

**A STATE OF AFFAIRS FOR A STATE IN NEED OF REPAIRS: AN ANALYSIS
OF SOUTH CAROLINA’S SEPARATION OF POWERS PRECEDENT**

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I. INTRODUCTION

South Carolina’s road infrastructure has hit a roadblock. Better yet, it has blown a tire, ramped the median, and now lays overturned—and aflame—in the oncoming lane. For decades, the Palmetto State has floundered in building and maintaining road infrastructure, resulting in road rankings consistently among the worst when compared to other states.¹ There exists an old saying:

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1. See generally Tim Smith, *How South Carolina Came to Own So Many Roads*, GREENVILLE NEWS (Apr. 3, 2017, 6:04 AM), <https://www.greenvilleonline.com/story/news/2017/04/03/south-carolina-roads/99579256/> [https://perma.cc/N2L6-DPLD] (“[T]he roads are seen as a part of the state’s infrastructure problem because [the Department of Transportation] cannot afford so many roads and the local roads do not connect towns or traverse the state. Lawmakers want to give many of them back but counties have been reluctant, fearful that the state will not provide the funding to keep them maintained.”); *The States with the Best and Worst Roads in America*, ZUTOBI (June 2, 2022), <https://zutobi.com/us/driver-guides/the-worst-roads-in-the-us> [https://perma.cc/HT6R-SJMN]

“you’ll know you’ve crossed the border because the roads in South Carolina are so bad.”² The Governor of South Carolina, Henry McMaster, noted in his 2022–23 annual budget that “no infrastructure [is] more in need of big, bold, and transformative one-time investments than our State’s roads, bridges, highways, and interstates. Our booming economy and rapid population growth have outpaced the State’s ability to keep up with improvements to our transportation infrastructure.”³

The need for repairs is self-evident. Take a trip through any busy street in Columbia—or virtually⁴ anywhere else in South Carolina—and you will see the sorry state for yourself: potholes, deteriorated curbs, manhole covers either too high or too low compared to the surrounding asphalt, poor lighting systems, dilapidated bridges, faded lane lines, and inadequate pedestrian walkways. Ask any South Carolina native, and they will tell you how it seems like everything is under construction—but nothing seems to get fixed. Regardless, urban road infrastructure is just one portion of the issue.

Interstates and highways are also in need of aid. Some of South Carolina’s busiest roads are restricted to two or three lanes. When an accident occurs in one of these spots, it leads to traffic congestion and presents dangers to the passengers, first responders, and other drivers since there is insufficient room to get off the road comfortably. Aside from shoulders, South Carolinians have consistently complained of poor interstate lighting, yet little seems to have gotten done.⁵ Citizen complaints followed by State inaction, unfortunately, seems to be the norm.

This is confirmed statistically when South Carolina is compared to other Southeastern States.⁶ The South, specifically the Southeast, as a region, has arguably the best road infrastructure in the entire country; however, South

(“Coming in at the very bottom with the worst roads in the country is South Carolina. It’s the only state to be scored below 50% on just 4.72, and it has the highest highway fatality rate of 1.83.”).

2. Alexandria Olgin, *The Sorry State of South Carolina’s Roads*, NAT’L PUB. RADIO (Mar. 18, 2017, 8:12 AM), <https://www.npr.org/2017/03/18/520631247/the-sorry-state-of-south-carolinas-roads>, [<https://perma.cc/7BGM-S2VP>].

3. HENRY MCMASTER, EXECUTIVE BUDGET STATE OF SOUTH CAROLINA FISCAL YEAR 2022–23, at 3 (2022).

4. Preferably literal *virtual* trips on Google Earth. Actual trips could result in damage to your vehicle.

5. See, e.g., Paul Rivera, “*It is Despicable*”: *Where Are the Lights on Columbia’s Interstates and Highways?*, WIS NEWS (Feb. 19, 2019, 7:09 PM), <https://www.wistv.com/2019/02/19/it-is-despicable-where-are-lights-columbias-interstates-highways/> [<https://perma.cc/8WPL-R4WB>]; Olgin, *supra* note 2.

