No. 89PA22 DISTRICT THREE-A

SUPREME COURT OF NORTH CAROLINA

****

ERIC STEVEN FEARRINGTON,
CRAIG D. MALMROSE,

Plaintiffs-Appellees,

v.

CITY OF GREENVILLE, PITT COUNTY BOARD OF EDUCATION,

Defendants-Appellants.

From the Court of Appeals
No. 20-87

From Pitt County
No. 19 CVS 1217

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DEFENDANT-APPELLANT CITY OF GREENVILLE'S NEW BRIEF

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ISSUES PRESENTED

I. Did the Court of Appeals err in determining that the Interlocal Agreement between City of Greenville and Pitt County Board of Education violated the Fines and Forfeiture Clause in Article IX, Section 7 of the North Carolina Constitution?

II. Are Plaintiffs prohibited from directly challenging the Red Light Camera Enforcement Program ("RLCEP") under the North Carolina Constitution when they have been provided with an adequate state remedy to challenge their citations and where they are not the intended recipients of the proceeds?

STATEMENT OF THE CASE

Plaintiff commenced this action by filing a complaint in Pitt County Superior Court on 22 April 2019, asserting statutory and constitutional violations against the City of Greenville (the "City") and Pitt County Board of Education (the "Board of Education"). **[R 2-13]** Defendant City and Defendant Board of Education timely filed Motions to Dismiss Plaintiffs' claims on 12 August 2019. **[R 76-78, 82-85]** On 9 October 2019, Plaintiffs moved for Summary Judgment. **[R 98]** On 15 October 2019, the Board moved for Partial Summary Judgment on Plaintiffs' claims. **[R 221-224]**

On 21 October 2019, the Honorable Jeffery B. Foster, Superior Court Judge, heard Defendants' Motions to Dismiss and Plaintiffs' Motion for Summary Judgment. **[R 80-81]** In its 20 April 2020 Order the Superior Court granted Defendants' Motion to Dismiss Plaintiffs' second, third, and fourth claims, and denied Plaintiffs' Motion for Summary Judgment of the second, third, and fourth claims. **[Id.]** The Court did not consider Plaintiffs' first or sixth claims for relief. **[Id.]** Plaintiffs did not allege a fifth claim for relief. **[R 9-10]**

On 19 June 2020, Defendant Board of Education filed a second Motion to Dismiss requesting that the court rule on the remaining First and Sixth claims. **[R 72-74]** On 21 July 2020, the Honorable Jeffery B. Foster heard Defendant Board of Education's renewed Motion to Dismiss, Defendant City's oral Motion for Summary Judgment, and Plaintiffs' Motion for Summary Judgment relating to the two claims that were not dismissed by the 22 April 2020 Order. On 22 July 2020, the court issued an Order dismissing Plaintiffs' first and sixth claims. **[R 326]**

Plaintiffs timely filed their Notice of Appeal to the Court of Appeals on 18 August 2020. **[R 329]** The Court of Appeals heard oral argument on 8 September 2021, and the Court of Appeals issued its published decision on 15 March 2022, reversing the Superior Court's entry of summary judgment in favor of Defendants on claim three: the Fines and Forfeiture Claim under Article IX, Section 7 of the North Carolina State Constitution and N.C. Gen. Stat. § 115C-437. *Fearrington v. City of Greenville*, 282 N.C. App. 218, 871 S.E.2d 366 (N.C. Ct. App. March 15, 2022).

Defendant City timely filed a Notice of Appeal and Petition for Discretionary Review to the Supreme Court of North Carolina on 19 April 2022. By Order on 6 April 2023, this Court granted Defendant City's Petition for Discretionary Review.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Review lies with this Court from its grant of Defendant-Appellant City of Greenville's Petition for Discretionary Review on 6 April 2023.

STATEMENT OF THE FACTS

In 2016, the City of Greenville ("the City") and the Pitt County Board of Education ("the Board") each adopted resolutions supporting a local bill to effectuate a Red Light Camera Enforcement Program ("RLCEP") within the City. **[R 3]** The RLCEP was designed to improve traffic safety within the City and contribute additional funds to public education in Pitt County. The City of Fayetteville successfully implemented a substantially similar program in 2014. **[R 14-15]**

On 30 June 2016, the North Carolina General Assembly ratified Session Law 2016-64 ("S.L. 2016-64") as a local act for the City and the Board. **[R 4]** In relevant parts, S.L. 2016-64 provides that:

> A violation detected by a traffic control photographic system shall be deemed a non-criminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed . . . .
>
> . . .
>
> The City of Greenville and the Pitt County Board of Education may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of G.S. 160A-300.1 and this act. Any agreement entered into pursuant to this section may include provisions on cost-sharing and reimbursement that the Pitt County Board of Education and the City of Greenville freely and voluntarily agree to for the purpose of effectuating the provisions of G.S. 160A-300.1 and this act. **[R 16]**

