

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
Jerry A. Bruce, individually and on) CASE NO.: _____
behalf of all those similarly situated,)
)
Plaintiff,)
vs.)
)
Joseph Kornell, in his official capacity as)
Greenville County Administrator, Jill)
Rees Kintigh, in her official capacity as)
Treasurer of Greenville County,)
Greenville County Council, and)
Greenville County,)
)
Defendants.)
)

SUMMONS

TO: DEFENDANTS ABOVE-NAMED:

YOU ARE SUMMONED and required to answer this complaint, a copy of which is being served on you, and to serve a copy of your answer to this complaint at the address shown below, within thirty (30) days after service, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be entered against you for the relief requested in the complaint.

[Signature on Following Page]

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

BY: s/William C. Lewis
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
William C. Lewis, Esq. (SC Bar 101287)
Brady R. Thomas, Esq. (SC Bar 72530)
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
T: (803) 281-8145
F: (803) 632-8263
terry@richardsonthomas.com
will@richardsonthomas.com
brady@richardsonthomas.com

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

Attorneys for Plaintiff and the Class

Dated: October 20, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
Jerry A. Bruce, individually and on)
behalf of all those similarly situated,)
<i>Plaintiff,</i>)
vs.)
Joseph Kernell, in his official capacity as)
Greenville County Administrator of)
Greenville County, Jill Rees Kintigh, in)
her official capacity as Treasurer of)
Greenville County, Greenville County)
Council, and Greenville County,)
<i>Defendants.</i>)

Plaintiff, Jerry A. Bruce (“Plaintiff”), individually and on behalf of all others similarly situated, files this Class Action Complaint against Joseph Kernell, in his official capacity as Greenville County Administrator (“Administrator Kernell”), Jill Rees Kintigh, in her official capacity as Treasurer of Greenville County (“Treasurer Kintigh”), Greenville County Council, and Greenville County, (collectively “Defendants”) and respectfully alleges the following:

INTRODUCTION

1. This is a class action brought to obtain monetary damages based upon Defendants’ collection and retention of illegal fees, specifically a “Road Maintenance Fee” and a “Telecommunications Fee.”
2. Greenville County Council enacted these fees via two ordinances in 2017. The “Road Maintenance Fee” was enacted through Ordinance 4906, which raised this fee to \$25.00. The “Telecommunications Fee” was enacted through Ordinance 4907 and required every owner of every real property in Greenville to pay \$14.95.

3. On June 30, 2021, the South Carolina Supreme Court filed its opinion in *Burns v. Greenville County Council*, 433 S.C. 583 (2021), declaring ordinances 4906 and 4907 invalid taxes passed in contravention of State law.

4. After issuance of this order declaring these fees invalid, Greenville County Council voted *not to return* the illegal fees.

5. This is the epitome of bad government; taking money illegally from citizens and after the South Carolina Supreme Court reprimands them, the government actors still refuse to return the ill-gotten fees.

6. This action is brought for recovery of those fees and ten times the illegally collected fees pursuant to S.C. Code Ann. § 8-21-30.

THE PARTIES

7. Plaintiff, Jerry A. Bruce, is a resident of Greenville County, South Carolina.

8. Defendant, Administrator Kornell, is the County Administrator for Greenville County, South Carolina, and on information and belief, a resident of Greenville County.

9. Defendant, Jill Rees Kintigh, is the Treasurer for Greenville County, and on information and belief, a resident of Greenville County, South Carolina.

10. Defendant, Greenville County, is a political subdivision of the state of South Carolina and the governing authority for the geographic region of Greenville County, South Carolina.

11. Defendant, Greenville County Council, is a body politic, incorporate, and governing body of Greenville County, South Carolina.

JURISDICTION AND VENUE

12. This court has jurisdiction over the parties because Plaintiff is a resident of South Carolina, and Defendants are residents, legislative bodies, or political subdivisions of South Carolina. Additionally, S.C. Code Ann. § 8-21-30 provides for suit to be brought in the Court of Common Pleas.

13. Venue in this Court is proper because a substantial part of the events giving rise to these claims occurred in Greenville County, South Carolina.

