

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Feb 10 2022

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

S.C. SUPREME COURT

Appellate Case No. 2021-001543

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, Petitioners,

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 School District Four; Dorchester School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees, Respondents.

JOINT RETURN TO PETITION FOR WRIT OF CERTIORARI BY RESPONDENTS

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

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; and Dorchester County Sheriff, Luther C. Knight, in his official capacity;

and

Dorchester School District Four, and Dorchester School District Four Board.

Robert L. Widener
Erik P. Doerring
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

William H. Davidson, II
Kenneth P. Woodington
DAVIDSON, WREN & PLYLER, P.A.
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

ATTORNEYS FOR RESPONDENTS

Town of Summerville, Summerville Town Council, and William E. McIntosh, III

Anthony E. Rebollo
Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Drew Hamilton Butler
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Box 21203
Charleston, South Carolina 29413
(843) 805-6550

ATTORNEYS FOR RESPONDENTS

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, in his official capacity

Kenneth A. Davis
Charles J. Boykin
Tierney Felicia Dukes
Post Office Box 11844
Columbia, South Carolina 29211
(803) 254-0707

Adam Jordan Mandell
94 Pleasant Street
Cambridge, Massachusetts 02139

ATTORNEYS FOR RESPONDENTS

Dorchester School District Four and Dorchester School District Four Board

INDEX

QUESTIONS PRESENTED.....	1
STATEMENT OF THE CASE.....	2
ARGUMENTS.....	3
I. This Court should deny certiorari on Question I	3
A. The Court of Appeals’ ruling is the law of this case.....	4
B. The Court of Appeals correctly ruled that Plaintiffs’ first cause of action fails to state a claim upon which relief can be granted	5
C. Plaintiffs fail to demonstrate any reversible error by the Court of Appeals	6
D. Assuming any reviewable and reversible error by the Court of Appeals, this Court should nevertheless deny certiorari, because the circuit court correctly dismissed the first cause of action under the law and the allegations in the complaint.....	8
1. The circuit court properly dismissed the first cause of action under the plain meaning of Act 388 and the South Carolina Revenue Procedures Act	8
2. The circuit court properly dismissed the first cause of action under the allegations made in the complaint.....	9
E. Summary and Conclusion	12
II. This Court should deny certiorari on Question II	12
A. The Court of Appeals correctly ruled that Plaintiffs abandoned their argument that the District 4 Defendants’ lack of taxing authority was irrelevant	13
B. To the extent this Court finds that Plaintiffs did not abandon their argument that the District 4 Defendants’ lack of taxing authority was irrelevant, the circuit court correctly dismissed the first cause of action against the District 4 Defendants, because it is not a taxing entity; and, thus, cannot be held liable for violating Act 388.....	14

C. The Court of Appeals correctly ruled that Plaintiffs did not dispute the circuit court’s finding that the District 4 Defendants were not violating Act 388, because the District did not pay its SROs with funds collected in violation of Act 38815

D. Assuming any error by the Court of Appeals, the circuit court correctly dismissed the first cause of action, because the Dorchester 4 Defendants do not use revenue derived from taxing property exempted by Act 388 to fund the School Resource Officer Program17

CONCLUSION.....19

QUESTIONS PRESENTED

1. This Court should deny certiorari on Question I regarding the Court of Appeals' dismissal of the first cause of action for failure to state a claim upon which relief can be granted.
2. The Court of Appeals' ruling is the law of this case, because Plaintiffs did not challenge the Court's actual ruling in their Petition for Rehearing or their Certiorari Petition and, therefore, this Court should deny the certiorari on Question I.
3. Assuming Plaintiffs have challenged the Court of Appeals' actual ruling, the Court correctly ruled that Plaintiffs' first cause of action fails to state a claim upon which relief can be granted and, therefore, this Court should deny certiorari on Question I.
4. Plaintiffs' arguments fail to demonstrate any reversible error in the Court of Appeals' actual ruling and, therefore, this Court should deny the certiorari on Question I.
5. Assuming any reviewable and reversible error by the Court of Appeals, this Court should nevertheless deny the certiorari on Question I, because the circuit court correctly dismissed the first cause of action under the law and the allegations in the complaint.
6. The circuit court properly dismissed the first cause of action under the plain meaning of Act 388 and the South Carolina Revenue Procedures Act.
7. The circuit court properly dismissed the first cause of action, because the South Carolina Revenue Procedures Act provides the exclusive remedy.
8. This Court should deny the certiorari on Question II on the Court of Appeals' dismissal of the first cause of action as to the District 4 Defendants.
9. The Court of Appeals correctly ruled that Plaintiffs abandoned their argument that the District 4 Defendants' lack of taxing authority was irrelevant.
10. To the extent this Court finds that Plaintiffs did not abandon their argument that the District 4 Defendants' lack of taxing authority was irrelevant, the circuit court correctly dismissed the first cause of action against the District 4 Defendants, because they are not a taxing entity; and, thus, cannot be held liable for violating Act 388.
11. The Court of Appeals correctly ruled that the Plaintiffs did not dispute the circuit court's finding that the District 4 Defendants were not violating Act 388 when the District did not actually pay its SROs from disputed funds.
12. Assuming any error by the Court of Appeals, the circuit court correctly dismissed the first cause of action, because the Dorchester 4 Defendants do not use revenue derived from taxing property exempted by Act 388 to fund the School Resource Officer Program.

