THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case Number: 2017-CP-40-4534

Mohsen A. Baddourah, as member of
the City Council of the City of Columbia.....Appellant,

v.

Henry McMaster, in his capacity as
Governor for the State of South Carolina.....Respondent.

FINAL BRIEF OF RESPONDENT

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II. Did the Circuit Court err in alternatively concluding that Appellant failed to state a cognizable cause of action or plausible claim for relief?

STATEMENT OF THE CASE

Appellant is a member of the City Council for the City of Columbia, South Carolina, and his term expires on or about December 31, 2019. (*See* Compl. ¶ 1, R. p. 14.) Following an altercation with his wife, Appellant was arrested on July 2, 2016, and subsequently indicted on a charge of Domestic Violence, Second Degree. (*See id.* ¶ 3.) Respondent Henry McMaster, in his capacity as Governor for the State of South Carolina ("Governor McMaster"), thereafter requested and received through counsel an Attorney General's Opinion, which concluded that "the crime of domestic violence 2nd degree is a 'crime of moral turpitude' for purposes of the Governor's suspension power provided in Article VI, § 8 of the South Carolina Constitution."[1] 2017 WL 1095385, at *1 (S.C.A.G. Mar. 9, 2017) (R. pp. 44–48) ("Att'y Gen. Op."). Accordingly, on March 13, 2017, Governor McMaster issued Executive Order No. 2017-05 ("Executive Order"), suspending Appellant from office pursuant to article VI, section 8 of the South Carolina Constitution. (*See* Compl. ¶ 5, R. pp. 14, 25–26.) As stated in the Executive Order, Appellant's

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1. At the October 26, 2017 hearing on Governor McMaster's Motion, Appellant's counsel did not object to the Court taking notice of or otherwise considering the March 9, 2017 Attorney General's Opinion. (Hrg. Tr. 4, R. pp. 43, lines 11–16.)

temporary suspension was effective "until such time as the above-referenced charge is resolved." (Executive Order 1, R. p. 25.)[2]

On March 31, 2017, Appellant challenged his temporary suspension and Governor McMaster's Executive Order by filing in the Supreme Court of South Carolina a Petition for Original Jurisdiction, Complaint, Motion for Temporary Injunction to Stay Enforcement of Executive Order 2017-05, and other related pleadings. After all parties had briefed the issues and arguments raised by Appellant, on May 25, 2017, the supreme court issued an order denying Appellant's Petition for Original Jurisdiction and Motion for Temporary Injunction to Stay Enforcement of Executive Order 2017-05. (May 25, 2017 Order, R. p. 2.)

On July 28, 2017, Appellant instituted the present action seeking, *inter alia*, a declaration that Appellant, "as a member of the legislative branch . . . is excepted from the Governor's suspension power under Article VI, § 8," (Compl. ¶ 18, R. p. 17), and that "the Governor's Executive Order is not enforceable because the alleged crime is not a crime involving moral turpitude," (*id.* ¶ 39, R. p. 21). In addition to his request for a declaratory judgment, Appellant also sought mandatory injunctive relief staying enforcement of the Executive Order and an award of attorney's fees. (*Id.* ¶¶ 43, 46, R. pp. 21, 22.)

On August 30, 2017, Governor McMaster filed a motion, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, seeking to dismiss Appellant's Complaint with prejudice. (R. pp. 27–31.) Appellant thereafter served—but apparently did not file—an undated Return to

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2. Appellant's Complaint cites to the Executive Order as Exhibit B and incorporates the same by reference; however, Appellant did not attach a copy of the Executive Order to his Complaint as indicated. Nevertheless, this Court, like the circuit court below, may take judicial notice of executive orders. *See Heyward v. Long*, 178 S.C. 351, 183 S.E. 145, 152 (1935) ("The court, of course, takes judicial notice that these commissioners, and all other commissioners composing the state highway commission, have been ousted from office by the proclamation of the Governor declaring the state highway department to be in a state of insurrection.").