FACTUAL ALLEGATIONS

A. The Illegal Fees

14. Greenville County Council passed Ordinance 4906 in 2017, “to change the road maintenance fee to ... \$25.” Ordinance 4906 amended Ordinance 2474—enacted in 1993—which required the owner of every vehicle registered in Greenville County to pay \$15 a year to the Greenville County Tax Collector.¹

15. Ordinance 4907 was enacted “for ... the lease, purchase, ... or maintenance of County-wide public safety telecommunications network infrastructure and network components” and related costs. This ordinance requires the owner of every parcel of real property in Greenville County to pay \$14.95 a year for ten years to the Greenville County Tax Collector.

16. Treasurer Kintigh is responsible for overseeing the collection of all taxes and fees in Greenville County, including the invalid fees created by Ordinances 4906 and 4907.

¹ The Greenville County treasurer oversees tax collection for Greenville County.

17. Treasurer Kintigh reports to Administrator Kernell, who is responsible for carrying out the policies, directives, and legislative actions of Greenville County Council, including Ordinances 4906 and 4907.

18. To date, Greenville County has collected an estimated \$30 million in these fees since the enactment of Ordinances 4906 and 4907.

19. In light of the *Burns* decision, Ordinances 4906 and 4907 were passed in contravention of state law, and as such are invalid, *ultra vires*, and void.

B. The *Burns* Decision

20. On June 30, 2021, the South Carolina Supreme Court issued its opinion to a suit challenging the validity of Ordinances 4906 and 4907.

21. The Supreme Court unanimously found Ordinances 4906 and 4907 invalid, with the majority² stating:

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

22. In light of Ordinances 4906 and 4907 passed in violation of state law, any collection of the “Road Maintenance Fee” and the “Telecommunications Fee,” pursuant to these ordinances, is illegal, and retention of these fees is an ongoing deprivation of the rights of the citizens of Greenville County.

² Justice Kittredge issued a concurring opinion in which Chief Justice Beatty joined.

C. Greenville County Council's Statements Post the *Burns* Decision

23. After the *Burns* decision, Administrator Kernell and his staff created a plan regarding how to refund the 30 million collected by Greenville County pursuant to these invalid fees.

24. Despite this plan and the *Burns* decision, Greenville County Council voted not to return the fees.

25. After the vote, Councilman Meadows stated he believed the money was taken illegally from Greenville taxpayers and must be returned, stating "I think anything that is legally not ours should be returned." Councilman Meadows was correct.

26. Administrator Kernell and Treasurer Kintigh continue to retain these illegally collected funds.

27. Several stewards of good government on County Council properly admitted that the County was wrong in keeping the illegal fees.

28. Councilman Steve Shaw stated: "It's not going to go well with the taxpayer, it doesn't go well with me, and anybody who believes in doing things right...It was the wrong way to collect it. Supreme Court said it was the wrong way..."

29. Councilman Stan Tzouvelekas stated: "We weren't supposed to collect that money - so it's not really what you did with the money, if when you got the money wasn't right."

30. Greenville County Council Chairman Willis Meadows stated: "Those that voted to kill this thing tonight says, 'Hey, we took your money, we're going to use it the way we want to

use it, and you were not going to get your money back.' And I think that's a travesty...That's wrong to do it to the taxpayers."

31. In the vote on October 19, 2021, 7 Council members voted to keep the fees and 5 Council members voted to return the fees. This was 5 votes for good government and 7 votes to keep money obtained illegally from the citizens they represent.

32. Greenville County acknowledged the invalidity of Ordinances 4906 and 4907 through its decision to no longer collect these fees.

D. Factual Allegations Specific to the Named Plaintiff

33. Plaintiff, Jerry A. Bruce, is a resident of Greenville County, South Carolina.

34. Plaintiff owns real property in Greenville County and owns multiple vehicles registered in Greenville County, South Carolina.

35. Plaintiff paid both the "Road Maintenance Fee" and the "Telecommunications Fee" for all years in which they were levied against citizens of Greenville County, South Carolina.

36. Plaintiff has not received a refund of any of the illegal fees he paid.

CLASS ALLEGATIONS

37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

38. Plaintiff brings this action on behalf of himself and other similarly situated persons who paid the illegal fees pursuant to Ordinances 4906 and/or 4907.

