No. 89PA22 DISTRICT 3A

SUPREME COURT OF NORTH CAROLINA

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ERIC STEVEN FEARRINGTON, AND CRAIG D. MALMROSE, Plaintiffs, v. CITY OF GREENVILLE AND PITT COUNTY BOARD OF EDUCATION, Defendants.	)	From the Court of Appeals No. COA20-877 From Pitt County 19 CVS 1217

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DEFENDANT PITT COUNTY BOARD OF EDUCATION'S NEW BRIEF

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Defendant Pitt County Board of Education (the "Board") respectfully submits this brief urging this Court to find that the red light camera program in Greenville, North Carolina does not violate Article IX, Section 7 of the North Carolina Constitution.

Article IX, Section 7 of the North Carolina Constitution (the "Fines and Forfeitures Clause") has one imperative: ensure the maintenance of public

schools by putting revenue generated from fines in the hands of local school boards. In every Article IX, Section 7 case this Court has decided before today, the injured party (*i.e.*, the entity that ultimately is going to benefit from enforcing the Fines and Forfeitures Clause) is the public schools. But Plaintiffs seek to convert this protection instituted by the framers of our Constitution into a benefit for themselves.

Their argument – that the Board may not voluntarily enter an inter-local agreement that increases revenue for the Board – would twist the meaning of the Fines and Forfeitures Clause from one that protects resources for schools into one that restricts the ability of local governments to increase school funds. And, as Plaintiffs further argue, if the local governments fail to comply with these restrictions on their ability to raise funds, the result is that the funds must be returned to those who paid them. Nothing could be further from what the Fines and Forfeitures Clause plainly says or what the Framers of the North Carolina Constitution intended.

This Court should reverse the Court of Appeals' decision and affirm the judgment of the trial court. The Board has not violated the North Carolina Constitution by accepting additional resources for the public schools. Further, even assuming arguendo Plaintiffs did properly allege[1] a Fines and Forfeitures

[1] As noted below, the Court of Appeals incorrectly applied the standard of review with respect to the claim at issue here.

Clause violation, the remedy for such violation is a return of funds to the Board, not a direct payment to the Plaintiffs.

STATEMENT OF FACTS RELEVANT TO APPEAL

On 30 June 2016, the General Assembly enacted North Carolina Session Law 2016-64 entitled "AN ACT TO MAKE CHANGES TO THE LAW GOVERNING RED LIGHT CAMERAS IN THE CITY OF GREENVILLE." (R. pp. 17-19) (the "Local Act"). The Local Act added Greenville to the list of municipalities that were authorized to implement a traffic control photographic system, commonly referred to as a "red light camera program" pursuant to N.C. Gen. Stat. § 160A-300.1(d) (Section 1); authorized applicable municipalities to enter into contracts for the lease, lease-purchase, or purchase of the photographic system (Section 2); and increased the maximum fine from $75 to $100 (Section 3).

At issue before this Court are Sections 4 and 5 of the Local Act, which read:

> SECTION 4. 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.
>
> SECTION 5. This act applies only to the City of Greenville and the Pitt County Board of Education.

S.L. 2016-64 §§ 4-5.

Nine months later, after an ordinance had been adopted and details discussed at meetings for both the Pitt County Board of Education and the City of Greenville, on 17 March 2017, the City and the Board freely and voluntarily entered into an inter-local agreement necessary and proper to effectuate the purpose and intent of N.C. Gen. Stat. § 160A-300.1 including provisions on cost-sharing and reimbursement. (R. p. 22-27) (the "Interlocal Agreement"). The fact of the Interlocal Agreement is set forth in the Complaint, Paragraphs 11-14, and the Interlocal Agreement is attached and incorporated therein. (R. pp. 4-5).

The Interlocal Agreement contains two paragraphs related to the payment of fines and cost-sharing: Paragraph 3 covers remittance of the clear proceeds of the fines by the City to the Board, and Paragraph 4 discusses the Board's financial support of the program. Paragraph 3 relating to remittance of the clear proceeds reads as follows:

> 3. 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 written 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.