Governor McMaster's Motion to Dismiss. (R. pp. 31-A, 32–42.) The trial court subsequently entertained argument on the record during a hearing held on October 26, 2017. On November 9, 2017, the trial court issued an Order granting Governor McMaster's Motion to Dismiss. (R. pp. 4–13.)

Appellant served a Notice of Appeal on December 8, 2017, but did not timely file the same. Accordingly, on December 20, 2017, Appellant filed a Motion to Accept Late Filing of Notice of Appeal, which Governor McMaster did not oppose. This Court granted Appellant's Motion to Accept Late Filing of Notice of Appeal on January 4, 2018. Appellant served his Initial Brief and Designation of Matter on March 7, 2018.

STATEMENT OF FACTS

On January 18, 2017, Appellant, who is a member of the City Council of the City of Columbia, was indicted by a Richland County Grand Jury for Domestic Violence, Second Degree, in violation of section 16-25-20 of the South Carolina Code of Laws. The indictment in question, which followed his prior arrest, charges that Appellant:

> cause[d] physical harm or injury to a household member, [VICTIM], or did offer or attempt to cause physical harm or injury to a household member, [VICTIM], with apparent present ability under circumstances reasonably creating fear of Imminent peril by striking the [VICTIM] with a car door an act likely to result in moderate bodily injury, in violation of Section 16-25-20(A-D), S.C. Code of Laws; 1976, as amended.

(Compl. ¶ 35, R. p. 20; Att'y Gen. Op. 5, R. p. 48.)

Pursuant to article VI, section 8 of the South Carolina Constitution,"[a]ny officer of the State or its political subdivisions . . . who has been indicted by a grand jury for a crime involving moral turpitude . . . may be suspended by the Governor until he shall have been acquitted." S.C. Const. art. VI, § 8. Therefore, Governor McMaster sought through counsel a formal opinion from the Office of the Attorney General as to whether the indictment in question charges a crime of

moral turpitude. On March 9, 2017, the Attorney General rendered a formal opinion, which ultimately concluded that Domestic Violence, Second Degree—both categorically and as specifically alleged in the Indictment—constitutes "a crime of moral turpitude." (*See* Att'y Gen. Op. 5, R. p. 48 ("Based upon the foregoing authorities, in our opinion, the Indictment alleges sufficiently a 'crime of moral turpitude' for purposes of Article VI, § 8. . . . It is our opinion that the crime of domestic violence 2nd degree is a 'crime of moral turpitude' for purposes of the Governor's suspension power provided in Article VI, § 8 of the South Carolina Constitution.").)

On March 13, 2017, Governor McMaster issued his Executive Order temporarily suspending Petitioner from his office as a member of the City Council of the City of Columbia "until such time as the above-referenced charge is resolved." (Executive Order 1, R. p. 25.) Governor McMaster's Executive Order expressly states that Appellant's suspension "in no manner addresses the guilt or innocence of Mohsen A. Baddourah and shall not be construed as an expression of any opinion on such question." (*Id.* at 1–2, R. pp. 25–26.) Nevertheless, Appellant challenged Governor McMaster's Executive Order, first by filing in the supreme court an unsuccessful Petition for Original Jurisdiction, and second, by initiating the present action in circuit court. After the lower court granted Governor McMaster's Motion to Dismiss, Appellant filed the instant appeal.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY RECOGNIZED THAT IT LACKED JURISDICTION TO REVIEW GOVERNOR MCMASTER'S EXERCISE OF HIS DISCRETIONARY AUTHORITY, BECAUSE THE CONSTITUTIONAL SEPARATION OF POWERS PREVENTS SUBSTITUTING JUDICIAL DISCRETION FOR EXECUTIVE DISCRETION, PARTICULARLY WHERE SUCH ACTION WAS NOT ARBITRARY.