STATEMENT OF THE CASE

This case arises from a public, political, and legislative debate on whether to use police officers or private security guards as School Resource Officers (SROs) to protect the safety of public schools in Dorchester School Districts Two and Four. The ultimate decision was to use police officers. After losing the public, political, and legislative debate, Petitioners (Plaintiffs) commenced this judicial attack on the SRO decision with a five-count complaint against five “sets” of defendants, the Town Defendants¹, County Defendants², District 4 Defendants³, District 2 Defendants⁴, and Dorchester TEC Defendants.⁵ (2nd Amd. Cmplnt. at R. 102-143).

The Town, County, and District 4 Defendants moved to dismiss four of the five causes of action. The circuit court granted the motions in two orders and denied Plaintiffs’ motions to reconsider. Plaintiffs timely appealed but, on appeal, they disavowed and thereby abandoned any challenge to the dismissals of the second and fourth causes of action. (Reply Br. 6, Arg. IV). The Court of Appeals affirmed the dismissals of the first and third causes of action. Plaintiffs petitioned for rehearing on the dismissal of the first cause of action but not the fourth. (Rhg. Pet., *passim*). The Respondents did not file a Return, because the Court of Appeals did not request one under Rule 221(a), SCACR. The Court of Appeals denied rehearing.

Plaintiffs petitioned for a writ of certiorari on the dismissal of the first cause of action only. (Cert. Pet., *passim*). The only issue before this Court is the dismissal of the first cause of action, because Plaintiffs did not seek rehearing and do not seek certiorari on the fourth cause of action.⁶

¹ The Town Defendants are Town of Summerville, Summerville Town Council, and William E. McIntosh, III.

² The County Defendants are Dorchester County, the County Sheriff, County Council and its members.

³ The District 4 Defendants are Dorchester School District Four and Dorchester School District Four Board.

⁴ The District 2 Defendants are Dorchester School District Two, the School District Board, and the Board members.

⁵ The Dorchester TEC Defendants are Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees.

⁶ See n. 9, *infra*. Any attempt to challenge the dismissal of the fourth cause of action in a certiorari reply would be futile. See n. 10, *infra*. The third cause of action was against the District 2 Defendants only and is not relevant here.

The first cause of action was by all plaintiffs against all defendants for alleged violations of S.C. Code Ann. § 12-37-220(B)(47), which the parties and circuit court referenced as Act 388, *i.e.*, Act No. 388, 2006 S.C. Acts 3166. (R. 103, ¶ 1; 136, ¶¶ 99-101). The circuit court dismissed this cause of action on “jurisdictional” grounds in one order. (R. 14-23). In a different order, the circuit court dismissed the first cause of action on “no taxing power” grounds as to the District 4 Defendants only. (R. 5-11). The “jurisdictional” dismissal is the subject of Question I in Plaintiffs’ Certiorari Petition, and the “no taxing power” dismissal is the subject of Question II. The Town Defendants, County Defendants, and District 4 Defendants submit this Joint Return to the Petition for a Writ of Certiorari and respectfully request that this Court deny the Petition in its entirety.⁷

ARGUMENTS

I. This Court should deny certiorari on Question I.

The circuit court dismissed the first cause of action, because the South Carolina Revenue Procedures Act provides the exclusive remedy for the claim. (R. 17-19, 22). The Court of Appeals did not review this ruling. It invoked the power to affirm for any reason appearing in the Record, concluded the first cause of action failed to state a claim upon which relief could be granted, and affirmed the dismissal of the first cause of action on this basis. (Ct. App. Op. 6-7 & n. 8).

Plaintiffs do not challenge the Court of Appeals’ actual ruling and, therefore, it is the law of this case. In any event, the Court of Appeals correctly ruled that the first cause of action failed

⁷ The District 2 Defendants and Dorchester TEC Defendants did not file any motions with the circuit court and did not join the motions of the other defendants. (R. 15, n. 1). The appealed orders do not rule on any issue between Plaintiffs and the District 2 or Dorchester TEC Defendants. Plaintiffs nevertheless identified them as Respondents in the appeal to the Court of Appeals. The District 2 and Dorchester TEC Defendants advised the Court that they were not proper parties to the appeal, because they did not make any motions in the circuit court, and the appealed orders did not address any claims made against them. See correspondence in Court of Appeals’ on-line public case file with “filed” dates of 7/9/2018, 7/15/2018, 7/25/2019, 7/29/2019, 1/27/2021, and 2/16/2021. Accordingly, they did not file a brief or present oral argument in the Court of Appeals. The Court nevertheless continued to list them as Respondents in the appellate caption, including the caption for the Court’s unpublished opinion. Plaintiffs continue to identify them as Respondents in the Certiorari Petition before this Court.

to state a claim upon which relief could be granted. Assuming any reviewable and reversible error by the Court of Appeals, the circuit court correctly dismissed the first cause of action as being within the exclusive remedy provision of the Revenue Procedures Act. For each of these reasons, as explained below, this Court should deny certiorari on Question I.