Paragraph 4, which is the "cost-sharing and reimbursement" authorized by the Local Act reads as follows:

4. FINANCIAL SUPPORT FOR THE PROGRAM:

(a) Except as set forth in subsection (c) below, the CITY will invoice the BOARD monthly the actual cost of the Service Contract. The CITY shall provide the BOARD a copy of the monthly invoices submitted by the Contractor for accounting purposes. The BOARD shall remit payment to the CITY within 30 days of receipt of invoice from the CITY in accordance with payment procedures detailed in Attachment A (Payment Procedures). The CITY's financial institution, account number, and point of contact may be revised by the CITY with reasonable written notice to the BOARD,

(b) The CITY will invoice the BOARD monthly the amount of Six Thousand Two Hundred Fifty Dollars ($6,250), said amount to be utilized by the City to pay the salary and benefits of a sworn law enforcement officer position to serve as the Red Light Camera program manager who will be responsible for final approval of violations as well as oversight of equipment integrity, calibration certification and quality assurance, the fees of the hearing officers conducting the nonjudicial administrative hearings to review objections to citations or penalties issued or assessed pursuant to the Red Light Camera program, and other expenses incurred by the City relating to the Red Light Camera program. The BOARD shall remit payment to the CITY within 30 days of receipt of

> invoice from the CITY in accordance with payment procedures detailed in Attachment A (Payment Procedures). The CITY's financial institution, account number, and point of contact may be revised by the CITY with reasonable written notice to the BOARD.
>
> (c) Notwithstanding any other provision of this Section 4, the financial support for the Red Light Camera program invoiced by the CITY and paid by the BOARD shall not include any amount which the CITY has not paid to the BOARD as a result of a deduction made pursuant to Section 3(b).
>
> (d) Notwithstanding any other provision of this Section 4, the Board will not be required to make payments to the City as required above which are greater than the amount distributed to the Board by the City pursuant to Section 3.

(R. pp. 25-26).

To summarize, the Interlocal Agreement provides that the City pay over the fines collected from its red light camera program to the Board. (R. pp. 5, 22-27). Those funds are not restricted and are placed in the Board's Local Current Expense Fund. N.C. Gen. Stat. § 115C-426(e). The Board uses the funds in the unrestricted Local Current Expense Fund to pay the myriad expenses it incurs: teacher and administrator salaries, health and safety costs, school supplies, utilities, insurance, etc. One of these expenses is the Board's monthly reimbursement of the City for costs incurred by the City in operating the red light camera program pursuant to Paragraph 4 of the Interlocal Agreement. As Paragraph 4(c) and 4(d) describe, however, the Board is never obligated to pay the City more than the revenue generated by the red light camera program.

PROCEDURAL HISTORY RELEVANT TO APPEAL

Plaintiffs-Appellees Eric Steven Fearrington and Craig Malmrose ("Plaintiffs") received fines for running red lights from the City of Greenville, which they contested through the City's administrative hearing process. (R. pp. 2-3). They then brought five claims, not just against the City, but against the Board as well. All five claims against the Board were dismissed under Rule 12(b)(6), including a claim that the City and the Board violated Article IX, Section 7 of the North Carolina Constitution (the "Fines and Forfeitures Claim"). (R. p. 80-81). Plaintiffs also filed motions for summary judgment at the pleadings stage, before the Board had even answered the Complaint. The trial court's order on the Fines and Forfeitures claim (21 April 2020), the Honorable Jeffery B. Foster presiding, denied those motions for summary judgment as it granted the Board's motion to dismiss under Rule 12(b)(6). Judge Foster's Order makes clear that it the ruling is based on the pleadings (and did not recite the summary judgment standard). (R. p. 80-81) ("Having reviewed the pleadings, memoranda of law, and arguments of counsel, the undersigned Judge ORDERS, ADJUDGES and DECREES as follows: . . . 2. As to Plaintiffs Third Claim for Relief (Declaratory Judgment that Civil Penalty Payments as Applied Violate Art. IX, § 7 of the North Carolina Constitution and G.S. § 115C-437), Defendants' Motions to Dismiss pursuant to Rule

12(b)(6) are GRANTED, and Plaintiffs Motion for Summary Judgment is DENIED").

