millage imposed for the repayment of general obligation debt. However, the Plaintiffs' position in this case—that a violation of Act 388 has occurred because property taxes revenues, allegedly generated by "double taxation," were expended to fund SROs—is incorrect. Based on the contents of the Second Amended Complaint alone, it is clear that Plaintiffs' Property-Tax-Based Claims are deficient as a matter of law for several alternative, independent reasons. See pp. 6-19 herein.

The remaining claims in the case are the Constitutional Claims, which are asserted by Plaintiff David Messinger only. As discussed later in this Motion (at pp. 21-23), Messinger's Constitutional Claims are premised on alleged statements by public officials which are not actionable. In addition, the Constitutional Claims are deficient for alternative reasons, such as (a) there is no express or implied private cause of action for money damages embodied in Article I, § 2, of the South Carolina Constitution and (b) allegations arising out of allegedly false and defamatory statements, and any resulting injury to reputation, will not support a claim that violation of a federal constitutionally protected right has occurred. See pp. 24-28 herein.

B. The Plaintiffs and the Claims They Assert

There are nine Plaintiffs in this case. Their claims are premised on two core allegations, which are repeated numerous times throughout the forty-two page Complaint: (a) the County's expenditures of tax revenues to fund the payments to Deputy Sheriffs serving as SROs were for "school operating purposes," and (b) the County Defendants instituted an alleged "financing scheme" that violated Act 388 and resulted in improper "double taxation." See, e.g., Second

Amended Complaint at ¶ 80 (alleging that "the police protection and other services SROs provide at the School Districts are a 'school operating purpose' within the meaning of Act 388") and ¶ 89 (referring to alleged "financing scheme" and claiming that it was "unnecessary, illegal double taxation in violation of the South Carolina Constitution and in violation of Act 388").

Six of the nine Plaintiffs are individuals and each of them asserts that he has "standing as a Plaintiff in this action as a taxpayer and due to the public importance of the issues in this lawsuit." See Second Amended Complaint at ¶¶ 6-11. In addition, each of the six individual Plaintiffs alleges he "has paid and will continue to pay taxes, including property taxes on his owner-occupied residence," to fund the County and/or Town, "and brings this action individually on his behalf and on behalf of all others similarly situated." Id.

The remaining Plaintiffs are the Dorchester County Taxpayers Association ("DCTA"), the Weatherstone Property Owners Association ("Weatherstone") and the South Carolina Public Interest Foundation ("SCPIF"). Weatherstone, DCTA and SCPIF do not allege that they pay property taxes to the County or any other political subdivision of the State of South Carolina. Id. at ¶¶ 5, 12 and 13. While the Second Amended Complaint mentions that it has "members," it never identifies them. Id. at ¶ 12. Nor does the Second Amended Complaint ever specifically allege that DCTA and SCPIF had any direct contact with the County, or that they owned property in the County. Id. at ¶¶ 12-13. In any event, all three of these organizations allege that they suing as a representative of themselves and their members. See id. at ¶¶ 5, 12 and 13.

All of the Plaintiffs allege that they have been harmed, or that they will be harmed, as a result of allegedly improper actions taken by the County Defendants with respect to property taxation. In an introductory section of the Second Amended Complaint called "Statutory and Regulatory Framework," for example, the Plaintiffs describe what they characterize as "SRO Funding – Act 388 And Double Taxation Violations." Id. at ¶ 48 et seq.

Part IV of the Plaintiffs' Second Amended Complaint, entitled "Factual Allegations," similarly addresses the wrongful expenditure of the County's property tax revenues, including the alleged "Double Taxation By County Or Town, And School Districts" and other perceived improprieties concerning property taxation and the expenditure of such taxes. Id. at ¶ 82 et seq.

In Part V of the Second Amended Complaint, the Plaintiffs assert five claims. Only four of those claims are directed at one or more of the County Defendants and, of those four, the first

and second causes of action are Property-Tax-Based Claims, while the fourth and fifth causes of action are Constitutional Claims:

> First Cause of Action: "Violations of Act 388," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." Id. at ¶ 101.
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> Second Cause of Action: "Illegal Double Expenditures," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." Id. at ¶ 104.
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> Third Cause of Action: This cause of action, which is not directed against the County Defendants, alleges "[t]he failure and refusal of [Dorchester School District Two ("DD2")] to comply with Act No. 98 of 2009 is unlawful." Id. at ¶ 106.
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> Fourth Cause of Action: "Violations of Freedom of Expression, Association and Petition to Redress Grievances Rights Under Article I, Section 2 of the South Carolina Constitution," alleging that Plaintiff David Messinger's constitutional rights were deprived by Defendants William E. McIntosh, the Town of Summerville and the following County Defendants: Chinnis, the County and the Sheriff. Id. at ¶ 109.
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> Fifth Cause of Action: "Violations of First and Fourteenth Amendment Rights Under the United States Constitution and 42 U.S.C. § 1983," alleging that Plaintiff David Messinger's constitutional rights were deprived by Defendants William E. McIntosh, the Town of Summerville and the following County Defendants: Chinnis, the County and the Sheriff. Id. at ¶ 112.

II. The Plaintiffs' Property-Tax-Based Claims

A. The Plaintiffs' Property-Tax-Based Claims Must Be Dismissed Due to Lack of Subject Matter Jurisdiction

1. **The South Carolina Revenue Procedures Act Provides the Exclusive Remedies for the Plaintiffs' Property Tax based Claims.** South Carolina's Constitution specifies that "[t]he General Assembly may direct, by law, in what manner claims against the State may be established and adjusted." S.C. Const. Articles X, at § 10, and XVII, at §2. For tax matters, the General Assembly exercised that constitutional power when it enacted the RPA: "It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine . . . **a dispute concerning property taxes**." S.C. Code Ann. § 12-60-20 (emphasis added). Moreover, the General Assembly made it clear that "[t]he South Carolina Revenue

Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent." Id.

To achieve those ends, the RPA provides specific remedies for contesting any tax alleged to be illegal or wrongfully collected. If a taxpayer has a dispute concerning real property taxes assessed or collected by county or local government, the RPA provides the resident taxpayer with the remedy of seeking a refund of those property taxes with the applicable county or local government, including judicial review by the Administrative Law Court, provided the following prerequisites are satisfied: (1) the taxpayer files a refund claim with the County Assessor; (2) the County Assessor, County Treasurer and the County Auditor render a decision on the refund claim; (3) the taxpayer appeals the decision to the County Board of Assessment Appeals within thirty days; and (4) after appeal, the County Board of Assessment Appeals renders a decision on the taxpayer's refund claim. S.C. Code Ann. § 12-60-2560(A)-(C). After those steps are taken, and if the refund claim is denied by the County Board of Assessment Appeals, the taxpayer may then seek judicial review through the Administrative Law Court. See S.C. Code Ann. § 12-60-2560(C).[2]

The remedies described above are exclusive. In that regard, Section 12-60-80(A) of the RPA specifically states the following: "Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." The exception set forth in subsection (B), referred to herein as "the RPA Exception," is for "an action for a declaratory judgment where the sole issue is whether a statute is constitutional." However, the terms of RPA Exception provide that it "does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons." S.C. Code Ann. § 12-60-80(B)(emphasis added).

Here, the Second Amended Complaint confirms that this case involves a dispute concerning property taxes. See Part I of this Motion. Consequently, the analysis of jurisdiction in this case begins with the RPA. See S.C. Code Ann. § 12-60-20.

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[2]If a taxpayer seeking a refund of property taxes does not follow these required statutory steps, the RPA requires the Administrative Law Court to dismiss the action without prejudice. S.C. Code Ann. § 12-60-2560(C). Edward D. Sloan, Jr. South Carolina Public Interest Foundation, et. al. v. Greenville County Assessor, ALC Case Nos. 08-ALJ-17-0243, et al., 2009 WL 1785385.

The Second Amended Complaint also confirms that the RPA Exception does not apply here for several reasons, all of which mean that (a) the RPA controls, (b) there are no remedies other than those set forth in the RPA itself and (c) jurisdiction to decide the claims asserted by the Plaintiffs rests exclusively in the Administrative Law Court.

2. The RPA Exception Is Inapplicable. The RPA Exception is for an action where the sole issue is whether a statute is constitutional. Here, however, the Plaintiffs have not made any such claim. To the contrary, the Plaintiffs contend that Act 388 and other statutes cited in their Complaint are valid and constitutionally permissible. As a result, the RPA Exception is inapplicable for that reason alone.

The Plaintiffs, however, take issue with certain "unlawful ordinances, resolutions, motions and contracts." Complaint at ¶ 2. But ordinances, resolutions, motions and contracts are not the same as statutes and, since the RPA Exception is for an action involving the constitutionality of a statute, the RPA Exception is inapplicable for that reason as well.

Yet, even if one were to assume, arguendo, that a complaint about "ordinances, resolutions, motions and contracts" is the functional equivalent of a complaint about the constitutionality of a statue (which it is not), constitutionality would still have to be the "sole issue" in the case for the RPA Exception to apply. S.C. Code Ann. § 12-60-80(B). Here, however, the Plaintiffs' Second Amended Complaint asserts a mix of claims and a variety of requests for relief. See, e.g., Second Amended Complaint at ¶ 1 (describing the case as "a civil action for declaratory, mandamus, injunctive and/or monetary relief"). The Plaintiffs' Complaint thus confirms that there are multiple issues — rather than a "sole issue" — to be determined in this case. Therefore, the RPA Exception does not apply for that reason as well.

Finally, the RPA Exception is inapplicable in any event because, by its express terms, it "does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons." S.C. Code Ann. § 12-60-80(B). (Emphasis added.) Here, the Plaintiffs describe themselves in the Second Amended Complaint as precisely such a limited class: "the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public." See Second Amended Complaint at ¶ 15 (emphasis added).

Under these circumstances, the RPA Exception set forth in S.C. Code Ann. § 12-60-80(B) is inapplicable for the several alternative, independent reasons set forth above.

B. The RPA Requires Dismissal Because Exclusive Jurisdiction is With the ALC

As noted above, the Property-Tax-Based Claims asserted against the County Defendants involve property tax disputes and "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes." S.C. Code Ann. § 12-60-80(A). The RPA also provides that the jurisdiction to decide such tax disputes is vested exclusively in the Administrative Law Court: "[i]f a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." S.C. Code Ann. § 12-60-3390.

The claims raised by the Plaintiffs in this case are clearly covered by the RPA because (a) they involve the allegedly illegal or wrongful collection and/or expenditure of property taxes and (b) the RPA Exception is inapplicable. This is confirmed in two important South Carolina Supreme Court decisions, which held that taxpayers may not challenge local property taxes through lawsuits filed in the circuit court, since that would circumvent the requirements and prohibitions of the RPA.

In Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d 39 (S.C. 2004), a group of taxpayers filed suit in circuit court, seeking a writ of mandamus, and declaratory and injunctive relief, concerning perceived higher millage rates applicable to non-owner occupied residences. In B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007), aff'g as modified 605 S.E.2d 551 (S.C. Ct. App. 2004), a group of taxpayers sued the county, county council, school district, and individual county officers in circuit court concerning the assessment of county property taxes and the funding of local schools. In both decisions, the South Carolina Supreme Court held that the RPA refund claim procedure was the taxpayer's exclusive remedy, and the circuit court actions were dismissed.

As with the taxpayers in Brackenbrook and B&A Development, the Plaintiffs here seek to challenge their local property taxes, and how those property taxes are used to fund school operating expenses, in particular, the payment for services of SROs in the county high schools and the technical center. The Plaintiffs have improperly filed suit in this Court, which lacks

jurisdiction to hear their property Property-Tax-Based Claims. Therefore, all such claims in this case must be dismissed, as required by S.C. Code Ann. § 12-60-3390.[3]

III. The Plaintiffs' Property-Tax-Based Claims for Equitable Relief Are Also Deficient Because They Have a Remedy at Law for Their Property-Tax-Based Claims

The Plaintiffs attempt to invoke this Court's equitable powers, conferred by Article V, § 7, of the South Carolina Constitution, by repeatedly requested injunctive relief, beginning with the very first introductory paragraph of their Second Amended Complaint. No action for injunctive relief is permitted, however, if the plaintiffs have an adequate remedy at law.

While the Second Amended Complaint now alleges (at ¶ 20) that the Plaintiffs have suffered "irreparable harm for which there is no adequate remedy at law," this particular assertion is inadequate and incorrect, for the reasons stated by the South Carolina Supreme Court in Riverwoods, LLC, v. Charleston Cnty., 563 S.E.2d 651, 657 (S.C. 2002). There, the Court denied requests for injunctive relief on the grounds that an adequate remedy at law existed in the Administrative Law Court:

> Taxpayers argue that every property owner in Charleston County paying ad valorem taxes is affected. They contend that, under these circumstances, paying taxes under protest is an unfair and impractical remedy and therefore an inadequate remedy.
>
> Taxpayers are incorrect. While it may be true that by invalidating the Ordinance all property owners in Charleston County will be affected in future tax years, the instant case involves only four properties. **Clearly, these Taxpayers have an adequate remedy provided under statute by paying their taxes under protest.... Thus, the trial court did not err in denying injunctive relief.**

(Emphasis added.)

Under these circumstances, the Plaintiffs have an adequate remedy at law under the RPA and, therefore, their claims for injunctive relief are deficient and must be dismissed.

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[3]For the sake of completeness, the County defendants note that Plaintiffs devote a substantial amount of length in their Second Amended Complaint to the concept of whether they have "standing" to bring this lawsuit. The concepts of "standing" and "jurisdiction" are, of course, different. Jurisdiction" is the legal authority for a court to hear the case, while "standing" pertains to the ability of a particular plaintiff to file a law suit in a particular court once it is established that the court has "jurisdiction." As this Court should not have jurisdiction to hear the case under the RPA, the issue of the Plaintiffs' "standing" before this Court need not be adjudicated.

IV. In Any Event, Plaintiffs' Property-Tax-Based Claims for Declaratory Judgment Are Insupportable Because They Have Misinterpreted the Scope and Effect of Act 388

A. Summary of the County Defendants' Position

As noted in the following pages of this Motion, the Plaintiffs have ignored the Supreme Court's analysis of the term "school operating purpose," which analysis belies the positions they advance in their Second Amended Complaint. The Plaintiffs' arguments are also misplaced because, for their positions to be correct, that would necessarily mean that the "school operating purpose" exemption in Act 388 effectively amended or partially repealed the broad, liberally-construed powers that the General Assembly conferred on the County and the Sheriff in other statutes that predate Act 388. Contrary to the Plaintiffs' claims, those powers and the statutes that authorize them (discussed below) were not curtailed or limited by the passage of Act 388.

The Plaintiffs, in other words, are making a "tail wags dog" argument. That argument is not only incorrect from a legal standpoint, it is also unwise and contrary to public policy. The Plaintiffs' apparently believe that the unelected authors of the "Tidwell Report" are better equipped than the individuals elected by Dorchester County voters to make decisions about police protection at schools. But no matter how well intentioned that apparent belief may be, there is simply no basis for wresting such decisionmaking authority away from the County and the Sheriff on the basis of a "creative" interpretation of a tax exemption that never once mentions or addresses those police powers in any way, shape or form.

Finally, there plainly was no "double tax" here because the taxes at issue were imposed by separate and distinct political subdivisions (see p. 19 herein) and the Plaintiffs' reliance on a November 24, 2015 opinion issued by the Attorney General's office, as to that issue and others, is misplaced. See 2015 WL 8773705. Respectfully, the legal analysis in that opinion, which does not constitute binding precedent in any event, was incorrect.[4]

B. The Supreme Court's Analysis of "School Operating Purpose" Contradicts the Plaintiffs' Interpretation of that Term

In Berkeley Cnty. Sch. Dist. v. S.C. Dep't of Revenue, 679 S.E.2d 913 (S.C. 2009), the South Carolina Supreme Court examined the meaning of the undefined term "school operating

[4] "While an attorney general opinion may be persuasive, it is not binding precedent." Branch v. City of Myrtle Beach, 505 S.E.2d 925, 927 (S.C. Ct. App. 1998), rev'd on other grounds, 532 S.E.2d 289 (2000).

purpose" at issue here. It did so in connection with a request by several school districts to be reimbursed from the Homestead Exemption Fund for expenses incurred under lease-purchase and installment-purchase agreement obligations for capital improvements (i.e., school buildings and other improved real property used by the schools). Id.

As explained by the Court, by enacting Act 388 in 2006, the General Assembly increased the amount of the tax exemption for owner-occupied residential property to one hundred percent of the fair market value of the property and provided the property was exempt from all property taxes imposed for school operating purposes, other than millage imposed for the repayment of general obligation debt. Id. at 916. In order to reimburse school districts for the tax revenue lost as a result of that exemption, an additional one percent sales tax was imposed, the proceeds from which would be credited to and deposited in the Homestead Exemption Fund. Id. A three-tier reimbursement mechanism was put in place to reimburse school districts out of the Homestead Exemption Fund to replace taxes lost as a result of the property tax exemption. Id. at 924.

The question before the Court was whether the school districts' ability to fund the lease-purchase and installment-purchase obligations with property taxes on owner-occupied residences was "lost" because of the exemption provided by Act 388 (i.e., whether those expenses were for "school operating purposes"). Id. The Court ultimately found that the ability to tax to fund such expenses was lost, since the expenses were for "school operating purposes." Id. Consequently, it held that the school districts were entitled to a reimbursement from the Homestead Fund. Id.

Before reaching that conclusion, the Court reviewed the definition of "operating expenses" in Black's Law Dictionary and, after doing so, noted that "a school would not be operational without an infrastructure which necessarily includes school buildings," further finding that "the continued operation of a school district is dependent upon the renovation and purchase of school buildings" and that the payments made in connection therewith were "essential for 'school operating purposes.'" Id. at 919 (Emphasis added).