A. The Court of Appeals’ ruling is the law of this case.

The first cause of action alleges a violation of Act 388, which provides that “owner-occupied residential property . . . is exempt from all property taxes imposed for school operating purposes.” The Court of Appeals accepted Plaintiffs’ contention that their first cause of action was solely an “illegal spending” claim under Act 388. The Court then turned to the express language of Act 388 and found that Act 388 “does not govern the spending of taxes” and “[t]herefore the claim, as set forth in the complaint, is not a claim upon which relief can be granted.” (Ct. App. Op. 7).⁸

Plaintiffs challenge the Court of Appeals’ ruling as being a misapplication of the “standing” requirements for bringing a civil action, and a misapplication of the rules regarding whether a statute creates a private cause of action. (Cert. Pet. 6-8). The Court of Appeals, however, did not base its ruling on either of these grounds. Rather, the Court ruled as follows: (1) Act 388 does not govern the spending of tax revenue and, therefore, there can be no “spending” claim based on Act 388; and (2) because an alleged violation of Act 388 is the only basis for the first cause of action, it fails to state a claim upon which relief can be granted.

Plaintiffs never challenge the Court of Appeals’ actual ruling. They have not argued on rehearing or certiorari that Act 388 governs the spending of tax revenue and that a “spending”

⁸ Act 388 (§ 12-37-220(B)(47)) provides in pertinent part: “(a) 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.” (Emphasis added).

claim can therefore be made under Act 388. (Rhig. Pet. and Cert. Pet., *passim*). Thus, the Court of Appeals' ruling is not subject to further review and is the law of this case that, right or wrong, requires affirmance.⁹ This Court should therefore deny certiorari on Question I.¹⁰

B. The Court of Appeals correctly ruled that Plaintiffs' first cause of action fails to state a claim upon which relief can be granted.

Every civil law cause of action rests upon the following paradigm: a duty imposed by law, a breach of *that* duty, and harm or damage resulting from *that* breach of *that* duty. The court determines whether the law recognizes a particular duty. A cause of action fails to state a claim if it fails to allege all elements of the paradigm.¹¹

Here, the Court of Appeals affirmed the dismissal of the first cause of action, because it failed to allege a breach of a duty imposed by law. The Court was correct. The only source of any

⁹ *Mazloom v. Mazloom*, 709 S.E.2d 661, 661 (S.C. 2011) (failure to challenge a Court of Appeals' ruling in a Petition for Rehearing renders it unreviewable for further appellate review by certiorari); *Moseley v. All Things Possible, Inc.*, 719 S.E.2d 656, 658 n.4 (S.C. 2011) (a Court of Appeals ruling not challenged in the certiorari petition is the law of the case); *Ex parte Morris*, 624 S.E.2d 649 (S.C. 2006) (unchallenged ruling is the law of the case and, right or wrong, requires affirmance); *Sloan v. Department of Transp.*, 618 S.E.2d 876, 880 (S.C. 2005) (ruling not challenged in the certiorari petition is unreviewable for further review).

¹⁰ Any attempt by Plaintiffs to challenge the Court of Appeals' actual ruling in a Reply would be futile, because issues cannot be raised for the first time in a Reply. Research reveals no case directly on point, but this is (or should be) the rule in certiorari proceedings for the following reasons. First, the general rule is that appellate practice rules applicable to appeals generally, including error preservation rules, also apply to certiorari review. See *Wilson v. Clary*, 47 S.E.2d 618, 622 (S.C. 1948). Second, it is axiomatic that, in direct appeals, issues cannot be raised for the first time in a Reply Brief. *E.g.*, *Harlan v. Williams*, 837 S.E.2d 491, 495 (S.C. App. 2019). This Court has applied the same rule to Reply Briefs in this Court when reviewing a Court of Appeals' opinion in certiorari proceedings. *McClurg v. Deaton*, 716 S.E.2d 887, 888 n. 2 (S.C. 2011), *aff'g* 671 S.E.2d 87 (S.C. 2008); *Chet Adams Co. v. James F. Pedersen Co.*, 413 S.E.2d 827, 829 (S.C. 1992) (reversing an uncited, unpublished opinion by Court of Appeals). Third, certiorari review by this Court is not available if the petitioner raised the issue for the first time in its Petition for Rehearing before the Court of Appeals. *Kleckley v. Northwestern Nat'l Cas.Co.*, 526 S.E.2d 218, 221 (S.C. 2000), *aff'g* 498 S.E.2d 669 (S.C. App. 1988). Fourth, the failure to challenge a Court of Appeals' ruling in a Petition for Rehearing renders it unreviewable for further appellate review by certiorari. *Mazloom v. Mazloom*, 709 S.E.2d 661, 661 (S.C. 2011). Fifth, a Court of Appeals ruling is unreviewable for further review and is the law of the case if not challenged in the certiorari petition. *Moseley v. All Things Possible, Inc.*, 719 S.E.2d 656, 658 n. 4 (S.C. 2011) (law of the case); *Sloan v. Department of Transp.*, 618 S.E.2d 876, 880 (S.C. 2005) (not preserved for review). In short, the general error preservation and presentation rules of direct appeals apply equally to certiorari proceedings. Thus, the rule is or should be that a petitioner cannot raise an issue for the first time in a Reply in support of a Certiorari Petition.