6. These states include North Carolina, Virginia, Kentucky, Georgia, Alabama, Florida, and Tennessee.

Carolina is not contributing to the region's recent success.⁷ South Carolina is the worst, or second worst, out of all Southeastern states in the following key road infrastructure metrics: annual cost to motorists,⁸ percentage of "non-acceptable" roads,⁹ and number of deaths per vehicle miles traveled.¹⁰ To make matters worse, some unsuccessful recent taxation funding methods have caused some South Carolinians to allege that such policies are corrupt and fraudulent,¹¹ ineffective at addressing key infrastructure issues,¹² and the product of heavy collusion to absolve potential liability.¹³

Indeed, the situation is so dire that one South Carolina Department of Transportation spokesperson recently described the road system as "reflect[ing] the organizational and political realities of the 1930s and 1940s rather than the 21st century."¹⁴ So, in an attempt to repair South Carolina's roads, counties across the state began implementing road maintenance fees in the 1990s consistent with their constitutionally and statutorily granted powers.¹⁵ Counties were allowed to impose these service user fees, pursuant

7. Andrew Soergel, *Southern States Have Best Road Infrastructure*, U.S. NEWS (Oct. 17, 2019), <https://www.usnews.com/news/best-states/articles/2019-10-17/southern-states-have-best-road-infrastructure> [<https://perma.cc/YNS2-DHP7>].

8. See Nick VinZant, *States with the Worst Road Infrastructure*, QUOTEWIZARD (Nov. 15, 2021), <https://quotewizard.com/news/states-with-worst-infrastructure> [<https://perma.cc/KNB6-PWDX>].

9. *Id.*

10. See *Fatality Facts 2020: State by State*, INS. INST. FOR HIGHWAY SAFETY (May 2022), <https://www.iihs.org/topics/fatality-statistics/detail/state-by-state> [<https://perma.cc/VXW2-H9N7>]. This analysis of the U.S. Department of Transportation's Fatality Analysis Reporting System proved fruitful in summarizing the 2020 fatal motor vehicle crashes for each state (35,766 total accidents resulting in 38,824 deaths). See *id.*

11. David Travis Bland, *Here's a Look at 11 Years of Hurdles Richland County's Penny Tax Program Has Faced*, THE STATE (July 21, 2021, 3:09 PM), <https://www.thestate.com/news/local/article252332678.html> [<https://perma.cc/MTZ4-83K4>].

12. *How Federal Funding Has Ruined S.C.'s Roads*, S.C. POL'Y COUNCIL (July 17, 2014), <https://scpolicycouncil.org/research/budget/federal-road-funding> [<https://perma.cc/3RC4-3LWM>].

13. See Will Folks, *South Carolina's Controversial Fee Bill Needs to Be Killed*, FITSNEWS (June 14, 2022), <https://www.fitsnews.com/2022/06/14/south-carolinas-controversial-fee-bill-needs-to-be-killed/> [<https://perma.cc/UC5S-MBWD>]; Editorial Staff, *Editorial: 4 Bills SC Lawmakers Need to Pass in This Week's Special Session*, POST AND COURIER (June 12, 2022), https://www.postandcourier.com/opinion/editorials/editorial-4-bills-sc-lawmakers-need-to-pass-in-this-weeks-special-session/article_69f0c220-e689-11ec-a072-078d1333123d.html [<https://perma.cc/G4V9-JHHY>].

14. Daniel C. Vock, *States Try to Unload Local Roads*, PEW (Apr. 10, 2014), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/04/10/states-try-to-unload-local-roads> [<https://perma.cc/R5GU-BNKE>].