A. Standard of Review

Subject matter jurisdiction is the "power to hear and determine cases of the general class

to which the proceedings in question belong." *Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005). "Subject matter jurisdiction is met if the case is brought in the court which has the authority and power to determine the type of action at issue." *Washington v. Whitaker*, 317 S.C. 108, 115, 451 S.E.2d 894, 898 (1994). A challenge to subject matter jurisdiction can be raised by motion to dismiss pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure. *Ballenger v. Bowen*, 313 S.C. 476, 478 n.2, 443 S.E.2d 379, 380 n.2 (1994); *Wheeler v. Morrison*, 313 S.C. 440, 442, 438 S.E.2d 264, 265 (Ct. App. 1993). By filing a Rule 12(b)(1) motion to dismiss, the movant challenges the power of the court to entertain and exercise jurisdiction over the subject matter. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). "The question of subject matter jurisdiction is a question of law for the court." *Id.* (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct. App. 1993)).

B. The Circuit Court Properly Dismissed Appellant's Complaint Pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure

Appellant contends that the circuit court erred in dismissing Appellant's Complaint under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and suggests that, by doing so, the circuit court itself somehow violated the separation-of-powers provision of the South Carolina Constitution. (App. Br. 5.) More specifically, Appellant states that "[t]o allow the executive to suspend a member of the legislative branch when prohibited by the constitution and then argue the court cannot review this action because it is a 'discretionary act' would be a gross violation of the separation of powers." (*Id.*) Aside from conflating membership on a municipal council with membership in the General Assembly, Appellant's argument in this regard improperly presupposes that judicial discretion should be substituted for well-reasoned executive discretion. Accordingly, because the constitutional separation of powers prevents substituting judicial discretion for

executive discretion—particularly where, as here, Governor McMaster did not act arbitrarily—this Court should affirm the circuit court's decision to dismiss Appellant's Complaint for want of subject matter jurisdiction.

First, the circuit court properly distinguished between the Governor's ministerial duties and discretionary authority and correctly concluded that the plain language of the South Carolina Constitution prevents the judiciary from substituting its own discretion for that of the executive branch. Article VI, section 8 of the South Carolina Constitution provides that "[a]ny officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude . . . may be suspended by the Governor until he shall have been acquitted." S.C. Const. art. VI, § 8. Thus, the constitution invests the Governor with discretionary suspension authority in those circumstances where public officials—other than members of the Legislative or Judicial Branches—are indicted for a crime involving moral turpitude. By using the word "may," this provision expressly represents a textual commitment of the question to the Governor, in the exercise of his sole discretion, and makes clear that the Governor's suspension authority is neither automatic nor ministerial. *Cf. Fowler v. Beasley*, 322 S.C. 463, 467, 468, 472 S.E.2d 630, 633 (1996) ("This Court has jurisdiction to review the *ministerial* acts of the governor." (emphasis added) (citing *Easler v. Maybank*, 191 S.C. 511, 5 S.E.2d 288 (1939))).

At bottom, where the Governor's authority is discretionary in nature, courts may not substitute judicial discretion for that of the executive without violating the separation-of-powers provision of the South Carolina Constitution. S.C. Const. art. I, § 8; *see Rose v. Beasley*, 327 S.C. 197, 204, 489 S.E.2d 625, 628 (1997) ("A de novo hearing on appeal of an order by an executive body acting in a quasi-judicial capacity [in removing an officer] violates the separation of powers

provision of our State constitution because judicial discretion cannot be substituted for that of an executive body." (footnote omitted) (citing *Guerard v. Whitner*, 276 S.C. 521, 280 S.E.2d 539 (1981); *Bd. of Bank Control v. Thomason*, 236 S.C. 158, 113 S.E.2d 544 (1960))). Because the judiciary may not substitute its own discretion or second-guess Governor McMaster's suspension of Appellant pursuant to article VI, section 8, "this matter must be left to the discretion of the Governor and this Court may not review that decision." *McConnell v. Haley*, 393 S.C. 136, 138, 711 S.E.2d 886, 887 (2011); *see also Blalock v. Johnston*, 180 S.C. 288, 185 S.E. 51, 55 (1936) ("The governor, in the exercise of the supreme executive power of the State, may, from the inherent nature of the authority in regard to many of his duties, have a discretion which places him beyond the control of the judicial power . . . ." (quoting *State ex rel. Whiteman v. Chase*, 5 Ohio St. 528, 535 (1856))).[3] Accordingly, the circuit court properly concluded that it lacked subject matter jurisdiction over Appellant's challenge and declined to second-guess Governor McMaster's decision.