The Supreme Court's analysis, therefore, focused on necessity and whether the operation of a school depends on, or is essential to the operation the school. Here, however, the taxes imposed by the County to fund the Deputy Sheriffs serving as SROs do not come within the meaning of the definition of "school operating purposes" when viewed from the standpoint of the County Defendants. In that regard, the operation of a school does not "necessarily" include

police protection services provided SROs; nor does the continued operation of a school "depend" on Deputy Sheriffs serving as SROs as "essential" components for school operating purposes.

If there were any doubt about this, the allegations in the Complaint remove it because the crux of the Plaintiffs' claims here is that that the use of Deputy Sheriffs as SROs is not necessary and that cheaper, privately employed security guards would be better. Plus, the Plaintiffs tacitly concede (as they must) that the statute defining SROs "allows" (i.e., does not require) the County and the Town to designate certain officers as SROs. Second Amended Complaint at ¶ 50. The Plaintiffs' interpretation of the term "school operating purpose" therefore conflicts with the analysis of the South Carolina Supreme Court and may be rejected for that reason alone.

C. Even Assuming, Arguendo, that a "School Operating Purpose" Exists, There Are No Act 388 Violations Due to Pre-Existing Police Powers and the Application of Basic Principles of Statutory Construction

1. Police Powers of Dorchester County and Its County Council. Dorchester County is a political subdivision of the State of South Carolina and its governing body, the Council, was established by Act No. 236 of 1969. See 56 Stat. Act No. 236 at 254 (1969). After the 1975 enactment of the Home Rule Act (S.C. Code Ann. §§ 4-9-10 et seq.), Dorchester County elected to operate within the "Council/Administrator" form of government, consisting of seven council districts. As a result, each member of Council is elected by single-member districts and serves four-year terms.

As part of the Home Rule Act, the General Assembly gave county councils broad authority and discretion to appropriate funds for county purposes. Specifically, S.C. Code Ann. § 4-9-30(5)(a) empowers a county council to "assess property and levy ad valorem property taxes . . . and to make appropriations for functions and operations of the county, including, but not limited to appropriations for ... public safety, including police and fire protection...." This particular statute dates back to the 1962 Code of Laws and no one disputes that the County Council has long used the foregoing authority to set a budget and, as part of that process, to appropriate funds annually for the operation of the Sheriff's Office.

In addition to the broad powers described above, the General Assembly conferred on the County general police powers, as set forth in S.C. Code Ann. § 4-9-25, which was first enacted in 1989:

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the

> exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

(Emphasis added.)

2. Police Power of the Sheriff and His Deputies. In South Carolina, sheriffs are elected, constitutional officers. See Article V, Section 24 of the State Constitution, providing that "[t]here shall be elected in each county by the electors thereof...a sheriff...." Furthermore, it is well established that sheriffs are the chief law enforcement officers of the counties they serve. Trammell v. Fidelity Casualty Co. of N.Y., 45 F.Supp. 366, 372 (D.S.C. 1942). By virtue of a statute enacted in 1962 (with origins dating back to 1912), sheriffs have the right and duty to assign their deputies to sections of the county "to prevent or detect, arrest and prosecute for breaches of the peace." S.C. Code Ann. § 23-13-70.

Under the common law and statutory law, deputy sheriffs are considered agents of the sheriff and not employees of the county. Allen v. Fidelity and Deposit Co. of Md., 515 F.Supp. 1185 (D.S.C.1981). Consequently, "deputy sheriffs are answerable only to the sheriff and not to the county government." Id. at 1190. In other words, Deputy Sheriffs serve at the pleasure of the sheriff. Rhodes v. Smith, 254 S.E.2d 49 (S.C. 1979).

3. Sheriff Deputies Who Serve as SROs Are Part and Parcel of Law Enforcement and Community Policing. S.C. Code Ann. § 5-7-12(B) defines an SRO as "a person who is a sworn law enforcement officer . . . and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." The Plaintiffs make much of this language because, while it specifically mentions law enforcement as a "primary duty," it also includes the word "teacher." The Plaintiffs, however, have failed to focus on the specific use of Deputy Sheriffs as SROs. Fortunately, that particular topic has been closely examined, on more than one occasion, by the United States Bureau of Justice Statistics ("BJS").

The BJS is an agency located within the U.S. Department of Justice that collects, analyzes and publishes information considered "critical to federal, state, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded." See Bureau of Justice Statistics, About the Bureau of Justice Statistics, http://www.bjs.gov/index.cfm?ty=abu.

The data BJS analyzes is obtained from Law Enforcement Management and Administrative Statistics (LEMAS) surveys conducted among a nationally representative sample of general purpose state and local law enforcement agencies, including sheriff's offices. Id.

Periodically, BJS releases specific reports on sheriffs and sheriff deputies as part of its "Sheriff Series."[5] The BJS Sheriff Series reports are instructive in that they confirm widespread use of deputy sheriffs as SROs across the United States as well as the nature and purpose of the services they render. In a recent report, for example, BJS observed that "Forty-eight percent of sheriffs' offices, employing 71% of all sworn personnel, used full-time school resource officers in 2000." See http://www.bjs.gov/content/pub/pdf/so00.pdf. The BJS categorizes the work performed by these sheriff office SROs as "community policing" and its report notes the following:

> Overall, 62% of sheriffs' offices, employing 76% of all sworn personnel, had full-time community policing officers. In some jurisdictions, these officers may be known as community relations officers, community resource officers, or some other name indicative of the community policing approach they employed....
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> * * *
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> **School resource officers use a community policing** approach to provide a safe environment for students and staff. In addition to handling calls for service within the school, **they work closely with school administrators and staff to prevent crime and disorder by monitoring crime trend, problem areas, cultural conflicts, and other areas of concern.**

Id. at p. 15 (Emphasis added).

4. The Plaintiffs Do Not Dispute the Law Enforcement Role of the Deputy Sheriffs at Issue. Even without any consideration of the BJS materials, the Plaintiffs do not dispute the law enforcement purpose served by the Deputy Sheriffs serving as SROs. Indeed, they specifically allege in their Second Amended Complaint that the Deputy Sheriffs serving as SROs at schools provide "police protection." Second Amended Complaint at ¶ 80. See also Second Amended Complaint at ¶ 57 ("Tidwell and Associates recommended that DD2 stop paying Dorchester County . . . for SROs employed by the County . . . to provide police protection in

[5]A court may take judicial notice of information in governmental agency reports and postings relating to the purpose, creation, and function of such reports and postings. See United States v. Chester, 628 F.3d 673, 692 (4th Cir. 2010)(taking judicial notice matters contained in reports from the CDC, DOJ Bureau of Justice Statistics, and the National Institute of Justice); and Fisher v. City of North Myrtle Beach, 2012 U.S. Dist. LEXIS 120607, 2012 WL 3638776, at *1 n.2 (D.S.C. Jul. 26, 2012)("The court may take judicial notice of factual information located in postings on governmental websites."). Further, Rule 201(f) of the South Carolina Rules of Evidence specifically provides that "[j]udicial notice may be taken at any stage of the proceeding."

DD2 schools...."); and ¶ 78 ("Passage of [Ordinance #15-14] allowed Dorchester County . . . to fund SROs to be used . . . to provide police protection at their respective schools")(emphasis added).

The Plaintiffs' Second Amended Complaint thus confirms that the purpose and service the Deputy Sheriffs provide as SROs is "police protection" and the County Defendants agree. However, the County Defendants do not agree that, by adding the words "for school purposes" after "police protection," the services performed by the Deputy Sheriffs are somehow transformed into something other than law enforcement, which would (for the reasons discussed below) weaken the police powers of the County and the Sheriff at schools in the County. To effect a change of that magnitude, specific legislative action would be required and, in South Carolina, there has been no such legislation.

5. Even If the SROs Are, In Some Sense, for a "School Operating Purpose," Basic Principles of Statutory Construction Confirm that the Plaintiffs Are Wrong. In theory, the purpose of the taxes at issue (or expenditures of the taxes at issue) might be said to differ depending upon the taxing unit that imposes them: primarily or exclusively a police purpose when viewed from the standpoint of the County and primarily or exclusively a school operating purpose when viewed from the standpoint of the School Districts. Alternatively, the taxes at issue could conceivably be viewed as having some mixed or shared purpose, with elements of both police protection and school operating purposes, regardless of which taxing authority imposes them.

Here, however, the Plaintiffs' attempt to label the property taxes and the services they fund as a "school operating purpose" is meaningless. Even if one were to assume, arguendo, that some aspect of the services performed by the Deputy Sheriffs perform as SROs is in some sense a "school operating purpose," or that the SROs perform services for which there are mixed or shared purposes, basic rules of statutory construction confirm that the County Defendants are entitled to judgment on the pleadings as a matter of law.

Regardless of the meaning of "school operating expense," this much is certain: (a) before and after the enactment of Act 388, S.C. Code Ann. § 4-9-30(5)(a) affirmatively authorized and still authorizes the County to assess collect and spend property taxes for police protection; (b) before and after the enactment of Act 388, S.C. Code Ann. § 49-9-25 specifically conferred and still confers on County Council the power and authority to enact regulations, resolutions, and

ordinances in relation to "any subject" as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving peace and order; and (c) before and after the enactment of Act 388, S.C. Code Ann. § 23-13-70 expressly provided and still provides the Dorchester County Sheriff with the right (and duty) to assign his deputies to sections of the county "to prevent or detect, arrest and prosecute for breaches of the peace."

As noted previously, the Plaintiffs' Second Amended Complaint confirms that having the Deputy Sheriffs serve as SROs at schools amounts to "police protection," meaning that no one is disputing the police protection aspect of those services. For the Plaintiffs' arguments about Act 388 violations to be correct, however, that would necessarily mean that Act 388 curtailed, limited and/or partially repealed the powers conferred on County Council and the Sheriff by the statutes described above, thereby diminishing the County Council's power to fund police protection at schools when compared to other parts of the County and similarly diminishing the Sheriff's power to assign his Deputies to school property when compared to other parts of the County.

What's the Plaintiffs' explanation for how such major changes to fundamental police power came about and why they are justified? The Plaintiffs blithely assert that an undefined term in Act 388, which is a property tax statute, mandates all of these important changes to longstanding powers, even though Act 388 says nothing at all about placing limits on such powers and never once references any of the other pre-existing statutes, discussed above, which conferred (and still confer) those powers on the County Council and the Sheriff.

The Plaintiffs are wrong and basic principles of statutory construction confirm that their argument about "Act 388 violations" cannot be correct. It is well established that "there is a presumption against the repeal of prior laws by implication." 1A Sutherland Statutory Construction § 23:10 at 474, 479 (7th ed. 2016) (hereinafter "Sutherland").[6] Indeed, the courts in South Carolina have routinely applied this presumption. See, e.g., Hodges v. Rainey, 533 S.E.2d 578, 582-83 (S.C. 2000)("The law does not favor the implied repeal of a statute.").

[6]"Implied amendments" of statutes are identical to repeal by implication when only a part of a prior statue is affected, altered or modified. 1A Sutherland Statutory Construction § 22:13 at 296 (7th ed. 2016).

In addition, basic rules of statutory construction recognize that "the party asserting the implied repeal bears the burden to demonstrate beyond question that the legislature intended in its later legislative action the unequivocal purpose to effect a repeal." Sutherland, § 23:10 at 479. The reasoning and justification for this burden have been described as follows:

> The presumption against implied repeal is founded upon the doctrine that the legislature is presumed to envision the whole body of the law when it enacts new legislation. Therefore, drafters should expressly designate offending provisions rather than leave a repeal to arise by implication from a later enactment. Where a newly enacted statute is silent on a previous existing one, the indication is that the legislature did not intend to repeal the existing one. Courts also assume that existing statutory or common law represents popular will, which reinforces the presumption against alteration or appeal.

Id. at 479-80 (footnotes omitted)(emphasis added). See also Hodges v. Rainey, 533 S.E.2d 578, 582-83 (S.C. 2000)("It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first.").

Basic principles of statutory construction also recognize that implied repeals or amendments to statutes that serve an important public purpose, such as police power, are especially disfavored. See Sutherland, § 23:10 at 481.

Finally, it is well established that "tax exemption statutes are strictly construed against the taxpayer." Southeastern Kusan v. S.C. Tax Com'n, 280 S.E.2d 57, 58 (S.C. 1981). "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." Id.

Here, the Plaintiffs cannot overcome the strong presumption against implied repeal or implied amendment arguments which are, whether they realize it or not, vital to the claims they make in their Complaint. First, there is no dispute that Act 388, which became effective for tax years beginning after 2006, never once mentioned or referred to any one of the pre-existing statutes referenced above. Instead, Act 388 was silent and there is absolutely no indication whatsoever that the legislature intended to repeal, modify or amend any part of any one of those statutes, which involve one of the most fundamental of all governmental powers.

Nevertheless, the Plaintiffs suggest that a parade of horribles will ensue if their position about Act 388 violations is not accepted: "If [the Defendants] can finance school police protection in the manner described above, by that precedent Dorchester County and the Town

can spend taxes raised on owner-occupied homes on salaries, electricity, gasoline for school buses and all other operating expenses of these School Districts...." Complaint at ¶ 81. This absurd hypothetical position deserves little comment, except to say that the Plaintiffs do not allege (nor could they allege) that math, science or any other school teachers, such as librarians, are being deputized by the Sheriff as an "end run" around Act 388. Similarly, the Plaintiffs do not allege (nor could they allege) school buses have been made part of the Sheriff's fleet of patrol cars and cruisers so that owner-occupied residences can now be taxed to fund the purchase of school bus gasoline.

The bottom line here is that the Plaintiffs have put forth a rhetorical "red herring" and, in the process of doing so (perhaps as a distraction), have conveniently ignored each of the basic principles of statutory construction described above. Consequently, their position concerning "Act 388 violations" must be rejected, even if they do genuinely believe that it would be cheaper or better to follow the recommendations of the unelected authors of the "Tidwell Report" when it comes to the issue of police protection in schools. See Second Amended Complaint at ¶¶ 55-56.

D. There Was No "Double Taxation"

In order to have "double taxation," the taxes in question must be imposed on the same property, for the same purpose, "by the same state, government or taxing authority." 84 C.J.S., Taxation, § 58. See also 71 Am. Jur. 2d, State and Local Taxation § 29 ("It is not invalid double taxation to impose state and local taxes upon the same property in the same year. This principle is equally applicable with respect to taxation by more than one local political subdivision") (footnote omitted); Black's Law Dictionary 491 (6th ed. 1990)(defining "double taxation" as the placement of two taxes on the same property by the same governing body during the same tax period for the same taxing purpose.)

The South Carolina Constitution recognizes counties, townships, and school districts as separate and distinct political subdivisions, each of which may be authorized to levy taxes. See Article 10, §§ 5 and 6, and Article 11, § 6, of the South Carolina Constitution. Here, Dorchester County and each of the School Districts constitute such "separate and distinct" political subdivisions and, therefore, there was no "double tax" for that reason alone. See Atkinson Dredging Co. v. Thomas, 223 S.E.2d 592, 596 (S.C. 1976)("Generally, to constitute double taxation there must be an identity of taxing authority, taxing period, taxing purpose, and person and property taxed; and even then there are exceptions....")(Emphasis added).

V. Overview of the Basis for Messinger's Constitutional Claims

A. Summary of the Claims

The fourth and fifth causes of action, asserted by Plaintiff David Messinger only, allege that the County, Chinnis and the Sheriff violated his state and federal constitutional rights and that, as a result, he should be awarded monetary damages. Chinnis and the Sheriff are sued only in their official capacity. Id. at ¶¶ 30 and 37.

In the fourth cause of action, Messinger has alleged that the three County Defendants listed above violated his rights "of free association, to petition for redress of grievance and of speech and expression" provided by Article I, Section 2 of the South Carolina Constitution. Complaint at ¶ 109. Messinger also alleges that the same three County Defendants violated his rights under the First and Fourteenth Amendments of the United States Constitution, and that a cause of action exists for these federal constitutional violations under 42 U.S.C. § 1983.[7] Complaint at ¶ 112.

Notably, the only factual allegations made against anyone associated with the County are those concerning Chinnis, the Sheriff and Captain Tony Phinney.[8] To the extent any of Messinger's claims may be construed as being against the County or the County Council as a legal body, including any officer or employee of the County (other than the Sheriff or Phinney) and any member of County Council (other than Chinnis), those claims must be dismissed due to the absence of any factual allegations about them.

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[7]The "Preliminary Statement" in the Second Amended Complaint (at ¶ 1) alleges violations of the "First, Fourteenth, and Fifth Amendments to the United States Constitution." In addition, there is a reference in the "Relief Requested" section (at pp. 39-40) to alleged violations of "First, Fifth, and Fourteenth Amendment rights." However, none of the causes of action asserted in the Second Amended Complaint alleges specific violations of the Fifth Amendment, which mainly deals with criminal due process rights, and the Second Amended Complaint does not assert specific facts raising a justiciable violation of the Fifth Amendment. See Second Amended Complaint at ¶¶ 111-113. To the extent that Messinger (or any of the other Plaintiffs) is raising non-criminal due process claims under the Fifth Amendment, they claims would be subject to the same analysis, discussed herein, applicable to Plaintiffs' Fourteenth Amendment due process claims.

[8]Phinney, who is a Captain in the Dorchester County Sheriff's Office, has not yet appeared in this action. Per agreement with counsel for Plaintiffs, counsel for the County Defendants agreed to accept service of the Second Amended Complaint for Phinney on January 19, 2017, and also agreed that the deadline for Phinney to respond would be February 2, 2017. The allegations in the Complaint regarding Phinney (at ¶ 61) are about an email he allegedly sent on May 1, 2012—more than four years before this suit was filed and more than three years before the Tidwell Report was published—as well telephone calls he allegedly made on unspecified dates. The allegations in the Second Amended Complaint do not assert that the alleged email or telephone calls concerned SROs.