15. See Nathaniel Cary, *SC Counties Can Charge Road Fees Again, But Lawsuits Linger*, POST AND COURIER (July 24, 2022), https://www.postandcourier.com/greenville/politics/sc-counties-can-charge-road-fees-again-but-lawsuits-linger/article_e774750e-0a04-11ed-a383-

to S.C. Code Ann. § 5-7-30, in relation to their broad array of Home Rule powers—one of which is related to road creation and maintenance.¹⁶ Pre-2022, S.C. Code Ann. § 6-1-300(6) clarified that to charge a “service or user fee,” the revenue generated from said fee must, among other things, “benefit[] the payer in some manner different from the members of the general public.”¹⁷ The implemented maintenance fees were a solid source of revenue to the counties for a while,¹⁸ so the counties took the opportunity to further increase their funding.¹⁹

Greenville was one of nearly half of South Carolina’s counties to charge annual road maintenance fees.²⁰ Using powers granted under S.C. Code Ann. § 6-1-300(6) and other statutes,²¹ Greenville County enacted Ordinances 4906 and 4907 in 2017 to raise their tax revenues.²² Ordinance 4906 required the owner of each vehicle registered in Greenville to pay an additional \$10 towards the road maintenance fee (the original fee was \$15, and this ordinance increased it to \$25).²³ Ordinance 4907 required the owner of every parcel of real property in Greenville County to pay \$14.95 telecommunications fee

6b3efe28e525.html [https://perma.cc/Z8TZ-L3D7]; S.C. CODE ANN. §§ 5-7-10–300 (2022) (“The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities . . .”).

16. *See id.* § 5-7-30 (“Each municipality of the State . . . may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads [and] streets, . . . or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them.”).

17. S.C. CODE ANN. § 6-1-300(6) (1997). In addition to these statutory requirements, and prior to *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), binding precedent imposed a four-pronged test to determine whether the fee was a valid uniform service charge. *See Brown v. County of Horry*, 308 S.C. 180, 182, 417 S.E.2d 565, 566 (1992), *superseded by statute*, S.C. CODE ANN. § 6-1-300(6) (1997); *see also infra* Sections III.B and III.C (providing more extensive details about these cases).

18. *See* Genna Contino, *Greenville County Votes Not to Give Taxpayers Refunds for \$30 Million in Illegal Fees*, GREENVILLE NEWS (Oct. 7, 2021, 12:08 PM), <https://www.greenvilleonline.com/story/news/local/2021/10/06/greenville-county-sc-not-refund-taxpayers-millions-road-fees/5847050001/> [https://perma.cc/LZF3-ZZ3D].

19. *See, e.g.*, Zach Prelutsky, *Increase in Road Maintenance Fee Proposed in Greenville Co.*, FOX CAROLINA (Oct. 4, 2022, 11:12 PM), <https://www.foxcarolina.com/2022/10/05/increase-road-maintenance-fee-proposed-greenville-co/> [https://perma.cc/Q82P-DN4X] (“In 2017 Greenville County increased [the road maintenance] fee from \$15 to \$25.”).

20. *See* Rick Brundrett, *Millions Owed to SC Taxpayers over Local Road Fees, Lawsuits Contend*, NERVE (Nov. 19, 2021), <https://thenerve.org/2021/11/millions-owed-to-sc-taxpayers-over-local-road-fees-lawsuits-contend/> [https://perma.cc/A8L4-QMZE].

21. *See* S.C. CODE ANN. § 4-9-30 (2019); S.C. CODE ANN. § 6-1-330 (2022); S.C. CODE ANN. §§ 5-7-10 to -300 (2022).

22. *See* GREENVILLE, S.C., CODE OF ORDINANCES §§ 14-11, 6-7 (2022).

23. *See id.* § 14-11(a).

every year for a decade.²⁴ The Greenville County Council stated that their purpose for enacting these was because the original Ordinance 4906 fee became “insufficient to keep up with the increased costs of maintenance.”²⁵ As for the updated Ordinance 4907, the increased fee was going to “promote the safety of life and property in Greenville County by providing much needed modernization of current public safety telecommunications infrastructure.”²⁶ No specific evidence of any benefit was noted by the Greenville County Council during or after enactment.²⁷

Counties and county councils across the state gained additional revenues that they could put toward building and repairing roadways. The increased fees led to a \$6.8 million uptick in annual tax revenues in Greenville county alone.²⁸ However, citizens were not as pleased.²⁹ This unhappiness culminated in the pivotal (at least in terms of taxation, separation of powers, and road infrastructure) Supreme Court of South Carolina decision, *Burns v. Greenville County Council*.³⁰