Plaintiffs appealed. The Court of Appeals affirmed dismissal of all the claims, except the claim alleging that the City and the Board violated Article IX, Section 7 of the North Carolina Constitution. On this claim, the Court of Appeals directed the trial court to enter summary judgment in favor of the Plaintiffs. *Fearrington v. City of Greenville*, 282 N.C. App. 218, 871 S.E.2d 366 (2022). This Court granted discretionary review with respect to two issues, which the Board addresses below.

STANDARD OF REVIEW

"Appellate courts review de novo an order granting a Rule 12(b)(6) motion to dismiss." *Taylor v. Bank of Am., N.A.*, , 382 N.C. 677, 679, 878 S.E.2d 798, 800 (2022). The standard is "well-established" under North Carolina law: "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Taylor*, 382 N.C. at 680, 878 S.E.2d at 800 (citations omitted). A motion to dismiss is not converted to summary judgment unless matters outside the pleading "are presented to and not excluded by the court." *Blue v. Bhiro*, 381 N.C. 1, 6-7, 871 S.E.2d 691, 694-95 (2022).

Where a trial court grants a motion to dismiss and denies a motion for summary judgment, the Court "must assume that the court did exclude all

matter outside the pleadings." *Shoffner Indus., Inc. v. W. B. Lloyd Const. Co.*, 42 N.C. App. 259, 263, 257 S.E.2d 50, 54 (1979). In such cases affidavits and other documents are outside the scope of the Court's review, and the primary question on appeal "is whether the trial court properly allowed the motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted." *Id.*

As a threshold matter, the Court of Appeals erred procedurally by applying the summary judgment standard to the dismissal of the Fines and Forfeitures Claim under Rule 12(b)(6). The Order from which Plaintiffs appealed granted the Board of Education's motion to dismiss the Complaint for failure to state a claim pursuant to Rule 12(b)(6). (R. pp. 80-81). In this dismissal, the trial court relied upon "the pleadings, memoranda of law, and arguments of counsel" rather than any evidence outside the pleadings. *See Blue*, 381 N.C. at 6-7, 871 S.E.2d at 695.

The Court of Appeals prejudiced the Board by directing the trial court to enter summary judgment in Plaintiffs' favor when the trial court did not consider any evidence on the Fines and Forfeitures Claim. *See* N.C. R. Civ. P. 56(c) (allowing entry of summary judgment only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact). On de novo review of the trial court's order, this Court should evaluate the Complaint

under the Rule 12(b)(6) standard and either affirm the final judgment of the trial court dismissing the Fines and Forfeitures Claim (which the Board submits is the correct result) or vacate the trial court's dismissal with respect to the Fines and Forfeitures Claim and remand for discovery (if the Court determines Plaintiffs state a claim). *See* N.C. R. Civ. P. 56(f) (allowing a non-moving party the opportunity to seek discovery prior to consideration of summary judgment).

ARGUMENT

The Pitt County Board of Education, acting pursuant to legislative authority and in its discretion as the local elected representatives responsible for maintaining public schools, has not violated Article IX, Section 7 of the North Carolina Constitution by participating in a program that increases resources available to schools in Pitt County. The Court of Appeals made two key oversights in its analysis of this particular claim. First, it did not address the fact that the two local governments had developed their Interlocal Agreement based on the Local Act, which read together with N.C. Gen. Stat. § 115C-437, is clearly a harmonious execution of the Fines and Forfeitures Clause. Second, with respect to the question before the Court regarding adequate state remedy, the Plaintiffs are not properly standing in the shoes of the Pitt County Board of Education and cannot claim revenues belonging to the Board for themselves.

To hold that collaboration between local governments to increase financial resources available to schools (on the part of the Board) and to efficiently protect people driving on the roads (on the part of the City) is unconstitutional, when such action was clearly authorized by the Legislature and complies with the plain meaning and purpose of the Constitution would be nothing more than judicial activism. Three elected bodies made these decisions after careful deliberation with every intent to comply with the Constitution and this Court's precedents; their actions should be upheld.

I. No Violation of the Fines and Forfeitures Clause Has Occurred.

The Fines and Forfeitures Clause provides

> all 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). The North Carolina Constitution vests responsibility for effecting this clause in the legislature. As this Court has previously explained, it is the prerogative of the General Assembly to "specify[] how the provision's goals are to be implemented." *N. Carolina Sch. Boards Ass'n v. Moore*, 359 N.C. 474, 512-13, 614 S.E.2d 504, 527 (2005) (explaining the Fines and Forfeitures Clause is not self-executing).

