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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Roger M. Young, Sr. Circuit Court Judge

Appellate Case No. 2024-001481
Appellate Case No. 2025-000207

Richard A. Butts, individually and on behalf of all others similarly situated,.....Respondent,

v.

Miriam Mace, in her official capacity as Treasurer of Georgetown County,
and Georgetown County, South Carolina, ... Appellants.

AND

Carroll Brown, individually and on behalf of all others similarly situated, ...Respondent,

v.

Harold M. Young, in his official capacity as Orangeburg County Administrator,
Matt Stokes, in his official capacity as Orangeburg County Treasurer,
Orangeburg County, and Orangeburg County Council, ... Appellants.

FINAL JOINT BRIEF OF RESPONDENTS

ROGERS, PATRICK, WESTBROOK & BRICKMAN, LLC
T. Christopher Tuck, Esq. (SC Bar 16891)
Robert S. Wood, Esq. (SC Bar 16644)
T.A.C. Hargrove, II, Esq. (SC Bar 102728)
1037 Chuck Dawley Blvd., Bldg. A
Post Office Box 1007
Mount Pleasant, SC 29465
T: (843) 727-6500
F: (843) 216-6509
ctuck@rpwb.com
bwood@rpwb.com
thargrove@rpwb.com

MCCULLOUGH, KHAN, APPEL
Ross A. Appel, Esq. (SC Bar 79149)
Clayton B. McCullough, Esq. (SC Bar 13722)
2036 Ewall Street
Mount Pleasant, SC 29464
T: (843) 937-0400
F: (843) 937-0706
clay@mklawsc.com
ross@mklawsc.com

Counsel for Respondents Richard A. Butts and the putative Class

RICHARDSON THOMAS, LLC
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8150
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., P.A.
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Ave. (29609)
Post Office Box 2446
Greenville, SC 29602
T: (864) 271-2636
F: (864) 271-2637
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAW FIRM, P.C.
T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
229 Magnolia St. (29306)
Post Office Box 2765
Spartanburg, SC 29304
T: (864) 585-3873
F: (864) 585-6485
rlangley@hodgelawfirm.com

Counsel for Respondents Carroll Brown and the putative Class

Dated: October 29, 2025

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II. Whether the trial court's determination that the retroactivity provision in Section 2(E) of Act No. 236 is unconstitutional may also be upheld on alternative sustaining grounds.

III. Whether the circuit court correctly held that ruling on the unconstitutionality of Section 2(E) of Act No. 236 violated the doctrine of constitutional avoidance.

STATEMENT OF THE CASE

The two cases in this appeal, *Butts v. Georgetown County et al.* and *Brown v. Orangeburg County et al.*, are class actions arising out of actors for Georgetown and Orangeburg Counties (collectively "Appellants", and individually "Georgetown Appellants" and "Orangeburg Appellants") who have charged, collected, and continue to retain virtually identical Road Maintenance Fees[1] to those fees invalidated by this Court in *Burns v. Greenville County Council*, 433 S.C. 583 (2021).

On June 30, 2021, the South Carolina Supreme Court declared to all political subdivisions in this state that when service or user fees are charged and expended in a manner that does not provide a unique benefit to the payor—like the Road Maintenance Fees at issue in these cases on appeal—then they are illegal under South Carolina law. *See id*. at 590 ("Going forward, courts will carefully scrutinize so-called 'service or user fees.'") (J. Kittredge, concurring). Despite that declaration, Appellants continue to collect and retain money collected pursuant to Georgetown County's and Orangeburg County's enacted Road Maintenance Fees. Overall, Appellants are hoarding millions of dollars in illegally collected Road Maintenance Fees that they refuse to return.

[1] "Road Maintenance Fees(s)" and "Road User Fee(s)" are interchangeable as when used throughout this brief.

I. *Butts v. Georgetown County*

Respondent Richard Butts filed his class action in Georgetown County Circuit Court on November 5, 2021 (hereinafter "*Butts* case"), seeking an order declaring Georgetown Appellants' Road User Fee unconstitutional, unlawful, and void *ab initio*, along with a mandate that Georgetown Appellants refund the illegal fees Respondent Butts was forced to pay, plus an award of ten times the amount of fees illegally collected pursuant to S.C. Code Ann. § 8-21-30. In addition to his individual claims, Respondent Butts seeks to represent a proposed class defined as:

> Any individual who paid a Road User Fee pursuant to Georgetown County Ordinance No. 2008-81 and/or Ordinance No. 2018-18.

(R. p. 43, ¶ 35).

On December 8, 2021, Georgetown Appellants filed an Answer along with a Motion to Strike five allegations from Respondent Butt's Complaint, and Appellant Georgetown County Council filed a Motion to Dismiss the Complaint. Prior to ruling on those motions, counsel for Georgetown Appellants and counsel for Respondent Butts stipulated to the dismissal of Defendant Angela Christian, in her capacity as Georgetown County Administrator, and Defendant Georgetown County Council on April 27, 2022. Following the stipulation of dismissal, the Circuit Court summarily denied the motion to strike on May 23, 2022. (R. pp. 1-11).

On June 22, 2022, nearly eight months after the *Butts* case was filed and one year after the *Burns* opinion, South Carolina Governor Henry McMaster signed 2022 Act No. 236 into law, which amended S.C. Code Ann. § 6-1-300(6), and *inter alia*, retroactively sanctioned conduct that the Supreme Court unanimously declared illegal in *Burns*. On November 4, 2022, Georgetown Appellants filed a Motion for Judgment on the Pleadings claiming that "[i]n light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law" and "[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money

damages for Defendants' collection of the Road User Fee in the past." (R. pp 62-63, ¶ 4). On January 6, 2023, the Honorable William H. Seals, Jr., denied Georgetown Appellants' motion for judgment on the pleadings based on Act 236's retroactivity language. (R. pp. 12-14). Judge Seals later reaffirmed that ruling on February 16, 2023, when he denied Defendants' motion to reconsider via Form 4. (R. pp. 15-16).

On May 17, 2023, this Court assigned the *Butts* and *Brown* cases, as well as all other similar cases pending when Act 236 was enacted, to the Honorable Roger M. Young, Sr., and vested in him the "exclusive jurisdiction to hear and dispose of [these and other Road User Fee cases] which have been or may be filed in South Carolina relating to Act No. 236." (R. pp. 17-21). Following that order, Respondent Butts filed a Motion to Amend his complaint requesting an order authorizing an Amended Complaint adding an additional declaratory judgment cause of action seeking a ruling that Act No. 236, as applied to the *Butts* case, is unconstitutional retroactive legislation. Judge Young granted Respondent Butts' Motion to Amend on September 6, 2023, and an Amended Class Action Complaint was filed the same day that added the following claim for declaratory relief: "Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act's effective date." (R. p. 71, ¶ 50(d)).