In that case, three members of the South Carolina General Assembly brought suit, alleging that the two ordinances were invalid taxes rather than valid uniform service charges.³¹ The plaintiffs argued that South Carolina law prohibits local government from imposing taxes unless they are “value-based property taxes or are specifically authorized by the [g]eneral [a]ssembly,” and since these two ordinances did neither, the passage was a direct violation of, among other things, S.C. Code Ann. § 6-1-300 and § 6-1-310.³² The supreme

24. *Id.* § 6-7(b); *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 585, 861 S.E.2d 31, 32 (2021).

25. *Burns*, 433 S.C. at 585, 861 S.E.2d at 32.

26. *Id.*

27. *See id.* at 588, 861 S.E.2d at 33.

28. Kirk Brown, *SC Supreme Court Says Greenville County Road and Telecommunications Fees Are Illegal Taxes*, GREENVILLE NEWS (June 30, 2021, 9:21 PM), <https://www.greenvilleonline.com/story/news/local/2021/06/30/south-carolina-supreme-court-strikes-down-greenville-county-fees/7815679002/> [<https://perma.cc/85UP-DJQB>].

29. *See* Melanie Palmer, *Greenville County Taxpayer Suing to Recover Road Fees Ruled “Unconstitutional,”* 7NEWS (Oct. 25, 2021, 5:18 PM), <https://www.wspa.com/news/local-news/greenville-co-taxpayer-suing-to-recover-road-fees-ruled-unconstitutional/> [<https://perma.cc/N939-2WLZ>].

30. *Burns*, 433 S.C. at 585, 861 S.E.2d at 31.

31. Representatives Mike Burns and Garry Smith along with Senator Dwight Loftis brought suit, believing these road maintenance fees were unconstitutional taxes and should be invalidated. Complaint ¶¶ 5, 33–34, *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) (No. 2017-CP-2301914).

32. *See Burns*, 433 S.C. at 585–86, 861 S.E.2d at 31–32. Plaintiffs alleged that the process in which the Greenville County Council had passed the fee also invalidated it: “Defendants allegedly adopted the Ordinance by a vote of seven in favor and four opposed when the Ordinances and Rules of County Council required a vote of nine in favor.” Complaint, *supra* note 31, ¶ 29. So, according to Plaintiffs, there were issues with the passage and the substance of these fees, along with a potential equal protection violation. *Id.* ¶¶ 29, 33.

court in *Burns* then decided on the issue of whether Greenville's ordinances constituted valid charges or invalid taxes.³³

The court ultimately held that the two Greenville ordinances were illegal taxes because they failed to benefit the taxpayer differently than the general public.³⁴ The court noted that Ordinance 4907's telecommunications fee could have been valid; however, there was no evidence introduced that the new telecommunications system would "meaningfully enhance property values."³⁵ Upwards of \$12.7 million annually stemming from these two ordinances was lost and would be returned to the citizens of Greenville County, or so everyone thought.³⁶ The court never mandated a return of the alleged ill-gotten fees in the *Burns* opinion.³⁷ Although the outcome was a victory for citizens, this case would become the catalyst for troubling times yet to come.

Immediately after *Burns*, Greenville County Council Members were split: some stated their intentions to return the ill-gotten monies³⁸ while others preferred to continue possessing them.³⁹ Citizens became outraged by this. Class action lawsuits against counties, county councils, county treasurers, and county administrators to return the taxes sprouted up from Greenville to Beaufort.⁴⁰ All of these equity and restitution suits were dismissed, either entirely or partially, the various courts finding that: (1) under sovereign immunity, the counties cannot be sued in equity for monetary damages;⁴¹ (2)

33. *Burns*, 433 S.C. at 590, 861 S.E.2d at 34.