The judiciary's role with respect to the Fines and Forfeitures Clause has historically been quite limited. The General Assembly's authorization of the Interlocal Agreement in this case "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." *Id.* Furthermore, "this 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." *Id* at 512-13, 614 S.E.2d at 527 (quoting *In re Spivey*, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997)). The Court of Appeals failed to conduct this analysis, which is evident from the fact that the opinion does not discuss the Local Act and the deference it deserves in authorizing the action taken by the local governments here.

The Pitt County Board of Education exercised its judgment that the program would serve to maintain public schools and therefore collaborated with the City of Greenville, under specific legislative authority to do so, to increase the funding available to its students. It cannot be that this action violated the Fines and Forfeitures Clause; holding otherwise reduces monies available for public education, precisely the opposite effect of the meaning and goals of the Fines and Forfeitures Clause.

A. The Interlocal Agreement Comports with the Plain Meaning of the Fines and Forfeitures Clause

The General Assembly executed the Fines and Forfeitures Clause through two statutory enactments that align with Paragraphs 3 and 4 of the Interlocal Agreement. The governments comply with the general law contained in N.C. Gen. Stat. § 115C-437 through Paragraph 3 of the Interlocal Agreement: the City remits all of the clear proceeds to the Board for its exclusive use and that should be the end of the inquiry. The governments comply with the specific provision contained in Section 4 of S.L. 2016-64 (the Local Act) through Paragraph 4 of the Interlocal Agreement: the Board spends some of the funds from its local current expense fund to generate additional revenue for maintaining public schools pursuant to specific authority delegated by the Legislature, a fact that is separate from the Fines and Forfeitures analysis but nonetheless complies with the plain meaning of the clause by maintaining public schools.

i. The Interlocal Agreement Faithfully Appropriates the Clear Proceeds to the Board in Compliance with N.C. Gen. Stat. § 115C-437.

N.C. Gen. Stat. § 115C-437 generally provides for allocation of revenue to local schools, including but not limited to revenue generated from fines:

> Revenues accruing to the local school administrative unit by virtue of Article IX, § 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school

> finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, § 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected.

Paragraph 3 of the Interlocal Agreement addresses the revenue generated by the fines imposed through red light violations, explaining that the City remits the "clear proceeds" to the Board. (R. p. 21). Paragraph 3 defines "clear proceeds" in conformity with N.C. Gen. Stat. § 115C-437, *i.e.*, fines collected less actual costs of collection not to exceed 10% of the amount collected. (R. p. 21).

The proceeds remitted pursuant to Paragraph 3, by law, must be placed in the local current expense fund of the Board.

> (e) The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners. These appropriations shall be funded by revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution, moneys made available to the local school administrative unit by the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, State money disbursed directly to the local school administrative unit, and other moneys made available or

> accruing to the local school administrative unit for the current operating expenses of the public school system.

N.C. Gen. Stat. § 115C-426(e).

Once placed in this fund, the constitutional inquiry should be concluded. The funds are faithfully appropriated, exclusively to the local board for maintaining public schools. The local board then has the authority to use its general fund to further the educational goals and policies of the Board and the State. Plaintiffs acknowledge that 100% of their fines were remitted to the School Board. (R. p. 5). That fact forecloses Plaintiffs' Claim.

ii. The Interlocal Agreement Operates to Maintain Public Schools.

The second statute at issue is the Local Act. As noted above, the Interlocal Agreement complies with the requirements of the Fines and Forfeitures Clause simply by remitting the funds to the Board. However, even if this Court determines that the reimbursement provisions of the Interlocal Agreement should be part of the analysis, the Interlocal Agreement still complies with the plain meaning of the Fines and Forfeitures Clause because the funds are used to maintain public schools.