On September 21, 2023, Respondent Butts filed a Motion for Partial Summary Judgment seeking a declaratory judgment that the retroactivity language contained in Act No. 236 was unconstitutional and unlawful as applied to that case. The parties submitted memoranda on Respondent Butts' motion and the court held a hearing via WebEx on April 16, 2024. On June 25, 2024, Judge Young granted Respondent Butts' Motion for Partial Summary Judgment, finding that the retroactivity provision of Act 236 was unconstitutional as applied to the *Butts* case. (R. pp. 22-34).

Georgetown Appellants subsequently filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. On August 8, 2024, Judge Young re-affirmed the June 25, 2024, Order and denied the Rule 59 motion. (R. pp. 35-38). Thereafter, on September 9, 2024, Georgetown Appellants filed their notice of appeal to this Court.

II. *Brown v. Orangeburg County*

Respondent Carroll Brown filed her class action in Orangeburg County Circuit Court on November 24, 2021 (hereinafter "*Brown* case"), seeking an order declaring Orangeburg Appellants' Road User Fee unconstitutional, unlawful, and void *ab initio*, along with a mandate that Orangeburg Appellants refund the illegal fees Respondent Brown was forced to pay, plus an award of ten times the amount of fees illegally collected pursuant to S.C. Code Ann. § 8-21-30.[2] (R. pp. 267-278*)*. In addition to her individual claims, Respondent Brown seeks to represent a class defined as:

> Any individual who at any time paid the Road Maintenance Fee.

(R. p. 271, ¶ 37).

On December 28, 2021, Orangeburg Appellants filed their Answer, a Motion to Dismiss, and Motion for Judgment on the Pleadings. (R. pp. 279-298). On June 30, 2022, following briefing and oral argument, the Honorable Edgar W. Dickson granted the motions to dismiss and for judgment on the pleadings as to Respondent Brown's monetary claims (*i.e.*, quantum meruit/unjust enrichment, violation of S.C. Code Ann. § 8-21-30, and violation of the South Carolina Due Process Clause, codified as Article I, § 3, of the South Carolina Constitution), but denied the

[2] Specifically, the Complaint included an equitable claim for quantum meruit/unjust enrichment against all Orangeburg Appellants; a claim against the Orangeburg County Administrator and Orangeburg County Treasurer for violation of S.C. Code Ann. § 8-21-30; a claim against all Orangeburg Appellants for violation of the Due Process Clause of the South Carolina Constitution; and a claim for declaratory judgment. (R. pp. 267-278).

motions as to the claim for declaratory relief. (R. pp. 246-261). Additionally, Defendants Orangeburg County Council and Harold M. Young, as Orangeburg County Administrator, were dismissed without prejudice by the parties' consent. *Id*. Respondent Brown subsequently filed a Motion for Reconsideration on July 11, 2022. (R. pp. 353-359). In the midst of these rulings, on June 22, 2022, Governor Henry McMaster signed Act 236 into law, which amended S.C. Code Ann. § 6-1-300(6), and *inter alia*, retroactively sanctioned conduct that the Supreme Court unanimously declared illegal in *Burns*. In response, and as discussed *supra*, Respondent Butts amended his complaint seeking a declaration that the retroactivity provision of Act No. 236 was unconstitutional as applied to his case, and a later motion for partial summary judgment seeking a declaration of the same, which was granted on June 25, 2024. (R. pp. 22-34). The subsequent Rule 59(e) motion filed by the Georgetown Appellants was denied on August 8, 2024. (R. pp. 35-38).

On October 18, 2024, following those rulings in the *Butts* case, the Orangeburg Appellants filed a Motion for Summary Judgment and/or for Entry of Declaratory Judgment and for Rule 54(b) Certification declaring that the retroactivity language within Section 2(E) of Act No. 236 is constitutional and granting summary judgment on their mootness defense. (R. pp. 365-370).[3] That motion argued that Respondent Brown's claims were barred by the mootness doctrine, and alternatively, if the court ruled that the retroactivity provision in Act No. 236 was unconstitutional as it did in *Butts*, the Orangeburg Appellants requested that the court certify final judgment on the constitutional question pursuant to Rule 54(b), SCRCP, to allow for an immediate appeal. *Id*.

[3] On October 10, 2024, the Orangeburg Appellants filed a Motion to Vacate Orders entered in *Butts v. Mace*, 2021-CP-22-00928 (Georgetown County), which was heard on January 4, 2025, alongside its October 18, 2024, Motion for Summary Judgment. (R. pp. 360-364) The Orangeburg Appellants agreed to withdraw that motion if Respondent Brown agreed to Rule 54(b) certification. Because the Court granted Rule 54(b), SCRCP certification, the Motion to Vacate Orders was withdrawn as moot.

Specifically, Orangeburg Appellants argued that the cases on which Judge Young based his ruling in *Butts* (*i.e.*, *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974) and *Steinke v. S.C. Dept. of Labor, Lic. & Reg.*, 336 S.C. 373, 520 S.E.2d 142 (1999)) should be overruled pursuant to *Patchak v. Zinke*, 138 S.C. 897 (2018).

On January 30, 2025, Judge Young denied Orangeburg Appellants' motion and held, "Both *Lindsay* and *Steinke* remain the law in South Carolina, and the Court stands by its decision in *Butts* and incorporates that legal analysis herein." (R. pp. 240-245). Judge Young further entered a declaratory judgment that the retroactivity provision of Act No. 236 is unconstitutional. *Id*. Thereafter, on February 5, 2025, Orangeburg Appellants timely filed their notice of appeal. On April 2, 2025, following a consent motion by all parties to the *Butts* and *Brown* cases, this Court entered an Order consolidating both appeals.

STATEMENT OF FACTS

These cases arise out of ordinances passed by Appellants which imposed Road User Fees that were virtually identical to the fees that were invalidated by this Court in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).