39. All members of this putative class paid these invalid fees pursuant to Ordinances 4906 or 4907 passed by Greenville County Council.

40. As to all members of this putative class, Administrator Kernell and Treasurer Kintigh were responsible for the collection and retention of these fees.

41. As a result, Greenville County has received and retained approximately \$30 million pursuant to Ordinances 4906 and 4907 which have been declared invalid by the South Carolina Supreme Court.

42. Specifically, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiff brings this action on behalf of himself, and all others similarly situated, as a representative of the following class (the "Class"):

Any individual who at any time paid either or both of the \$25 "Road Maintenance Fee" or the \$14.95 "Telecommunications Fee" pursuant to Ordinances 4906 and 4907, respectively.

43. Excluded from the Class are Defendants, Defendants' immediate family members, Greenville County Council members, legal counsel for Defendants, the judges, and all other court personnel to whom this case is assigned and their immediate family members.

44. The passage of Ordinances 4906 and 4907, and the illegal collection and retention of these invalid fees by Defendants, directly and proximately resulted in damages to Class members.

THE CLASS MEETS THE REQUIREMENTS OF RULE 23 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

45. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

46. The Class is properly brought and should be maintained as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure because it satisfies the prerequisites of numerosity, commonality, typicality, and adequacy.

47. *Numerosity:* The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. However, the estimates of total fees paid is

approximately \$30,000,000.00 paid in increments of \$25 and/or \$14.95, therefore the number of members satisfies the numerosity requirement.

48. *Commonality:* The claims of Plaintiff and the members of the Class involve common questions of law and fact, which predominate over questions affecting only individual members of the Class and which can be answered with common proof, including, *inter alia*, the following: (1) whether collection of the invalid fees violates S.C. Code Ann. § 8-21-30; (2) whether Defendants should be ordered to return the illegally collected fees and pay statutory penalties plus interest in accordance with South Carolina Law; and (3) whether Plaintiff and the Class members are entitled to damages as a result of Defendants' collection and retention of these invalid fees.

49. *Typicality:* Plaintiff's claim is typical of those members of the Class because his claim has the same essential characteristics as the claims of the Class members, and their claims arise from the same course of conduct by Defendants. Plaintiff and all of the Class members paid either or both of the invalid fees. As to Plaintiff and all Class members, the invalid Ordinances 4906 and 4907 applied in the exact same manner. As to Plaintiff and all Class members, Defendants violated South Carolina law, specifically S.C. Code Ann. § 8-21-30.

50. *Adequacy:* Plaintiff will fairly and adequately represent the interests of all Class members. Plaintiff's claims are common to all Class members and Plaintiff has strong interests in vindicating their rights. Plaintiff is represented by counsel experienced in complex, class action litigation. Neither Plaintiff nor Plaintiff's counsel has any interests adverse to, or in conflict with, any absent Class member.

51. The amount in controversy for all Class members exceeds one hundred dollars.

52. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy in that, among other factors:

- (a) The interests of the Plaintiff and Class members in individually controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by means of a class action;
- (b) The expense of prosecuting Plaintiff's and Class members' claims individually would significantly exceed any economic benefit Plaintiff or Class members could realize individually, and individual litigation would overload court dockets and magnify the delay and expense to all parties, making individual litigation of liability and damages economically impractical and infeasible;
- (c) It is desirable that litigation of the claims occur for the Class members in this forum to preserve the resources of both the courts and the litigants, and to reduce the risk of varying and inconsistent adjudications that could occur in individual adjudications; and
- (d) Little, if any, difficulty is likely to be encountered in management of this class action because applicable law will uniformly apply to the claims of the Class members.

FOR A FIRST CAUSE OF ACTION
Unjust Enrichment

- 53. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
- 54. Defendants are aware that all fees collected pursuant to Ordinances 4906 and 4907 were collected in violation of state law.
- 55. Some Defendants have acknowledged these fees were collected illegally and should be returned to those that paid them.

56. Plaintiff and Class members were required, by these illegal Ordinances, and in accordance with these invalid ordinances, to pay the “Road Maintenance Fee” and/or “Telecommunications Fee” to Greenville County.

57. However, Defendants have not reimbursed these fees, and Greenville County Council recently voted on the record *not to return* these fees, despite the minority of Council having a plan to do so.