Section 4 of the Local Act specifies that the Interlocal Agreement may include provisions on cost-sharing and reimbursement, if agreed to "freely and voluntarily" by both the Board and the City. (R. p. 16). The two entities acted pursuant to Section 4 of the Local Act when they entered into Paragraph 4 of

the Interlocal Agreement. Paragraph 4 is a cost-sharing arrangement whereby the Board reimburses the City for some of the costs of the program, because the Board and City determined such reimbursement was necessary to generate the revenue that ultimately helps maintain public schools.

By enacting the Local Act, the General Assembly delegated the authority to determine the amount of the cost-sharing and reimbursement to the City and the Board. The Constitution specifically authorizes the General Assembly to do this, stating: "The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate." N.C. Const. Art. IX, § 2(2); *see also Coggins v. Bd. of Educ. of Durham*, 223 N.C. 763, 767, 28 S.E.2d 527, 530 (1944). The Board, duly elected and vested with the authority to manage its resources, decided to act upon this legislative authority and take advantage of an opportunity to generate additional revenue by entering into an Interlocal Agreement with the City. The Board has authority to manage its resources as it deems appropriate and is accorded a presumption of legality in conducting its business. *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.").

Plaintiffs mistakenly insist that N.C. Gen. Stat. § 115C-437 limits the amount that the School Board may agree to reimburse the City after receiving

the fines, and that reimbursement of the City violates the Fines and Forfeitures Clause. *Fearrington v. City of Greenville*, 282 N.C. App. 218, 238, 871 S.E.2d 366, 381 (2022). Reading N.C. Gen. Stat. § 115C-437 and S.L. 2016-64 together, however, the plain meaning is that the fines are remitted to the School Board in the amount set out by N.C. Gen. Stat. § 115C-437, and then the School Board is authorized by the Local Act to reimburse the City in the amount agreed to voluntarily by the governments. This is precisely what has happened. Even considering seriously Plaintiffs' contentions, the Board and the City took action based on legislative authority specifically designed to maintain public schools in their community. There is no constitutional violation.

B. The Interlocal Agreement Effectuates the Purpose of the Fines and Forfeitures Clause

The purpose of the Fines and Forfeitures Clause is to ensure that public resources are set aside for education in North Carolina. *Cf. In re Advisory Opinion to Governor*, 223 N.C. 845, 851, 28 S.E.2d 567, 571 (1944) (explaining that a constitutional inhibition or prohibition "usually extends no farther than the reason on which it is founded").

> It is manifest that Article IX, Section (7), of the Constitution was designed in its entirety to secure two wise ends, namely: (1) To set apart the property and revenue specified therein for the support of the public school system; and (2) to prevent the diversion of public school property and revenue from their intended use to other purposes.

Shore v. Edmisten, 290 N.C. 628, 633, 227 S.E.2d 553, 558 (1976) (quoting *Boney v. Kinston Graded School*, 229 N.C. 136, 48 S.E.2d 56 (1948)).

This purpose is advanced by the Local Act because revenue accrues to the Board that would not otherwise be available to maintain public schools. The Interlocal Agreement provides that the Board can only gain, not lose. Paragraph 4(c) caps any cost-sharing at the amount remitted to the Board, such that the Board can never be obligated to pay money to the City beyond what the red light camera program generates. Without the revenue generation from the fines, however, the City could not afford to contract and have 24-hours per day, 7-days per week monitoring of intersections. The cost-sharing arrangement enables the City to implement the red light camera program. The actual, practical impact is that monies that would not have been generated for the school system are so generated – the resources available to the Board are greater than they would be without the Interlocal Agreement. Thus, the program on the whole ensures that funds are faithfully appropriated and used exclusively for maintaining free public schools in Pitt County.

The Court of Appeals specifically analyzed the historical purposes of the Fines and Forfeitures Clause in 2015, writing:

> Troubled by the historic disregard displayed by our General Assembly in failing to fund public education adequately, the framers of Article IX, Section 7(a) adopted the provision for the purpose of dedicating certain revenue to education, thereby

> limiting the power of the General Assembly to appropriate said revenue for any other purpose. See Lawrence, supra at 59-60. . . .
>
> Thus, against the backdrop of a history of inadequate public school funding, legislative diversion of constitutionally dedicated funds, and the impotence of local government, the framers of the Constitution of 1875 adopted the language in Article IX, Section 7(a) for the purpose of securing to *each county* a constitutionally-protected source of revenue to aid in meeting its obligation to support our State's public schools. See Lawrence, supra at 58-60.