34. *Id.* at 589, 861 S.E.2d at 34. In the court's terms, "every driver on any road in Greenville County—whether their vehicles are registered in Greenville County, Spartanburg County, or in some other state—benefits from [the road maintenance paid for by Greenville County residents]." *Id.* at 587–88, 861 S.E.2d at 33. The court also found that the telecommunications fee was invalid because there was no evidence that the system would benefit the fee payers differently than the public. *Id.* at 588, 861 S.E.2d at 33. This directly contradicts S.C. CODE ANN. § 6-1-300(6)'s requirement that fees "benefit[] the payer in some manner different from the members of the general public." *Id.* at 587, 861 S.E.2d at 33.

35. *Id.* at 588–89, 861 S.E.2d at 33. Surprisingly, neither the County Council (when adopting the ordinance) nor Greenville County (when arguing *Burns*) presented any evidence that this change would increase property values. *Id.* at 588, 861 S.E.2d at 33.

36. Brown, *supra* note 28 ("Definitely the taxpayers are going to have to be refunded," County Councilman Joe Dill said.).

37. *See Burns*, 433 S.C. 583, 681 S.E.2d 31.

38. *See* Brown, *supra* note 28. Councilmembers like Butch Kirven stated that, while *Burns* may lead to property tax increases, providing the refunds to taxpayers was "the right thing to do." *Id.* Council Chairman Willis Meadows similarly voiced, "I am pleased with how [*Burns*] turned out because I think it is the right decision." *Id.*

39. *See id.*

40. *See, e.g.,* Complaint, Brown v. Young, No. 2021-CP-3801268 (S.C. Ct. C.P. Orangeburg Cnty. Nov. 2, 2021).

41. *See, e.g.,* Order Granting in Part Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings at 2–3, Brown v. Young, No. 2021-CP-3801268 (S.C. Ct. C.P. Orangeburg Cnty. Nov. 2, 2021) [hereinafter Brown Order].

S.C. Code Ann. 8-21-30 does not apply to Road Fees;⁴² (3) S.C. Code Ann. 8-21-30 was implicitly repealed by the South Carolina Tort Claims Act;⁴³ and (4) due process claims were dismissed because South Carolina law does not provide for monetary damages via a due process claim.⁴⁴

Even though the counties were not required to return the monies via judicial intervention, county councils and legislators alike were still perturbed by the *Burns* decision, since it prevented counties from imposing new methods of road infrastructure funding.⁴⁵ The restriction on counties' ability to pursue new revenue streams was so burdensome that, in 2022, the South Carolina Legislature approved Bill S. 233.⁴⁶

This bill amended S.C. Code Ann § 6-1-300, specifically subsection six, to omit the “government service or program . . . that benefits the payer in *some manner different from the members of the general public*” language that was the linchpin of the *Burns* decision.⁴⁷ Indeed, the legislature favored a change to “. . . be used to the benefit of the payers, *even if the general public also benefits*.”⁴⁸ In addition, they added S.C. Code Ann. § 6-1-330(E) which “[applied the amendments] retroactively to any service or fee imposed after December 31, 1996.”⁴⁹ This retroactive passage operates to supersede *Burns*⁵⁰ and allow the legislature to continue implementing fees similar to Ordinance 4906 and 4907 that would benefit everyone. It also would allow Greenville County to continue to possess the revenues generated from the invalid fees.

South Carolina's roads are in dire need of repair. However, that need does not trump precedent that prohibits the unconstitutional retroactive application of statutes contrary to a supreme court decision. The passage of S. 233 has effectively substituted one issue (poor roads) for another: a violation of the state constitution and decades of precedent. This Note aims to explain the landscape of South Carolina's recent separation of powers cases and show how, when applying this precedent to *Burns* and the S. 233 amendment, the

42. See, e.g., *id.* at 8. S.C. CODE ANN. § 8-21-30 (2022) provides that certain government officers—like a County Treasurer—could be “liable to forfeit ten times the amount so improperly charged”

43. See, e.g., Brown Order, *supra* note 41, at 10 (citing S.C. CODE ANN. § 15-78-20(b) (2022)). For more on the SCTCA, see *Understanding the SC Tort Claims Act*, MUNICIPAL ASSOCIATION OF SOUTH CAROLINA, <https://www.masc.sc/Pages/programs/solutions/insurance/RiskLetter/Spring%202019/Understanding-the-SC-Tort-Claims-Act.aspx> [https://perma.cc/LL74-43M9].