¹¹ *E.g.*, *Madison v. Babcock Ctr., Inc.*, 638 S.E.2d 650, 656-657 (S.C. 2006); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 586 S.E.2d 586, 588 (S.C. 2003); *Estate of Cantrell v. Green*, 397 S.E.2d 777, 779 (S.C. 1990); *Corbett v. City of Myrtle Beach*, 521 S.E.2d 276, 281 (S.C. App. 1999).

legal duty alleged in the first cause of action was Act 388, and Plaintiffs concede their only claims is for the illegal spending of tax revenue. Act 388 does not govern the spending of tax revenue and does not impose any “spending” duty. Therefore, the first cause of action failed to state a cause of action, because it failed to allege a legal duty breached by the defendants.

Nothing in Act 388 purports to impose any duty on the spending of tax revenue, and Plaintiffs fail to argue that anything in Act 388 does so. Thus, Act 388 is not and cannot be the source of any “spending” duty, but it is the only source of duty alleged in the first cause of action. Therefore, the first cause of action failed to allege the essential elements of a duty imposed by law and a breach of *that* duty. Thus, the Court of Appeals properly affirmed the dismissal of the first cause of action, and this Court should therefore deny certiorari on Question I.

C. Plaintiffs fail to demonstrate any reversible error by the Court of Appeals.

Plaintiffs attack the Court of Appeals’ opinion as a ruling that Plaintiffs do not have “standing” or do not have a private cause of action under Act 388. (Cert. Pet. 6-8). There simply is no such ruling in the Court’s opinion. Thus, Plaintiffs’ argument is a strawman argument that fails on its face to bear Plaintiffs’ burden of demonstrating reversible error by the Court of Appeals and, therefore, this Court should deny certiorari on Question I.¹²

Plaintiffs list-cite six cases in support of their strawman argument, arguing that these cases “recogniz[e] the public importance of and the right of citizens to challenge the illegal expenditure of public funds” and that “[t]his case is no less a challenge to the public action in misusing public funds.” (Cert. Pet. 7, 8). These cases do not demonstrate any error by the Court of Appeals.

¹² Plaintiffs also complain that “standing” was not an issue in the circuit court or the Court of Appeals, but the Court of Appeals nevertheless used “standing” to dismiss the first cause of action. (Cert. Pet. 6-7). It is true that no one raised “standing” in the circuit court or the Court of Appeals. It is not true, however, that the Court of Appeals used “standing” to affirm the dismissal of the first cause of action. Rather, it dismissed the first cause of action because, as alleged in the complaint, it failed to allege the essential elements of a duty imposed by law and a breach of *that* duty.

It is true that each of these cases recognized the plaintiffs as having “standing” to bring the cause of action. It is true that these cases often emphasized the public importance of the underlying matter. It is also true, however, that all of these plaintiffs alleged the breach of a particular duty actually and directly imposed by a specified law (typically a statute or a provision of the state constitution). Here, unlike these list-cited cases, the first cause of action does not allege a duty imposed by law and a breach of *that* duty. It alleges only a “spending” claim and erroneously relies on Act 388 as the only source of the “spending” duty that is essential to stating a cause of action. Act 388 does not impose any “spending” duty. Thus, these cases do not demonstrate any reversible error by the Court of Appeals in affirming the dismissal of the first cause of action and, therefore, this Court should deny certiorari on Question I.¹³

¹³ See the following six cases list-cited by Plaintiffs at pages 7-8 of their Certiorari Petition:

Sloan v. Department of Transp., 618 S.E.2d 876, 878-880 (S.C. 2005) (Department of Transportation violated statutory duty/requirement imposed by § 57-5-1620 to procure the contract by invitation for bid process).

Sloan v. Sanford, 593 S.E.2d 470, 471-474 (S.C. 2004) (Governor’s service as an officer in the Air Force Reserve did not violate the constitutional prohibition against holding a commission under the federal government).

Baird v. County of Charleston, 511 S.E.2d 69, 75-76, 77-79 (S.C. 1999) (plaintiffs prevail on the merits of the various allegations that the defendant violated particular duties imposed by various statutes).

South Carolina Pub. Interest Found. v. South Carolina Dep’t of Transp., 804 S.E.2d 854, 859, 861-862 (S.C. 2017) (DOT’s inspection of private bridges violated the constitutional duty that tax proceeds be used for a public purpose and violated the statutory requirement that inspection must be requested by a municipality).

Sloan v. School Dist. of Greenville County, 537 S.E.2d 299, 300-304 (S.C. App. 2000) (procurement in violation of requirements imposed by the procurement code to use competitive bidding procurement process; used emergency procurement process without satisfying the statutory requirements for emergency procurements).

South Carolina Pub. Interest Found. v. South Carolina Transp. Infrastructure Bank, 744 S.E.2d 521, 522-523 (S.C. 2013) (whether the statute on membership of the Infrastructure Bank’s Board of Governors violated the state constitution provisions on “dual office holding” and “separation of powers”).

D. The circuit court correctly dismissed the first cause of action under the law and the allegations in the complaint.

The circuit court dismissed the first cause of action, because the South Carolina Revenue Procedures Act (RPA) provides the exclusive remedy for the claim made in the first cause of action. (R. 17-18, 22).¹⁴ As shown below, the circuit court was correct. For this reason, and for the reasons set forth in the Town Defendants’ brief in the Court of Appeals, which are incorporated herein by reference, the circuit court properly dismissed the first cause of action, and this Court should therefore deny certiorari on Question I.¹⁵

1. The circuit court properly dismissed the first cause of action under the plain meaning of Act 388 and the South Carolina Revenue Procedures Act.