2016 N.C. Sess. Law. 2016-64, § 4. Following the ratification of S.L. 2016-64, the City amended Part II, Chapter 2 of Title 10 of its Ordinance No. 16-052 to add Article X, designed to govern the RLCEP. **[R 4]** Section 10-2-284 of Article X provides, in pertinent part, that when a vehicle unlawfully crosses the stop line at a system location when the traffic signal for the vehicle's direction is emitting a steady red

light, or when the vehicle violates any other traffic regulation specified in N.C. Gen. Stat. § 20-158, such shall be deemed a noncriminal violation for which a civil penalty of $100.00 shall be assessed. Section 10-2-284 also states that failure to pay the penalty or file an appeal within thirty (30) days of service or mailing of the citation results in an additional penalty of $100.00. **[R 18]** Under Section 10-2-285, appeals must be made via notice of appeal within thirty (30) days of service or mailing of the citation; failure to do so constitutes a waiver of the right to contest the citation. Under the same section, appeals are heard through an administrative process established by the City, and a hearing officer's decision is subject to review in Pitt County Superior Court by proceedings in the nature of certiorari. **[R 5, 18-19]**

On 20 March 2017, the City and the Board entered into an Interlocal Agreement (the "Interlocal Agreement"), as authorized under S.L. 2016-64. Under the Interlocal Agreement, the City agreed to transfer all proceeds of the RLCEP to the Board each month. **[R 20-26, 225-26, 237-39, 241-42]** To date, the City has paid over $2.5 million in clear proceeds from the RLCEP directly to the Board. [**R 225-26, 241-42]** Upon receipt of the RLCEP proceeds, the Board places the funds into the Board's general fund, which is pooled with all other revenues not designed for a specific purpose (such as federal grants or state teacher allotments). Pursuant to the mutually agreed upon interlocal agreement, the City invoices the Board for the actual costs of its contract with American Traffic Solutions Inc., ("ATS"), and an additional $6,250.00 for the salary of the RLCEP Manager. **[R 20-26]** The Board expends the funds it receives from the RLCEP in any manner authorized by the Board, and it does

not pay to the City any invoice in excess of the amount of proceeds received from the traffic violations. All additional resources received by the Board by virtue of the RLCEP, after paying the appropriate City invoices, an amount that currently exceeds $1.6 million, are used exclusively for school purposes and would not otherwise be available to the Board in absence of the RLCEP. **[R 225-26]** The City would not have implemented the RLCEP in the absence of the Interlocal Agreement. **[R 237-38, 241-42]**

On 28 March 2017, the City and ATS entered into a contract for management of the RLCEP, under which the City agreed to pay ATS $31.85 of each of $100.00 paid for a citation, among other charges for revenue from late payments, subsequent notices, and certified mail. Among its contractual obligations, ATS installed, maintains, and manages the RLCEP for the City **[R 27-45]** The City began assessing civil penalties for violations of the RLCEP in 2017. **[R 241-42]**

On 15 May 2018, Plaintiff Eric Steven Fearrington ("Plaintiff Fearrington") received a citation from the City for violating traffic laws. **[R 5]** As shown by the citation attached to the Complaint, Plaintiff Fearrington's vehicle was photographed entering an intersection when the traffic signal facing his vehicle was emitting a steady red light. **[R 46-47]** Following his request for an administrative hearing on an undisclosed date, Plaintiff Fearrington's hearing proceeded on 16 October 2018. **[R 5]** The City found that Plaintiff Fearrington had "no defense" and assessed him a civil penalty of $100.00. Plaintiff Fearrington was thereafter informed in writing that he had "fully exhausted [his] administrative remedies with the city of Greenville

concerning [his] citation." **[Id.]**

On 29 November 2018, Plaintiff Craig D. Malmrose ("Plaintiff Malmrose") received a document titled "Failure to Comply Second Notice of Violation," which alleged that he had violated the RLCEP on 1 October 2018, though he alleges that he never received any prior communication about any such violation. [R 5-6] As shown by the citation, Plaintiff Malmrose's vehicle was photographed entering an intersection when the traffic signal facing his vehicle was emitting a steady red light. **[R 52]** Plaintiff Malmrose was assessed a civil penalty of $100.00, in addition to a $100.00 fine for failing to comply with the first notice, which he claims he never received. Plaintiff Malmrose wrote a letter contesting his violation and requesting a hearing on 4 December 2018. Following his hearing, on 19 February 2019, Plaintiff Malmrose was found liable and was assessed a $100.00 civil penalty. On 8 March 2019, Plaintiff Malmrose received a Hearing Notice of Determination, finding him liable because of purported "fast yellow," and he was ordered to pay a total of $200.00. **[R 6]**

ARGUMENT

I. The Court of Appeals erred in holding that the Interlocal Agreement between City of Greenville and Pitt County Board of Education violated the Fines and Forfeiture Clause in Article IX, Section 7 of the North Carolina Constitution.

The Court of Appeals held that the RLCEP violates the Fines and Forfeiture Clause contained in Article IX, Section 7 of the North Carolina Constitution because the Board receives less than the clear proceeds of the civil penalties collected under that program. *Fearrington*, 282 N.C. App. at 235, 871 S.E.2d at 379. This holding was in error, as the panel misconstrued and improperly invalidated the City and the Board's independent and legislatively authorized cost-sharing arrangement. *See id.* at 236-37, 871 S.E.2d at 380-81.