B. Summary of the Allegations as to Chinnis

The allegations regarding Chinnis are set forth in Paragraph 59 of the Second Amended Complaint. They arise out of allegedly false and defamatory statements by Co-Defendant William ("Bill") McIntosh on Facebook. In essence, McIntosh allegedly published statements on Facebook indicating that Messinger and Michael Turner (who is not a party to this case) had unsuccessfully advocated a "hare-brained private security scheme" designed to benefit "washed-out cops," and that they were "mad" at Chinnis because he "saw right through it." Id. Messinger then alleges that Chinnis "republished" these statements by posting the following comment: "Nailed it Bill!"[9] Id.

C. Summary of the Allegations as to the Sheriff

The Sheriff allegedly made "strong objections and threats" to unidentified "officials" at Dorchester School District Two and the County in response to efforts to implement the Tidwell Report. Id. at ¶ 58. While Messinger does not identify the specific "objections and threats" that were allegedly made by the Sheriff, he alleges that they were designed to convey to others that, if private contractors were engaged to staff SRO positions, the Dorchester County Sheriff's Office would delay or withhold assistance requested by County schools. Id.

VI. Public Officials Have an Absolute Right to Free Speech, Which Precludes All of Messinger's State and Federal Constitutional Claims

As indicated above, Chinnis allegedly wrote "Nailed it!" in response to a Facebook post by Co-Defendant McIntosh, while the Sheriff allegedly made "objections and threats" that are not quoted, but concerned delays that would occur be if privately-hired SROs were used at Dorchester County Schools. However, none of these allegedly false and defamatory statements is sufficient to support the Constitutional Claims asserted by Messinger in the fourth and fifth causes of action.

Politicians and public officials—including Chinnis and the Sheriff—have a right to personal expression. See, e.g., Bond v. Floyd, 385 U.S. 116, 136-37 (1964)(rejecting the idea that the First Amendment only applies to the "citizen-critics" of government and concluding that "[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy"). In fact, the

[9]While the County Defendants do not concede that "Nailed it!" constitutes a "republication," determination of that issue is not necessary for purposes of this Motion.

very essence of our political system is based on government speech. Republican Party of Minn. V. White, 536 U.S. 765, 781-82 (2002)("The role that elected officials play in our society makes it all the more imperative that they be allowed to freely express themselves on matters of current public importance.")(quoting Wood v. Georgia, 370 U.S. 375, 395 (1962)). Indeed, the speech and opinions of public officials are the vehicle through which constituents and recipients of government services come to know their public officials and the opinions those officials have about the issues.

Free political speech, in other words, is a two-way street and is not off-limits to someone simply he or she is a public official. In Citizens United v. Federal Election Commission, 558 U.S. 310, 3340-41 (2010), the Supreme Court described the vital importance of political speech as "an essential mechanism of democracy," further noting that "political speech must prevail against laws that would suppress it, whether by design or inadvertence." Consistent with this, "[t]he First Amendment protects speech and speaker, and the ideas that flow from each." Id. at 341 (emphasis added).

Here, Messinger's state and federal constitutional claims for money damages, and any incidental requests for declaratory and injunctive relief,[10] are based on statements by public officials who were allegedly expressing their views on the use SROs. Therefore, even if one were to assume that all of Messinger's allegations concerning the statements of these County Defendants were true (which is denied), his attempts to base legal and/or equitable claims on the speech of these public officials must fail as a matter of law, because he is effectively seeking to control the expression of public officials concerning SROs:

> The short of the matter is that control of government expression (which would always seem to fall in the category of political expression, the most protected form of speech) is no more practicable, and no more appealing, than control of political expression by anyone else ... the guarantee of freedom of speech "does not mean that government must be ideologically 'neutral,' " or "silence government's affirmation of national values," or prevent government from "add [ing] its own voice to the many that it must tolerate."

[10]While Messinger's fourth and fifth causes of action request money damages only, the "Relief Requested" portion of the Second Amended Complaint (at p. 40) appears to contain a request for declaratory and/or injunctive arising out of Messinger's Constitutional Claims. In the absence of a constitutional violation, however, neither Messinger nor any of the other Plaintiffs can obtain any type of relief, injunctive or otherwise, on those claims.

Block v. Meese, 793 F.2d 1303, 1314 (D.C. Cir. 1986) (citation omitted). See also Int'l Ass'n of Machinists & Aero. Workers v. Haley, 832 F. Supp. 2d 612, 629 (D.S.C. 2011), aff'd by unpublished opinion (4th Cir. 2012)(noting that politicians, elected officials and their appointees "can be expected to take sides on virtually any issue that captures the public's attention," adding that if courts were to entertain pronouncements concerning public matters as First Amendment challenges, then virtually every interchange would be subject to a lawsuit).

Here, the statements allegedly made by Chinnis and the Sheriff were protected by the First Amendment right that each of them holds in both their official capacity. See, e.g., Wood v. Georgia, 370 U.S. 375, 394-95 (1962)(addressing a sheriff's right, both as a candidate for public office and as a private citizen, to free expression on matters of current public importance). To conclude otherwise would impermissibly diminish the value of free speech and deter public officials from stating their opinions to their constituents and/or colleagues, which is the type the unrestricted "government speech" described in Pleasant Grove City, Utah v. Summum, 555 U.S. 460, 467-68 (2009):

> A government entity has the right to "speak for itself." "[I]t is entitled to say what it wishes," and to select the views that it wants to express. Indeed, it is not easy to imagine how government could function if it lacked this freedom. "If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed." (citations omitted).

These principles apply here as well. If the claims by Messinger in his fourth and fifth causes of action are permitted to proceed, the landscape of the right to free speech, as applied to individuals serving as public officials in South Carolina, would be transformed in a way that would ineluctably, and impermissibly, violate their Constitutional rights as public officials. Fortunately, this is not the law and Messinger's Constitutional Claims must be dismissed.

VII. Messinger's State Constitutional Claim Fails for Other Reasons

A. Article I, § 2, of the S.C. Constitution Fails Does Not Provide for the Award of Money Damages

In his fourth cause of action, Messenger asserts that four County Defendants listed above violated "his rights of free association, to petition for redress of grievances and of speech and expression protected by Article I, Section 2 of the South Carolina Constitution . . . . " Id. at ¶ 110. As a result, he alleges that he has "suffered emotional distress, humiliation, embarrassment,

injury to his reputation and other damages, for which he is entitled to nominal, actual, compensatory and punitive damages and reasonable attorney fees and costs" Id.

However, even if one were to assume, arguendo, that the allegations about the four County Defendants were true (which is denied), Article I, Section 2, of the South Carolina Constitution says nothing at all about damages being available for the violation of its provisions and does not provide Messinger with an express or implied private right of action. While it is true the violation of federal constitutional rights may (under 42 U.S.C. § 1983) result in the award of damages in some circumstances, Messinger's fourth cause of action must be dismissed because (a) it alleges only a claim for money damages based on violations of his rights under the South Carolina State Constitution and (b) state law claims are not cognizable under 42 U.S.C. § 1983. Quillan v. Evatt, 445 S.E.2d 639, 640 (S.C. Ct. App. 1994)(holding that Section 1983 claims, which are limited to violations of rights protected by the United States Constitution and federal law, were not available for injuries allegedly suffered at the hands of state officials).

Accordingly, the claim for money damages asserted by Messinger in the fourth cause of action is deficient as a matter of law and must be dismissed.

B. The Torts Claim Act and Legislative Immunity Bar Messinger's State Constitutional Claim Against Chinnis and the County

Even if there were a private cause of action for alleged violations of the South Carolina Constitution, the fourth cause of action would still be deficient as to the County and as to Chinnis, who has been sued in his official capacity only.

1. **The Torts Claim Act.** The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (the "TCA"), which governs tort claims against South Carolina state, county and local government, is a limited waiver of sovereign immunity and the exclusive civil remedy available in any action against a South Carolina governmental entity or its employees. S.C. Code Ann. § 15-78-70(a); S.C. Code Ann. § 15-78-200. See Richland County v. Carolina Chloride, 677 S.E.2d 892 (S.C. Ct. App. 2009); Murphy v. Richland Mem'l Hosp., 455 S.E.2d 688, 689 (S.C. 1995); and Wells v. City of Lynchburg, 501 S.E.2d 746, 749 (S.C. Ct. App. 1998). The provisions of the TCA establishing limitations and exemptions to the liability of the State, its political subdivisions, and employees "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f); City of Hartsville v. South Carolina Municipal Ins. & Risk Financing Fund, 677 S.E. 574 (S.C. 2009).

The provisions of the TCA provide limited liability for tort-type claims on the part of the State, its political subdivisions, and employees, while acting in the scope of official duty. S.C. Code Ann. §§ 15-78-20(b); 15-78-30(b). The TCA does not create causes of action, but removes otherwise common law bars on a limited basis. Richland County v. Carolina Chlorida, supra. All other immunities applicable to a government entity, its employees, and agents, are expressly reserved under the TCA. S.C. Code Ann. § 15-78-20(b).

The TCA defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d). The County is a "political subdivision of the State." The TCA's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). Under the TCA, "Scope of official duty" or "scope of state employment" mean (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i). For alleged individual liability under the TCA, plaintiffs must prove "that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a), (b).

Here, Chinnis, a member of County Council, allegedly expressed his views about the SRO debate. And Chinnis, as a local legislator, is immune from Messinger's state-based Constitutional Claims under the TCA and they must therefore be dismissed.

2. Legislative Immunity. Immunity from suit for legislative or quasi-legislative acts is a longstanding common law principle in American jurisprudence. In Tenney v. Brandhove, 341 U.S. 367 (1951), the United States Supreme Court recounted the long history of legislative immunity and, after doing so, noted that the states "took great care to preserve the principle that the legislature must be free to speak and act without fear of criminal and civil liability." Id. at 375. The rationale for providing immunity is as follows:

> Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives.

Id. at 377.

These principles and the rationale that supports them have been recognized and applied by the South Carolina courts. See, e.g., Richardson v. McGill, 255 S.E.2d 341, 343 (S.C. 1979) ("sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties") and Williams v. Condon, 553 S.E.2d 496, 503 (S.C. Ct. App. 2001)(citing and quoting Tenney in a case involving another immunity).

Legislative immunity applies not just the individual members of the County Council (such as Chinnis), but to the County itself. See Hollyday v. Rainey, 964 F.2d 1441, 1443 (4th Cir. 1992)(finding that county was protected by absolute legislative immunity because the plaintiff's case or the defense "would perforce require testimony of the legislators involved regarding their motives"). This is significant here because the courts have recognized that common law immunities in effect prior to the enactment of the South Carolina Tort Claims Act were not supplanted by that Act. See, e.g., O'Laughlin v. Windham, 498 S.E.2d 689 (S.C. Ct. App. 1998).

Indeed, the retention of the common law legislative immunity is confirmed by several sections of the Torts Claim Act. See S.C. Code Ann. §§ 15-78-20(b)("All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved"); 15-78-60(1)(preserving sovereign immunity for "legislative, judicial, or quasi-judicial action or inaction"); 15-78-60(2)(preserving sovereign immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"); and 15-78-60(4)(preserving sovereign immunity for "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").

Accordingly, the Constitutional Claims asserted by Messinger in the fourth cause of action would be barred due to legislative immunity, even if they were not barred for the other alternative, independent reasons already discussed.

VIII. Messinger's Federal Constitutional Claims, Including Claims Under 42 U.S.C. §1983, Are Also Deficient for Other Reasons

A. Claims to Reputation Arising Out of Allegedly Defamatory Statements Are Not Actionable Under Section 1983

In his fifth cause of action, Messinger asserts that the same three County Defendants—the County, Chinnis, and the Sheriff—violated his rights under the first and fourteenth amendments of the United States and 42 U.S.C. § 1983. Id. at ¶¶ 111-113. He then asserts that

he has suffered emotional distress, humiliation, embarrassment and loss of reputation, for which he is owed damages under 42 U.S.C. § 1983.

However, even if one were to assume, arguendo, that the allegations about the four County Defendants were true (which is denied), Messinger's fifth cause of action would still be deficient because it is based on claimed injuries to reputation arising out of allegedly "false and defamatory statements,"[11] which is not cognizable in an action under 42 U.S.C. § 1983. See Paul v. Davis, 424 U.S. 693, 712 (1976)(holding that defamation did not constitute a violation of constitutional rights and, therefore, did not state a claim under § 1983, further noting that harm or injury to reputation, even where inflicted by an officer of the state, "does not result in a deprivation of any 'liberty' or 'property' recognized by state or federal law").

The Supreme Court has consistently reaffirmed these principles. In Siegert v. Gilley, 500 U.S. 226, 288 (1991), the Court noted that "[d]efamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation." It further held that even an allegation about defamation resulting in loss of employment opportunities would not convert the plaintiff's claim into a constitutional claim, noting that "the plaintiff in Paul v. Davis similarly alleged serious impairment of his future employment opportunities as well as other harm." Id. See also Sudeikis v. Chicago Transit Authority, 774 F 2d 766 (7th Cir. 1985)("retaliatory defamation" did not amount to a constitutional violation since it was not accompanied by termination of her employment); and Gini v. Los Vegas Metro. Police Dep't, 40 F 3d 1041, 1045 (9th Cir. 1994)("For any defamation and damage flowing from it, [plaintiff] has a tort remedy under state law, not under the First Amendment").

Here, the damages claimed by Messinger in the fifth cause of action flow from injury to his reputation, which occurred as a result of allegedly false and defamatory statements about his views on the use of privately-funded SROs. Under the case law cited above, this is plainly insufficient and, therefore, the fifth cause of action must be dismissed.

B. The Eleventh Amendment Bars the Fifth Cause of Action, Under 42 U.S.C. §1983, Against the Sheriff

The plain text of § 1983 provides that, for a claim to be viable, the defendant must be a "person" as that term is used in the statute. Under the Eleventh Amendment to the United States

[11] See, e.g., Second Amended Complaint at ¶¶ 109(C) and 112(C).

Constitution, however, neither the state, nor a state official acting in an official capacity, comes within the meaning of "person" as that term is used in 42 U.S.C. § 1983. Will v. Mich. Dep't. of State Police, 491 U.S. 58 (1989).

The South Carolina courts have squarely held sheriffs and their deputies are state officials (not county officials) and, as such, they are not amenable to a suit under 42 USC § 1983. See Cone v. Nettles, 417 S.E.2d 523, 524 (S.C. 1992)(specifically holding that sheriffs and deputy sheriffs are state officials and that "a cause of action against a sheriff or sheriff's deputies cannot be maintained under 42 U.S.C. §1983). Accordingly, it is clear that a South Carolina sheriff may not be sued in his official capacity for monetary damages.

Here, therefore, the § 1983 claims asserted against the Sheriff must be dismissed

C. The § 1983 Claims Asserted Against the County and Chinnis Would Still Be Barred Because of Legislative Immunity

Federal, state, regional, and local legislators are entitled to absolute immunity for acts performed in their legislative capacity. Bruce v. Riddle, 631 F.2d 272, 279 (4th Cir.1980); and Bogan v. Scott-Harris, 523 U.S. 44, 46 (1998). It is clear, moreover, that legislative immunity extends to claims made under 42 U.S.C. § 1983 based on the allegations in this case. Id. at 54 ("Local legislators are entitled to absolute immunity from § 1983 liability for their legislative activities").

Here, therefore, Chinnis, as a member of the County Council, is absolutely immune from suit when performing legislative functions, which is precisely the conduct about which Messinger complains. See Bruce, 631 F.2d at 280 (applying the principles of legislative immunity to members of a county council); and Whitener v. McWatters, 112 F.3d 740 (4th Cir.1997) (applying principles of legislative immunity to members of a county board of supervisors). Accordingly, Messinger's §1983 claims against Chinnis and the County are barred as a matter of law.

IX. Protective Motion, Subject to the Foregoing Motion to Dismiss, to Strike Plaintiffs' Jury Demand

For the numerous alternative, independent reasons set forth above, the County Defendants respectfully submit that this entire case and all claims against them must be dismissed. Subject to and without waiving their Motion to Dismiss, however, the County defendants respectfully move, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, for an order striking the Plaintiffs' jury demand.

A suit for declaratory judgment may be legal or equitable and is characterized as one or the other by the nature of the underlying issue outlined in the complaint. Lowcountry Open Land Trust v. State, 552 S.E.2d 778, 781 (S.C. Ct. App. 2001). Accordingly, one must look to the lawsuit's main purpose as reflected by the nature of the pleadings, evidence, and character of relief sought to determine whether the claim is legal or equitable. Gordon v. Drews, 595 S.E.2d 864, 867 (S.C. Ct. App. 2004).

As noted previously, the instant case does not involve any properly pled claims for money damages and, in the final analysis, the crux of the Plaintiffs' claims is their request for declaratory judgment, seeking certain pronouncements from the Court, and injunctive relief based on those pronouncements. The Plaintiffs' claims are, therefore, equitable in nature. See e.g., Wiedemann v. Town of Hilton Head, 542 S.E.2d 752, 753 (S.C. Ct. App.2001).

In equity the parties are not entitled to a trial by jury as a matter of right. Williford v. Downs, 218 S.E.2d 242, 243 (S.C. 1975); and Wachovia Bank, Nat. Ass'n v. Blackburn, 755 S.E.2d 437, 441 (S.C. 2014). Because no such right exists here and also because of the technical tax issues involved, which are matters of law to be decided by the Court, the County Defendants respectfully requests that the Plaintiffs' jury demand should be stricken.