44. See, e.g., Brown Order, *supra* note 41, at 13–14.

45. See Cary, *supra* note 15.

46. S. 233, 2021–2022 Gen. Assemb., 124th Reg. Sess. (S.C. 2022).

47. See *id.* (amending S.C. CODE ANN. § 6-1-330(6) (1997)).

48. *Id.*

49. *Id.*

50. See discussion *infra* Section III.C.

retroactive application of S.C. Code Ann § 6-1-300(6) is unconstitutional. Indeed, this amendment should only be given *prospective* effect.

Specifically, Part II of this Note will discuss the doctrine of separation of powers generally. Part III will describe a history of retroactive passage issues across decades of caselaw in South Carolina and will show a concerning similar pattern of activity by the general assembly and the judiciary's response to the general assembly's attempts to pass retroactive legislation. Part IV will analyze the *Burns v. Greenville County Council* decision. Finally, in Part V, this Note will briefly discuss the constitutionality of S. 233 before concluding.

II. SEPARATION OF POWERS GENERALLY

The principle of separation of powers is “deceptively simple”: three separate entities—the legislative, the executive, and the judiciary—each individually have distinct powers that the other two entities may not encroach upon.⁵¹ The general premise is that the United States Constitution, in Articles I, II, and III, classified the three branches separately while also providing for a system of checks and balances.⁵² Aside from federal imposition, this doctrine also applies to most state governments, as forty states have included separation of powers clauses within their state constitutions.⁵³

There are many ways in which this doctrine may be infringed upon. One of the most pervasive is the retroactive passage of legislation, a principle that has been around—and frowned upon—since ancient times.⁵⁴ Retroactive legislation is a law that “looks backward or contemplates the past, affecting

51. Elizabeth Magill, *The Real Separation in Separation of Powers Law*, 86 VA. L. REV. 1127, 1128–29 (2000) (stating that even though separation of powers is “deceptively simple,” there is still debate as to “what the principal requires, what its objectives are, or how it does or could accomplish its objectives”).

52. *Id.* at 1132–34; U.S. CONST. art. I § 1 (legislative power is vested in Congress); U.S. CONST. art. II § 1 (executive power is vested in the President); U.S. CONST. art. III § 1 (judicial power is vested in the Supreme Court); U.S. CONST. art. I § 6, cl. 2 (prohibiting Congressmembers from becoming officers of the United States). For checks and balances, *see, e.g.*, U.S. CONST. art. II § 2, cl. 2 (Senate’s “advise and consent” functions); U.S. CONST. art. I § 2 cl. 5 (Congress’ involvement in Presidential impeachment); U.S. CONST. art. I § 7, cl. 2 (President’s veto power).

53. *Separation of Powers: An Overview*, NCSL (May 1, 2021), <https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview#:~:text=Forty%20state%20constitutions%20specify%20that,legislative%2C%20executive%2C%20and%20judicial> [https://perma.cc/838M-P42Q].

54. Elmer E. Smead, *The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 MINN. L. REV. 775, 775, 788–89 (1936) (discussing the “common law maxim” of “*nova constitutio futuris formam imponere debet, et non praeteritis*,” which means: a new law ought to impose form on what is to follow, not on the past) (citing *Dash v. Van Kleeck*, 7 Johns. Ch. 477 (N.Y. Ch. 1811)).

acts or facts that existed before the act came into effect.”⁵⁵ Lord Coke is typically credited with the creation of the modern concept of retroactive legislation, though he was heavily influenced by Henry de Bracton’s⁵⁶ work, *De Legibus et Consuetudinibus Anglia*.⁵⁷ Essentially, Coke opposed the legislatures’ ability to create a statute applicable to cases that arose before the enactment of the statute or acts occurring before passage.⁵⁸ Other influential scholars and legal giants, such as William Blackstone, agreed with Bracton and Coke.⁵⁹