The Fines and Forfeiture Clause provides in relevant part:

> [A]ll moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

N.C. Const. art. IX, § 7(a). "Supplementing funding for public schools with proceeds from 'penalties, forfeitures, and fines' as unbudgeted, non-recurring sources of revenue reflect North Carolina's stated and strong public policy to support public education." *De Luca v. Stein*, 261 N.C. App. 118, 128, 820 S.E.2d 89, 95 (2018), rev'd on other grounds, 374 N.C. 102, 840 S.E.2d 194 (2020). Under N.C. Gen. Stat. § 115C-437, the statute cited by Plaintiffs in support of their claim, "[r]evenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution,"

including the "clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State," may be "diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected." N.C. Gen. Stat. § 115C-437 (2019).

a. The Interlocal Agreement is expressly authorized by the General Assembly and conforms with Article IX, Section 7 and N.C. Gen. Stat. § 115C-437.

The Interlocal Agreement between the City and the Board contains express language that conforms with Article IX, Section 7 and with N.C. Gen. Stat. § 115C-437:

> DISTRIBUTION OF CLEAR PROCEEDS:
>
> (a) **The CITY shall pay to the BOARD the clear proceeds of the revenue collected by the Contractor and paid over to the CITY.** These funds will be transferred at least monthly in accordance with procedures established by the Parties and detailed in Attachment A (Payment Procedures). The BOARD'S financial institution, account number, and point of contact may be revised by the BOARD upon reasonable notice to the CITY.
>
> (b) For the purposes of determining the clear proceeds derived from the citations, **the following expenses, not to exceed ten percent (10%) of revenue collected by the Contractor and paid over to the CITY, are authorized to be deducted** from said revenue:
>
> 1) The cost of materials and postage directly related to the printing and mailing of the first and second notices sent to the owner, and, if necessary, the driver of the vehicle.
>
> 2) The cost of computer services directly related to the production and mailing of the notices.

[R 21] Accordingly, the clear proceeds are paid to the Board, and the revenue may be diminished up to ten percent for the actual costs of collection, as permitted by Article

IX, Section 7, and N.C. Gen. Stat. § 115C-437.

The Interlocal Agreement is also specifically authorized by the General Assembly through S.L 2016-64, which provides that the Interlocal Agreement "may include provisions on cost-sharing and reimbursement that the Pitt County Board of Education and the City of Greenville freely and voluntarily agree to for the purpose of effectuating the provisions of G.S. 160A-300.1 and this Act." **[R 16]**

The term "clear proceeds" does not mean all monies collected from a civil penalty. Rather, it means net proceeds, that is, the proceeds left after the cost of collection are deducted. *Cauble v. City of Asheville*, 66 N.C. App. 537, 542, 311 S.E.2d 889. 892 (1984). In *Cauble*, the North Carolina Court of Appeals addressed squarely the question of how much could be deducted from fines.

> Case law relating to the determination of costs in similar instances indicates that defining costs of collection is a legislative function[.] The North Carolina Court General Assembly has not, however, seen fit to provide municipalities with a formula for determining "clear proceeds" of fines realized from traffic violations. Lacking guidance on the subject, this Court is compelled to resort to a less precise measure in order to allow municipalities to retain the costs of collecting the fines in question.

Id. at 543, 311 S.E.2d at 893.

In 1985, the year after the *Cauble* decision, the General Assembly did, in fact, adopt a statute to define how to calculate "clear proceeds," when it amended N.C. Gen. Stat. § 115C-437 to set a 10% limit on deductions from fines as a general matter. Since then, courts have been clear that it is the Legislature's role to implement the Fines and Forfeitures Clause and define "clear proceeds." In 2005, this Court

explained:

> Since this constitutional provision is not self-executing, the General Assembly's actions in specifying how the provision's goals are to be implemented must be held to be constitutional unless the statutory scheme runs counter to the plain language of or the purpose behind Article IX, Section 7. "[T]his Court gives acts of the General Assembly great deference, and a statute will not be declared unconstitutional under our Constitution unless the Constitution clearly prohibits that statute." In re Spivey, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997) . . . .
>
> Applying these principles, we hold that Article 31A of Chapter 115C merely specifies the details which are omitted from the broad language of Article IX, Section 7.

NCSBA v. Moore, 359 N.C. 474, 512-13, 614 S.E.2d 504, 527 (2005).