Prayer For Relief

WHEREFORE, the County Defendants respectfully request that the Court dismiss this action or, in the alternative, that it grant the County Defendants' protective Motion to Strike the Plaintiffs' jury demand. Finally, the County Defendants respectfully request that the court award them such other and further relief for which they may show themselves entitled.

Drew Hamilton Butler
Anthony E. Rebollo
RICHARDSON, PLOWDEN, CARPENTER
& ROBINSON, P.A.
1900 Barnwell Street
P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE COUNTY
DEFENDANTS

January 19, 2017

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Defendants Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sherriff; Luther C. Knight, in his official capacity; do hereby certify that I have served the foregoing Motion to Dismiss the Plaintiffs' Second Amended Complaint and, Subject to Their Motion to Dismiss, Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the following attorney(s):

W. Andrew Gowder, Jr., Esq.
Austen & Gowder, LLC
1629 Meeting Street
Charleston, SC 29405

Michael T. Rose
Mike Rose Law Firm, PC
406 Central Avenue
Summerville, SC 29483

Attorneys for the Plaintiffs

Erik P. Doerring
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Columbia, SC 29211

Attorney for Defendants Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity

David L. Morrison
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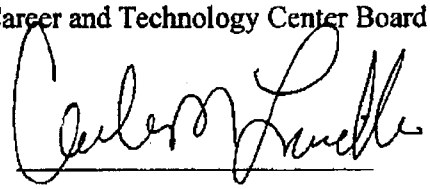
Attorneys for Defendants Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Evan Guthrie, Barbara Crosby and Lisa Tupper, in their official capacities, Dorchester County School District Four, Dorchester County School District Four Board of

Trustees; Dorchester County Career and Technology Center; and
Dorchester County Career and Technology Center Board of Trustees



Carla Linder

January 19, 2017

$25.00 cash MB ✓

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

FILED - RECORDED
2017 JAN 23 PM 1:19
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DORCHESTER COUNTY TAXPAYERS ASSOCIATION, ET AL.
☐ Plaintiff

v.

✓ DORCHESTER COUNTY; DORCHESTER COUNTYCOUNCIL, ET AL.
☐ Defendant.

CASE NO. 2016-CP-18-838

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
W. Andrew Gowder, Jr., Bar No. Pratt-Thomas Walker P.O. Drawer 22247, Charleston, SC 29413 phone: fax: e-mail: other:	Anthoney E. Rebollo, Bar No. 70488 Richardson Plowden & Robinson, PA P.O. Drawer 7788, Columbia, SC 29202 phone: 803-771-4400 fax: 803-779-0016 e-mail: trebollo@richardsonplowden.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss Plaintiffs' 2nd Amended Complaint
Estimated Time Needed:20 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Defendant — January 19, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
2016 SEP 15 AM 11:26	
COUNTY OF DORCHESTER)	FIRST JUDICIAL CIRCUIT
Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation, Plaintiffs,	Civil Action No.: 2016-CP-18-838
v.	and
Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity; Dorchester County Sherriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities, Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, Defendants.	Motion to Dismiss of Defendants Town of Summerville; Summerville Town Council; and William E. McIntosh, in his official capacity Subject to Their Motion to Dismiss, An Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure ("SCRCP") and the authorities cited herein, Defendants Town of Summerville (the "Town"); Summerville Town

Council ("Town Council"); and William E. McIntosh, in his official capacity as a member of Town Council (with the Town, Town Council and William E. McIntosh, in his official capacity as a member of Town Council together as the "Town Defendants") respectfully file this Motion to Dismiss and, in the alternative, a Protective Motion to Strike the Plaintiffs' Jury Demand. The Town Defendants' motion to dismiss the Plaintiffs' property tax-based claims is made under SCRCP Rule 12(b)(1) for lack of subject matter jurisdiction, and the Town Defendants' motion to dismiss the remaining claims of the Plaintiffs is made under SCRCP Rule 12(b)(6) for failure to state sufficient facts to constitute causes of action. In support thereof, the Town Defendants would show the Court the following:

I. Preliminary Statement

Dorchester County (the "County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sheriff, Luther C. Knight, in his official capacity (together, the "County Defendants") have collectively filed a motion to dismiss the plaintiffs' claims in this action under SCRCP Rule 12 and the other authorities cited in therein, and, in the alternative, to strike the Plaintiffs' jury demand. The Town Defendants join these motions of the County Defendants, adopt all statements and authorities in the County Defendants' motions as if fully set forth herein, and provide the following additional facts and authorities in support of the Town Defendants' motions.

The focus of Plaintiffs' lawsuit involves the funding of local "School Resource Officers", where the services of County Deputy Sheriffs and Town Police Officers are provided by the County and Town to local schools , under contract, for the safety and security of students. Based apparently on an "Efficiency Review" report prepared for Dorchester County School District

Two, which recommended cost-savings "opportunities" for the school district, including hiring private security guards to replace the County Deputy Sheriffs and Town Police Officers serving as School Resource Officers, the Plaintiffs challenge the "use and allocation of tax receipts by the County and School Districts", and believe they are being "double-taxed" through the School Districts' use of, and payment for, School Resource Officers. Plaintiffs also add claims against individual members of County Council and Town Council, stating these officials made statements for the "purpose and with the effect of undermining those proponents credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the" recommendations of the School District's "Efficiency Review" report.

Plaintiffs request the Court to issue a declaratory judgment, permanent injunction, a writ of mandamus, and other relief to remedy their perceived claims. For the reasons identified in the motions of the County Defendants and the Town Defendants herein, all of the Plaintiffs' claims against the Town Defendants must be dismissed.

II. Factual Background Applicable to the Town Defendants

The Amended Complaint (the "Complaint") alleges that Weatherstone Property Owners Association ("Weatherstone POA") is a non-profit South Carolina corporation, and has its principal place of business and owns real property in Berkeley County and the Town. (¶5, Complaint). Weatherstone POA does not allege that it pays property taxes to the County, Town, or any other political subdivision of the State of South Carolina. (¶ 5, Complaint). The Complaint also alleges that William A. Harbeson, James Stephen Green, Jr., and Homer P. Gonzalez are residents of and own property located in the Town, and on which these individual plaintiffs pay property taxes on their owner-occupied residences. (¶¶ 7 – 9, Complaint). The Complaint alleges that the Dorchester County Taxpayers Association ("DCTA") is a non-profit

corporation organized in South Carolina in 1998, and that DCTA is suing "as a representative of itself and its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts. (¶ 12, Complaint). DCTA alleges that it "brings this action individually on its behalf, its members and on behalf of all others similarly situated." (¶ 12, Complaint). The Complaint does not identify any members of DCTA. (Entire Complaint). The Complaint alleges that the South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit South Carolina corporation, and that SCPIF "brings this action individually, on its behalf and on behalf of all others similarly situated". (¶ 13, Complaint). Other than William A. Harbeson, James Stephen Green, Jr., and Homer P. Gonzalez, none of the other named plaintiffs in this action, including George Resnick, Gerald E. Ziegler, David Messinger, DCTA, and SCPIF specifically allege any direct contact with, that they own property in, or pay property taxes to, the County or Town. (¶¶7 – 9 Complaint).

As alleged in the Complaint, the Town is a body corporate and a municipal corporation of the State of South Carolina located in the County. (¶ 21, Complaint). Town Council is the elected governing body of the Town created and operating under the laws of the State of South Carolina. (¶ 22, Complaint). William E. McIntosh III is a member of Town Council. (¶ 38, Complaint).

Plaintiffs allege in the Complaint that the County provides the services of Deputy Sheriffs as School Resource Officers to Dorchester County School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center, under written agreements, copies of which are appended to the Complaint. (¶¶ 61 – 65, 68 – 69, 70 – 71, Ex. 3, 4, and 5, Complaint). Plaintiffs do not allege that the Town has entered into any contracts or agreements with either Dorchester County School District Two, Dorchester County

School District Four, or the Dorchester County Career and Technology Center to provide the services of Town police officers as School Resource Officers. (Entire Complaint).

Plaintiffs allege that support for implementing "cost-savings recommendations in the Tidwell Report...was squelched and impeded by intimidating and threatening actions made by officials of...Summerville Town Council." (¶58, Complaint). Plaintiffs allege that McIntosh "made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of the recommendations in the Tidwell Report and opponents to Council's and Town's unlawful methods of funding SROs, for the purpose and with the effect of undermining those proponents credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs". (¶58, Complaint). Plaintiffs also allege that McIntosh repeatedly threatened to interfere with the employment of one of the plaintiffs, David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding SRO funding matters. (¶58, Complaint). Plaintiffs allege that McIntosh made the statements and took the actions to help the Town, Dorchester County Sheriff and other defendants continue the current method of funding School Resource Officers and to avoid implementing the recommendations in the Tidwell Report. (¶58, Complaint).

Plaintiffs allege that Town Council has authorized the agreements entered into between the County and each of Dorchester County School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center to fund and provide County Deputy Sheriffs as School Resource Officers. (¶ 72, 75 Complaint). Plaintiffs also allege that the Town receives "additional property taxes" from one or more of these entities to

reimburse the Town for funding School Resource Officers, and that these "property taxes" have been paid or are obligated to be paid by Dorchester County School District Two and/or Dorchester County School District Four to reimburse the Town for monies the Town has paid for School Resource Officers at one or more of these schools. (¶ 73, 75 Complaint). Plaintiffs allege that "all monies paid and obligated to be paid" by the County and Town to Dorchester County School District Two, Dorchester County School District Four, and the Dorchester County Career and Technology Center have been paid or will be paid with property taxes collected on owner-occupied homes on the County and/or the Town. (¶ 74, Complaint). Finally, Plaintiffs allege that the Town's collection and use of property taxes is to finance School Resource Officers for police protection at schools. (¶78, Complaint).

III. Plaintiffs' Property Tax-Related Claims Must be Dismissed For Lack of Subject Matter Jurisdiction

The focus of the nine Plaintiffs in this case, some of whom are individual residents in the County and Town, some of whom are individuals who do not allege residency in the County and/or Town, and others who are non-profit entities who do not allege any specific connection with the County and/or Town, is on property taxes assessed by the County and/or Town, and the use of these property taxes to fund school district operating expenses, namely the payment for services of School Resource Officers. It is well-settled that claims such as this cannot be brought in this Court, and must be brought in the South Carolina Administrative Law Court, provided required administrative remedies have first been exhausted.

The South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et. seq., ("RPA") was adopted by the General Assembly to "provide the people of this state with a straightforward procedure to determine a ... dispute concerning property taxes." S.C. Code Ann. § 12-60-20. The RPA "must be interpreted and construed in accordance with, and in furtherance

of", this purpose. *Id.* With limited exceptions, the RPA is the exclusive remedy for taxpayers seeking to contest perceived "illegal or wrongful" taxes. S.C. Code Ann. § 12-60-80(A).

If a taxpayer has a dispute concerning his real property taxes assessed by county or local government, the RPA provides the resident taxpayer with the remedy of seeking a refund of these property taxes with the applicable county or local government, including judicial review by the South Carolina Administrative Law Court, provided the following prerequisites are satisfied:

1. The taxpayer files a refund claim with the County Assessor;
2. The County Assessor, County Treasurer and the County Auditor render a decision on the refund claim;
3. The Taxpayer has thirty days to appeal that decision to the County Board of Assessment Appeals; and
4. After appeal, the County Board of Assessment Appeals renders a decision on the taxpayer's refund claim.

S.C. Code Ann. § 12-60-2560(A) – (C).

After these steps are taken, if the refund claim is denied by the County Board of Assessment Appeals, the taxpayer may then seek judicial review through the Administrative Law Court. *See* S.C. Code Ann. § 12-60-2560(C). If a taxpayer seeking a refund of property taxes does not follow these required statutory steps, the RPA requires the Administrative Law Court to dismiss the action without prejudice. S.C. Code Ann. § 12-60-2560(C). Edward D. Sloan, Jr. South Carolina Public Interest Foundation, et. al. v. Greenville County Assessor, ALC Case Nos. 08-ALJ-17-0243, et. al. (opinion attached).

The RPA importantly contains express prohibitions against taxpayers seeking to circumvent its provisions by providing:

> (A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes. (emphasis supplied).

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

S.C. Code Ann. § 12-60-80.

For purposes of RPA Section 12-60-80(B), and the exception for declaratory judgment actions that may be brought in circuit court where the sole issue is whether a statute is unconstitutional, this limited exception to the RPA refund remedy does not apply where the claim is that the statute is unconstitutional as applied to the particular plaintiffs. S.C. Code Ann. § 12-60-80(B); B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007); *see also* Ward v. State, 538 S.E.2d 245 (S.C. 2000).

In two important decisions, the South Carolina Supreme Court has ruled that taxpayers may not challenge local property taxes through lawsuits filed in the circuit court, and which would circumvent the requirements and prohibitions of the RPA. In Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d 39 (S.C. 2004), a group of taxpayers filed suit in circuit court, seeking a writ of mandamus, and declaratory and injunctive relief, concerning perceived higher millage rates applicable to non-owner occupied residences. In B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007), *aff'g as modified* 605 S.E.2d 551 (S.C. Ct. App. 2004), a group of taxpayers sued the county, county council, school district, and individual county officers in circuit court concerning the assessment of county property taxes and the funding of local schools. In both decisions, the South Carolina

Supreme Court squarely ruled that the RPA refund claim procedure was the taxpayer's exclusive remedy, and the circuit court actions were dismissed.

As with the taxpayers in Brackenbrook and B&A Development, the Plaintiffs here seek to challenge their local property taxes, and how these property taxes are used to fund school operating expenses, in particular, the payment for services of School Resource Officer in the county high schools and the technical center. The Plaintiffs have improvidently filed this case in this Court, which lacks jurisdiction to hear their property tax-based claims. Under the RPA, Plaintiffs' property tax-related claims in this case must be dismissed.

IV. Plaintiffs Remaining Claims Against the Town Defendants Must Be Dismissed Under the South Carolina Tort Claims Act, Common Law Legislative Immunity and 42 U.S.C. § 1983

In addition to the property tax-related claims brought by the Plaintiffs in their case, Plaintiffs also allege claims against individual local County and Town officials, including William E. McIntosh III ("McIntosh"), a member of Town Council. Applicable to the Town and McIntosh, Plaintiffs allege that support for implementing "cost-savings recommendations in the Tidwell Report...was squelched and impeded by intimidating and threatening actions made by officials of ... Summerville Town Council."; that McIntosh "made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of the recommendations in the Tidwell Report and opponents to Council's and Town's unlawful methods of funding SROs, for the purpose and with the effect of undermining those proponents credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs; McIntosh repeatedly threatened to interfere with the employment of one of the plaintiffs, David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to

express his views regarding SRO funding matters; and McIntosh made the statements and took the actions to help the Town, Dorchester County Sheriff and other defendants continue the current method of funding School Resource Officers and to avoid implementing the recommendations in the Tidwell Report. None of these assertions have merit, and Plaintiffs claims in this regard must be dismissed.

Initially, it must be observed that the only factual allegations made against anyone associated with the Town is McIntosh. Despite generalizing that support for the Tidwell cost-savings report was "squelched and impeded by intimidating and threatening actions made by officials of... Summerville Town Council", no specific allegations are made against any officer or employee of the Town or Town Council, and the only member of Town Council stated to have engaged in perceived actionable conduct is McIntosh. To the extent any of Plaintiffs' claims may be construed as being against Town Council as a legal body, any officer or employee of the Town, and any member of Town Council other than McIntosh, these claims must be dismissed.

A. The South Carolina Tort Claims Act Bars Relief

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et. seq. (the "TCA"), governs tort claims against South Carolina state, county and local government, is a limited waiver of sovereign immunity, and is the exclusive civil remedy available in any action against a South Carolina governmental entity or its employees. S.C. Code Ann. § 15-78-70(a); S.C. Code Ann. § 15-78-200; *See* Richland County v. Carolina Chloride, 677 S.E.2d 892 (S.C. Ct. App. 2009); Murphy v. Richland Mem'l Hosp., 455 S.E.2d 688, 689 (S.C. 1995); Wells v. City of Lynchburg, 501 S.E.2d 746, 749 (S.C. Ct. App. 1998). The provisions of the TCA establishing limitations and exemptions to the liability of the State, its political subdivisions, and employees "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-

78-20(f); City of Hartsville v. South Carolina Municipal Ins. & Risk Financing Fund, 677 S.E. 574 (S.C. 2009).

The provisions of the TCA provide limited liability for tort-type claims on the part of the State, its political subdivisions, and employees, while acting in the scope of official duty. S.C. Code Ann. §§ 15-78-20(b); 15-78-30(b). The TCA does not create causes of action, but removes otherwise common law bars on a limited basis. Richland County v. Carolina Chlorida, *supra*. All other immunities applicable to a government entity, its employees, and agents, are expressly reserved under the TCA. S.C. Code Ann. § 15-78-20(b).

The TCA defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d). A municipality, such as the Town, is a "political subdivision of the State" and the Town. S.C. Code Ann. § 5-1-10; S.C. Code Ann. § 15-78-70(a). The TCA's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). Under the TCA, "Scope of official duty" or "scope of state employment" mean (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i)

For alleged individual liability under the TCA, plaintiffs must prove "that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a), (b).