A. Georgetown Appellants

In 2001, via Ordinance No. 2001-16, Appellant Georgetown County enacted the County's Road Maintenance Fee, which required the owner of every motor vehicle registered in Georgetown County to pay an annual $15 fee to the Treasurer of Georgetown County. (R. p. 66, ¶ 14). Appellant Georgetown County later passed Ordinance No. 2008-81 in 2008, which raised the fee to $30 per registered vehicle. (R. p. 66, ¶ 15). A decade later, Ordinance No. 2018-18 was enacted and raised the fee to $50 per registered vehicle. (R. p. 66, ¶ 16). That $50 fee remains in effect today. (R. p. 65, ¶ 6).

Appellant Miriam Mace, as Treasurer of Georgetown County, is responsible for overseeing the collection of all taxes and fees in Georgetown County, including the Road User Fee at issue in this case. (R. p. 66, ¶ 17). Since 2007, Appellant Mace and her predecessors have collected an estimated $26 million in Road User Fees from owners of motor vehicles registered in Georgetown County. (R. p. 66, ¶ 19).

B. Orangeburg Appellants

In 1987, Appellant Orangeburg County enacted the County's Road Maintenance Fee, which required the owners of all every vehicle registered in Orangeburg County to pay an annual $35 fee to the Treasurer of Orangeburg County. (R. p. 269, ¶ 15). Since its enactment, the Orangeburg County Road Maintenance Fee has been increased over the years and is currently $50 per registered vehicle. (R. p. 269, ¶ 16).

Appellant Matt Stokes, as Treasurer of Orangeburg County, is responsible for the collection of all fees in Orangeburg County, including the Road Maintenance Fee at issue. (R. p. 269, ¶ 17). Appellant Stokes collects approximately $3 million in Road Maintenance Fees each year from owners of motor vehicles registered in Orangeburg County. (R. p. 269, ¶ 19).

C. The *Burns v. Greenville County Council* Opinion

On June 30, 2021, this Court issued its opinion in a lawsuit that challenged the validity of user/service fees imposed by Greenville County that were substantially similar to the Road User Fee imposed by Georgetown County and the Road Maintenance Fee imposed by Orangeburg County. *See Burns v. Greenville Cnty. Council,* 433 S.C. 583, 861 S.E.2d 31 (2021); (R. pp. 65-67, ¶¶ 5, 21-23) (citing *Burns v. Greenville Cnty. Council,* 433 S.C. 583, 861 S.E.2d 31 (2021);

and (R. p. 270, ¶¶ 23-26). In the *Burns* opinion, this Court unanimously found that the Greenville County ordinances imposing those fees were invalid:

> Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the "government service or program . . . benefits the [fee] payer in some manner different from the members of the general public."
>
> …
>
> Greenville County Ordinances 4906 and 4907 purport to impose a "uniform service charge" on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90, 861 S.E.2d at 33-34. The concurring opinion, written by Justice Kittredge and joined by Chief Justice Beatty, elaborated on that holding, stating in relevant part:

> [T]his Court in recent years has received an increasing number of challenges to purported "service or user fees." **Local governments, for obvious reasons, want to avoid calling a tax a tax. I am hopeful that today's decision will deter the politically expedient penchant for imposing taxes disguised as "service or user fees." I believe today's decision sends a clear message that the courts will not uphold taxes masquerading as "service or user fees." Going forward, courts will carefully scrutinize so-called "service or user fees" to ensure compliance with section 6-1-300(6).**

Id. at 590, 861 S.E.2d at 34 (Kittredge, concurring) (emphasis added).

D. Act No. 236

On June 22, 2022, one year after the *Burns* opinion was issued and seven months after the *Butts* and *Brown* cases were filed, Governor Henry McMaster signed Act No. 236 into law, which amended, *inter alia*, S.C. Code Ann. § 6-1-300(6) by removing the particularized benefit language—the requirement upon which *Burns* was decided—and added new statutory language allowing fee revenue to "be used to the benefit of the payers, even if the general public also benefits." 2022 Act No. 236, § 2(A). This change effectively eliminates any distinction between a service or user fee and a tax and allows local governments to charge their constituents service or

user fees regardless of whether the payor derives any unique benefit. In addition, Act No. 236 includes language that purports to reach back to 1997 and retroactively sanction the collection of fees that the Supreme Court unanimously declared illegal in *Burns*. 2022 Act No. 236, § 2(E) ("This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.").

Because Respondent Butts originally filed suit on November 5, 2021, his claim, and putative class claims, accrued and were the subject of litigation prior to the effective date of Act No. 236. (R. pp. 39-49). Similarly, because Respondent Brown filed suit on November 24, 2021, her claim, and putative class claims, accrued and were the subject of litigation prior to the effective date of Act No. 236. (R. pp. 267-278).

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. "The interpretation of a statute is a question of law." *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013). Therefore, this Court "need not defer to the determination of the court below." *Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022).

ARGUMENT

I. The circuit court correctly ruled that the retroactivity provision in Section 2(E) of Act No. 236 is unconstitutional because it violates the South Carolina Constitution's Separation of Powers doctrine.

The South Carolina Constitution, adopted in 1868, largely followed the United States Constitution by delegating distinct powers to the legislative, executive, and judicial branches of government. However, the South Carolina Constitution goes further by expressly mandating the separation of powers, a provision absent from the United States Constitution. *See*, S.C. Const. art. I, § 8. Specifically, Article I, section 8 of the South Carolina Constitution states:

> "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other*."

S.C. Const. art. I, § 8 (emphasis added).

Of the myriad ways that the doctrine of separation of powers may be violated, legislative acts purporting to apply amended statutes (overturning decisions of this Court) retroactively *to active cases* are among the more pervasive examples. And despite several legislative attempts, this Court has consistently defended its judicial authority, holding that legislative acts attempting to retroactively overrule this Court's prior interpretation of a statute violate Article I, section 8, of the South Carolina Constitution and the doctrine of separation of powers. *See Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974) (discussed *infra*); *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (discussed *infra*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003) (extending the holding in *Steinke*, and discussed *infra*); *JRS Builders, Inc., v. Neunsinger*, 364 S.C. 596, 614 S.E.2d 629 (2005) (reaffirming *Steinke* and *Lindsay*, and discussed *infra*); and *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 24-25, 736 S.E.2d 651, 655-56 (2012) (reaffirming *Steinke* and *Lindsay*, and discussed *infra*).