The RPA provides the exclusive remedy “in *any case involving* the illegal or wrongful *collection* of taxes, or *attempt to collect* taxes.” S.C. Code Ann. § 12-60-80(A) (Rev. 2014) (emphasis added).¹⁶ The RPA remedy is an administrative process that ultimately ends with a hearing in the Administrative Law Court (ALC). Any relief from the judgment of the ALC is by appeal to the appellate courts. § 12-60-3380. If an action covered by the RPA is brought in circuit court, the court “shall dismiss the case without prejudice.” § 12-60-3390. Thus, as Plaintiffs have always conceded, if the first cause of action “involves” the “wrongful assessment or collection of taxes,” their exclusive remedy is the RPA’s administrative process. (App. Br. 8-9).

¹⁴ The RPA includes an exception to its exclusive remedy provision. Declaratory judgment actions with the “the sole issue [being] whether a statute is constitutional may be brought in circuit court.” S.C. Code Ann. § 12-60-80(B) (Rev. 2014). It is undisputed that this exception does not apply here.

¹⁵ See “Final Brief of Respondents Town of Summerville [et al.]” at pages 4-15. The County Defendants adopted these arguments in their “Final Respondents’ Brief of Dorchester County [et al.]” at page 5, as did the District 4 Defendants in their “Final Brief” at page 10.

¹⁶ Section 12-60-80(A) provides in full: “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 added). The South Carolina Revenue Procedures Act (RPA) is codified at S.C. Code Ann. §§ 12-60-10 to -3390 (Rev. 2014 & Supp. 2018).

Act 388 is a tax exemption statute that *exempts* “owner-occupied residential property” from all property taxes “imposed for school operating purposes.”¹⁷ By definition, when the General Assembly exempts property from a tax, it prohibits the taxing authority from assessing, attempting to collect, or collecting the tax against the exempted property. Therefore, and again by definition, any claim under Act 388 necessarily “*involv[es]* the illegal or wrongful *collection* of taxes, or *attempt to collect* taxes” and triggers the exclusive remedy provision of the RPA. Accordingly, under the plain meaning of the RPA and Act 388, the RPA provides the exclusive remedy for the claim made in the first cause of action. The circuit court therefore properly dismissed the first cause of action, and this Court should therefore deny certiorari on Question I for this reason.

2. The circuit court properly dismissed the first cause of action under the allegations made in the complaint.

Act 388 clearly “involves” the collection of taxes under the plain meaning and operation of a tax exemption statute. To avoid this, Plaintiffs argue that the first cause of action, despite being based on Act 388, makes a claim for illegally spending taxes, not illegally collecting them. As alleged in the complaint, however, the first cause of action rests upon Act 388, which necessarily involves the allegedly wrongful or illegal collection of taxes. Thus, the circuit court correctly dismissed the first cause of action under the allegations in the complaint.

Plaintiffs’ first cause of action has a tortured history. The original complaint alleged “taxes have been *imposed* and/or will be *imposed illegally*” to finance SROs and requested a “*refund* to taxpayers [of] taxes *illegally collected*.” (R. 248-249, ¶ 2) (emphasis added). In the first cause of action, Plaintiffs alleged that “the methods of financing SROs *violate Act 388*” and damaged them by requiring them to pay “*unlawful taxes*.” (R. 279-280, ¶¶ 96-97) (emphasis added).

¹⁷ Act 388 (§ 12-37-220(B)(47)(a)) (emphasis added). For the full text of this code section, see n.8, *supra*.

Plaintiffs filed and served an Amended Complaint before serving their original complaint. (R. 145-244). The only significant difference between the original and amended complaints is that Plaintiffs dropped their claim for a refund of illegally collected taxes. (See, *e.g.*, R. 182-184). The first cause of action remained the same and continued to rest upon the alleged violation of Act 388. (*Compare* Amd. Cmplnt. at R. 178, ¶¶ 97-99 *with* Orig. Cmplnt. at R. 279-280, ¶¶ 95-97).

Notably, the original complaint and the amended complaint did not make any “illegal spending” claims.

The Town and County Defendants moved to dismiss the first cause of action in the Amended Complaint. (See R. 595-599; and R. 571, 575-578). By consent order, Plaintiffs withdrew their amended complaint and agreed to not assert “any claim or cause of action based on the refund, assessment and/or collection of South Carolina taxes” in their to-be-filed second amended complaint. The Town and County Defendants withdrew their motions with unfettered leave to refile later. (R. 28, ¶¶ 1, 3-4).

Plaintiffs’ Second Amended Complaint recast the first cause of action as an “illegal spending” claim in an unsuccessful attempt to comply with the consent order and avoid dismissal. Plaintiffs used new terms like “expending funds” and the “expenditure of public funds” while emphatically proclaiming: “This action is not brought to challenge the collection of or to request a refund of any tax.” (R. 104, ¶ 2; 136, ¶ 100). The allegations in the Second Amended Complaint, however, demonstrate the first cause of action involves the collection of taxes under Act 388.

Part III(A) of the complaint is entitled “SRO Funding–Act 388 and Double Taxation Violations.” (R. 113). Part IV is entitled “Factual Allegations,” and the key subpart is entitled “Violations of Act 388.” (R. 117). Plaintiffs use terms like spending and expenditures but cannot avoid the fact that their claim is based on the taxes having been collected in violation of Act 388.