Here, the Plaintiffs have made claims against McIntosh that he, presumably as member of Town Council and individually "but in his official capacity" as a member of Town Council,

engaged in "intimidating and threatening actions", "made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of the recommendations in the Tidwell Report ... for the purpose and with the effect of undermining those proponents credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell Report's recommendations regarding the funding of SROs", and "threatened to interfere with the employment of one of the plaintiffs, David Messinger, by providing derogatory information about Messinger to Messinger's employer, for the purpose and with the effect of making Messinger afraid to express his views regarding SRO funding matters". Aside from these general allegations, however, Plaintiffs have not alleged any specific facts which would rise to tort-like claims against McIntosh, including allegations of whether the facts, if properly alleged, were not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Plaintiffs' claims against McIntosh must therefore be dismissed under the TCA.

B. Common Law Legislative Immunity Bars Relief

In addition to the bar of the TCA, Plaintiffs' claims against the Town and McIntosh are barred by common law legislative immunity. Immunity from suit for legislative or quasi-legislative acts is a longstanding common law principle in South Carolina jurisprudence. The reasoning and arguments of the County in its motion to dismiss are equally applicable to the Town and McIntosh here, and the Plaintiffs' claims against the Town and McIntosh must be dismissed independently on the basis of legislative immunity.

C. Plaintiffs' Section 1983 Claims are Deficient

Plaintiffs also assert a federal cause of action against the Town and McIntosh under 43 U.S.C. § 1983. This federal statute provides "a civil remedy in federal court for deprivation of

federal rights under color of state law." Coastline Corp. v. Currituck City, 734 F.3d 175 (4th Cir. 1984). To succeed under a Section 1983 claim, plaintiffs must first identify a cognizable federal right that has been violated, and then "must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). *See also* Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977)(In order to state a claim under Section 1983, the plaintiff must affirmatively show "that the official charged acted personally in the deprivation of the plaintiff['s] rights."); *and* Spear v. Town of West Hartford, 771 F.Supp. 521, 527 (D. Conn. 1991), *aff'd*, 954 F.2d 63, 67 (2nd Cir. 1992)("plaintiff must make specific allegations of fact that indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient.").

Here, Plaintiffs have failed to identify any provision of the United States Constitution, or other applicable federal law, that has been violated by the actions pled in the Complaint. Plaintiffs have also made broad, simple, and conclusory allegations in the Complaint, and have simply failed to raise specific facts sufficient to constitute a cause of action of under Section 1983. Plaintiffs' federal Section 1983 claims must therefore be dismissed.

Prayer for Relief

WHEREFORE, the Town Defendants respectfully request that the Court dismiss this action for lack of subject matter jurisdiction and for failure to state facts sufficient to constitute causes of action against the Town Defendants; or, in the alternative, the Town Defendants respectfully request that Court grant both the Town Defendants' and the County Defendants' protective Motion to Strike the Plaintiffs' jury demand. Finally, the Town Defendants respectfully request that the Court award them such other and further relief for which they may show themselves entitled.

McNair Law Firm, P.A.

By: _____

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Columbia, SC 29211
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edoerring@mcnair.net

Attorneys for Defendants
Town of Summerville,
Summerville Town Council, and
William E. McIntosh, III in official capacity

September 12, 2016

Checkpoint Contents
State & Local Tax Library
State & Local Tax Reporters
States
South Carolina
Cases
South Carolina Dept. of Rev. Commission Decisions
2009
Edward D. Sloan, Jr., South Carolina Public Interest Foundation, and NOLAS Trading Company, Inc. Petitioners, v. Greenville County Assessor, Respondent., 08-ALJ-17-0243-CC; 08-ALJ-17-0244-CC; 08-ALJ-17-0245-CC; 08-ALJ-17-0246-CC; 08-ALJ-17-0247-CC; 08-ALJ-17-0248-CC, 05/18/2009

Edward D. Sloan, Jr., South Carolina Public Interest Foundation, and NOLAS Trading Company, Inc. Petitioners, v. Greenville County Assessor, Respondent.

Case Information:

Docket/Court: 08-ALJ-17-0243-CC; 08-ALJ-17-0244-CC; 08-ALJ-17-0245-CC; 08-ALJ-17-0246-CC; 08-ALJ-17-0247-CC; 08-ALJ-17-0248-CC, South Carolina Dept. of Rev. Commission Decisions

Date Issued: 05/18/2009

Tax Type(s): Property

OPINION

ORDER OF DISMISSAL

STATEMENT OF THE CASE

In these consolidated cases the Petitioners Edward D. Sloan, Jr., South Carolina Public Interest Foundation, and NOLAS Trading Company, Inc. (collectively the "Petitioners") seek a refund of real property taxes paid in 2006 and 2007. The Petitioners claim that the millage rates assessed for those years were excessive. The Respondent Greenville County Assessor (the "Assessor") has made a Motion to Dismiss these actions based upon the contention that Petitioners have not exhausted their administrative remedies as required by the South Carolina Revenue Procedures Act (the "RPA" or the "Act"), S.C. Code Ann. § 12-60-10, et. seq. For the reasons that follow, the Court agrees with the Assessor's contention and therefore dismisses the above-captioned cases without prejudice.

FINDINGS OF FACT

On March 1 and 19, 2008, the Petitioners sent correspondence to the Assessor protesting the 2006 and 2007 taxes on its real property. On April 8, 2008, the Petitioners wrote the Board of Assessment Appeals c/o of the Greenville County Assessor and stated that they had "received no response and assumed that is equivalent to denial by the Assessor." On April 21, 2008, the Greenville County Assessor, Auditor and Tax Collector sent a memorandum to the Petitioners stating as follows:

> The Greenville County Assessor, Auditor and Tax Collector met on April 18, 2008 to consider your request for tax refund.... While the Committee believes it has appropriate jurisdiction to consider this request for a refund, they do not have the authority to determine the issue of excess millage levied by a political subdivision.

CONCLUSION:

> Request for refund is denied.

TAX PAYER MAY CONTINUE APPEAL

> SC Code 12-60-2560 (B) provides within thirty days after the decision is mailed to the taxpayer on the claim for refund, a property taxpayer may appeal the decision to the County Board of Assessment Appeals.

Two days later (April 23), the Petitioners sent a letter to the Board of Assessment Appeals c/o the Greenville County Assessor stating: "Supplementing our April 8 to you about refund of overpaid 2006 property taxes, enclosed is a copy of the Assessor's April 21 denial of that claim." The Petitioners sent an identical letter that same date concerning 2007 taxes.

Twenty days later, and before the Board of Assessment Appeals issued any ruling, the Petitioners filed a Notice of Request for Contested Hearing with this Court on May 13, 2008. As of the date of this Order, the Board of Assessment Appeals has not ruled upon the Petitioners' appeal.

CONCLUSIONS OF LAW

A. The RPA Procedures for Protesting Real Property Taxes

When a taxpayer alleges illegal or wrongful collection of real property taxes, the statutory remedy is for the taxpayer to seek a refund under the procedures described in S.C. Code Ann. § 12-60-2560. [1] In summary those procedures are as follows:

1. Taxpayer files a refund claim with the **County** Assessor, id. § 12-602560(A);
2. The **County** Assessor, **County** Treasurer and the **County** Auditor render a decision on the claim, id.;
3. The Taxpayer has thirty days to appeal that decision to the **County** Board of Assessment Appeals, id. § 12-60-2560(B); and
4. The **County** Board of Assessment Appeals renders a decision, id. § 12-60 2560(C).

It is only after all of these steps are taken that a claim is ripe to be appealed to this Court. See S.C. Code Ann. § 12-60-2560(C) ("Within thirty days after the [County Board of Assessment Appeals'] decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division."). If a petitioner does not follow these steps, the RPA requires this Court to dismiss the action without prejudice. S.C. Code Ann. § 12-60-2560(C) ("If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice.").

B. The Relevant Case Law

The South Carolina Supreme Court has held in two opinions that under the plain language of the RPA, the administrative remedies and procedures provided by that Act are the exclusive remedy for any claim of "illegal or wrongful collection of taxes." See Brackenbrook N. Charleston, LP v. Charleston **County**, 360 S.C. 390, 398-99, 602 S.E.2d 39, 44 (2004) and B&A Develop., Inc. v. **Georgetown County**, 372 S.C. 261, 265, 641 S.E.2d 888, 890 (2007). As discussed below, those cases also establish that a court must dismiss claims for refunds

without prejudice where taxpayers have not exhausted their administrative remedies. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 ; B&A, 372 S.C. at 266-67, 641 S.E.2d at 891-92 .

In Brackenbrook the taxpayers filed an action against Charleston County seeking a refund of their real property taxes. The taxpayers in that case, like the Petitioners in these cases, alleged that they were subject to excessive millage. Brackenbrook, 360 S.C. at 399 , 602 S.E.2d at 44 . The taxpayers in Brackenbrook filed their action without first exhausting their administrative remedies under the RPA. The lower court held that taxpayers were not required to exhaust their administrative remedies, but the Supreme Court reversed and remanded for the case to be dismissed without prejudice to the petitioners' rights to pursue exhaustion of those remedies. The Court noted that the purpose of the RPA is "to provide the people of this State with a straight forward procedure to determine any disputed revenue liability." Brackenbrook, 360 S.C. at 395, 602 S.E.2d at 42 (quoting S.C. Code Ann. § 12-60-20). See also id. at 398, 602 S.E.2d at 44 ("While the Act contains many specific procedures for taxpayers challenging their PTAs, relief under the Act is not limited to these types of protests."). After then recounting the refund procedures established by the Act, and the fact that the taxpayers in Brackenbrook based their claim to a refund on the millage rate, the Court held that the taxpayers' claim for a refund was subject to the RPA. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 . Accordingly, because the taxpayers failed to exhaust their administrative remedies under the RPA, the Supreme Court remanded the case to the trial court to be dismissed without prejudice. Brackenbrook, 360 S.C. at 399, 602 S.E.2d at 44 .

In B&A the taxpayers brought an action seeking a refund of real and personal property taxes without first exhausting their administrative remedies under the RPA. B&A, 372 S.C. at 263, 641 S.E.2d at 889-90 . Just as in Brackenbrook, the taxpayers in B&A "alleged a case of excessive millage." B&A, 372 S.C. at 264, 641 S.E.2d at 890 . This time, having had the guidance of Brackenbrook, the lower courts dismissed the taxpayers' claims for failure to exhaust the RPA processes. B&A, 372 S.C. at 264, 641 S.E.2d at 890 . In the Supreme Court, the taxpayers made several arguments as to why Brackenbrook was either wrong or should not apply to their case, but to no avail. The Court reiterated its holding from Brackenbrook and concluded that:

This case is not distinguishable from Brackenbrook, and thus, the Court of Appeals properly affirmed the circuit court's dismissal of the action pursuant to Section 12-60-3390. [2]
Petitioners allege that **Georgetown County** collected both real and personal property taxes based upon an excessive millage rate thereby resulting of an overcollection of taxes allocated to the school district. The RPA provides an administrative remedy in the form of a

refund for both real and personal property taxes. Thus, pursuant to Brackenbrook and the plain language of the RPA, petitioners must exhaust their administrative remedies before proceeding to circuit court.

B&A, 372 S.C. at 266-67, 641 S.E.2d at 891-92 (citations omitted). [3]

Although the requirement to exhaust administrative remedies clearly applies to refund claims based upon arguments of excessive millage, see, e.g., B&A, 372 S.C. at 266, 641 S.E.2d at 891 , Petitioners nevertheless argue that they should be relieved of this obligation because it would be futile to comply with the RPA's required procedures. Specifically, the Petitioners argue that the County Board of Assessment Appeals has no authority to address allegedly excessive millage, and thus requiring exhaustion of the RPA procedures provides no useful purpose. This very argument, however, was raised in Brackenbrook, but it failed. Even the dissent in that case made the same argument about alleged futility, but to no avail: "The county assessor has no authority regarding millage rates and relief under § 12-60-2560 is inappropriate." Brackenbrook, 360 S.C. at 402, 602 S.E.2d at 46 (Moore, J., dissenting) . Notwithstanding the "futility" concern expressed by the dissent, the majority of the Supreme Court required compliance with the procedures set out in the RPA. Thus, this futility argument in the context of the RPA is foreclosed and is not a legally viable argument.

C. Petitioners' Failure to Follow the RPA Procedures, Thus Necessitating Dismissal

Petitioners also argue they exhausted all administrative remedies. The Court disagrees. As the Appendix attached to this order demonstrates, the Petitioners did not follow the steps required to exhaust administrative remedies. Once the Petitioners sent their April 23, 2008 letters to the Board of Assessment Appeals, the next step was to await a decision from that Board, and then pursue review of that decision with this Court. The Petitioners, however, did not wait on that decision. Instead, only twenty days after sending the April 23 letters, the Petitioners filed Notices of Request for Contested Case on May 13, 2008. The Court takes the time to note here that there is no time limit set forth in the RPA for the Board of Assessment Appeals to rule on a protest. The Court further notes that, absent any direction in the Statute, it is not reasonable to require a ruling from this body a mere twenty days after receiving a protest appeal. Moreover, an individual taxpayer does not have the authority to unilaterally impose time restrictions and deadlines under the RPA.

It is thus clear that Petitioners have not exhausted the administrative process and remedies because they did not wait for a ruling from the Board of Assessment Appeals. The RPA very

clearly provides that a decision from the County Board of Assessment Appeals is a prerequisite to initiating an appeal in this Court. See S.C. Code Ann. § 12-60-2560(C) ("Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division.") (emphasis added). See also Brackenbrook, 360 S.C. at 397, 602 S.E.2d at 43 ("After the board's written disposition of an appeal, the aggrieved party (whether taxpayer or assessor) may appeal to the [ALJ] Division."). The RPA is equally clear that, where the administrative processes established by the Act have not been followed, the Court must dismiss any cases prematurely filed in this Court: "If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice." S.C. Code Ann . § 12-60-2560(C) (emphasis added).

Thus, under the plain language of the RPA and the Supreme Court opinions addressing this language, the Petitioners' failure to adhere to the procedures set out in the RPA mandates that this Court dismiss these cases without prejudice.

ORDER

IT IS HEREBY OIRDERED that the above-captioned cases be dismissed without prejudice.

AND IT IS SO ORDERED.

_____

John D. McLeod, Judge

S.C. Administrative Law Court

May 18, 2009

Columbia, SC

[1] S.C. Code Ann. § 12-60-2560 provides:

> (A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of real property taxes assessed by the **county** assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the **county** assessor who

made the property tax assessment for the property for which the tax refund is sought. The assessor, upon receipt of a claim for refund, shall immediately notify the **county** treasurer and the **county** auditor for the **county** from which the refund is sought. The majority of these three officials shall determine the taxpayer's refund, if any, and shall notify the taxpayer in writing of their decision.

(B) Within thirty days after the decision is mailed to the taxpayer on the claim for refund, a property taxpayer may appeal the decision to the county board of assessment appeals.

(C) Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division.... If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy..., the Administrative Law Judge shall dismiss the action without prejudice.

[2] S.C. Code Ann. § 12-60-3390 mandates dismissals in cases in which cases are prematurely filed in the circuit court prior to exhaustion of administrative remedies under the RPA. The RPA contains an identical provision requiring dismissal where a taxpayer prematurely initiates a contested case in the ALJ Division prior to exhaustion of the preceding processes. See id. § 12-60-2560(C) (contested cases in the ALC challenging real property taxes must be dismissed without prejudice if RPA procedures have not been exhausted).

[3] Brackenbrook and B&A are consistent with numerous rulings from this Court dismissing tax refund cases for failure to exhaust administrative remedies. Godfrey v. Lexington **County** Assessor, Docket No. 09-ALJ-17-0055-CC (March 24, 2009) ; Harward v. Newberry **County** Assessor, Docket No. 08-ALJ-170262-CC (November 13, 2008) ; Dinwiddie v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0103CC (September 11, 2006) ; Harper v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0039-CC (September 11, 2006) ; Ilderton v. Charleston **County** Assessor, Docket No. 06-ALJ-17-0031-CC (September 11, 2006) ; Parris v. Beaufort **County** Assessor, Docket No. 05-ALJ-17-00302-CC (August 22, 2005) ; B.V. II v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0368-CC (July 27, 2005) ; L. Williams v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0276-CC (March 9, 2005) ; J. Williams v. Orangeburg **County** Assessor, Docket No. 04-ALJ-17-0275-CC (March 9, 2005) ; Kelley v. Lexington **County** Assessor, Docket No. 01-ALJ-17-0578-CC (January 18, 2002) ; Middleton v. Horry **County** Assessor, Docket No. 00-ALJ-17-0453-CC (September 14, 2000) ;

Professional Drive Associates, LLC v. Horry **County** Assessor, Docket No. 00-ALJ-17-0482-CC (September 12, 2000) ; Caldwell v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-17-0386-CC (July 25, 2000) ; Brookshire v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-17-0365-CC (July 25, 2000) ; Woodgeard v. Horry **County** Assessor and Horry **County** Auditor, Docket No. 00-ALJ-170364-CC (July 25, 2000) ; Stadium Club Partners, LLP v. Richland **County** Tax Assessor, Docket No. 00ALJ-17-0227-CC (July 5, 2000) .