Lindsay anchors this Court's separation of powers precedent in cases involving the General Assembly's attempt to retroactively overturn prior decisions of this Court. In that foundational decision, this Court held that "[u]nder our State Constitution which provides . . . for the separation of the legislative, executive and judicial powers of the government, the General Assembly does not have authority to [legislatively reverse a decision of the Supreme Court]." *Lindsay*, 262 S.C. 621, 628, 207 S.E.2d 75, 78. In so doing, this Court recognized:

> "The construction of a statute is a judicial function and responsibility. Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial interpretation of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively."

Id. at 628-29, 207 S.E.2d at 78 (internal citation omitted).

In *Steinke*, this Court addressed whether statutory caps on liability, reinstated by a 1997 budget act, applied retroactively to a wrongful death action filed in 1994. *Steinke*, 336 S.C. 373, 520 S.E.2d 142 (1999). The South Carolina Department of Labor, Licensing and Regulation appealed a $1 million jury award against it, arguing that the 1997 law purported to apply to "claims or actions pending on that date or thereafter filed." *Id*. at 401, 520 S.E.2d 157. The Court noted its earlier decision in *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994), holding the Tort Claims Act's liability caps were impliedly repealed by the subsequent, inconsistent Uniform Contribution Among Tort-Feasors Act. *Id*. at 402, 520 S.E.2d at 157. The General Assembly responded to *Southeastern Freight Lines* by passing a 1994 law reinstating the caps, but exempting causes of action filed before July 1, 1994. *Id*. The complaint in *Steinke* was filed on June 29, 1994, before the 1994 law went into effect. According to this Court, whether the 1997 law or the Court's decision in *Southeastern Freight Lines* applies "implicates the doctrine of separation of powers." *Id*. (citing S.C. Const. art. I, § 8). Because the plaintiffs' claims were filed before the 1997 law reinstating the caps, this Court held *Lindsay* controls and, therefore, "[t]he Legislature may not retroactively overrule this Court's interpretation of the statutes in *Southeastern Freight Lines*. The Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in future cases." *Id*. at 403, 520 S.E.2d at 157-58. This Court summarized its ruling as follows: "May the Legislature by a

retroactive amendment overrule this Court's prior interpretation of a statute? We conclude the Legislature may not." *Id*. at 402, 520 S.E.2d at 157.

At bottom, *Steinke* stands for the proposition that once a lawsuit is filed, its claims are vested under the law in effect at the time (as interpreted by this Court's opinions) and subsequently enacted legislation overturning this Court's opinions cannot apply retroactively to claims already filed. This holding defends separation of powers because, otherwise, the General Assembly would be empowered to legislate the outcome of pending cases, a function entrusted solely to the judiciary under the South Carolina Constitution.

Four years later in *Simmons*, the Court reaffirmed *Steinke* by extending its holding to shield from retroactive legislation not only lawsuits filed prior to the effective date of the new law, *but also those claims that arose or accrued prior to the effective date*. *Simmons*, 355 S.C. at 588, 586 S.E.2d at 572. ("The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.") (emphasis in original). The *Simmons* plaintiffs filed suit against a governmental hospital in May 1998 for negligence in the care and treatment of their minor child in 1992. *Id*. at 583, 586 S.E.2d at 570. After answering the complaint, the parties agreed to settle the plaintiffs' claims for $1.5 million. *Id*. Believing its liability was limited to the $250,000 cap imposed by the Tort Claims Act, the hospital only tendered $250,000. *Id*. at 583-84, 586 S.E.2d at 570. Thereafter, the plaintiffs moved for declaratory judgment to determine the applicability of the cap. *Id*. at 584, S.E.2d at 570. The trial court found that the $250,000 cap applied, and plaintiffs appealed. *Id*. Citing *Steinke*[4], this Court addressed "whether the liability caps within the 1994 and 1997 Acts are

[4] Specifically, the Court referenced the statement in *Steinke* that, "[t]he Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in ***future cases***." *Simmons*, 355 S.C. at 587, 586 S.E.2d at 571-72 (quoting *Steinke*, 336 S.C. at

applicable to claims which **arose or accrued** prior to each Act's effective date, but which were not **filed** until after the effective date." *Id*. at 587, 586 S.E.2d at 572 (emphasis in original). Citing *Steinke* and *Lindsay*, this Court rejected the hospital's argument that only the date the case was filed mattered, holding:

> At the time Appellants' claim arose — when [plaintiffs' minor child] was infected shortly after his birth in 1992 — there were no statutory caps in place under the rule of *Southeastern*. Therefore, the Legislature's attempt to reach back and change the status of such claims that arose prior to the Legislature's 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 *in toto* in 1997, is, by definition, retroactive, and violates the doctrine of separation of powers. *Steinke*; *Lindsay*. The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that **arose or accrued** after the effective date of the reenactments.

Id. at 587-88, 586 S.E.2d at 572 (emphasis in original).

In *JRS Builders, Inc.*, this Court once more reaffirmed *Steinke* and *Lindsay*. 364 S.C. 596, 614 S.E.2d 629 (2005). That case dealt with a mechanic's lien dispute between a property owner and a builder over which version of S.C. Code Ann. § 29-5-10 applied in determining the prevailing party for purposes of awarding attorney's fees. *Id*. at 599, 614 S.E.2d at 631. This Court held that the statute on the books when the lawsuit was filed and this Court's interpretation of said statute in *Brasington Tile Co., Inc. v. Worley*, 327 S.C. 280, 289, 491 S.E.2d 244, 248 (1997) govern—not the amendment adopted after the lawsuit was filed. *Id*. at 600, 614 S.E.2d at 631. Again, citing *Steinke* and *Lindsay*, this Court rejected the retroactivity argument and held that "[b]ecause a prior, on-point judicial decision has been rendered, any subsequent statutory amendments apply prospectively only. To decide otherwise would allow the legislature, in effect, to overrule judicial decisions in violation of the separation of powers doctrine." *Id*.

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402) (emphasis in original). Because *Steinke* was filed before the effective date of the 1994 Act, the date of accrual was not significant to the Court's decision.

More recently, this Court has left no doubt that *Lindsay* and *Steinke* remain good law and shape this state's retroactivity jurisprudence. *See Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 24-25, 736 S.E.2d 651, 655-56 (2012) (citing *Linsday* and *Steinke* but finding General Assembly's statutory amendment did not violate separation of powers doctrine because amendment pre-dated Supreme Court's final decision).

Against this backdrop of settled precedent, Judge Young found the retroactivity provision in Section 2(E) of Act No. 236. unconstitutional as applied to both *Butts* and *Brown*. In doing so, Judge Young held *Lindsay* and *Steinke* controlled because both *Butts* and *Brown* were filed several months before Act No. 236 took effect.