In paragraph 50 of Part III(A), Plaintiffs allege that the defendants cannot “spend funds *obtained by taxing* owner-occupied homes to fund SROs, because doing so *would violate [Act 388]*. (R. 114) (emphasis added).

In paragraph 76 of Part IV(A), Plaintiffs allege that “[a]t all times pertinent all monies paid and obligated to be paid . . . for SROs have been paid or will be paid *with property taxes raised . . . in violation of Act 388.*” (R. 128) (all emphasis added) (See also R. 123, ¶ 63; R. 129, ¶ 80).

In paragraph 100, Plaintiffs allege that the “expenditure of public funds for [SROs] . . . violate Act 388 by expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense, *as described by the South Carolina Attorney General in 2015 S.C. AG LEXIS 105, attached as Exhibit 1.*” (R. 136, ¶ 100) (all emphasis added).

The incorporated AG Opinion concluded that conduct like that alleged in the complaint would violate Act 388:

- (1) The question was the “*legality* of certain property taxes that have been imposed and/or that will be imposed . . . for the purpose of providing police protection at schools [and] . . . [i]n particular . . . *whether those taxes violate*” Act 388.
- (2) The AG concluded that SRO expenses are a “school operating purpose” as envisioned by Act 388.¹⁸
- (3) The AG concluded: “we believe a court would determine *taxation* by a county for a School Resource Officer is *unlawful* because it *evades the prohibition against taxation* of primary residences for school operating purposes [in Act 388].”

(R. 288, 290-291) (emphasis added). In paragraph 101, the first cause of action seeks relief for damages caused by the “Defendants’ violations of Act 388.” (R. 136).

¹⁸ The issue of whether SRO expenses are “school operating purposes” under Act 388 is not an issue here. It was not decided by the circuit court and was not an issue on appeal. For purposes of this appeal only, it is uncontested that SRO expenses come within Act 388.

Under the allegations in the first cause of action, the only thing that makes the spending illegal is the alleged illegal collection of those taxes in violation of Act 388. In other words, Plaintiffs claim that the taxes were spent illegally because, *but only because*, they were collected illegally. Manifestly, therefore, the first cause of action “*involv[es] the illegal or wrongful collection of taxes, or attempt to collect taxes*” and, therefore, the administrative remedy afforded by the RPA is the exclusive remedy. Accordingly, the circuit court properly dismissed the first cause of action, and this Court should therefore deny certiorari on Question I.

E. Summary and Conclusion

Plaintiffs do not challenge the Court of Appeals’ actual ruling and, therefore, no challenge to that ruling is preserved for further review, and it is the law of the case. In any event, the Court of Appeals correctly ruled that the first cause of action failed to state a claim upon which relief could be granted. Moreover, the circuit court correctly ruled that the RPA provides the exclusive remedy for the claim made in the first cause of action and therefore correctly dismissed it. Accordingly, for each of the foregoing reasons, this Court should deny certiorari on Question I.

Affirming the Court of Appeals for any of the foregoing reasons applies equally to the Town, County, and District 4 Defendants. In addition, the first cause of action should be dismissed with prejudice as to the District 4 Defendants for the reasons set forth in Argument II, *infra*.

II. This Court should deny certiorari on Question II.

In a separate order applicable to the District 4 Defendants only, the circuit court dismissed the first cause of action against the District 4 Defendants because District 4 does not have taxing authority and because the relevant statute (Ordinance 15-14) shows that District 4 does not use revenue derived from taxing property exempt under Act 388 to fund the school resource officer program. (R. 4-7). The Court of Appeals affirmed the dismissal on the lack of taxing authority

argument on the grounds that Plaintiffs' failure to present supporting authority for its argument meant that the argument was abandoned on appeal and not presented for review. (Ct. App. Op. 7). Further, the Court of Appeals determined that the Plaintiffs did not dispute the circuit courts finding that District 4 was not actually violating Act 388 because it was not using disputed funds to pay SROs, thus that finding became the law of the case and required affirmation of the circuit court's dismissal under the two issue rule. (Ct. App. Op. 7).

The Court of Appeals correctly ruled that the taxing authority argument was abandoned and correctly applied the two-issue rule to the payment argument. Even if the Court of Appeals committed a reversible error, the circuit court correctly dismissed the first cause of action. For the reasons explained below, this Court should deny certiorari on Question 2.

A. The Court of Appeals correctly ruled that Plaintiffs abandoned their argument that the District 4 Defendants' lack of taxing authority was irrelevant.

While the District 4 Defendants could theoretically be defendants in a declaratory judgment action, to the extent that Plaintiffs rely on the taxing authority of a defendant as a basis for its Act 388 cause of action, the lack of taxing authority of District 4 Defendants is relevant to that question. Among other things, the provision of Act 388¹⁹ in dispute in this case creates specific exemptions

¹⁹ S.C. Code Ann. § 12-37-220(A)(47) provides:

- (a) 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.
- (b) Notwithstanding any other provision of law, property exempted from property tax in the manner provided in this item is considered taxable property for purposes of bonded indebtedness pursuant to Section 15 of Article X of the Constitution of this State.
- (c) The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two-thirds majority of the membership of each house of the General Assembly;

from the *ad valorem* taxation of specified property, including designated owner-occupied residential property. Because this provision of Act 388 is not a general prohibition against the expenditure of tax revenue but the actual imposition of a specific tax, Act 388 does not apply to entities, like District 4 Defendants, which do not have the authority to impose a tax as a matter of law. Furthermore, the Court of Appeals ruled that Section 12-37-220 does not govern the spending of taxes. (Ct. App. Op. 7). Accordingly, Plaintiffs' failure to provide any supporting authority for its argument that the lack of taxing authority is irrelevant, is fatal to any claim against the District 4 Defendants arising out of taxing authority.²⁰

B. To the extent this Court finds that Plaintiffs did not abandon their argument that the District 4 Defendants' lack of taxing authority was irrelevant, the circuit court correctly dismissed the first cause of action against the District 4 Defendants, because it is not a taxing entity; and, thus, cannot be held liable for violating Act 388.