58. Defendants continue to retain the unlawfully collected fees.

59. As a result, Defendants obtained monies, (realized a benefit) which rightfully belong to Plaintiff and Class members, to the detriment of Plaintiff and Class members.

60. Defendants’ retention of these monies under the circumstances would be unjust.

61. As such, Defendants should return the full value of the illegally collected fees.

FOR A SECOND CAUSE OF ACTION

Violation of S.C. Code Ann. § 8-21-30

(As to Administrator Kernell and Treasurer Kintigh)

62. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

63. Administrator Kernell and Treasurer Kintigh are officers of Greenville County, a political subdivision of the State of South Carolina.

64. As the Treasurer and Administrator for Greenville County, Administrator Kernell and Treasurer Kintigh oversaw and directed the charge, collection, and retention of the “Road Maintenance Fee” and the “Telecommunications Fee” pursuant to the invalid and illegal Ordinances 4906 and 4907.

65. Pursuant to *Burns* and South Carolina Law, these fees were illegally charged.

66. Pursuant to S.C. Code Ann. § 8-21-30, the officers responsible for charging these fees, Administrator Kernal and Treasurer Kintigh, are liable to forfeit ten times the amount so improperly charged.

67. Pursuant to S.C. Code Ann. § 8-21-30, these damages may be recovered in suit in the Court of Common Pleas. Therefore, all illegally collected fees should be returned and a ten time multiplier penalty should be paid to Plaintiff and each member of the class.

FOR A THIRD CAUSE OF ACTION
Violation of Due Process S.C. Constitution
(As to All Defendants)

68. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

69. No person shall be deprived of life, liberty, or property without due process of law.

S.C. Const. art. I, §3.

70. Plaintiff and Class members paid the “Road Maintenance Fee” and “Telecommunications Fee” pursuant to the invalid and illegal Ordinances 4906 and 4907.

71. Plaintiff and the Class members have cognizable property interests in their monies that they were forced to give to Defendants, pursuant to invalid and illegal Ordinances 9406 and 4907.

72. Defendants violated Plaintiff and Class members’ due process rights by charging, collecting, and retaining unlawfully, collected fees pursuant to these illegal and invalid Ordinances.

73. The violations of Plaintiff and Class members’ due process rights have damaged Plaintiff and Class members.

JURY TRIAL DEMANDED AND PRAYER FOR RELIEF

74. WHEREFORE, Plaintiff demands a jury trial and prays for judgment against the Defendants and:

- a. that summons and process issue to the Defendants as required by law;
- b. that Plaintiff, individually, recover compensatory damages for the invalid and illegal retention of the “Road Maintenance Fee” and “Telecommunications Fee” by Defendants;
- c. that the Court certify the Class requested herein, and find that Plaintiff is an appropriate representative of the Class;
- d. that the Court find that the undersigned counsel fairly and adequately represents and protects the interests of the Class, and certify the undersigned counsel to act as counsel for the Class;
- e. that judgment be entered against Defendants finding that they deprived Plaintiff and Class of rights secured by the Laws of South Carolina;
- f. that judgment be entered against Defendants in such amount as will fully and adequately compensate Plaintiff and the other Class members;
- g. that the Court issue an order awarding damages of ten times the amount of illegal fees collected;
- h. that Plaintiff and Class be awarded the just and proper equitable relief requested;
- i. that the Court award Plaintiff and Class members their costs;
- j. that the Court award Attorney’s fees as provided for under South Carolina law;

- k. that Plaintiff have a trial by jury with respect to his legal claims; and
- l. that the Court grant such other and further relief as it deems just and proper.

**RICHARDSON, THOMAS, HALTIWANGER,
MOORE & LEWIS, LLC**

BY: s/William C. Lewis
Terry E. Richardson, Jr., Esq. (SC Bar 4721)
William C. Lewis, Esq. (SC Bar 101287)
Brady R. Thomas, Esq. (SC Bar 72530)
1513 Hampton Street, First Floor
Columbia, South Carolina 29201
T: (803) 281-8145
F: (803) 632-8263
terry@richardsonthomas.com
will@richardsonthomas.com
brady@richardsonthomas.com

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

Attorneys for Plaintiff and the Class

Dated: October 20, 2021

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