Appellants now ask this Court to overturn *Steinke* and its progeny, claiming this long line of cases are an unwarranted misapplication and extension of *Lindsay*. Should this Court do so, it will relinquish the judiciary's exclusive power to interpret statutes and decide pending cases to the General Assembly, which this Court characterizes as the dominant branch under South Carolina's unique constitutional system (discussed, *infra*), in violation of Article I, section 8, of the South Carolina Constitution.

This Court should reject Appellants' invitation to cede judicial power to the General Assembly. "[S]tare decisis is far more a respect for a body of decisions as opposed to a single case standing alone." *McLeod v. Starnes*, 396 S.C. 647, 654-55, 723 S.E.2d 198, 203 (2012) (citing *Langley v. Boyter*, 284 S.C. 162, 180, 325 S.E.2d 550, 560 (Ct. App. 1984), *quashed on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985) ("The doctrine of stare decisis says that where a principle of law has become settled by a series of court decisions, it should be followed in similar cases.")). Here, Appellants would have this Court overturn not a single, isolated case, but rather decades of well-reasoned and binding precedent. There is simply no compelling reason to do so.

The Appellants' reliance on United States Supreme Court precedent and precedent from other States to overturn *Steinke* and its progeny is unavailing. The Appellants rely chiefly on *Plaut v. Spendrift Farm, Inc.*, 514 U.S. 211 (1995), *Patchak v. Zinke*, 583 U.S. 244 (2018) (affirming Congress's power to strip federal courts of jurisdiction over a specific class of cases, even if that action effectively dictates the outcome of a pending lawsuit), and *Bank Markazi v. Peterson*, 578 U.S. 212 (2016) (upholding a statute that designated specific Iranian assets for the satisfaction of terrorism-related judgments, even though it effectively ensured a win for the victims in a pending case).

As an initial matter, United States Supreme Court precedent is not controlling on this Court on matters dealing exclusively with state law. *Key v. Carolina & N. W. R. Co.*, 150 S.C. 29, 35, 147 S.E. 625, 626 (1929) ("The Courts of South Carolina, except when federal questions are involved, are not bound by the decisions of the United States Supreme Court, however highly we may regard the opinions of that great Court."). This Court is no stranger to rejecting United States Supreme Court precedent when it does not comport with South Carolina law and precedent. *See*, *e.g.*, *State v. Rearick*, 417 S.C. 391, 403-05, 790 S.E.2d 192, 198-99 (2016) (refusing to adopt the rationale in *Abney v. United States*, 431 U.S. 651 (1977) in a double jeopardy challenge because doing so "would have dire consequences for the future of appellate review in South Carolina.").

Unlike the United States Constitution, the South Carolina Constitution has an explicit separation of powers clause found in Article I, section 8, which is the constitutional foundation of *Steinke* and its progeny. This constitutional command reflects fundamental differences in the balance of power struck between the three branches of the South Carolina government when compared to the federal government. The Fourth Circuit has observed these distinct separation of powers traditions, noting this Court "in no uncertain language, employs an arguably even more

stringent standard, using separation of powers to prohibit the legislature from enacting retroactive statutes that effectively overturn a 'prior, on-point judicial decision.'" *Ward v. Dixie Nat'l Life Ins. Co*., 595 F.3d 164, 177 (4th Cir. 2010) (citing *JRS Builders*, *Simmons*, *Steinke*, and *Lindsay*).

Appellants cite to sixteen cases from fifteen jurisdictions outside of South Carolina that have "adopted a similar separation of powers test as the United States Supreme Court…" (App. Brief, p. 16, FN 5.) However, like decisions from the United States Supreme Court, decisions from other jurisdictions are not binding on this Court, and "[o]ur supreme court will look to other states for persuasive authority **where there are no South Carolina opinions on point.**" *Golini v. Bolton*, 326 S.C. 333, 343, 482 S.E.2d 784, 789 (Ct. App. 1995) (emphasis added). Here, there are multiple South Carolina cases on point, which was made clear by Judge Young in his order in *Butts*. (R. p. 30) ("Therefore, pursuant to the Supreme Court's decisions in *Lindsay*, *Steinke*, and *Simmons*, the Court finds the retroactivity provision in Section 2(E) of Act 236 is unconstitutional because, if applied to this case, it would overturn the Supreme Court's interpretation of section 6-1-300(6) in *Burns*.") Because there are multiple South Carolina cases that are "on point," this Court should disregard Appellants' references to cases outside of this jurisdiction. If, however, the Court does look to Appellants' conclusory statements regarding those cases, the factual differences are more than enough to distinguish them from the present cases on appeal.

First, in contrast to Appellants' pronouncement that the sixteen extraterritorial cases they cite at footnote 5 "apply[] explicit retroactive legislation to **all cases that have not been brought or reached final judgment when the legislation is enacted,**" only four of those opinions, including one which is unpublished, held that retroactive legislation applied to cases that had not reached final judgment. *See Ex Parte Jenkins*, 723 So.2d 649, 655 (Ala. 1998) (finding that the legislature's attempt to reopen previously rendered final judgments violated Alabama's separation

of powers doctrine); *Rokita v. Tully*, 235 N.E.3d 189, 199 (Ind. Ct. App. 2024) (holding the legislature could not set aside final judgments of a court and comply with the separation of powers doctrine.); *Wuebker v. Heenan Agency, Inc.*, 814 N.W.2d 622, *4 (Iowa Ct. App. 2012) (holding that separation of powers doctrine was not violated because the case had not reach final judgment.); and *Doe 1k v. Roman Catholic Diocese of Charlotte*, 387 N.C. 12, 14, 911 S.E.2d 38, 40 (2025) ("Under well-settled separation of powers principles, the legislature has no right, directly or indirectly, to annul, in whole or in part, a judgment or decree of a court already rendered".) (citation modified).