Second, the circuit court correctly recognized that Governor McMaster's exercise of his executive discretion was anything but arbitrary in nature. *Cf. State ex rel. Thompson v. Seigler*, 230 S.C. 115, 123, 94 S.E.2d 231, 235 (1956). In ruling on Governor McMaster's Motion to

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3. *See generally Brown v. Ansel*, 82 S.C. 141, 63 S.E. 449, 449 (1909) ("Even if the Governor is subject to our writ of mandamus, a question noticed, but not decided, in *State v. Ansel*, 76 S. C. 406, 57 S. E. 185 [(1907)], it appears from the petition that the act sought to be compelled is not a plain ministerial duty, but involves the exercise of discretion, and is therefore not compellable by mandamus."); *State v. Williams*, 10 S.C.L. (1 Nott. & McC.) 26, 28 (1817) ("The people of this state, have, by the constitution assigned to the respective branches of the government, the several powers therein specified, according to the various provisions of that instrument, and in the exercise of those powers, each must necessarily be governed by its own judgment and discretion. The governor, in the discharge of his official duties, must follow what appears to him the most correct construction of the constitution, and wherever he has by official acts given a construction to any part of it which relates to his particular department, this court will not readily interfere to arrest the progress of his measures.").

Dismiss, the circuit court concluded that it "need not reach or decide the question of whether Domestic Violence, Second Degree, constitutes a 'crime involving moral turpitude' for purposes of article VI, section 8," reasoning that "[b]ecause this phrase is not defined in the text of the constitution, its application must be left to the determination of the Governor in the exercise of his discretion." (Order 6–7, R. pp. 9–10 (citing *McConnell*, 393 S.C. at 138, 711 S.E.2d at 887 ("Because there is no indication in the Constitution as to what constitutes an 'extraordinary occasion' to justify an extra session of the General Assembly, this matter must be left to the discretion of the Governor and this Court may not review that decision.").) As to his application of this constitutional discretion, the circuit court noted that "where, as here, Governor McMaster requested and received an Attorney General's Opinion further confirming his conclusion that Domestic Violence, Second Degree, is a crime involving moral turpitude, it cannot be said that Governor McMaster's exercise of his discretion to temporarily suspend Plaintiff was arbitrary." (*Id.* at 7, R. p. 10 (citing *State ex rel. Thompson v. Seigler*, 230 S.C. 115, 123, 94 S.E.2d 231, 235 (1956)).) Therefore, notwithstanding Appellant's arguments to the contrary and implication that the circuit court abdicated its constitutional authority, the circuit court instead properly recognized that where the act complained of discretionary in nature and that the exercise of that discretion was not arbitrary in application, judicial intervention is both unnecessary and improper. Accordingly, this Court should affirm the circuit court's well-reasoned decision to dismiss Appellant's Complaint pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

II. THE CIRCUIT COURT CORRECTLY DETERMINED, IN THE ALTERNATIVE, THAT APPELLANT FAILED TO STATE A PLAUSIBLE CLAIM FOR RELIEF.

A. Standard of Review

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, "[a] defendant may move to dismiss the plaintiff's complaint for 'failure to state facts sufficient to constitute a cause of action.'" *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (quoting S.C. R. Civ. P. 12(b)(6)). "A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." *Id.* (quoting *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013)). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper." *Id.* (quoting *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 74–75, 753 S.E.2d 846, 850 (2014)). "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)).