Moore makes it clear that the Legislature is free to create different mechanisms through which to accomplish the goals of Article IX, Section 7, and merely recognized N.C. Gen. Stat. § 115C-437 as one such way. Legislative actions that further guide how Article IX, Section 7 should be implemented are generally not restricted so long as such actions are in line with the purpose of the constitutional provision. *See id.*

Shortly after *Moore*, the Court of Appeals in *Shavitz v. City of High Point* recognized the Legislature's authority to put in place a different mechanism for complying with the Constitution for the City of Concord and Wake County than for the City of High Point. 177 N.C. App. 465, 482, 630 S.E.2d 4, 16 (2006). In *Shavitz*, High Point argued that N.C. Gen. Stat. § 115C-437 should not apply to fines collected through its red light camera program. *Id.* The court held that the 10% cap in N.C. Gen. Stat. § 115C-437 did apply to High Point, but also discussed how the Session

Laws governing the municipalities of Concord and Wake County specifically defined clear proceeds as "the funds remaining after paying for the lease, lease purchase, or purchase of the traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the municipality related to the use of the system." *Id.* at 482, 630 S.E.2d at 17; 2001 N.C. Sess. Law ch. 286, §§ 3, 4, as amended by 2003 N.C. Sess. Laws ch. 380, §§ 3, 4. The court noted that "the General Assembly's 2001 enactment concerning Concord and Wake makes it clear that the Legislature feels it has the authority to clarify the meaning of clear proceeds in the context of red light camera programs." *Id.* at 482, 630 S.E.2d at 16.

Similar to what it did for Concord and Wake County, the Legislature enacted a law specific to Greenville, codified as S.L. 2016-64, § 4 of which provides:

> The City of Greenville and the Pitt County Board of Education may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of G.S. § 160A-300.1 and this act. Any agreement entered into pursuant to this section may include provisions on cost-sharing and reimbursements that the Pitt County Board of Education and the City of Greenville freely and voluntarily agree to for the purpose of effectuating the provisions of G.S. 160A-300.1 and this act.

Through this legislation, the General Assembly has specifically authorized the City and the Board to enter into an interlocal agreement consisting of cost-sharing and a reimbursement arrangement structure of their choosing, a step which ensures the financial solvency of the red light camera program and also generates much needed resources for the Board which it would not otherwise receive.

In practice, the City provides 100% of the clear proceeds generated from the RLCEP to the Board. This fully complies with the requirements of Article IX, Section

7 and N.C. Gen. Stat. § 115C-437. The Board then voluntarily uses a portion of those funds, or other funds if it chooses, to reimburse the City for the costs of the RLCEP for the costs of the program through the cost-sharing agreement authorized by S.L. 2016-64. The Court of Appeals failed to properly differentiate between these two distinct transactions in its opinion.

b. The Court of Appeals failed to acknowledge that 100% of the clear proceeds from the RLCEP are transmitted to the Board.

In its opinion, the Court of Appeals looked at the City's responses to interrogatories and determined that the RLCEP generated $2,495,380.46 in revenue from 2017 through June 2019 and the Board paid the City $706,986.65 in program expenses during that same time. *Fearrington*, 282 N.C. App. at 236, 871 S.E.2d 366, 380. Therefore, under the panel's interpretation, the Board only received 71.66% of the total amount of fines and fees collected by Greenville when it was entitled to 90%. *Id.* The Court of Appeals therefore held that the Interlocal Agreement is in violation of Article IX, Section 7 because the Board does not "in any real sense" receive the clear proceeds, as the Board has agreed to reimburse the City in a separate transaction through the terms of the Interlocal Agreement. *Id.*

What this analysis ignores is the fact that 100% of the clear proceeds are given to the Board. This first transaction is the one to which the "clear proceeds" analysis applies.

In a wholly distinct arrangement, the Board elects to spend a portion of the funds it has already received to reimburse the City for the costs of operating the RLCEP. The Board decided, in its own discretion and pursuant to the explicit

authorization in S.L. 2016-64, to reimburse the City for actual costs of the RLCEP program to ensure that it remains operational. The Fines and Forfeiture Clause does not apply to the Board's own expenditures of funds, so the Board's expenditure cannot be a violation of the Fines and Forfeiture Clause. When the two transactions between the City and the Board are properly considered as separate, it is clear that the Board receives 100% of the clear proceeds of the RLCEP as contemplated by Article IX, Section 7, and N.C. Gen. Stat. § 115C-437.

The Court of Appeals opinion relies heavily on its 2006 decision in *Shavitz v. City of High Point* for what can and cannot be deducted by a city from the clear proceeds from a red light camera program. *Fearrington*, 282 N.C. App. 236-38, 871 S.E.2d at 380-81. Setting aside the fact that this analysis ignores the fact, discussed *supra*, that there are no deductions from the clear proceeds transmitted to the Board, *Shavitz* provides no support for the majority's opinion that the City's RLCEP violates Article IX, Section 7.

In *Shavitz*, the City of High Point distributed *none* of the proceeds from its red light camera program to the Board of Education. 117 N.C. App. at 471, 630 S.E.2d at 11-12. Instead, it disbursed seventy percent of the revenue to the contractor it retained to install and operate the red light camera system, with the remaining money used to compensate the appeal officer, educate the public about the red light system, facilitate traffic safety programs, and make safety-related transportation improvements. *Id.* The Court of Appeals held that Article IX, Section 7 applied to civil penalties assessed under High Point's red light ordinance and therefore the School

Board was entitled to the clear proceeds. *Id.* at 481, 630 S.E.2d at 32.