Second, four of those cases held that retroactive application of a newly enacted statute did not violate the separation of powers doctrine when the legislation created a new right in favor of a criminal defendant or victim, waived the rights of the state, or was designed to protect consumers. *See State v. Rios*, 225 Arz. 292, 306 (Ct. App. 2010) (upholding retroactive legislation that created new rights for criminal defendants.); *People v. Bunn* 27 Cal.4th 1, 4-5 (2002) (upholding a statute that amended the statute of limitations for sex crimes against minors by expanding the limitations period and reviving claims that had been previously time barred); *Savannah R-III School Dist. V. Pub. School Ret. Sys. of Mo.*, 950 S.W.2d 854, 858 (Mo. 1997) (holding that the legislature may pass retrospective laws that waive the rights of the state in favor of protecting citizens without violating the state's constitutional prohibition of retrospective laws.); *Wilmington Trust, Nat'l Assoc. v. Farkas*, 232 A.D.3d 524, 526 (N.Y. App. Div. 2024) (holding that because the statute in question was designed to protect consumers and prevent lenders' ability to manipulate the statute of limitations to the detriment of homeowners its retroactive application did not violate the separation of powers doctrine.). Unlike the statutes in question in these cases cited by Appellants,

Act No. 236 does not create new rights for the plaintiffs, waive rights for the state, or protect consumers. On the contrary, it attempts to nullify Respondents' claims in favor of the Appellants.

Third, two cases stand for the proposition that separation of powers is not implicated when the statutes in question clarified a prior decision and did not direct findings of fact or application of law. *See Bhinder v. Sun Co., Inc.*, 263 Conn. 358, 371, 819 A.2d 822, 831 (2003) (holding that the "enactment of clarifying legislation, simply cannot violate the doctrine of separation of powers"); *D.C. v. Beretta U.S.A. Corp.*, 940 A.2d 163, 173 (D.C. Cir. 2008) (holding that the new statute did not direct findings of fact or applications of law, and thus, did not offend separations of powers.) Like the cases before, these are easily distinguishable from the present appeal. Act No. 236's retroactivity provision does not clarify a prior statute but instead directs a change in the application of the law by making valid what this Court in *Burns* deemed invalid. The remaining extraterritorial cases cited by Appellants are equally unavailing.[5]

[5] *Vitetta v. Corrigan*, 240 P.3d 322, 326-27 (Colo. Ct. App. 2009) (holding there was no issue with separation of powers when the retroactive statute in question made clear it applied to pending cases by stating it "shall apply to civil actions pending on or after" the effective date.); *Cate v. Kroger*, 627 S.W.3d 864, 868-73 (Ky. 2021) (Notably, this case did not argue that the statute in question violated separation of powers, but held that vesting principles in workers compensation claims did not apply to the duration or amount of benefits because they had not yet been adjudicated.); *King v. Campbell County*, 217 S.W.3d 862, 869 (Ky. 2006) (upholding retroactive application of an amended statute did not violate separation of powers or due process because, among other things, the amendment only applied to counties where the amendment was authorized by public question, and that the amendment was enacted before any claims had vested.); *Gleason v. Samaritan Home*, 260 Kan. 970 (1996) (holding that separation of powers was not violated by legislation deciding the scope of appellate jurisdiction and administrative appeals.); *Bernier v. Data Gen. Corp.*, 787 A.2d 144, 150 (Maine 2002) (upholding retroactive application of a statute when the legislative history of the statute indicated an intent to give the statute "the broadest possible application."); and *Wilkinson v. Bd. Of Univ. and School Lands*, 903 N.W.2d 51, 57 (N.D. 2017) (upholding retroactive application of a statute when the statute included new provisions to consider when deciding ownership of disputed minerals. As in *Rios*, *Bunn*, *Savannah R-III*, and *Wilmington Trust*, the statute created new rights that disfavored the State.)

Furthermore, this Court's distinct separation of powers precedent is a product of South Carolina's unique constitutional paradigm, which is characterized by a dominant General Assembly. In *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, this Court observed that South Carolina "has been considered a 'legislative state.'" 403 S.C. 640, 650, 744 S.E.2d 521, 526 (2013) (citing Cole Blease Graham, Jr., The South Carolina Constitution: A Reference Guide 46 (2007)). The Court, referencing Professor James L. Underwood's treatise on the subject, summarized this history as follows:

> The path leading to this collaborative governance where the General Assembly wields extensive power is discussed at length by Professor Underwood in his excellent treatise on our State constitution. While recognizing that no one force can be identified as being responsible for "South Carolina's unique form of government in which the legislative takes a permanent position among the three theoretically equal branches of government," Underwood does discuss several causative factors. James L. Underwood, *The Constitution of South Carolina, Volume I: The Relationship of the Legislative, Executive, and Judicial Branches* 13 (1986).
>
> > Among the historical forces that created the impetus for the acquisition of such powers by the colonial Commons House were abuses by the royal executive that created an inbred suspicion of concentrated executive power in the South Carolina political leadership. In the view of Commons these royal executive excesses threatened the economy of the province, frustrated their own ambitions by reserving choice judicial and other positions for British placemen and threatened the prerogatives of Commons to judge the proper composition of its own membership. The climate favorable to the legislative style of government was enhanced by a small, homogeneous elite who found it convenient to rule as a group through the legislature as a form of committee of peers. Admiration and emulation of the constitutional precedents of British government with its example of growing parliamentary power proved to be a seductive model for the South Carolinians, many of whom were lawyers trained at English Inns of Court.
>
> *Id.* at 21-22. Although our system has retrenched somewhat from the colonial levels of legislative control, **the influence of the legislature in the activities of the other branches remains firmly girded in the operation of our government.**
>
> Consequently, **our rich and unique constitutional history** has resulted in a system of government which does not lend itself to a neat, compartmentalized, or "cookie-

> cutter" approach. Rather, to counteract the destructive forces which can emanate from strictly defined and jealously guarded power bastions, **certain "power fusion devices" have developed to enable the branches to work together in a cooperative fashion.** *Id.* at 3

Id. at 650-51, 744 S.E.2d at 526-27 (emphasis added).

Respondents submit that *Steinke* and its progeny represent one such "power fusion device" under South Carolina's unique constitutional system. These considerations are simply not the same with respect to the federal government. The rationale in *Plaut*, *Patchak*, and *Bank Markazi* responds to a different constitutional paradigm and does not support overturning *Steinke*. If the Court were to abandon *Steinke* and its progeny, it would intolerably tip the scales further in favor of an already dominant General Assembly and empower it to decide *pending* cases by legislatively reversing this Court's prior decisions. Therefore, this Court should find that the retroactivity provision in Section 2(E) of Act No. 236 unconstitutionally violates Article I, section 8, of the South Carolina Constitution, and affirm the decision of the circuit court.

II. The circuit court's finding that the retroactivity provision in Section 2(E) of Act No. 236 is unconstitutional may also be upheld on alternative sustaining grounds.