END OF DOCUMENT -

CERTIFICATE OF SERVICE

2016 SEP 15 AM 11:26

The undersigned employee of McNair Law Firm, P.A., attorneys for the Defendants Town of Summerville, Summerville Town Council, and William E. McIntosh does hereby certify that service of their Motion to Dismiss was made upon all counsel of record by placing the same in the US Mail, first class postage prepaid on 9-13 2016, addressed as follows:

W. Andrew Gowder, Jr., Esq. Pratt-Thomas Walker 16 Charlotte St. PO Drawer 22247 Charleston, SC 29413-2247 *Attorneys for Plaintiffs*	Anthony E. Rebollo, Esq. Richardson, Plowden, Carpenter & Robinson, PA 1900 Barnwell St. PO Drawer 7788 Columbia, SC 29202 *Attorneys for Dorchester County Defendants*
Michael T. Rose, Esq. Mike Rose Law Firm, PC 409 Central Ave. Summerville, SC 29483 *Attorneys for Plaintiffs*	David L. Morrison, Esq. Morrison Law Firm, LLC 7453 Irmo Dr., Ste B. Columbia, SC 29212 *Attorneys for Dorchester School District Defendants, Dorchester Co. Career and Technology Center Defendants, and J. Pye*

Jennifer L. Rath, Legal Secretary

$25.00 MB ✓

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	First JUDICIAL CIRCUIT
COUNTY OF Dorchester	)	CASE NO.: 2016 -CP- 18-838
		2016 SEP 15 AM 11:26
Dorchester County Taxpayers Association et al. Plaintiff,	)	**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.	)	
Dorchester County et. al. Defendant.	)	

Plaintiffs' Attorney:	Attorney for Defendants Town of Summerville, Summerville Town Council, and William E. McIntosh:
W. Andrew Gowder Jr., Esq., Bar No. _____ Address: Pratt-Thomas Walker, PO Drawer 22247, Charleston SC 29413 Phone: 843-727-2229Fax 843-727-2239 E-mail: wag@p-tw.comOther: _____	Erik P. Doerring, Esq., Bar No. 1715 Address: McNair Law Firm, PO Box 11390, Columbia, SC 29211 Phone: 803-799-9800 Fax803-753-3278 E-mail: edoerring@mcnair.netOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss/Motion to Strike
Estimated Time Needed: 30 Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒Written motion attached
☐Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 9/12/16
Signature of Attorney for ☐ Plaintiff/☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE
COUNTY OF DORCHESTER)	FIRST JUDICIAL CIRCUIT
)	
Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all pothers similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger, and South Carolina Public Interest Foundation;)	Civil Action No.: 2016-CP-18-838
Plaintiffs,)	
v.)	
Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,)	Motion to Dismiss Filed By Defendants Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sheriff, Luther C. Knight
	And
	Subject to Their Motion to Dismiss, An Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand
Defendants.)	

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure and the other authorities cited herein, Defendants Dorchester County (the "County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of the

County Council; and Dorchester County Sheriff, Luther C. Knight (the "Sheriff"),[1] respectfully file this Motion to Dismiss and, in support thereof, would show the Court the following:

I. Preliminary Statement

The claims asserted against the County Defendants in the Plaintiffs' Amended Complaint (the "Complaint") depend upon the interpretation and meaning of a property tax statute, S.C. Code Ann. § 12-37-220(B)(47)("Act 388"). In short, Act 388 provides that owner-occupied residential property is exempt from all property taxes imposed "for school operating purposes" other than millage imposed for the repayment of general obligation debt.

To support their claims, the Plaintiffs focus on the undefined term "school operating purpose" and argue a violation of Act 388 has occurred because property taxes were assessed and collected by the County to fund the payment of Deputy Sheriffs assigned by the Sheriff to work as School Resource Officers ("SROs") at schools located within the County. Based on the contents of the Complaint, however, it is clear that the Plaintiffs' arguments are deficient as a matter of law for several alternative, independent reasons. Consequently, all of their claims against the County Defendants must be dismissed.

II. The Plaintiffs' Claims Must be Dismissed Due to Lack of Subject Matter Jurisdiction

A. The Plaintiffs and Their Claims Concerning the Allegedly Wrongful Imposition and Collection of Property Taxes

There are nine Plaintiffs in this case. Their claims are premised on two core allegations, which are repeated numerous times throughout the thirty-eight page Complaint: (a) the taxes imposed by the County to fund the payments to Deputy Sheriffs serving as SROs were for "school operating purposes" and (b) there was an alleged "financing scheme" that violated Act 388 and resulted in improper "double taxation." See, e.g., Complaint at ¶ 78 (alleging that "School police protection is a 'school operating purpose' within the meaning of Act 388") and ¶ 87 (referring to alleged "financing scheme" and claiming that it was "unnecessary, illegal double taxation and a violation of Act 388").

Six of the nine Plaintiffs are individuals and each of them asserts that he has "standing as a Plaintiff in this action as a taxpayer." See Complaint ¶¶ 6-11. In addition, each of the six individual Plaintiffs alleges he "has paid and will continue to pay taxes, including property taxes

[1] In this Motion, the movants are referred to collectively as the "County Defendants."

on his owner-occupied residence," to fund the County and/or Town, "and brings this action individually on his behalf and on behalf of all others similarly situated." Id.

The remaining Plaintiffs are the Dorchester County Taxpayers Association, the Weatherstone Property Owners Association and the South Carolina Public Interest Foundation. Each of these organizations is suing as a representative of itself and its members who are allegedly either taxpayers in the Town, County and/or one or more of the School Districts. See id. at ¶¶ 5, 12 and 13.

All of the Plaintiffs allege that they have been harmed, or that they will be harmed, as a result of allegedly improper actions taken by the County Defendants with respect to property taxation. In an introductory section of the Complaint called "Statutory and Regulatory Framework," for example, the Plaintiffs describe what they characterize as "SRO Funding – Act 388 And Double Taxation Violations." Id. at ¶ 47 et seq.

Part IV of the Plaintiffs' Amended Complaint, entitled "Factual Allegations," similarly addresses the wrongful assessment and collection of property taxes, including alleged "Double Taxation By County Or Town, And School Districts" and other perceived improprieties associated with property taxation. Id. at ¶ 80 et seq.

In Part V of the Amended Complaint, the Plaintiffs assert six claims, five of which appear to be directed at one or more of the County Defendants:

> First Cause of Action: "Violations of Act 388," alleging (among other things) that Plaintiffs have been "damaged by having had to pay and by having to pay in the future additional and unlawful taxes...." Id. at ¶ 99.
>
> Second Cause of Action: "Illegal Double Taxation," alleging (among other things) that Plaintiffs have been "damaged by having had to pay and by having to pay in the future additional and unlawful taxes...." Id. at ¶ 102.
>
> Third Cause of Action: This cause of action, which is not directed against the County Defendants, alleges "[t]he failure and refusal of [Dorchester School District Two ("DD2")] to comply with Act No. 98 of 2009 is unlawful." Id. at ¶ 104.
>
> Fourth Cause of Action: "Violations of Expression and Association Rights Under South Carolina Constitution," alleging the deprivation of constitutional rights to "Plaintiffs and other taxpayers." Id. at ¶ 107.

Fifth Cause of Action: "Violations of First Amendment Rights Under the United States Constitution," alleging the deprivation of constitutional rights to "Plaintiffs and other taxpayers." Id. at ¶ 110.

Sixth Cause of Action: "Violations of Substantive and Procedural Due Process Rights Under the Fourteenth Amendment," alleging (among other things) that Plaintiffs have been, and will be, harmed "by having to pay and risking having to pay taxes unlawfully...." Id. at ¶ 114.

B. The South Carolina Revenue Procedures Act Provides the Exclusive Remedies for Cases Involving the Wrongful Collection of Taxes

The South Carolina Constitution specifies that "[t]he General Assembly may direct, by law, in what manner claims against the State may be established and adjusted." S.C. Const. Articles X, at § 10, and XVII, at §2. For tax matters, the General Assembly exercised that constitutional power when it enacted the South Carolina Revenue Procedures Act ("RPA"): "It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine . . . a dispute concerning property taxes." S.C. Code Ann. § 12-60-20. Moreover, the General Assembly made it clear that "[t]he South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent." Id.

To achieve those ends, the RPA provides specific remedies for contesting any tax alleged to be illegal or wrongfully collected. In that regard, Section 12-60-80(A) of the RPA specifically states the following: "[e]xcept as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." The exception set forth in subsection (B), referred to herein as "the RPA Exception," is for "an action for a declaratory judgment where the sole issue is whether a statute is constitutional." However, the terms of RPA Exception provide that it "does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons." S.C. Code Ann. § 12-60-80(B)(emphasis added).

The Complaint confirms that this case involves a dispute concerning property taxes. Consequently, there is no question that the analysis of jurisdiction in this case begins with the RPA, which was specifically enacted for claims involving the illegal or wrongful collection of taxes, or attempts to collect taxes. The Complaint also confirms that the RPA Exception does not apply here for several reasons, all of which mean that (a) the RPA controls, (b) there are no remedies other than those set forth in the RPA itself and (c) jurisdiction to decide the claims asserted by the Plaintiffs rests exclusively in the South Carolina Administrative Law Court.

C. The RPA Exception Is Inapplicable

The RPA Exception is for an action where the sole issue is whether a statute is constitutional. Here, however, the Plaintiffs have not made any such claim. To the contrary, the Plaintiffs contend that Act 388 and other statutes cited in their Complaint are valid and constitutionally permissible. As a result, the RPA Exception is inapplicable for that reason alone.

The Plaintiffs, however, take issue with certain "ordinances, resolutions, motions and contracts." Complaint at ¶ 2. But ordinances, resolutions, motions and contracts are not the same as statutes and, since the RPA Exception is for an action involving the constitutionality of a statute, the RPA Exception is inapplicable for that reason as well.

Yet, even if one were to assume, arguendo, that a complaint about "ordinances, resolutions, motions and contracts" is the functional equivalent of a complaint about the constitutionality of a statue (which it is not), constitutionality would still have to be the "sole issue" in the case for the RPA Exception to apply. S.C. Code Ann. § 12-60-80(B). Here, however, the Plaintiffs' Complaint (at ¶ 114) references "nominal and actual damages" and it asserts a mix of other claims and a variety of requests for relief. See, e.g., Complaint at ¶ 1 (describing the case as a "civil action for declaratory, mandamus, injunctive and/or monetary relief"). The Plaintiffs' Complaint thus confirms that there are multiple issues — rather than a "sole issue" — to be determined in this case. Therefore, the RPA Exception does not apply for that reason as well.

Finally, the RPA Exception is inapplicable in any event because, by its express terms, it "does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons." S.C. Code Ann. § 12-60-80(B). (Emphasis added.) Here, the Plaintiffs describe themselves in the Complaint as precisely such a limited class: "the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a person nature to the Plaintiffs, not common to all members of the general public." See Complaint at ¶ 15 (emphasis added).

Under these circumstances, the RPA Exception set forth in S.C. Code Ann. § 12-60-80(B) is inapplicable for the several alternative, independent reasons set forth above.

D. The RPA Requires Dismissal Because Exclusive Jurisdiction is With the ALC

This case involves a property tax dispute and, as noted above, "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes." S.C. Code Ann. § 12-60-80(A). The RPA also provides that the jurisdiction to decide such tax disputes is vested exclusively in the Administrative Law Court: "[i]f a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." S.C. Code Ann. § 12-60-3390.

The claims raised by the Plaintiffs in this case are clearly covered by the RPA because (a) they involve the allegedly illegal or wrongful collection of property taxes and (b) the RPA Exception is inapplicable. This is significant because, as the courts have recognized, the procedures imposed by the RPA (which the Plaintiffs do not ever allege that they satisfied) are a necessary prerequisite to any court action involving the "illegal or wrongful collection of taxes." See e.g., Brackenbrook North Charleston LP, et al. v. The Cnty. of Charleston, et al., 602 S.E.2d 39 (S.C. 2005)(remanding the case to the trial court for dismissal after finding that the plaintiffs had not followed the procedures specifically provided in the RPA "to determine any disputed revenue liability").

Here, the Plaintiffs did not proceed under the RPA; instead, they opted to file the action directly in circuit court. Consequently, this case must be dismissed as required by S.C. Code Ann. § 12-60-3390.

III. In Any Event, Any Common Law Claims for "Damages" Are Barred As a Matter of Law for Reasons Unrelated to Jurisdiction

A. Plaintiffs Refer to "Damages" But Assert No Tort Claims, Which Would Be Barred for Various Reasons Anyway

The Complaint does not allege or assert the elements of any common law tort claims.[2] However, it contains isolated references to "damages." While the South Carolina Public Interest Foundation alleges that it does not seek "money damages" (Complaint at ¶ 13), this particular allegation implies that the other Plaintiffs are seeking money damages. This is confirmed later in the Complaint when the Plaintiffs allege that they, and those similarly situated, "have been damaged" as a result of having paid "unlawful taxes." Id. at ¶¶ 99 and 102. Indeed, the

[2]There are three references in the Complaint to 42 U.S.C. § 1983. The Plaintiffs' claims under that federal statute, and the reasons that they are deficient, are discussed in Part VI of this Motion.

Plaintiffs affirmatively state that they have "suffered" both "nominal and actual damages" to be proven at trial. Id. at ¶ 114.

To the extent (if any) that the Plaintiffs are attempting to assert common law tort claims, any such attempt was plainly deficient because they failed to allege the essential elements of any particular tort. Therefore, dismissal of any such claims is required by Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action and, in any event, would also be required for the alternative, independent reasons discussed below.

B. Legislative Immunity Bars Any Common Law Tort Claims Asserted Against the Individual County Council Members and the County Itself

Immunity from suit for legislative or quasi-legislative acts is a longstanding common law principle in American jurisprudence. In Tenney v. Brandhove, 341 U.S. 367 (1951), the United States Supreme Court recounted the long history of legislative immunity and, after doing so, noted that the states "took great care to preserve the principle that the legislature must be free to speak and act without fear of criminal and civil liability." Id. at 375. The rationale for providing immunity is as follows:

> Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives.

Id. at 377.

These principles and the rationale that supports them have been recognized and applied by the South Carolina courts. See, e.g., Richardson v. McGill, 255 S.E.2d 341, 343 (S.C. 1979) ("sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties") and Williams v. Condon, 553 S.E.2d 496, 503 (S.C. Ct. App. 2001)(citing and quoting Tenney in a case involving another immunity).

Legislative immunity applies not just to the individual members of the County Council, but the County itself. See Hollyday v. Rainey, 964 F.2d 1441, 1443 (4th Cir. 1992)(finding that county was protected by absolute legislative immunity because the plaintiff's case or the defense "would perforce require testimony of the legislators involved regarding their motives"). This is significant here because the courts have recognized that common law immunities in effect prior

to the enactment of the South Carolina Tort Claims Act were not supplanted by that Act. See, e.g., O'Laughlin v. Windham, 498 S.E.2d 689 (S.C. Ct. App. 1998).

Indeed, the retention of the common law legislative immunity is confirmed by several sections of the Torts Claim Act. See S.C. Code Ann. §§ 15-78-20(b)("All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved"); 15-78-60(1)(preserving sovereign immunity for "legislative, judicial, or quasi-judicial action or inaction"); 15-78-60(2)(preserving sovereign immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"); and 15-78-60(4)(preserving sovereign immunity for "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").

To the extent that that the Plaintiffs are asserting common law tort claims (which they have not), all such claims would be barred as a matter of law for the reasons above.

C. The Tort Claims Act Also Bars Any Common Law Tort Claims Asserted Against the Individual County Council Members and the Sheriff

In South Carolina, the Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 455 S.E.2d 688, 689 (S.C. 1995); Wells v. City of Lynchburg, 501 S.E.2d 746, 749 (S.C. Ct. App. 1998). Moreover, "[t]he provisions of [the Torts Claim Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f).

With respect to individual liability, the Tort Claims Act provides immunity to employees of state agencies for acts committed within the scope of their official duties unless "it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a), (b). Although the Complaint in this case does not allege the essential elements of any such torts against the Sheriff or the individual members of County Council, it is clear that any such claims would be barred by the Torts Claim Act.

IV. In Any Event, The Plaintiffs' Request for Equitable Relief Are Deficient for Reasons Unrelated to Jurisdiction

A. The Plaintiffs' Failure (And Inability) to Properly Plead Equitable Claims

While it is not entirely clear whether the Plaintiffs were trying (and yet failed) to assert common law tort claims against the County Defendants, there is no doubt that they are attempting to invoke this Court's equitable powers, conferred by Article V, § 7, of the South Carolina Constitution, because they have repeatedly requested injunctive relief, beginning with the very first introductory paragraph of their Complaint. No action for injunctive relief is permitted, however, if the plaintiffs have an adequate remedy at law.

In S.C. Pub. Serv. Auth. v. Carolina Power and Light Co., 137 S.E.2d 507, 509-10 (S.C. 1964), the Supreme Court explained the pleading requirements with respect to that fundamental principle and held that, unless facts are alleged which show that the plaintiff has no remedy at law, any request for injunctive relief must be dismissed:

> While the complaint contains the general allegation that the plaintiff will suffer irreparable injury, there is no factual allegation to support it. This is insufficient to constitute a cause of action for injunctive relief.
>
> The following rule is stated in 43 C.J.S. Injunctions § 182b(5)(b), at page 861: 'Generally, unless the rule is changed by statute, an injunction will not be granted unless the complaint shows that a refusal to grant the writ will work irreparable injury. It is not sufficient simply to allege that the injury will be irreparable, but the facts must be stated so that the court may see that the apprehension of irreparable injury is well founded. In view of the severity or harshness of the remedy by injunction, a strict adherence to this rule of pleading is required.' The rule is thus stated in 28 Am.Jur., Injunctions, Section 266, page 778: 'But mere allegations of the pleader's conclusion that the act or acts sought to be restrained will, if committed, cause irreparable injury or damage for which there is no remedy at law, not supported by facts showing such irreparable injury or damage, is not sufficient to make out a case for injunctive relief. The pleading should state facts to enable the court to judge whether such is the case.'

(Emphasis added.)