B. The Circuit Court Properly Concluded, in the Alternative, that Appellant's Complaint Was Subject to Dismissal Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure

Appellant argues that the circuit court erred in determining that his latest legal challenge was also subject to dismissal because his Complaint failed to allege facts sufficient to state a viable cause of action or plausible claim for relief. Appellant's arguments in this regard are without merit. Therefore, for the reasons set forth below, the Court should affirm the circuit court's

alternative ruling that Appellant's Complaint is subject to dismissal in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

First, the circuit court correctly determined that Appellant is not a member of the Legislative Branch—for purposes of the exception set forth in article VI, section 8—simply by virtue of his membership on Columbia City Council. In the supreme court, circuit court, and present appeal, Appellant has repeatedly argued that, as a municipal official and member of the Columbia City Council, he "is a member of the legislative branch exercising legislative power," (App. Br. 9), such that his suspension violated the constitutional separation of powers. Indeed, Appellant's Complaint asked the Court to declare that he, as a municipal councilman, is a member of the Legislative Branch. (Compl. 9, R. p. 22.) However, as outlined by the circuit court in great detail, Appellant's argument in this regard is inconsistent with the text of article VI, section 8, ignores the framework and context of the remainder of the constitution, and overlooks longstanding precedent for governors suspending members of municipal councils. This Court should not entertain or accept Appellant's invitation to construe article VI, section 8's exception for "members or officers of the Legislative and Judicial Branches" in a manner that would "impose limitations beyond [its] clear meaning." *McConnell*, 393 S.C. at 138, 711 S.E.2d at 887 (citing *Segars–Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 691 S.E.2d 453 (2010)).

As noted above, article VI, section 8 of the South Carolina Constitution provides, in relevant part, as follows:

> Any officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude . . . may be suspended by the Governor until he shall have been acquitted. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

S.C. Const. art. VI, § 8. Appellant's argument that he qualifies for the exception afforded "members and officers of the Legislative . . . Branch[]" strains credulity. *Id.* One need not look beyond the constitutional provision in question to dispel Appellant's argument. As noted by the circuit court, by capitalizing "Legislative and Judicial Branches" in section 8 of article VI, "the framers essentially employed defined terms, craving reference to their use elsewhere in the constitution—namely, in articles III and V, which address the Legislative and Judicial Departments, respectively." (Order 7–8 n.4, R. pp. 10–11 (citing S.C. Const. art. III ("Legislative Department"); S.C. Const. art. V ("Judicial Department")).) "Thus, the relevant text is unambiguous and does not mention municipal officials or contemplate that they will be viewed as members of the Legislative Branch." (*Id.* at 8, R. p. 11.)

Appellant's argument also ignores the larger framework and context of the constitution. For example, article III, section 1 provides that "[t]he legislative power of this State shall be vested in two distinct branches, the one to be styled the 'Senate' and the other the 'House of Representatives,' and both together the 'General Assembly of the State of South Carolina.'" S.C. Const. art. III, § 1. By contrast, municipal government is separately addressed elsewhere in the constitution. *See* S.C. Const. art. VIII ("Local Government") ("All officers, State, executive, legislative, judicial, circuit, district, County, township and municipal . . . ."). In short, and as explained in greater detail by the circuit court, the framers were able to distinguish the branches of state government from local government and identify those offices that comprised each. (Order 8, R. p. 11 ("the drafters were therefore capable of distinguishing, and took care to differentiate, 'legislative' officers from 'County, township and municipal officers'").) Therefore, Appellant's argument and proposed interpretation would require ignoring "the canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius exclusio alterius*' [which] holds that 'to express or

include one thing implies the exclusion of another, or the alternative.'" *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (quoting *State v. Bolin*, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008)).