Not only does Section 2(E) of Act No. 236 unconstitutionally infringe on South Carolina's separation of powers doctrine, it may also be found unconstitutional on alternative sustaining grounds, including violations of the due process clause and takings clause. Although arguments that Act No. 236 violates the due process and takings clauses were not raised or ruled on by the circuit court, this Court may affirm the circuit court's decision on any grounds whether appearing in the record or not. Rule 220(c), SCACR; *see also*, *I'On, L.L.C. v. Town of Mount Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("a respondent . . . may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

Justice Pleicones' dissent in *JRS Builders* recognized other constitutional guardrails that support Respondents' position that Section 2(E) of Act No. 236 is unconstitutional. His dissent opined that "[t]he only constitutional limit on retroactivity in a civil context derives from due process guarantees, and from S.C. Const. art. I, § 4, prohibiting the passage of a law that 'has the effect of impairing the obligation of contract or divesting vested rights of property.'" *JRS Builders, Inc*., 364 S.C. at 602, 614 S.E.2d at 633 (J. Pleicones, dissenting) (citing *Schumacher v. Chapin*, 228 S.C. 77, 88 S.E.2d 874 (1955)). Applying Act No. 236's amended user fee statute, which overturns *Burns*, to *Butts* and *Brown*—both of which were filed months prior to Act No. 236's adoption—violates due process, divests vested rights, and amounts to an unconstitutional taking.

A. Section 2(E) of Act No. 236 is unconstitutional because it violates the Due Process Clause in the South Carolina Constitution.

The South Carolina Constitution guarantees that "[t]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law…." S.C. Const. Art. I, § 3. The South Carolina Supreme Court in *U.S. Rubber Co. v. McManus*, held:

> A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary legislative interference. To permit the legislature to destroy vested rights of action would be in violation of the due process clauses of the Federal Constitution and the State Constitution.

211 S.C. 342, 349–50, 45 S.E.2d 335, 338 (1947). In *U.S. Rubber*, the rubber company, as an assignee of a judgment against McManus, sought permission to institute an action on the judgment against the defendant, McManus. *Id.* The circuit court permitted the rubber company to bring the action against McManus to enforce the judgment that was more than 10 years old but less than 20 years old. *Id.* The rubber company served notice on McManus of its intent/plan to request this

permission from the circuit court. The circuit court heard the rubber company's motions and granted it based on:

> Section 354, 1942 Code, which provides that 'no action shall be brought upon a judgment rendered in any court in this State * * * without leave of the court, or a judge thereof, * * * for good cause shown, on notice to the adverse party * * *.'

Id.

McManus opposed the motion and argued that the action was barred by Act 516 ("the 1946 Act"), which repealed the majority of section 354. *Id.* The circuit court, however, held that at the time the 1946 Act was passed, the rubber company's cause of action had accrued, and it therefore had a vested property right in the judgment. *Id.*

On appeal, this Court disagreed with the circuit court finding the rubber company's cause of action had accrued prior to the passage of the 1946 Act stating:

> In the case now before us, it is clear that the respondent's cause of action at the date of the 1946 Act, had not accrued because at the time of such enactment it had not obtained leave of the court to bring an action on the judgment. The obtaining of leave constituted a prerequisite to the court's jurisdiction to entertain such an action.

Id. The Court further held that "prior to [the 1946 Act], a judgment in this state more than ten years old amounted to nothing more than an inchoate or potential cause of action. Under the law there was no vested right to sue until the statutory requirements had been complied with." *Id.* This Court held:

> We need only point out that the 1946 Act in no way affected an 'existing cause of action' vested in the respondent. **A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary legislative interference. To permit the legislature to destroy vested rights of action would be in violation of the due process clauses of the Federal Constitution and the State Constitution. But rights are vested only when they are absolute, complete and unconditional, and not dependent upon any future act, contingency or decision.**

Id. (emphasis added).

Unlike in *U.S. Rubber*, where the right of action required leave of court to bring an action on the judgment before the rubber company had a vested right to sue, the plaintiffs in *Butts* and *Brown* did not have contingent claims. Rather, their claims were absolute, complete, and unconditional, having been filed months before Act No. 236 was enacted. Therefore, Respondents' filed and pending causes of action were vested and did not depend on a future act as was the case in *U.S. Rubber—i.e.*, requesting leave of court to file the action. If Act No. 236's amended user fee statutes are applied to *Butts* and *Brown*, it will amount to an unconstitutional violation of Respondents' due process rights by stripping them of vested property rights in their respective lawsuits that were filed before Act No. 236 was enacted and in reliance on this Court's decision in *Burns*.

This Court also recognizes, in the zoning and land development context, the "time of application rule," which is rooted in due process and vesting concepts. The "time of application rule" provides that when there is "good faith reliance by the owner on the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit" a subsequently enacted ordinance cannot deprive the owner of a use that was permitted under the then existing ordinance. *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 33, 173 S.E.2d 140, 143 (1970). The "time of application rule" responds to the fundamental unfairness of changing the rules *in the middle of a legal process* to a party's detriment. That is precisely what the Appellants advocate. Doing so conflicts with bedrock principles of due process and vested rights. Therefore, this Court should find that the retroactivity provision of Act No. 236 is an unconstitutional violation of Respondents' due process rights and affirm the circuit court's decision.

B. Section 2(E) of Act No. 236 is unconstitutional because it violates the Takings Clause in the South Carolina Constitution.

Section 2(E) of Act 236 is also unconstitutional because it violates the Takings Clause in the South Carolina Constitution. The South Carolina Constitution states, "Except as otherwise provided in this constitution, private property shall not be taken for public use without just compensation being first made therefor." S.C. Const. art. I, § 13(A). The Takings Clause is implicated "where private property is taken for public use by the State or by any of its agencies . . . or by a municipal corporation." *Smith v. City of Greenville*, 229 S.C. 252, 260, 93 S.E.2d 639, 643 (1956) (internal citations or quotations omitted).

"[P]arties claiming such violations must first show they have a legitimate property interest." *Grimsley v. S.C. L. Enf't Div.*, 396 S.C. 276, 283–84, 721 S.E.2d 423, 427 (2012). Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id*. (quoting *Snipes v. McAndrew*, 280 S.C. 320, 324, 313 S.E.2d 294, 297 (1984)).