Richmond Cnty. Bd. of Educ. v. Cowell, 243 N.C. App. 116, 120-121, 776 S.E.2d 244, 247 (2015) (citing David M. Lawrence, *Fines, Penalties, and Forfeitures: An Historical and Comparative Analysis*, 65 N.C. L. Rev. 49 (1986)).

Consistent with this history, this Court has repeatedly construed Article IX, Section 7 in a manner that maximizes contributions to the public schools. *Mussallam v. Mussallam*, 321 N.C. 504, 508-10, 364 S.E.2d 364, 366-67 (1988); *Craven Cnty. Bd. of Educ. v. Boyles*, 343 N.C. 87, 90-92, 468 S.E.2d 50, 52-53 (1996); *Cauble v. City of Asheville*, 301 N.C. 340, 342-45, 271 S.E.2d 258, 259-61 (1980); *State ex rel. Thornburg v. House and Lot Located at 532 B Street, Bridgeton*, 334 N.C. 290, 294-96, 432 S.E.2d 684, 686-87 (1993).

The purpose of Article IX, Section 7, as interpreted in the case law and is clear from the face of the Constitution, is to increase revenues and support for public schools. The purpose of the Local Act and the Interlocal Agreement, and the actions of the Board and the City in this case, is to increase financial

support for the maintenance of public schools in Pitt County. There is no violation.

This case is similar to *Boney v. Board of Trustees of Kinston Graded Schools*, 229 N.C. 136 (1948), where this Court held that the transaction between two local governments aided in the maintenance of the public schools, and therefore complied with Article IX, Section 7. In that case, the Legislature authorized the Board of Trustees of the Kinston Graded Schools to convey an athletics field to the City of Kinston without monetary consideration so the City could use it as a public park and as the site for an athletics stadium (planned to be constructed and leased to a professional baseball organization). This Court held that no violation of the Fines and Forfeitures Clause occurred even though the school board's property was conveyed without payment, because ultimately, the net benefit was to the schools. Critical to the Court's analysis were the following factors, which run parallel to the case at bar:

1. The authorizing legislation had to be construed in favor of constitutionality;

2. "[T]he supposed diversion of school property is apparent rather than real," meaning that the school system ultimately benefited even though it did not appear that way on the face of the agreement. There, the City would be making $150,000 in improvements to the property and the school system could still use it; here, the City would be generating millions in revenue that would otherwise not be generated;

3. The agreement contained provisions protecting the property so that the children could still use it (just as in the Interlocal

Agreement, the Board is never required to pay any amount above what it has been remitted in revenues, pursuant to Paragraph 4(c));

4. The agreement had to be approved by both elected local governments, which were accountable to the local people; and

5. The school Board, as an equal party to the agreement, could assert its rights at any point by seeking court intervention if "any unconstitutional diversion" of school resources occurred.

Here, just as in *Boney*, the Court must analyze the Interlocal Agreement and Local Act in context: the purpose is to ensure more, not fewer, resources for public education. The irony of Plaintiffs' argument is that Plaintiffs want the Court to "enforce" Article IX, Section 7, with the effect that the Board will lose all of the red light camera monies: without reimbursement from the School Board, the City has no incentive to spend the money to operate the red light camera program, as it would bear all of the costs of the program. An outcome in which "enforcing" the Fines and Forfeitures Clause has the effect of stripping a school board of funding is nonsensical.

* * *

The Constitution allows the General Assembly to execute the Fines and Forfeitures Clause; it allows the General Assembly to assign to local governments responsibility for the financial support of the free public schools. The General Assembly did these things. Its enactments carry a strong presumption of constitutionality, and the invalidity of those enactments must be established beyond a reasonable doubt. *Baker v. Martin*, 330 N.C. 331, 334-

35, 410 S.E.2d 887, 889 (1991); *North Carolina State Bd. of Educ. v. State*, 371 N.C. 149, 156, 814 S.E.2d 54, 60 (2018). The two local governments acted in accordance with this legislative authority because they determined that they could increase appropriations to maintain public schools by doing so. These steps were consistent with the meaning and purpose of the Constitution. The Court of Appeals decision finding their actions unconstitutional should be reversed.