The City does not dispute that Article IX, Section 7 applies to the distribution of the proceeds from its RLCEP. Unlike the City of High Point in *Shavitz*, here, the City has complied with Article IX, Section 7 by transmitting 100% of the clear proceeds from its RLCEP to the Board. This first transaction fully satisfies the requirements of the Fines of Forfeiture's Clause, and the Court of Appeals holding to the contrary was in error.

c. The Court of Appeals failed to afford proper deference to S.L. 2016-64.

Article IX, Section 7 and N.C. Gen. Stat. § 115C-437 contain no provisions prohibiting cost-sharing agreements and, in fact, such agreement is specifically authorized by S.L. 2016-64. In deciding that the cost-arrangement is "an elaborate diversion of funds," the Court of Appeals decision, in essence, declares the Session Law invalid without engaging in any substantive analysis or directly addressing it. This runs contrary to clearly established Supreme Court precedent. This Court has held that it is "firmly established that our State Constitution is not a grant of power. All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution." *State ex rel. Martin v. Preston*, 325 N.C. 438, 448-49, 385 S.E.2d 463, 478 (1989). Acts of the General Assembly are afforded great deference by our judiciary "and a statute will not be declared unconstitutional under our Constitution unless the Constitution clearly prohibits that statute." *In re Spivey*, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997).

This Court has recently articulated two primary reasons why it affords deference to legislative enactments: (1) "laws enacted by our General Assembly [are] expressions of the people's will," and (2) "it is the role of the legislature, rather than this Court, to balance disparate interests and find a workable compromise among them." *Cmty. Success Initiative v. Moore*, 2023 N.C. LEXIS 364, *28-29 (2023) (citing *Preston*, 325 N.C. at 448, 385 S.E.2d at 478; and *Beaufort Cnty. Bd. of Educ. v. Beaufort Cnt. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009)).

The Court of Appeals decision undermines the validity of S.L. 2016-64 and fails to give the deference that is required to the cost-sharing arrangement specifically authorized by the Session Law.[1] This not only impacts the City but has the potential to undercut the validity of special legislation obtained by local governments across the state pursuant to Article II, Section 22(6) of the North Carolina Constitution and degrades decades of well-established law.

d. <u>The Court of Appeals decision is contrary to the strong public policy considerations underpinning the RLCEP.</u>

The Court of Appeals decision, in practice, would cut off millions of dollars that the Board would otherwise receive to help maintain safe, productive educational environments for children in Pitt County. The RLCEP provides additional and much needed financial resources to the Pitt County school system that would not otherwise be available and furthers the objectives of Article IX, Section 7 of the North Carolina Constitution. The "manifest purposes" of Article IX, Section 7 is to ensure funding for

[1] Importantly, the Court of Appeals lacked jurisdiction to invalidate S.L. 2016-64 because the State of North Carolina was not named as a party to this action. *See* N.C. Gen. Stat. § 1-72.3.

public schools, "to set aside property and revenue to support the public school system and to prevent the diversion of such property and revenue to other purposes." *Cauble*, 66 N.C. App. at 544, 311 S.E.2d at 894. The City would not have implemented the RLCEP in the absence of the Interlocal Agreement. **[R 237-38, 241-42]**. As such, the cost sharing agreement authorized by the Legislature results in more money going to the public school system.

Because the Board does, in fact, receive 100% of the clear proceeds from the RLCEP, the provisions of the Fines and Forfeiture Clause are therefore satisfied. The Board has discretion as to how to spend those funds, as long as they are used for the advancement of public education, and the Board is accorded a presumption of legality in conducting its business. *See Reese v. Charlotte-Mecklenburg Bd. of Educ.*, 196 N.C. App. 539, 549, 676 S.E.2d 481, 488 (2009) (Board of Education's decision to enter into inter-local agreement with County was afforded the presumption of legality and correctness); *Wake Cares, Inc. v. Wake County Bd. of Educ.*, 363 N.C. 165, 173, 675 S.E.2d 345, 351 (2009) ("This Court cannot substitute its own judgment for that of the Board."). Here, in accord with S.L. 2016-64, the Board has chosen to spend a portion of the funds it receives on the Interlocal Agreement with the City, in order to help facilitate the RLCEP, thereby continuing the revenue stream associated with the program.

II. The Court of Appeals erred in holding that Plaintiffs had standing to bring their action in Superior Court.

Should the Court determine that the RLCEP does violate the Fines and Forfeiture Clause contained in Article IX, Section 7 of the North Carolina

Constitution, which Defendant disputes, the Court of Appeals further erred in determining that Plaintiffs had standing to bring their action because Plaintiffs are not the intended recipients of the proceeds of the Interlocal Agreement, and they have an adequate state remedy to resolve their claims.

a. Plaintiffs lack standing under Article IX, Section 7 of the North Carolina Constitution.

"Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction." *In re Z.G.J.,* 378 N.C. 500, 505, 862 S.E.2d 180, 185 (2021) (quoting *In re A.S.M.R.*, 375 N.C. 539, 542, 850 S.E.2d 319 (2020)). Standing to sue means "that a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial review of that controversy. Standing is a jurisdictional issue . . . and does not generally concern the ultimate merits of a lawsuit." *Burlington Industries, Inc. v. Edelman*, 666 F. Supp. 799, 804 (M.D.N.C. 1987) (citing *Sierra Club v. Morton*, 405 U.S. 727, 732, 21 L.Ed.2d 636 (1972)). The burden to show standing exists on the party asserting standing. *United Daughters of the Confederacy v. Winston-Salem*, 383 N.C. 612, 633, 881 S.E.2d 32, 41 (2022). Because Plaintiffs are not a party to the Interlocal Agreement and because they have not demonstrated or pleaded any injury resulting from the alleged constitutional violation, they lack standing to bring this challenge.

Plaintiffs' Article IX, Section 7 challenge focuses on the Interlocal Agreement between the City and the Board. While Plaintiffs purport to contest that the City did not honor its obligations under the Interlocal Agreement in remitting 90% of fines to public schools, Plaintiffs are not parties to the Interlocal Agreement. **[R 20-26]** For

that reason alone, Plaintiffs do not have a sufficient stake in any controversy arising out of the Interlocal Agreement that would give them standing to assert their challenge. In addition, Plaintiffs have not suffered any injury from the alleged breach of the Interlocal Agreement.

The Court of Appeals relied on this Court's decision in *Committee to Elect Dan Forest v. Emps. Political Action Committee*, 376 N.C. 558, 853 S.E.2d 698 (2021), to support its determination that Plaintiffs have standing under Article IX, Section 7. *Fearrington*, 282 N.C. App. at 226, 871 S.E.2d at 374. However, in doing so, it misinterpreted the holding of that case. The panel construed *Committee to Elect Dan Forest* to eliminate wholesale the injury-in-fact requirement of standing in cases such as the one brought by Plaintiffs. *Id.* The panel held that because Plaintiffs' legal injury itself gave rise to standing and "[b]ecause Plaintiffs are not challenging the constitutionality of a statute or an 'executive act,' they need not demonstrate an injury-in-fact in order to establish standing." *Id.* at 227, 871 S.E.2d at 374. This is not consistent with the holding of *Committee to Elect Dan Forest*. The plaintiffs in that case were those "on whom the statute confers a cause of action." *Id.* at 608, 853 S.E.2d at 733. The Court's holding that the plaintiffs need not have demonstrated injury-in-fact was limited to circumstances where "the legislature exercises its power to create a cause of action under a statute." *Id.* No such statutory cause of action exists for Plaintiffs in this case, therefore, the analysis in *Committee to Elect Dan Forest* is inapplicable.

The panel went even further in its standing discussion to determine that

Plaintiffs demonstrated injury because of the panel's ultimate holding that the allocation of the proceeds from the fines issued to Plaintiffs violated Article IX, Section 7. *Fearrington*, 282 N.C. App. at 227, 871 S.E.2d at 374. While the City strongly disputes this holding, even assuming *arguendo* that the distribution of the funds from the RLCEP did violate the Fines and Forfeiture Clause, Plaintiffs would still not have standing to challenge it. The alleged violation is that 90% of the clear proceeds of the citation are not distributed to the Board. The Board, not Plaintiffs, is the entity entitled to receive those funds, and therefore the Board, not Plaintiffs, is the only entity that would be injured by a deficit in distribution. Plaintiffs, in running a red light and violating the RLCEP, would be obligated to pay their citation no matter where the money was distributed to post-payment, and are therefore not injured by any alleged constitutional violation in that distribution.

The panel also discussed with approval the application of "taxpayer standing" to Plaintiffs. *Id*. Taxpayer standing is not applicable to this situation.

The panel first cites *Cauble v. City of Asheville*, 301 N.C. 340, 271 S.E.2d 258 (1980). *Cauble* addressed the application of Article IX, Section 7 to violations of the City of Asheville's overtime parking ordinances. 301 N.C. at 342, 271 S.E.2d at 259. The panel notes that "[a]t no point did [the Court of Appeals panel] or our Supreme Court doubt whether it had subject-matter jurisdiction to hear the plaintiff's appeal." *Fearrington*, 282 N.C. App. at 227, 871 S.E.2d at 375. However, the panel fails to include in its analysis that standing was not at issue in *Cauble*. Neither party raised it and neither the Court of Appeals nor the Supreme Court addressed standing in

their opinions. The absence of a discussion and holding to the contrary is not the same as approval of a legal rule or theory. The Supreme Court's silence on the issue of taxpayer standing in *Cauble* does not equate to tacit endorsement. *Cauble* therefore has no precedential value on the issue of taxpayer standing.