Respondents have a recognized property right in money for purposes of a takings analysis. *See, e.g.,* S.C. Code Ann. § 14-1-30 ("The words 'personal property,' as used in this Title [14, Courts], include money, goods, chattels, things in action and evidences of debt."). Moreover, "South Carolina courts have embraced federal takings jurisprudence as providing the rubric under which we analyze whether an interference with someone's property interests amounts to a constitutional taking." *Applied Bldg. Scis., Inc. v. S.C. DOC, Div. of Pub. Rys*., 442 S.C. 421, 428, 900 S.E.2d 241, 245 (2024) (citing *Hardin v. S.C. Dep't Transp.,* 371 S.C. 598, 604, 641 S.E.2d 437, 441 (2007) and *Byrd v. City of Hartsville,* 365 S.C. 650, 656 n.6, 620 S.E.2d 76, 79 n.6 (2005)). The United States Supreme Court has long held that money is a protected property interest

for purposes of a takings claim. *Sheetz v. Cty. of El Dorado*, 601 U.S. 267 (2024) (holding the Takings Clause applies to legislatively enacted impact fees in addition to monetary exactions applied administratively); *Koontz v. St. Johns River Water Mgmt. Dist*., 570 U.S. 595 (2013) (holding monetary exactions, when tied to a specific parcel of land and its development, can constitute a "taking" if they lack the required nexus and rough proportionality to the impacts of the proposed development); *Webb's Fabulous Pharms. Inc. v. Beckwith*, 449 U.S. 164, 165 (1980) (holding a state statute that authorized a county to retain the interest earned on an interpleader fund deposited in the registry of the county court constituted a taking of private property).[6]

For decades, the Respondents paid their money pursuant to the unlawful Georgetown County and Orangeburg County Road maintenance fee ordinances. Because money is a recognized property interest under South Carolina law and federal takings jurisprudence, the Appellants' collection of these unlawful fees constitutes precisely the kind of government appropriation that the Takings Clause—both state and federal—forbids absent just compensation. Act No. 236 attempts to ratify and shield Appellants' unconstitutional takings, leaving Plaintiffs without remedy for property that was unlawfully taken from them over many years. As such, the retroactivity provision is unconstitutional as applied to the monetary refund claims in *Butts* and *Brown*.

[6] There is no conflict in this Court following the United States Supreme Court's takings jurisprudence while embracing a different view of retroactive legislation and separation of powers. The takings clauses in the United States Constitution and South Carolina Constitution are essentially identical. However, unlike the United States Constitution, the South Carolina Constitution has an express separation of powers clause and a unique constitutional tradition as discussed, *infra*.

III. The circuit court did not violate the doctrine of constitutional avoidance by ruling on the unconstitutionality of Section 2(E) of Act No. 236.

Appellants claim Judge Young violated the constitutional avoidance doctrine by ruling on the as-applied unconstitutionality of Section 2(E) of Act No. 236 before this Court rendered a final ruling in *Thompson v. Killian*. Significantly, *Thompson v. Killian* does not involve any ruling on Act No. 236. The appeal does not discuss the Act or its retroactivity provision, but whether S.C. Code § 12-60-80(C), the Revenue Procedures Act, and sovereign immunity barred certain class action and equitable refund claims the plaintiffs brought against Aiken County. Nevertheless, Appellants contend that Judge Young violated the constitutional avoidance doctrine. They argue that if this Court affirms the lower court's decision in *Thompson*, other road maintenance fee cases (*e.g.*, *Butts* and *Brown*) will effectively be resolved in favor of county governments, and thus Judge Young should have withheld ruling on the constitutional issues. But this argument ignores this Court's May 17, 2023, Order, which specifically called for the expeditious resolution of claims arising under Section 2(E). (R. pp. 262-266). Judge Young therefore acted properly in issuing rulings in *Butts* and *Brown*, ensuring that these constitutional issues would be before this Court alongside the threshold legal issues implicated in *Thompson v. Killian*.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the Court affirm the orders on appeal and hold that the retroactivity provision in Section 2(E) of Act No. 236 is an unconstitutional violation of the South Carolina Constitution's Separation of Powers doctrine, or in the alternative, that the same conclusion is warranted because it violates the Due Process and/or Takings Clause of the South Carolina Constitution. Respondents further request that the Court

hold that the lower court's decision in *Butts* does not violate the doctrine of constitutional avoidance.

Respectfully submitted,

ROGERS, PATRICK, WESTBROOK & BRICKMAN, LLC

s/ T. Christopher Tuck
T. Christopher Tuck, Esq. (SC Bar 16891)
Robert S. Wood, Esq. (SC Bar 16644)
T.A.C. Hargrove, II, Esq. (SC Bar 102728)
1037 Chuck Dawley Blvd., Bldg. A
Post Office Box 1007
Mount Pleasant, SC 29465
T: (843) 727-6500
F: (843) 216-6509
ctuck@rpwb.com
bwood@rpwb.com
thargrove@rpwb.com

MCCULLOUGH, KHAN, APPEL

s/ Ross A. Appel
Ross A. Appel, Esq. (SC Bar 79149)
Clayton B. McCullough, Esq. (SC Bar 13722)
2036 Ewall Street
Mount Pleasant, SC 29464
T: (843) 937-0400
F: (843) 937-0706
clay@mklawsc.com
ross@mklawsc.com

Counsel for Respondents Richard A. Butts and the putative Class

RICHARDSON THOMAS, LLC

s/ William C. Lewis
William C. Lewis, Esq. (SC Bar 101287)
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
Brady R. Thomas, Esq. (SC Bar 72530)
Grace M. Babcock, Esq. (SC Bar 105714)
1513 Hampton Street, First Floor
Columbia, SC 29201
T: (803) 281-8150
F: (803) 632-8263
will@richardsonthomas.com
terry@richardsonthomas.com
brady@richardsonthomas.com
grace@richardsonthomas.com

DAVID R. PRICE, JR., P.A.

s/Sam Tooker
Sam Tooker, Esq. (SC Bar 78999)
David R. Price, Jr., Esq. (SC Bar 75140)
318 West Stone Ave. (29609)
Post Office Box 2446
Greenville, SC 29602
T: (864) 271-2636
sam@greenvillelegal.com
david@greenvillelegal.com

HODGE & LANGLEY LAW FIRM, P.C.

s/T. Ryan Langley
T. Ryan Langley, Esq. (SC Bar 76558)
Charles J. Hodge, Esq. (SC Bar 2537)
229 Magnolia St. (29306)
Post Office Box 2765
Spartanburg, SC 29304
T: (864) 585-3873
rlangley@hodgelawfirm.com
Counsel for Respondents Carroll Brown and the putative Class