II. No Direct Constitutional Claim is Available against the Board of Education for Violation of the Fines and Forfeitures Clause.

The second issue before this Court is whether an "adequate remedy" existed – or put in context, whether Plaintiffs may assert a direct constitutional claim under the Fines and Forfeitures Clause. North Carolina law provides that "in the absence of an adequate state remedy, one whose state constitutional rights have been abridged" may assert a direct claim under the North Carolina Constitution. *Corum v. Univ. of N. Carolina Through Bd. of Governors*, 330 N.C. 761, 782, 413 S.E.2d 276, 289 (1992).

The question before the Court confuses the issues however.[2] Plaintiffs cannot assert a *Corum* claim because they are not the intended recipients of

[2] The question of adequate remedy arose in the courts below because Plaintiffs brought five claims, three of which arguably asserted they were individually harmed. The Fines and Forfeitures Claim, however, is not asserting an individual harm but a taxpayer harm.

the proceeds in this case; Plaintiffs would not be able to assert a *Corum* claim even if there was an "adequate state remedy" because they do not allege their individual state constitutional rights have been abridged. The direct constitutional claim analysis is therefore inappropriate to the task.

The proper mechanism to bring a claim under the Fines and Forfeitures Clause is to stand in the shoes of the Board as a taxpayer. However, to the extent Plaintiffs seek to assert a claim as taxpayers, they have failed to do so because they are seeking repayment of the fines to themselves (not the Board) in an effort to drain the resources to which the Board is entitled.

A. The Direct Constitutional Claim Belongs to the Board.

The right to sue under the Fines and Forfeitures Clause is unequivocally vested in the school board. N.C. Gen. Stat. § 115C-44(a); N.C. Const. art. IX. As this Court has previously explained:

> The county board of education, as the governing board of the county administrative unit, has control of the school funds of the county administrative unit, and the board of trustees, as the governing board of the city administrative unit, has management of the school funds of the city administrative unit. This being so, the right to sue for the protection or recovery of the school funds of a particular school administrative unit belongs by necessary implication to the governing board of that unit.

Branch v. Bd. of Ed. of Robeson Cnty., 233 N.C. 623, 625, 65 S.E.2d 124, 126 (1951) (citations omitted).

For this reason, this Court has allowed direct constitutional claims by school boards under the Fines and Forfeitures Clause. *See, e.g.*, N.C. Const. art. IX; *N. Carolina Sch. Boards Ass'n v. Moore*, 359 N.C. at 515, 614 S.E.2d at 528-29; *Craven Cnty. Bd. of Educ. v. Boyles*, 343 N.C. 87, 92, 468 S.E.2d 50, 53 (1996). The Board, not Plaintiffs, would be the person "whose state constitutional rights [would be] abridged" by a violation of the Fines and Forfeitures Clause. *See Corum*, 330 N.C. at 782, 413 S.E.2d at 289; *see also, e.g.*, *Nicholson v. State Ed. Assistance Auth.*, 275 N.C. 439, 447, 168 S.E.2d 401, 406 (1969) ("Only one who is in immediate danger of sustaining a direct injury from legislative action may assail the validity of such action.") (citation omitted).

Plaintiffs cannot therefore seek repayment of their fines to themselves under the Fines and Forfeitures Clause. The result of their claim, if deemed valid, should be that the Board is entitled to additional monies from the City.

B. Plaintiffs Are Not Seeking Redress as Taxpayers.

The only viable claim under the Fines and Forfeitures Clause therefore is one brought on behalf of the Board. Though the Complaint alleges that Plaintiffs are taxpayers, (R. pp. 2), nowhere in the Complaint do the Plaintiffs state that they are suing on behalf of the Board or seeking a greater portion of the fines be repaid to the Board. Nowhere do Plaintiffs allege they are seeking

to vindicate the Board's right that the fines at issue "belong to and remain in the several counties." N.C. Const. art. IX, § 7.