The foregoing analysis is critical here because it demonstrates that the Plaintiffs' requests for injunctive relief are deficient on their face. To begin with, a careful review of the Complaint confirms that the Plaintiffs never once allege irreparable harm. Secondly, the Plaintiffs never once allege (nor could they) that they have no remedy at law. Finally, the Complaint actually indicates that the Plaintiffs do have an adequate remedy at law to redress their alleged harm because (a) they affirmatively state (at ¶ 114) that they have "suffered" both "nominal and actual

damages" to be proven at trial and (b) that their "damages" are the result of having paid "unlawful taxes" (id. at ¶¶ 99 and 102).[3]

Indeed, the South Carolina Supreme Court addressed this very issue in Riverwoods, LLC, v. Charleston Cnty., 563 S.E.2d 651, 657 (S.C. 2002), denying requests for injunctive relief on the grounds that an adequate remedy at law existed in the Administrative Law Court:

> Taxpayers argue that every property owner in Charleston County paying ad valorem taxes is affected. They contend that, under these circumstances, paying taxes under protest is an unfair and impractical remedy and therefore an inadequate remedy.
>
> Taxpayers are incorrect. While it may be true that by invalidating the Ordinance all property owners in Charleston County will be affected in future tax years, the instant case involves only four properties. **Clearly, these Taxpayers have an adequate remedy provided under statute by paying their taxes under protest.... Thus, the trial court did not err in denying injunctive relief.**

(Emphasis added.)

All of the above is particularly devastating to the Plaintiffs' request for injunctive relief because, as previous noted in Part II of this Motion, the General Assembly enacted the Revenue Procedures Act for the specific purpose of providing an exclusive forum for the initiation of refund suits to recover the very "damages" (i.e., allegedly wrongful taxes) that the Plaintiffs reference in their Complaint. Here, therefore, the Complaint not only proves that the Plaintiffs' failed to properly plead their claims for injunctive relief but, also, that this Court lacks jurisdiction to hear and decide their claims. See Part II of this Motion.

Under these circumstances, all of the Plaintiffs' claims for equitable relief are deficient as a matter of law and must therefore be dismissed.

B. Plaintiffs' Requests for a Writ of Mandamus Are Likewise Misplaced

The Plaintiffs Complaint (at ¶ 2) includes a request a writ of mandamus to require the "governmental Defendants" to perform nondiscretionary duties.

Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal. Wilson v. Preston, 662 S.E.2d 580, 583 (S.C. 2008). A duty is ministerial when it is "absolute, certain and imperative" as opposed to being discretionary. Id. To obtain a writ of mandamus, a petitioner must show: (1) a duty of

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[3]As noted in Part II of this Motion, any such claims must be made in the Administrative Law Court pursuant to the Revenue Procedures Act.

respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. Riverwoods, LLC, v. Charleston Cnty., 563 S.E.2d 651, 657 (S.C. 2002).

To the extent (if any) that the Plaintiffs' request for a writ of mandamus is directed against the County Defendants, it is baseless for several reasons. First, the matters alleged with respect to the County Defendants did not involve "ministerial" duties. Second, the Plaintiffs do have an adequate remedy at law. See Part IV(B) of this Motion. Finally, the Plaintiffs' arguments concerning "Act 388 violations" and "double taxation" are also insupportable for the alternative independent reasons discussed immediately below in Part V of this Motion.

V. In Any Event, The Pronouncements Plaintiffs Seek Under the S.C. Uniform Declaratory Judgment Act Are Insupportable for Reasons Unrelated to Jurisdiction

A. Summary of the County Defendants' Positions

As noted in the following pages of this Motion, the Plaintiffs have ignored the Supreme Court's analysis of the term "school operating purpose," which analysis belies the positions they advance in their Complaint. The Plaintiffs' arguments are also misplaced because, for their positions to be correct, that would necessarily mean that the "school operating purpose" exemption in Act 388 effectively amended or partially repealed the broad, liberally-construed police powers that the General Assembly conferred on the County and the Sheriff in several other statutes that predate Act 388. Contrary to the Plaintiffs' claims, those police powers and the statutes that authorize them (discussed below) were not curtailed or limited by the passage of Act 388.

The Plaintiffs, in other words, are making a "tail wags dog" argument. That argument is not only incorrect from a legal standpoint, it is also unwise and contrary to public policy. The Plaintiffs' apparently believe that the unelected authors of the "Tidwell Report" are better equipped than the individuals elected by Dorchester County voters to make decisions about police protection at schools. No matter how well intentioned that apparent belief may be, there is simply no basis for wresting such decisionmaking authority away from the County and the Sheriff on the basis of a "creative" interpretation of a tax exemption that never once mentions or addresses those police powers in any way, shape or form.

Finally, there plainly was no "double tax" here because the taxes at issue were imposed by separate and distinct political subdivisions (see pp. 19-20 herein) and the Plaintiffs' reliance on a November 24, 2015 opinion issued by the Attorney General's office as to that issue and

others is misplaced. See 2015 WL 8773705. Respectfully, the legal analysis in that opinion, which does not constitute binding precedent in any event, was incorrect.[4]

B. The Supreme Court's Analysis of "School Operating Purpose" Contradicts the Plaintiffs' Interpretation of that Term

In Berkeley Cnty. Sch. Dist. v. S.C. Dep't of Revenue, 679 S.E.2d 913 (S.C. 2009), the South Carolina Supreme Court examined the meaning of the undefined term "school operating purpose" at issue here. It did so in connection with a request by several school districts to be reimbursed from the Homestead Exemption Fund for expenses incurred under lease-purchase and installment-purchase agreement obligations for capital improvements (i.e., school buildings and other improved real property used by the schools). Id.

As explained by the Court, by enacting Act 388 in 2006, the General Assembly increased the amount of the tax exemption for owner-occupied residential property to one hundred percent of the fair market value of the property and provided the property was exempt from all property taxes imposed for school operating purposes, other than millage imposed for the repayment of general obligation debt. Id. at 916. In order to reimburse school districts for the tax revenue lost as a result of that exemption, an additional one percent sales tax was imposed, the proceeds from which would be credited to and deposited in the Homestead Exemption Fund. Id. A three-tier reimbursement mechanism was put in place to reimburse school districts out of the Homestead Exemption Fund to replace taxes lost as a result of the property tax exemption. Id. at 924.

The question before the Court was whether the school districts' ability to fund the lease-purchase and installment-purchase obligations with property taxes on owner-occupied residences was "lost" because of the exemption provided by Act 388 (i.e., whether those expenses were for "school operating purposes"). Id. The Court ultimately found that the ability to tax to fund such expenses was lost, since the expenses were for "school operating purposes." Id. Consequently, it held that the school districts were entitled to a reimbursement from the Homestead Fund. Id.

Before reaching that conclusion, the Court reviewed the definition of "operating expenses" in Black's Law Dictionary and, after doing so, noted that "a school would not be operational without an infrastructure which necessarily includes school buildings," further finding that "the continued operation of a school district is dependent upon the renovation and

[4] "While an attorney general opinion may be persuasive, it is not binding precedent." Branch v. City of Myrtle Beach, 505 S.E.2d 925, 927 (S.C. Ct. App. 1998), rev'd on other grounds, 532 S.E.2d 289 (2000).

purchase of school buildings" and that the payments made in connection therewith were "essential for 'school operating purposes.'" Id. at 919 (Emphasis added).

The Supreme Court's analysis, therefore, focused on necessity and whether the operation of a school depends on, or is essential to the operation the school. Here, however, the taxes imposed by the County to fund the Deputy Sheriffs serving as SROs do not come within the meaning of the definition of "school operating purposes" when viewed from the standpoint of the County Defendants. In that regard, the operation of a school does not "necessarily" include police protection services provided SROs; nor does the continued operation of a school "depend" on Deputy Sheriffs serving as SROs as "essential" components for school operating purposes.

If there were any doubt about this, the allegations in the Complaint removes it because the crux of the Plaintiffs' claims here is that that the use of Deputy Sheriffs as SROs is not necessary and that cheaper, privately employed security guards would be better. Plus, the Plaintiffs concede (as they must) that the statute defining SROs "allows, but does not require, the County and the Town to designate certain officers as SROs." Complaint at ¶ 49 (Emphasis added). The Plaintiffs' interpretation of the term "school operating purpose" therefore conflicts with the analysis of the South Carolina Supreme Court and may be rejected for that reason alone.

C. Even Assuming, Arguendo, that a "School Operating Purpose" Exists, There Are No Act 388 Violations Due to Pre-Existing Police Powers and the Application of Basic Principles of Statutory Construction

1. Police Powers of Dorchester County and Its County Council. Dorchester County is a political subdivision of the State of South Carolina and its governing body, the Council, was established by Act No. 236 of 1969. See 56 Stat. Act No. 236 at 254 (1969). After the 1975 enactment of the Home Rule Act (S.C. Code Ann. §§ 4-9-10 et seq.), Dorchester County elected to operate within the "Council/Administrator" form of government, consisting of seven council districts. As a result, each member of Council is elected by single-member districts and serves four-year terms.

As part of the Home Rule Act, the General Assembly gave county councils broad authority and discretion to appropriate funds for county purposes. Specifically, S.C. Code Ann. § 4-9-30(5)(a) empowers a county council to "assess property and levy ad valorem property taxes . . . and to make appropriations for functions and operations of the county, including, but not limited to appropriations for ... public safety, including police and fire protection...." This particular statute dates back to the 1962 Code of Laws and no one disputes that the County

Council has long used the foregoing authority to set a budget and, as part of that process, to appropriate funds annually for the operation of the Sheriff's Office.

In addition to the broad powers described above, the General Assembly conferred on the County general police powers, as set forth in S.C. Code Ann. § 4-9-25, which was first enacted in 1989:

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

(Emphasis added.)

2. Police Power of the Sheriff and His Deputies. In South Carolina, sheriffs are elected, constitutional officers. See Article V, Section 24 of the State Constitution, providing that "[t]here shall be elected in each county by the electors thereof...a sheriff...." Furthermore, it is well established that sheriffs are the chief law enforcement officers of the counties they serve. Trammell v. Fidelity Casualty Co. of N.Y., 45 F.Supp. 366, 372 (D.S.C. 1942). By virtue of a statute enacted in 1962 (with origins dating back to 1912), sheriffs have the right and duty to assign their deputies to sections of the county "to prevent or detect, arrest and prosecute for breaches of the peace." S.C. Code Ann. § 23-13-70.

Under the common law and statutory law, deputy sheriffs are considered agents of the sheriff and not employees of the county. Allen v. Fidelity and Deposit Co. of Md., 515 F.Supp. 1185 (D.S.C.1981). Consequently, "deputy sheriffs are answerable only to the sheriff and not to the county government." Id. at 1190. In other words, Deputy Sheriffs serve at the pleasure of the sheriff. Rhodes v. Smith, 254 S.E.2d 49 (S.C. 1979).

3. Sheriff Deputies Who Serve as SROs Are Part and Parcel of Law Enforcement and Community Policing. S.C. Code Ann. § 5-7-12(B) defines an SRO as "a person who is a sworn law enforcement officer . . . and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district." The Plaintiffs make much of this language because, while it specifically mentions law enforcement as a "primary duty," it also includes the word "teacher."

The Plaintiffs, however, have failed to focus on the specific use of Deputy Sheriffs as SROs. Fortunately, that particular topic has been closely examined, on more than one occasion, by the United States Bureau of Justice Statistics ("BJS").

The BJS is an agency located within the U.S. Department of Justice that collects, analyzes and publishes information considered "critical to federal, state, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded." See Bureau of Justice Statistics, About the Bureau of Justice Statistics, http://www.bjs.gov/index.cfm?ty=abu. The data BJS analyzes is obtained from Law Enforcement Management and Administrative Statistics (LEMAS) surveys conducted among a nationally representative sample of general purpose state and local law enforcement agencies, including sheriff's offices. Id.

Periodically, BJS releases specific reports on sheriffs and sheriff deputies as part of its "Sheriff Series."[5] The BJS Sheriff Series reports are instructive in that they confirm widespread use of deputy sheriffs as SROs across the United States as well as the nature and purpose of the services they render. In a recent report, for example, BJS observed that "Forty-eight percent of sheriffs' offices, employing 71% of all sworn personnel, used full-time school resource officers in 2000." See http://www.bjs.gov/content/pub/pdf/so00.pdf. The BJS categorizes the work performed by these sheriff office SROs as "community policing" and its report notes the following:

> Overall, 62% of sheriffs' offices, employing 76% of all sworn personnel, had full-time community policing officers. In some jurisdictions, these officers may be known as community relations officers, community resource officers, or some other name indicative of the community policing approach they employed....
>
> * * *
>
> **School resource officers use a community policing** approach to provide a safe environment for students and staff. In addition to handling calls for service within the school, **they work closely with school administrators and staff to prevent crime and disorder by monitoring crime trend, problem areas, cultural conflicts, and other areas of concern.**

Id. at p. 15 (Emphasis added).

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[5]A court may take judicial notice of information in governmental agency reports and postings relating to the purpose, creation, and function of such reports and postings. See United States v. Chester, 628 F.3d 673, 692 (4th Cir. 2010)(taking judicial notice matters contained in reports from the CDC, DOJ Bureau of Justice Statistics, and the National Institute of Justice); and Fisher v. City of North Myrtle Beach, 2012 U.S. Dist. LEXIS 120607, 2012 WL 3638776, at *1 n.2 (D.S.C. Jul. 26, 2012)("The court may take judicial notice of factual information located in postings on governmental websites."). Further, Rule 201(f) of the South Carolina Rules of Evidence specifically provides that "[j]udicial notice may be taken at any stage of the proceeding."

4. The Plaintiffs Do Not Dispute the Law Enforcement Role of the Deputy Sheriffs at Issue. Even without any consideration of the BJS materials, the Plaintiffs do not dispute the law enforcement purpose served by the Deputy Sheriffs serving as SROs. Indeed, they specifically allege in their Complaint "the purpose" of having the Deputy Sheriffs serve as SROs at schools is "police protection:" "The purpose of Dorchester County's . . . collecting and using those taxes is to finance SROs for police protection at schools." Complaint at ¶78 (emphasis added). See also Complaint at ¶¶ 56 ("Tidwell and Associates recommended that DD2 stop paying Dorchester County . . . for SROs employed by the County . . . to provide police protection in DD2 schools...."); and 76 ("Passage of [Ordinance #15-14] allowed Dorchester County . . . to fund SROs to be used . . . to provide police protection at their respective schools")(emphasis added).

The Plaintiffs have thus admitted that "the purpose" of the services the Deputy Sheriffs provide as SROs is to provide "police protection" and the County Defendants agree. However, the County Defendants do not agree that, by adding the words "for school purposes" after "police protection," the services performed by the Deputy Sheriffs are somehow transformed into something other than law enforcement, which would (for the reasons discussed below) weaken the police powers of the County and the Sheriff at schools in the County. To effect a change of that magnitude, specific legislative action would be required and, in South Carolina, there has been no such legislation.

5. Even If the SROs Are, In Some Sense, for a "School Operating Purpose," Basic Principles of Statutory Construction Confirm that the Plaintiffs Are Wrong. In theory, the purpose of the taxes at issue in this case might be said to differ depending upon the taxing unit that imposes them: primarily or exclusively a police purpose when viewed from the standpoint of the County and primarily or exclusively a school operating purpose when viewed from the standpoint of the School Districts. Alternatively, the taxes at issue could conceivably be viewed as having some mixed or shared purpose, with elements of both police protection and school operating purposes, regardless of which taxing authority imposes them.

Here, however, the Plaintiffs' attempt to label the property taxes and the services they fund as a "school operating purpose" is meaningless. Even if one were to assume, arguendo, that some aspect of the services performed by the Deputy Sheriffs perform as SROs is in some sense a "school operating purpose," or that the SROs perform services for which there are mixed or

shared purposes, basic rules of statutory construction confirm that the County Defendants are entitled to judgment on the pleadings as a matter of law.

Regardless of the meaning of "school operating expense," this much is certain: (a) before and after the enactment of Act 388, S.C. Code Ann. § 4-9-30(5)(a) affirmatively authorized and still authorizes the County to assess and collect property taxes for police protection; (b) before and after the enactment of Act 388, S.C. Code Ann. § 49-9-25 specifically conferred and still confers on County Council the power and authority to enact regulations, resolutions, and ordinances in relation to "any subject" as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving peace and order; and (c) before and after the enactment of Act 388, S.C. Code Ann. § 23-13-70 expressly provided and still provides the Dorchester County Sheriff with the right (and duty) to assign his deputies to sections of the county "to prevent or detect, arrest and prosecute for breaches of the peace."

As noted previously, the Plaintiffs concede in their Complaint (¶ 78) that "the purpose" of the taxes at issue is to "finance SROs for police protection at schools," meaning that no one is disputing the police protection aspect of those services. For the Plaintiffs' arguments about Act 388 violations to be correct, however, that would necessarily mean that Act 388 curtailed, limited and/or partially repealed the powers conferred on County Council and the Sheriff by the statutes described above, thereby diminishing the County Council's power to fund police protection at schools when compared to other parts of the County and similarly diminishing the Sheriff's power to assign his Deputies to school property when compared to other parts of the County.

What's the Plaintiffs' explanation for how such major changes to fundamental police power came about and why they are justified? The Plaintiffs blithely assert that an undefined term in Act 388, which is a property tax statute, mandates all of these important changes to longstanding police powers, even though Act 388 says nothing at all about placing limits on such powers and never once references any of the other pre-existing statutes, discussed above, which conferred (and still confer) those powers on the County Council and the Sheriff.

The Plaintiffs are wrong and basic principles of statutory construction confirm that their argument about "Act 388 violations" cannot be correct. It is well established that "there is a presumption against the repeal of prior laws by implication." 1A Sutherland Statutory

Construction § 23:10 at 474, 479 (7th ed. 2016) (hereinafter "Sutherland").[6] Indeed, the courts in South Carolina have routinely applied this presumption. See, e.g., Hodges v. Rainey, 533 S.E.2d 578, 582-83 (S.C. 2000)("The law does not favor the implied repeal of a statute.").