The second case cited by the Court of Appeals panel on the issue of taxpayer standing is *Goldston v. State*, 361 N.C. 26, 637 S.E.2d 876 (2006). *Fearrington*, 282 N.C. App. at 227, 871 S.E.2d at 375. *Goldston* dealt with a constitutional challenge to the General Assembly and the Governor's diversion of funds from the Highway Trust Fund to the state's General Fund. *Goldston*, 361 N.C. 26 at 28-29, 637 S.E.2d at 878. The diverted funds at issue were generated by taxpayers from motor fuel taxes, title and registration fees, and other highway taxes collected specifically for application to the Highway Trust Fund. *Id.* at 29, 637 S.E.2d at 879. This Court held that the plaintiffs had standing to bring their challenge where they alleged that they had paid taxes meant for the Highway Trust Fund, because "taxpayers have standing to challenge the allegedly illegal or unconstitutional disbursement of tax funds by local officials." *Id.* at 31, 637 S.E.2d at 879. Referencing its decision in *Teer v. Jordan*, 232 N.C. 48, 59 S.E.2d 359 (1950), a case that also dealt with tax funds diverted from highway use, this Court noted that "[a]lthough we caution that government agencies should not be hindered by lawsuits from taxpayers who merely disagree with the police decisions of government officials, we concluded that 'the right of a citizen and taxpayer to maintain an action in the courts to restrain the unlawful use of public funds *to his injury* cannot be denied.'" *Id.* at 33, 637 S.E.2d 881 (emphasis added).

This case is not analogous to *Goldston* and does not implicate taxpayer standing. Here, the challenged distribution is not of taxes collected from the general public for public use. Instead, the funds are collected from specific violators of the RLCEP and distributed according to Article IX, Section 7, and interrelated state and local legislative enactments. *Goldston* also supports the proposition that an individual seeking to assert taxpayer standing must still allege and demonstrate injury, *see id.*, which, as discussed above, Plaintiffs have not and cannot do.

Further, the Complaint does not seek relief that would redress a violation of Article IX, Section 7 of the North Carolina Constitution. Plaintiffs want their money returned to them, not paid to the Board, as evident from the relief requested in their Complaint: "If Defendants do not refund the penalties collected under the Red Light Safety Camera Program, that the Court order a refund to each of the members of the class under G.S. § 1-259, including a provision for the distribution of unpaid residuals as authorized by G.S. § 1-267.10." **[R 13]** "Where the requested relief is not authorized by statute, the complaint is necessarily defective because the court is powerless to grant the relief regardless of what facts could be proved." *Lea v. Grier*, 156 N.C. App. 503, 508, 577 S.E.2d 411, 415 (2003) (quoting *Foster v. Garrell*, 280 N.C. 117, 122, 184 S.E.2d 858, 861 (1971) (parentheticals and internal quotation marks omitted)).

Plaintiffs are not the intended beneficiaries of the Interlocal Agreement, nor are they injured by any alleged violation of Article IX, Section 7 in the distribution of funds under that Agreement. They therefore do not have standing to bring this challenge.

b. An adequate state remedy exists to resolve Plaintiffs' claims.

North Carolina law is clear that where an effective administrative remedy exists "that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts." *Presnell v. Pell*, 298 N.C. 715, 721, 260 S.E.2d 611, 615 (1979). An "adequate state remedy" is defined as one that "'provide[s] the possibility of relief under the circumstances[,]'" and may exist either at common law or by statute. *Edwards v. City of Concord*, 827 F. Supp. 2d 517, 521 (M.D.N.C. 2011) (quoting *Craig ex. rel. v. New Hanover County Bd. of Educ.*, 262 N.C. 334, 340, 678 S.E.2d 351, 355 (2009)). This Court has developed a definition of adequacy that is two-fold: (1) the remedy addresses the alleged constitutional injury, and (2) the remedy provides the plaintiff the opportunity to "enter the courthouse doors." *Copper ex rel. Copper v. Denlinger*, 363 N.C. 784, 789, 688 S.E.2d 426, 429 (2010). Administrative remedies may provide an adequate state remedy. *Id.* "The adequacy of a state remedy requires only the opportunity to be heard, and if successful, to recover for the injuries alleged in the direct constitutional claim." *Taylor v. Wake Cty.*, 258 N.C. App. 178, 189, 811 S.E.2d 648, 656 (2018). Pleadings alone may suffice to demonstrate adequate state remedies. *See Ware v. Fort*, 124 N.C. App. 613, 619, 478 S.E.2d 218, 222 (1996) (dismissing claims where "pleadings indicate that plaintiff had a number of alternative state law remedies whereby he could have pursued the damage he seeks.").

Where an individual has a procedural opportunity to pursue the appeal of a matter, by statute, regulation, ordinance, or otherwise, that individual has an

adequate state remedy and is barred from bringing a claim under the North Carolina Constitution. For example, in *Copper*, the plaintiffs, Durham public high school students or their parents, filed a purported class action complaint concerning allegations of more severe disciplinary measures being taken against minority students. 363 N.C. at 786, 688 S.E.2d at 427. However, under N.C. Gen. Stat. §§ 115C-45(c) and 391(e), the students had a statutory right to appeal the disciplinary action, which this Court found to bar the direct constitutional claim advanced. *Id.* at 789, 688 S.E.2d at 429.

