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.

REPLY BRIEF OF APPELLANTS

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I. THE SECOND AMENDED COMPLAINT CHALLENGES THE USE OF PROPERTY TAXES RAISED FROM OWNER OCCUPIED RESIDENTIAL PROPERTY FOR SCHOOL OPERATING PURPOSES; IT IS NOT AN APPEAL OF THE COLLECTION OF THOSE TAXES.

The Respondents argue in their briefs that since Act 388[1] exempts owner occupied residential property from being taxed for school operating purposes, any challenge to an action that uses those funds inappropriately is necessarily a tax appeal by the challengers under the exclusive jurisdiction of the Administrative Law Court. This argument ignores the plain language of the statutes and of the complaint and the relief it seeks.

None of the Appellants challenge their tax bills. They do not question the County's taxation of their owner-occupied residences in the amount or in the manner that the County has taxed them. Their objection, explicitly, is to the use of those funds raised through taxation for school operating purposes. R. p. 108, line 8- p. 109, line 16. That challenge does not fall within the ambit of the jurisdiction of the Revenue Procedures Act. S.C. Code Ann. § 12-60-20; see also § 12-60-80, 90.

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[1] "Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12-37-250, one hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." S.C. Code Ann. § 12-37-220(47)(a) (LexisNexis, Lexis Advance through all acts received through the 2018 Regular Session).

Under the plain language of the statute, the Appellants have brought a public interest challenge to an inappropriate and illegal government action, which they are entitled to do, *Mauldin vs. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434 (1890); *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000). The Appellants have not objected to the amount or calculation of their taxes or to the County's right to tax and collect the amounts they have on their real property. Consequently, the Revenues Procedures Act does not cover this action and the trial court's dismissal of this action was an error and should be reversed.

II. DISTRICT FOUR IS A NECESSARY AND APPROPRIATE PARTY THAT SPENT OWNER OCCUPIED RESIDENTIAL PROPERTY TAX REVENUE ON SCHOOL OPERATING PURPOSES.

In a separate but related argument, Dorchester School District Four ("District 4") also claims that since it is not a taxing authority, it is not a proper party to this action and should be dismissed. This, again, misconstrues the nature of this challenge which is to an improper use of taxes collected, not to the authority to tax or to the amount of a tax calculation. The Appellants have not made District 4 a party based on its taxing authority, but rather because the district used money raised through taxing owner occupied residential property for school operating purposes in its district. Any challenge to that practice and subsequent declaratory and injunctive relief would necessarily affect it and it is therefore a proper party to this action. See, Rules 19 and 20, SCRCP.

District Four also argues that although the Appellants filed a Memorandum in Opposition to its Motion to Dismiss, their appeal against it was somehow not preserved. That is incorrect. On December 12, 2017, Appellants filed a Memorandum in Opposition to all pending motions to dismiss, including District Four's motion. R. p. 437. Its motion, largely based on the same argument that this was a tax challenge, was extensively met in the Appellants' memorandum in opposition to that argument. In addition, at the hearing, Appellants' counsel reiterated these arguments immediately after District Four's counsel presented its oral argument. Then, again, Appellants argued against District Four's dismissal on these specific grounds in its Rule 59(e) motion, Plaintiffs' Motion to Reconsider, Alter or Amend Judgment, and For a Hearing, (R. p. 415- 417), which the trial court denied. The issues related to District Four's dismissal from this case were presented to the trial court, ruled on by the trial court and fully preserved on appeal *Hubbard v. Rowe*, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939) ("In matters of appeal, so far as it appears, all that this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised in the lower Court and passed upon by that Court."), cited by *Bailey v. Segars*, 346 S.C. 359, 365, 550 S.E.2d 910, 913 (Ct. App. 2001).

III. THE COMPLAINT STATES VALID CLAIMS AGAINST INDIVIDUAL DEFENDANTS MCINTOSH, PHINNEY AND CHINNIS WHO WERE ALLEGED TO HAVE ACTED OUTSIDE THE SCOPE OF THEIR AUTHORITY.