In their Second Amended Complaint, Plaintiffs allege the District 4 Defendants violated Act 388 by expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense. (R. 136, ¶ 100). Specifically, Plaintiffs allege that the arrangement of assigning school resource officers to schools in District 4 requires the expenditure of tax revenue from exempt property for school operating purposes in violation of Act 388. (R. 129, ¶¶ 80, 81). Because District 4 is not a taxing entity but rather an entity that only engages in spending tax revenue, it cannot be liable for violating a statute that governs the collection of taxes.

The portion of Act 388 at issue in this case (§ 12-37-220(B)(47)(a)) reads as follows:

[O]ne 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.

²⁰ Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 557 S.E.2d 689, 691 (S.C. App. 2001).

Because Act 388 is not a general prohibition against the expenditure of tax revenue but the actual imposition of a specific tax, Act 388 does not apply to entities, like District 4, which do not have the authority to impose a tax as a matter of law. The circuit court therefore properly dismissed the first cause of action against the District 4 Defendants, and this Court should therefore deny certiorari on Question 2.

C. The Court of Appeals correctly ruled that Plaintiffs did not dispute the circuit court’s finding that the District 4 Defendants were not violating Act 388, because the District did not pay its SROs with funds collected in violation of Act 388.

Plaintiffs argue that the District 4 Defendants are proper parties because District 4 “is involved in the funding of School Resource Officers in its District with revenue derived from taxing owner occupied residences, so it is a proper party under a declaratory judgment action.” (Cert. Pet. 8-9). Further, Plaintiffs argue that the District 4 Defendants violated Act 388 because of the arrangement assigning SROs to District 4 schools requires the expenditure of tax revenue from exempt property for school operating purposes in violation of Act 388. (R. 129, ¶¶ 80, 81). This is not accurate.

To reimburse school districts for the amounts exempt under Act 388, the State collects an additional one percent sales tax, which it credits to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to 1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts for the tax revenue lost as a result of the owner-occupied residential property exemption set forth in Act 388. S.C. Code Ann. § 11-11-156(A)(1). Specifically, the reimbursement to the school district “consists of an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed by the district on owner-occupied residential property for that fiscal year as if no reimbursed exemptions applied.” *Id.*

Based upon a review of the Dorchester County Budget Ordinance (Ordinance 15-14), referenced in Plaintiffs' Second Amended Complaint, the circuit court found that on the face of the Budget Ordinance, the payments from the District 4 Defendants are "Charges for Services" rather than "Current – Real Estate Taxes." (R. 6.). Accordingly, the circuit court found that "the District 4 Defendants have not funded the school resource officer program with the exempt property tax revenue but rather from reimbursements from the State," thus, the alleged expenditures by the District 4 Defendants do not violate Act 388 as a matter of law. (R. 6.).

The Court appeals ruled that Plaintiffs did not dispute this finding, which became the law of the case. (Ct. App. Op. 7). In their Petition, Plaintiffs did not set forth any facts, law, or argument challenging the circuit court's ruling. Plaintiffs' conclusory statement in their Petition that "[t]he Dorchester District 4 defendants are proper defendants to this declaratory judgment action because they participated in the practice of paying School Resource Officers with owner-occupied residential property taxes in violation of state statute" is not sufficient to dispute the circuit court's finding. (Cert. Pet. 9).

Plaintiffs now argue that the Budget Ordinance, cited in its own pleadings, is a "document submitted by DD4 that was not authenticated or identified by a witness under oath, the meaning of which is unclear." (Cert. Pet. 10). Plaintiffs never argued to the Court of Appeals that the circuit court's review of the Budget Ordinance, a legislative enactment cited in Plaintiffs' own pleadings was improper; that the Budget Ordinance was unclear in any way; that the Budget Ordinance was not authentic; or that the circuit court should have interpreted the Budget Ordinance differently than it did. A mere recitation of a conclusory statement does not amount to a dispute of a particular finding by the circuit court.²¹

²¹ See n. 20, *supra*.

Because Plaintiffs did not dispute the circuit court's finding that the District 4 Defendants were not funding its SRO program from exempt property tax revenue and, therefore, did not violate Act 388, it is the law of the case. Accordingly, this Court should deny certiorari on Question 2.

D. Assuming any error by the Court of Appeals, the circuit court correctly dismissed the first cause of action, because the Dorchester 4 Defendants do not use revenue derived from taxing property exempted by Act 388 to fund the School Resource Officer Program.

While Act 388 does not apply to the District 4 Defendants because of their lack of taxing authority, Act 388 also does not prohibit the District 4 Defendants from funding the school resource officer program from sources other than exempt owner-occupied residential property.