In addition, basic rules of statutory construction recognize that "the party asserting the implied repeal bears the burden to demonstrate beyond question that the legislature intended in its later legislative action the unequivocal purpose to effect a repeal." Sutherland, § 23:10 at 479. The reasoning and justification for this burden have been described as follows:

> The presumption against implied repeal is founded upon the doctrine that the legislature is presumed to envision the whole body of the law when it enacts new legislation. Therefore, drafters should expressly designate offending provisions rather than leave a repeal to arise by implication from a later enactment. Where a newly enacted statute is silent on a previous existing one, the indication is that the legislature did not intend to repeal the existing one. Courts also assume that existing statutory or common law represents popular will, which reinforces the presumption against alteration or appeal.

Id. at 479-80 (footnotes omitted)(emphasis added). See also Hodges v. Rainey, 533 S.E.2d 578, 582-83 (S.C. 2000)("It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first.").

Basic principles of statutory construction also recognize that implied repeals or amendments to statutes that serve an important public purpose, such as police power, are especially disfavored. See Sutherland, § 23:10 at 481.

Finally, it is well established that "tax exemption statutes are strictly construed against the taxpayer." Southeastern Kusan v. S.C. Tax Com'n, 280 S.E.2d 57, 58 (S.C. 1981). "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." Id.

Here, the Plaintiffs cannot overcome the strong presumption against implied repeal or implied amendment arguments which are, whether they realize it or not, vital to the claims they make in their Complaint. First, there is no dispute that Act 388, which became effective for tax years beginning after 2006, never once mentioned or referred to any one of the pre-existing

[6] "Implied amendments" of statutes are identical to repeal by implication when only a part of a prior statue is affected, altered or modified. 1A Sutherland Statutory Construction § 22:13 at 296 (7th ed. 2016).

statutes referenced above. Instead, Act 388 was silent and there is absolutely no indication whatsoever that the legislature intended to repeal, modify or amend any part of any one of those statutes, which involve one of the most fundamental of all governmental powers.

Nevertheless, the Plaintiffs suggest that a parade of horribles will ensue if their position about Act 388 violations is not accepted: "If [the Defendants] can finance school police protection in the manner described above, by that precedent Dorchester County and the Town could finance salaries, electricity, gasoline for school buses and all other operating expenses of these school districts...." Complaint at ¶79. This absurd hypothetical position deserves little comment, except to say that the Plaintiffs do not allege (nor could they allege) that math, science or any other school teachers, such as librarians, are being deputized by the Sheriff as an "end run" around Act 388. Similarly, the Plaintiffs do not allege (nor could they allege) school buses have been made part of the Sheriff's fleet of patrol cars and cruisers so that owner-occupied residences can now be taxed to fund the purchase of school bus gasoline.

The bottom line here is that the Plaintiffs have put forth a rhetorical "red herring" and, in the process of doing so (perhaps as a distraction), have conveniently ignored each of the basic principles of statutory construction described above. Consequently, their position concerning "Act 388 violations" must be rejected, even if they do genuinely believe that it would be cheaper or better to follow the recommendations of the unelected authors of the "Tidwell Report" when it comes to the issue of police protection in schools. See Complaint at ¶¶ 55-56.

D. There Was No "Double Taxation"

In order to have "double taxation," the taxes in question must be imposed on the same property, for the same purpose, "by the same state, government or taxing authority." 84 C.J.S., Taxation, § 58. See also 71 Am. Jur. 2d, State and Local Taxation § 29 ("It is not invalid double taxation to impose state and local taxes upon the same property in the same year. This principle is equally applicable with respect to taxation by more than one local political subdivision") (footnote omitted); Black's Law Dictionary 491 (6th ed. 1990)(defining "double taxation" as the placement of two taxes on the same property by the same governing body during the same tax period for the same taxing purpose.)

The South Carolina Constitution recognizes counties, townships, and school districts as separate and distinct political subdivisions, each of which may be authorized to levy taxes. See Article 10, §§ 5 and 6, and Article 11, § 6, of the South Carolina Constitution. Here, Dorchester

County and each of the School Districts constitute such "separate and distinct" political subdivisions and, therefore, there was no "double tax" for that reason alone. See Atkinson Dredging Co. v. Thomas, 223 S.E.2d 592, 596 (S.C. 1976)("Generally, to constitute double taxation there must be an identity of taxing authority, taxing period, taxing purpose, and person and property taxed; and even then there are exceptions....")(Emphasis added).

VI. Plaintiffs' Federal Claims Under 42 U.S.C. §1983 Are Deficient as a Matter of Law and Must Therefore Be Dismissed

A. All Section 1983 Claims Asserted Against the Sheriff Must Be Dismissed Because He is a State Official

While the Sheriff denies each of the outrageous claims asserted against him by the Plaintiffs in this case, the substance of those claims need not be addressed since, on their face, all such claims are deficient as a mater of law.

The plain text of § 1983 provides that, for a claim to be viable, the defendant must be a "person" as that term is used in the statute. Under the Eleventh Amendment to the United States Constitution, however, neither the state, nor a state official acting in an official capacity, comes within the meaning of "person" as that term is used in 42 U.S.C. § 1983. Will v. Mich. Dep't. of State Police, 491 U.S. 58 (1989).

The South Carolina courts have squarely held sheriffs and their deputies are state officials (not county officials) and, as such, they are not amenable to a suit under 42 USC § 1983. See Cone v. Nettles, 417 S.E.2d 523, 524 (S.C. 1992)(specifically holding that sheriffs and deputy sheriffs are state officials and that "a cause of action against a sheriff or sheriff's deputies cannot be maintained under 42 U.S.C. §1983). Accordingly, it is clear that a South Carolina sheriff may not be sued in his official capacity for monetary damages.

Here, the Complaint confirms (at ¶ 37) that the Sheriff has been sued in his "official capacity." Therefore, any and all § 1983 claims asserted against him must be dismissed.

B. Any § 1983 Claims for "Damages" Against the Individual County Council Members Are Also Deficient

1. Summary of the Allegations About the County Council Members. Seven members of the County Council have been individually named as defendants in this case: David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr. The Complaint confirms that all of them are "being sued only in [their] official capacity." Complaint at ¶¶ 30-36.

County Councilmen Bailey, Davis, Duncan and Hargett are mentioned just once in the body of the Complaint, in the listing of the names of Defendants. See Complaint at ¶¶ 31 (Bailey), 33 (Duncan), 35 (Davis) and 34 (Hargett). Other than being included as a part of that list, none of these individuals is mentioned anywhere else in the Complaint.

The names of County Councilmen Byars and Hearn also appear in the Complaint's listing of the names of the defendants. Complaint at ¶¶ 32 (Byars) and 36 (Hearn). However, the Complaint mentions each of them one additional time, in a single paragraph discussing remarks that each allegedly made in response to the issuance of a South Carolina Attorney General's legal opinion about the tax matters at issue in this case. See Complaint at ¶ 96.

Councilman Chinnis is likewise mentioned in the listing of the defendants (at ¶ 30), but his name is specifically mentioned in Paragraph 58 of the Complaint, which alleges the following:

> Summerville Town Councilman McIntosh and Dorchester County Councilman Chinnis made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents of recommendations in the Tidwell Report and opponents to the Council's and Town's unlawful methods of funding SROs, for the purpose and with the effect of undermining those proponents' credibility and influence, deterring them from expressing their views and preventing them from persuading government officials to comply with the Tidwell report's recommendations regarding funding of SROs.

Paragraphs 59 of the Complaint also mentions Chinnis, but it simply refers back to Paragraph 58, which is quoted above. In Paragraph 96 of the Complaint, the Plaintiffs allege that Chinnis (like Byars and Hearn) made remarks about the issuance of an Attorney General's legal opinion about the tax matters at issue in this case. Finally, the name Chinnis is mentioned one time each in Paragraphs 107 and 110 of the Complaint, but each of those paragraphs refers only to "actions" that were "described above" in the Complaint, yet another reference to Paragraph 58 (quoted above).

2. **The § 1983 Allegations in the Complaint Are Insufficient as to the Individual County Council Members and Must Therefore Be Dismissed.** The Complaint has just three references to 42 U.S.C. § 1983, but appears to purport to assert a § 1983 claim against one or

more of the individual members of the County Council. Evidently, it seeks to do so broadly alleging violations of the Plaintiffs' First, Fifth and Fourteenth Amendment rights.[7]

In this context, however, allegations that are merely conclusory are insufficient as a matter of law. The United States Supreme Court has observed that "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009)(Emphasis added). See also Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir.1977)(In order to state a claim under § 1983, the plaintiff must affirmatively show "that the official charged acted personally in the deprivation of the plaintiff['s] rights."); and Spear v. Town of West Hartford, 771 F.Supp. 521, 527 (D. Conn. 1991), aff'd, 954 F.2d 63, 67 (2nd Cir. 1992)("plaintiff must make specific allegations of fact that indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient.").

Here, the Complaint fails to allege how each of the individual County Council members, in an official capacity, violated the Plaintiffs' constitutional rights. As noted above, County Councilmen Bailey, Davis, Duncan and Hargett are mentioned just once in the Complaint as part of a listing of names. In other words, there is not a single specific factual allegation against each of these individuals in the Complaint and the remaining allegations improperly group them together without stating the actions that each individual allegedly committed. This is plainly insufficient under the pleadings standards referenced above.

Byars, Hearn and Chinnis were included as part of the same list, but there were additional allegations as to them (at ¶ 96) concerning remarks that each allegedly made in response to the issuance of an Attorney General's opinion. However, even assuming, arguendo, that the remarks are accurately quoted, the Plaintiffs never allege that the remarks in question were directed against them. To the contrary, the Plaintiffs' allegations confirm that they were about the November 24, 2015 opinion issued by the Office of the South Carolina Attorney General (2015 WL 8773705), to express doubts about whether a court would agree with the legal analysis and conclusions it reached about the tax statutes at issue in this case.

Then, finally, there are the alleged actions of Chinnis, who allegedly "made or endorsed false, defamatory statements and accusations on social media (Facebook) about two proponents

[7]In terms of the County Defendants, the Fifth and Sixth causes of action mention only Chinnis by name, but also refer to "Dorchester County Council."

of recommendations in the Tidwell Report and opponents to the Council's and Town's unlawful methods of funding SROs." Complaint at ¶ 58. The insufficiency of this, the most "specific" of the allegations made against the County Councilmen, is obvious.

First, we are left to guess as to whether Chinnis is the one who allegedly made the "defamatory statements and accusations" or whether he endorsed them. In other words, it is not at all clear whether the Plaintiffs are alleging he made all of those "defamatory statements and accusations," or endorsed them all, or did some of both; nor is it clear what "endorsed" even means, and whether the alleged endorsement(s) were tacit, explicit or otherwise.

Second, and perhaps most important, no specifics are provided about the alleged "defamatory statements and accusations." In other words, what exactly was said or written? The Complaint does not say. Consequently, this particular allegation fits the classic description of a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. at 678.

Finally, the Plaintiffs never allege the number of alleged "defamatory statements and accusations" that were either "made" or "endorsed" and, other than asserting they occurred "on social media," the Plaintiffs allege no times or dates for these matters; nor do they identify the "two proponents" and "opponents" they reference in connection with this claim.

Under these circumstances, the Plaintiffs' allegations against all of the individual members of the County Council are deficient because they do not meet the pleading requirement imposed by the South Carolina Rules of Civil Procedure and the case law cited above.

3. In Any Event, the Plaintiffs' § 1983 Claims Against County Council Members Would Still Be Barred Because of Legislative Immunity. Federal, state, regional, and local legislators are entitled to absolute immunity for acts performed in their legislative capacity. Bruce v. Riddle, 631 F.2d 272, 279 (4th Cir.1980); and Bogan v. Scott–Harris, 523 U.S. 44, 46 (1998). It is clear, moreover, that legislative immunity extends to claims made under 42 U.S.C. § 1983 based on the allegations in this case. Id. at 54 ("Local legislators are entitled to absolute immunity from § 1983 liability for their legislative activities").

Here, therefore, the individual members of the County Council are absolutely immune from suit when performing legislative functions, which is precisely the conduct about which the Plaintiffs complain. See Bruce, 631 F.2d at 280 (applying the principles of legislative immunity to members of a county council); and Whitener v. McWatters, 112 F.3d 740 (4th Cir.1997) (applying principles of legislative immunity to members of a county board of supervisors).

Accordingly, even if the Plaintiffs had properly pled §1983 against individual members of the County Council (which they did not), those claims would still be barred as a matter of law.

4. There is No Basis for Injunctive or Declaratory Relief Under § 1983. To the extent that the Plaintiffs seek injunctive or declaratory relief under 42 U.S.C. § 1983, it is clear that any such claims must be rejected based on the holding in National Private Truck Council, Inc. v. Oklahoma Tax Commission, 515 U.S. 582, 589 (2004):

> In determining whether Congress has authorized state courts to issue injunctive and declaratory relief in state tax cases, we must interpret § 1983 in light of the strong background principle against federal interference with state taxation. Given this principle, **we hold that § 1983 does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases when an adequate legal remedy exists.** Petitioners do not dispute that Oklahoma has offered an adequate remedy in the form of refunds. Under these circumstances, the Oklahoma courts' denial of relief under § 1983 was consistent with the long line of precedent underscoring the federal reluctance to interfere with state taxation.

(Emphasis added.)

In light of the foregoing, the Plaintiffs' claims (if any) for injunctive relief under § 1983 must fail since an adequate remedy at law exists in this case in the Administrative Law Court. As discussed in Part II of this Motion, the Revenue Procedures Act provides an exclusive forum to litigate the claims made in this case about the allegedly improper assessment and collection of property taxes. See Riverwood, LLC, v. Cnty. of Charleston, 563 S.E.2d 651 (S.C. 2002).

VII. Protective Motion, Subject to the Foregoing Motion to Dismiss, to Strike Plaintiffs' Jury Demand

For the numerous alternative, independent reasons set forth above, the County Defendants respectfully submit that this entire case and all claims against them must be dismissed. Subject to and without waiving their Motion to Dismiss, however, the County defendants respectfully move, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, for an order striking the Plaintiffs' jury demand.

A suit for declaratory judgment may be legal or equitable and is characterized as one or the other by the nature of the underlying issue outlined in the complaint. Lowcountry Open Land Trust v. State, 552 S.E.2d 778, 781 (S.C. Ct. App. 2001). Accordingly, one must look to the lawsuit's main purpose as reflected by the nature of the pleadings, evidence, and character of relief sought to determine whether the claim is legal or equitable. Gordon v. Drews, 595 S.E.2d 864, 867 (S.C. Ct. App. 2004).

As noted previously, the instant case does not involve any properly pled claims for money damages and, in the final analysis, the crux of the Plaintiffs' claims is their request for declaratory judgment, seeking certain pronouncements from the Court, and injunctive relief based on those pronouncements. The Plaintiffs' claims are, therefore, equitable in nature. See e.g., Wiedemann v. Town of Hilton Head, 542 S.E.2d 752, 753 (S.C. Ct. App.2001).

In equity the parties are not entitled to a trial by jury as a matter of right. Williford v. Downs, 218 S.E.2d 242, 243 (S.C. 1975); and Wachovia Bank, Nat. Ass'n v. Blackburn, 755 S.E.2d 437, 441 (S.C. 2014). Because no such right exists here and also because of the technical tax issues involved, which are matters of law to be decided by the Court, the County Defendants respectfully requests that the Plaintiffs' jury demand should be stricken.

Prayer For Relief

WHEREFORE, the County Defendants respectfully request that the Court dismiss this action or, in the alternative, that it grant the County Defendants' protective Motion to Strike the Plaintiffs' jury demand. Finally, the County Defendants respectfully request that the court award them such other and further relief for which they may show themselves entitled.

Drew Hamilton Butler
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ATTORNEYS FOR THE COUNTY
DEFENDANTS

August 19, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all pothers similarly situated, George Resnick; William A. Harbeson; James Stephen Greene, Jr.; Homer P. Gonzalez; Gerald E. Ziegler; David Messinger, and South Carolina Public Interest Foundation;	)	Civil Action No.: 2016-CP-18-838
Plaintiffs,	)	
v.	)	
Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh, III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four, Dorchester County School District Four Board of Trustees; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,	)	**CERTIFICATE OF SERVICE**
Defendants.	)	

I, the undersigned, an employee of Richardson Plowden & Robinson, PA, do hereby certify that I have caused a copy of Motion to Dismiss Filed By Defendants Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan,

Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; and Dorchester County Sheriff, Luther C. Knight And Subject to Their Motion to Dismiss, An Alternative, Protective Motion to Strike the Plaintiffs' Jury Demand

to be served upon the following parties by depositing same in the United States mail, with postage prepaid and affixed thereto, address as follows:

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Legal Assistant to Anthony E. Rebollo

August 19, 2016

$25.00 MB ✓

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

DORCHESTER COUNTY TAXPAYERS ASSOCIATION, ET AL.
☐ Plaintiff

v.

DORCHESTER COUNTY; DORCHESTER COUNTYCOUNCIL, ET AL.
☐ Defendant.

FILED - RECORDED
2016 AUG 19 PM 2:03
CHERYL ... CLERK OF COURT DORCHESTER COUNTY

CASE NO. 2016-CP-18-838

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed:20 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:
Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No: 2018-001262

Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler and South Carolina Public Interest Foundation, ...Appellants,

v.

Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Town of Summerville, Summerville Town Council, William E. McIntosh, III, in his official capacity, Dorchester County Sheriff, Luther C. Knight, in his official capacity, Dorchester School District Two, Dorchester School District Two Board of Trustees, Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in the official capacities, Dorchester School District Four, Dorchester School District Four Board of Trustees, Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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