The Fifth Cause of Action states a valid claim against the individual defendants Chinnis, McIntosh and Phinney, as individuals, acting outside their legislative and official authority and those claims should be upheld and not dismissed. In the complaint, Mr. Messinger alleges that Phinney, McIntosh and Chinnis acted collaboratively and with malicious intent to cause Messinger to lose his employment and become unemployable as a police officer, and threatened, intimidated, retaliated against and punished Messinger to deter him from making statements criticizing policy they supported. Messinger alleged these defendants contacted or threatened to contact his employer to cause him to become unemployed and unemployable, if he continued expressing views they opposed.[2] Messinger alleged Defendants caused his employer to require him to stop serving as the Administrator of a website as a condition of his continued employment as an officer with the Mt. Pleasant police department.[3] The complaint alleges these defendants publicly made harsh, derogatory and defamatory statements about his competency as a police officer and motives to the point that Messinger feared being unemployed and unemployable if he continued expressing his views.[4]

These allegations clearly state a cause of action under Section 1983 for retaliation and intimidation intended to chill his exercise of his First and Fourteenth Amendment rights. Messinger's complaint stated no cause of action for defamation

[2] (R. p. 119, line 13 – p. 122, line, 23), (R. p. 138, lines 8- 28), (R. p. 139, line 15- p. 140, line 6).
[3] (R. p. 121, line 8- p. 122, line 23).
[4] (R. p. 119, line 13 – p. 122, line, 23), (R. p. 138, lines 8- 28), (R. p. 139, line 15- p. 140, line 6).

and the allegations under the Section 1983 cause of action are not based on defamation. (R. p. 139, line 14- p. 140, line 15).

McIntosh and Chinnis argue that they have defenses as a matter of law because the SRO issue was a matter of public concern. Under the First Amendment, though, these officials could speak, even harshly, against Messinger related to this issue, but the threats and actions calculated to deprive him of his employment are not protected actions under the First Amendment. The alleged actions of Chinnis, McIntosh and Phinney, in threatening Messinger's employment were not speech, but were merely intimidation and harassment intended to chill Messinger's speech.

Further, these actions were not protected by legislative immunity, because they are not related to the debate concerning the SRO funding. The *Richardson* case is distinguishable in that they concerned alleged defamatory statements about the Plaintiff who was Director of the Recreation Commission made (1) at a meeting attended only by the legislative delegation, the members of the Recreation Commission, and appellant; (2) by a member of the legislative delegation; and (3) concerning a matter related to the legislative member's duties and in which all present had an official interest. *Richardson v. McGill*, 273 S.C. 142, 147-48, 255 S.E.2d 341, 343-44 (1979). In this case, Messinger's duties as a police officer in Mt. Pleasant (Charleston County) had nothing to do with the debate over the funding of the SROs in Dorchester County. His employment and character had no relevance to the debate over the merits of the funding question, and the comments made, and actions taken were made simply to silence him.

Finally, it is a distinction without a difference that neither the County nor the Town employed Messinger so could not themselves fire him. By taking the extraordinary and unconscionable step of threatening to interfere with his employment in another municipality, and in attempting to do so, they engaged in the kind of intimidation and coercion to squelch his protected First Amendment rights that is described in the retaliation cases cited in Appellant's Brief.

As officials who went outside of their official duties and powers in taking these actions as alleged in the complaint, Messinger is entitled to proceed against these individual Respondents for declaratory and injunctive relief and to seek damages against them.

Messinger will not proceed against the other remaining Respondents on the Fifth Cause of Action under the Second Amended Complaint.

IV. THE APPELLANTS ARE NOT PURSUING AN APPEAL OF THE DISMISSAL OF THE SECOND OR FOURTH CAUSES OF ACTION.

The Appellants have not pursued an appeal of the dismissal of the Second and Fourth Causes of Action.[5]

[5] As argued herein, the Appellants seek reversal of the dismissal of the First Cause of Action against all Respondents and the Fifth Cause of Action against individual Respondents Chinnis, McIntosh and Phinney. The Third Cause of Action was not the subject of a motion to dismiss and is not the subject of this appeal.

Respectfully Submitted,

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March 20, 2019
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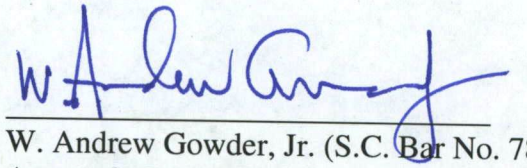
Certificate of Counsel

The undersigned hereby certifies that the Reply Brief of Appellant complies with Rule 211(b) SCACR.



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