Plaintiffs referenced the Dorchester County Budget Ordinance (Ordinance 15-14) in their Second Amended Complaint (R. 125, ¶ 68), without attaching the full ordinance among the documents attached as exhibits to the Second Amended Complaint. However, the Ordinance was attached to the District 4 Defendants' Memorandum in Support of Motion to Dismiss, pursuant to Rule 201 of the South Carolina Rules of Evidence. (R. 476, note 1). Rule 201 generally allows the Court to take judicial notice of matters of public record while keeping within the boundaries of a motion to dismiss. Rule 201, SCRE closely follows Rule 201 of the Federal Rules of Evidence.

In analyzing a Rule 12(b)(6) motion, a court may consider documents incorporated into the complaint by reference as well as matters of which a court may take judicial notice. *Odom v. CVS Caremark Corp.*, No. 3:14-456-MGL, 2014 U.S. Dist. LEXIS 181471 at *6 (D.S.C. Dec. 12, 2014) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). "[A] court may properly take judicial notice of 'matters of public record' and other information that, under Federal Rule of Evidence 201, constitute 'adjudicative facts.'" *Goldfarb v. Mayor & City Council of Balt.*, 791 F.3d 500, 508 (4th Cir. 2015); see also *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Pursuant to Fed. R. Evid. 201, a court may take judicial notice of adjudicative

facts if they are "not subject to reasonable dispute," in that they are "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." And, courts may take judicial notice of publicly available records, without converting a motion to dismiss to a motion for summary judgment. See, e.g., *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015) ("Courts are permitted to consider facts and documents subject to judicial notice without converting the motion to dismiss into one for summary judgment.").

Based upon a review of the Dorchester County Budget Ordinance 15-14, referenced in Plaintiffs' Second Amended Complaint (R. 125, ¶ 68), the circuit court found that on the face of the Budget Ordinance, the payments from the District 4 Defendants are "Charges for Services" rather than "Current – Real Estate Taxes." (R. 10; 486-490.). Accordingly, the circuit court found that "the District 4 Defendants have not funded the school resource officer program with the exempt property tax revenue but rather from reimbursements from the State," thus, the alleged expenditures by the District 4 Defendants do not violate Act 388 as a matter of law. (R. 10.).

While Plaintiffs now argue that the Budget Ordinance is a "document submitted by [the District 4 Defendants] that was not authenticated or identified by a witness under oath, the meaning of which is unclear," (Cert. Pet. 10), the circuit court reviewed the document in accordance with Rule 201 and correctly determined that the District 4 Defendants were not using revenue derived from taxing property exempted by Act 388 to fund the School Resource Officer Program. The circuit court therefore properly dismissed this claim against the District 4 Defendants, and this Court should therefore deny certiorari on Question 2.

CONCLUSION

This Court should deny certiorari on Question I for three separate and independent reasons. First, the Court of Appeals' ruling is the law of this case, because Plaintiffs have not challenged the Court's actual ruling. Second, and assuming Plaintiffs have challenged the Court's actual ruling, the Court of Appeals correctly ruled that the first cause of action fails to state a claim upon which relief can be granted. Third, and assuming any reviewable and reversible error by the Court of Appeals, the circuit court properly dismissed the first cause of action as being within the exclusive remedy provision of the South Carolina Revenue Procedures Act. Denial of certiorari on any of these three grounds moots consideration of the other two.

This Court should deny certiorari on Question II for four separate and independent reasons. First, the Court of Appeals correctly ruled that Plaintiffs had abandoned their challenge to the circuit court's "no taxing power" ground for dismissal. Second, assuming no abandonment by Plaintiffs, the circuit court correctly dismissed the first cause of action, because the District 4 Defendants do not have any taxing power and therefore cannot violate Act 388. Third, the Court of Appeals correctly ruled that Plaintiffs failed to challenge the circuit court's "source of funding" ground for dismissal. Fourth, assuming any error by the Court of Appeals, the circuit court correctly dismissed the first cause of action, because the District 4 Defendants do not fund the SRO program with revenue raised in violation of Act 388. Denial of certiorari on any of these three grounds moots consideration of the other three.

Respectfully Submitted,

/s/ Robert L. Widener

Robert L. Widener
Erik P. Doerring
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29201
(803) 799-9800

William H. Davidson, II
Kenneth P. Woodington
DAVIDSON, WREN & PLYLER, P.A.
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

ATTORNEYS FOR RESPONDENTS
Town of Summerville, Summerville Town
Council, and William E. McIntosh, III

/s/ Carmen V. Ganjehsani

Anthony E. Rebollo
Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Drew Hamilton Butler
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Box 21203
Charleston, South Carolina 29413
(843) 805-6550

ATTORNEYS FOR RESPONDENTS
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, Dorchester County Sheriff
Luther C. Knight, in his official capacity

/s/ Kenneth A. Davis

Kenneth A. Davis
Charles J. Boykin
Tierney Felicia Dukes
Post Office Box 11844
Columbia, South Carolina 29211
(803) 254-0707

Adam Jordan Mandell
94 Pleasant Street
Cambridge, Massachusetts 02139

ATTORNEYS FOR RESPONDENTS
Dorchester School District Four and
Dorchester School District Four Board

February 10, 2022
Columbia, SC