Similarly, and particularly analogous to this action, the North Carolina Court of Appeals has held that where a driver was issued a citation from an automatic RLCEP, the driver's suit under the North Carolina Constitution was barred because he had other avenues of challenging the RLCEP, including an appeal process instituted by Mecklenburg County pursuant to N.C. Gen. Stat. § 160A-300.1(c)[2]. *Structural Components Int. Inc. v. City of Charlotte*, 154 N.C. App. 119, 125, 573 S.E.2d 166, 171 (2002). Indeed, where the driver otherwise followed the appeal process, but that process provided that, following administrative appeals, a "hearing officer's decision is subject to review in the Superior Court of Mecklenburg County by proceeding in the nature of certiorari," the driver's failure to petition for certiorari through an independent action barred his constitutional claims. *Id.*

Here, all individuals who receive a citation under the RLCEP have an adequate remedy to challenge that decision. The first step is an administrative hearing held by

[2] As of January 1, 2021, the right of appeal now falls under N.C. Gen. Stat. § 160D-1402.

the City, as mandated by N.C. Gen. Stat. § 160A-300.1(c)(4). Plaintiffs here each pursued an appeal via administrative hearing and were each thereafter found liable for their respective penalties. **[R 5-6]** However, Plaintiffs failed to complete the next step of the administrative appeal process. As provided under Section 10-2-285 of Article X of the City's Ordinance No. 16-052, entitled "Appeals," after an appeal hearing takes place, a "hearing officer's decision is subject to review in the Superior Court of Pitt County by proceedings in the nature of certiorari." **[R 18-19]** This ordinance employed by the City uses virtually the same language used by the City of Charlotte in *Structural Components*.

Plaintiff Fearrington filed a petition for writ of certiorari; however, he never fully pursued that process before dismissing his petition and filing a declaratory judgment action. **[9(d) Supp. 1-4]** Plaintiff Malmrose did not pursue review in the nature of certiorari prior to bringing his direct constitutional claim. Plaintiffs' direct constitutional claims are therefore barred by the existence of an exclusive and adequate state remedy. *See Structural Components*, 154 N.C. App. at 125, 573 S.E.2d at 171.

The Court of Appeals erroneously held that Plaintiffs, specifically Plaintiff Fearrington, exhausted his administrative remedies because of the Consent Order issued on January 16, 2019, dismissing Plaintiff Fearrington's petition for writ of certiorari. *Fearrington*, 282 N.C. App. at 224, 871 S.E.2d at 373. Notably, Plaintiff Malmrose was not a party to the Consent Order and therefore the Court of Appeals analysis on that point is inapplicable to him. The Court of Appeals held that the

Consent Order constituted a final order that disposed of the final appeal in the administrative process, rather than a stipulation by the parties. This holding was in error.

In order to effectuate the final disposition of a petition for review in the nature of certiorari from an administrative hearing, the superior court is authorized to (1) affirm the decision of the lower tribunal, (2) reverse the decision and remand with instructions, or (3) remand the case for further proceedings. N.C. Gen. Stat. § 160D-1402(k). The Consent Order in this case did none of those three things. Therefore, contrary to the Court of Appeals holding, the Consent Order could not constitute "a final order entered in the last stage of the administrative appeal process." Fearrington, 282 N.C. App. at 225, 871 S.E.2d at 373. Instead, it was entered into for the explicit purpose of effectuating the agreement and stipulations of the parties, not substantively resolving Plaintiff Fearrington's claims. **[9(d) Supp. 1]**

It is well established under North Carolina law that parties may not stipulate to jurisdiction. *Northfield Dev. Co. v. City of Burlington*, 165 N.C. App. 885, 887, 599 S.E.2d 921, 924, disc. review denied, 359 N.C. 191, 607 S.E.2d 278 (2004) ("parties cannot stipulate to subject matter jurisdiction where no such jurisdiction exists."). Therefore, while the Consent Order may reflect the stipulation by the parties that Plaintiff Fearrington fully exhausted his administrative remedies, that is not for the parties to decide. *See Dale v. Lattimore*, 12 N.C. App. 348, 352, 183 S.E.2d 417, 419, cert denied, 279 N.C. 619, 184 S.E.2d 113 (1971) ("lack of subject matter jurisdiction may always be raised by a party, or the court may raise such defect on its own

initiative.").

Plaintiffs did not fully pursue the additional level of review afforded them or seek to cure the hearing officers' adverse decisions on appeal to the superior court. Plaintiffs therefore did not avail themselves of an adequate state remedy and their direct constitutional claims are barred. *See Structural Components, Int. Inc.*, 154 N.C. App. at 125, 573 S.E.2d at 171.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court reverse the opinion of the Court of Appeals and affirm the orders of the trial court.

Respectfully submitted, this 7th day of June 2023.

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CERTIFICATE OF SERVICE

I certify that I served the attached **DEFENDANT-APPELLANT CITY OF GREENVILLE'S NEW BRIEF** on all parties by United States Mail, postage prepaid, and electronic mail addressed as follows:

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This the 7th day of June 2023.

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