Instead, Plaintiffs have sued the Board, seeking to raid public funds belonging to the Board (and by extension, its taxpayers) for the benefit of "individuals who have received citations and paid fines" under the red light camera program.[3] (R. pp. 11, 13). Ordering refunds to feepayers does not remedy the purported wrong – indeed, such a remedy would further deplete the resources of the Board and contravene the purpose and text of the Fines and Forfeitures Clause. Plaintiffs have not cited, nor is the Board aware of, any decision of this Court awarding a direct recovery to feepayers under the Fines and Forfeitures Clause. *Shore*, 290 N.C. at 633, 227 S.E.2d at 558 ("[A]ny judgment by a trial judge which seeks to direct payment of a fine anywhere other than to the counties for the use of the public schools is unconstitutional.").

[3] This class is not the same as the County's taxpaying population. County taxpayers who never paid any fees would not share in the relief sought (where they otherwise would through public appropriation), and feepayers who never paid any taxes to the county would receive a refund (where they otherwise have no standing to assert a claim).

Furthermore, taxpayers such as Plaintiffs have an adequate state remedy.[4] Provided certain procedural requirements are met, North Carolina law allows taxpayers standing to sue for "equitable relief" ensuring the proper appropriation of funds to and for the school board. *See, e.g.*, *Moore*, 359 N.C. at 515, 614 S.E.2d at 528-29; *Craven Cnty. Bd. of Educ.*, 343 N.C. at 92, 468 S.E.2d at53; *Cauble*, 301 N.C. at 345, 271 S.E.2d at 261. Just as the recovery in a shareholder derivative suit accrues to a corporation, *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 210, 794 S.E.2d 699, 706 (2016), the recovery in a taxpayer suit – equitable relief preventing misuse or misappropriation of public funds by public officials – accrues to the local government supported by the taxpayers. *United Daughters of the Confederacy v. City of Winston-Salem by & through Joines*, 383 N.C. 612, 631, 881 S.E.2d 32, 48 (2022); *Goldston v. State*, 361 N.C. 26, 31, 637 S.E.2d 876, 880 (2006);

[4] An adequate state remedy 1) must allow plaintiff the opportunity to enter the courthouse doors and present his claim, and 2) redress the alleged constitutional injury. *Copper ex rel. Copper v. Denlinger*, 363 N.C. 784, 789, 688 S.E.2d 426, 429 (2010); *Craig ex rel. Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 339-40, 678 S.E.2d 351, 355 (2009). A proper taxpayer suit for equitable relief would have done both.

Cauble, 301 N.C. at 345, 271 S.E.2d at 261.[5] In turn, such relief (*i.e.*, a legal appropriation) accrues to all taxpayers.

* * *

In sum, even if Plaintiffs stated a valid claim under the Fines and Forfeitures Clause (they do not), Plaintiffs have pleaded themselves out of court. Plaintiffs are not the intended recipients of proceeds under the Fines and Forfeitures Clause. What Plaintiffs have asserted here – a direct claim for damages – improperly seeks to convert a "corporate" right held by the school board (and by extension, Pitt County's taxpaying public) into an individual right held by Plaintiffs and the discrete class of feepayers they represent. Plaintiffs' claim is wholly incompatible with taxpayer standing and therefore should be dismissed.

CONCLUSION

For the reasons set forth above, this Court should reverse the Court of Appeals decision with respect to the Fines and Forfeitures Clause and reinstate the trial court's dismissal of the claim pursuant to Rule 12(b)(6).

[5] Taxpayer claims and shareholder derivative actions in this state trace back to the same legal roots. *Merrimon v. S. Paving & Const. Co.*, 142 N.C. 539, 55 S.E. 366, 368 (1906). In addition to recovery accruing to the local government, taxpayer claims are subject to substantially similar requirements as shareholder derivative lawsuits. *Compare, e.g.*, *United Daughters of the Confederacy*, 383 N.C. at 630-31, 881 S.E.2d at 47-48; *Branch*, 233 N.C. at 626, 65 S.E.2d at 127; *with* N.C. Gen. Stat. §§ 55-7-40.1(1), 55-7-41, 55-7-42.

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Electronically Submitted
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CERTIFICATE OF SERVICE

I, Elizabeth L. Troutman, hereby certify that a copy of the foregoing document was served upon the following by e-mail and was filed using the N.C. Appellate Court electronic filing system, as follows:

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