The circuit court also expressly recognized that if Appellant "was considered a member or officer of the Legislative Branch, his status as such would effectively render meaningless the Governor's suspension and removal authority by withdrawing a significant category of public officials from the ambit of article VI, section 8." (Order 9, R. p. 12.) From a practical standpoint, such an interpretation would lead to an absurd result and ignore longstanding precedent for governors suspending members of municipal councils in this State under similar circumstances. *See State v. Long*, 406 S.C. 511, 515 n.5, 753 S.E.2d 425, 427 n.5 (2014) ("This Court will construe a constitutional amendment in a similar manner as it does a statute. When construing a statute, this Court will reject a meaning when it would lead to a result so plainly absurd that it could not have possibly have been intended by the General Assembly or would defeat the plain legislative intention." (citing *Fraternal Order of Police v. S.C. Dep't of Revenue*, 352 S.C. 420, 574 S.E.2d 717 (2002); *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))); *see, e.g.*, Executive Order No. 2017-16 (suspending member of Norway Town Council upon indictment for crime involving moral turpitude); Executive Order No. 1994-05 (suspending member of Atlantic Beach Town Council upon indictment for crime involving moral turpitude). Accordingly, the circuit court properly rejected Appellant's argument that he is a member of the Legislative Branch.

Second, the circuit court properly rejected Appellant's latest attempt to litigate the underlying criminal charge against him by declining to address specifically whether Appellant's indictment for Domestic Violence, Second Degree charges a "crime involving moral turpitude."

Although South Carolina courts have endeavored to define "moral turpitude" in several instances—primarily in the evidentiary context—our state constitution does not expressly demarcate, circumscribe, or otherwise define what constitutes "a crime involving moral turpitude." Accordingly, because there is no specific definition or indication in the constitution as to what qualifies as "a crime involving moral turpitude" under article VI, section 8, "this matter *must* be left to the discretion of the Governor and this Court may not review that decision." *McConnell*, 393 S.C. at 138, 711 S.E.2d at 887 (emphasis added). As such, the circuit court was not required to reach this non-dispositive issue, and this Court is no different. Nevertheless, Governor McMaster maintains that Domestic Violence, Second Degree, is a crime involving moral turpitude for purposes of his discretionary suspension authority under article VI, section 8.[4] Appellant's self-interested arguments to the contrary are less than persuasive and, for present purposes, certainly do not supersede Governor McMaster's thoughtful conclusion, as well as the independent opinion of the Attorney General.

In sum, Appellant's Complaint fails to allege sufficient facts, which, taken as true for present purposes, state a cause of action or plausible claim for relief, whether declaratory or injunctive in nature. Thus, further discovery is unnecessary and unwarranted. Accordingly, the

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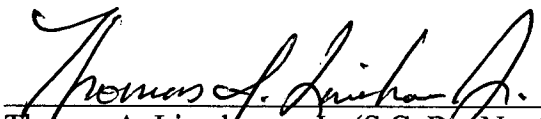
4. Under South Carolina law, moral turpitude "implies something immoral in itself," *State v. Horton*, 271 S.C. 413, 414, 248 S.E.2d 263, 263 (1978), and "involves an act of baseness, vileness, or depravity in the social duties which a man owes to his fellow man or society in general, contrary to the accepted and customary rule of right and duty between man and man," *State v. Major*, 301 S.C. 181, 186, 391 S.E.2d 235, 238 (1990). As noted by Appellant, moral turpitude "refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general." (App. Br. 12 (quoting *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001).) Particularly where, as here, moderate bodily injury or fear of imminent peril results or is alleged to have resulted, Governor McMaster submits that causing or attempting to cause physical harm or injury to one's household member is "contrary to the rules of morality" and is a crime that necessarily involves moral turpitude as a key element and ingredient. *See* S.C. Code Ann. § 16-25-20(A).

circuit court correctly concluded, in the alternative, that Appellant's Complaint is subject to dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, the Court should affirm the circuit court's decision to dismiss Appellant's Complaint for want of subject matter jurisdiction and, alternatively, for failing to state a claim for relief.

Respectfully submitted,



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