Retroactive laws are typically classified as either “strongly” or “weakly” retroactive.⁶⁰ Strongly retroactive laws operate to become effective prior to their date of enactment and therefore are “highly offensive.”⁶¹ Conversely, weakly retroactive laws operate in the future but change the *consequences* of past behavior—like the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), for example.⁶² Regardless of a piece of legislation’s strength, retroactive legislation should only be valid if it is “procedural” or “remedial” in operation,⁶³ meaning that it “restore[s] . . . the status quo.”⁶⁴ To illustrate a curative piece of retroactive legislation, heed the following example:

55. *Retroactive Law*, BLACK’S LAW DICTIONARY (11th ed. 2019).

56. Bracton was an English cleric, author, and idealist. Most known for his famous legal writings, he has been credited with providing great insight into mens rea. Eugene J. Chesney, *Concept of Mens Rea in the Criminal Law*, 29 J. CRIM. L. & CRIMINOLOGY 627, 631–40 (1939) (summarizing Bracton’s influences on mens rea, especially pertaining to intentional crimes like murder, rape, robbery, and larceny).

57. Smead, *supra* note 54, at 776. *De Legibus et Consuetudinibus Anglia*, meaning “On the Laws and Customs of England,” has widely been revered as one of the most influential pieces of legal writing. *See, e.g.*, Charles R. Young, Book Review, 75 AM. HIST. REV. 471, 471 (1969) (showing that, even centuries after Bracton’s death, modern scholars still discuss, find new interpretations, and critique this work); *Bracton Online*, HARV. L. SCH. LIBR., <https://amesfoundation.law.harvard.edu/Bracton/> [<https://perma.cc/PV38-2LC4>].

58. Smead, *supra* note 54, at 777.

59. *Id.* at 777–78.

60. DANIEL E. TROY, RETROACTIVE LEGISLATION 6 (1998).

61. *Id.*; Stephen R. Munzer, *Retroactive Law*, 6 J. LEGAL STUD. 373, 383 (1977).

62. TROY, *supra* note 60, at 6. CERCLA is a prime example of weakly retroactive legislation (but with strong consequences), imposing strict liability on parties for the disposal of waste that took place decades prior. *See id.* Even if the dumpers complied with the letter of the law at the time of disposal, they could still be held liable retroactively. *Id.* For more information on CERCLA, see Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601–9675.

63. *Edwards v. State L. Enf’t Div.* 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011) (“[S]tatutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature.”).

64. TROY, *supra* note 60, at 7; *see also Edwards*, 395 S.C. at 579, 720 S.E.2d at 466 (“A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability. When a statute creates a new obligation or imposes a new duty, courts

[C]onsider a law providing that a marriage is lawful only if the marriage certificate has affixed to it a special stamp, provided by the state. Suppose, as a result of a breakdown at the state printing office, these stamps are not ready when the law goes into effect. This stamp requirement is not well known, and people get married without having their certificate stamped. Few would object to legislation conferring validity on these otherwise-void marriages, even though such a law would unquestionably be retroactive.⁶⁵

The South Carolina Constitution contains a fairly standard separation of powers provision: “the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no . . . departments shall assume or discharge the duties of any other.”⁶⁶ This section, while similar to that of many other states,⁶⁷ still contained ambiguity that “leaves a wide berth for courts to interpret what violates its separation of powers provision.”⁶⁸ Indeed, the specific “discharge the duties” language is unlike that in North Carolina’s Constitution.⁶⁹ As a result, in the past half-century especially, South Carolina has wrestled frequently with retroactivity and separation of powers issues.⁷⁰

III. SOUTH CAROLINA’S SEPARATION OF POWERS AND ROAD INFRASTRUCTURE TIMELINE

Now that some key intricacies of the doctrine of separation of powers have been elaborated upon, a discussion of South Carolina’s separation of powers case law is warranted. *Burns* and the retroactive S. 233 amendments are just another round in the long-standing boxing match between judiciary

generally consider the statute prospective only.”) (citing *Smith v. Eagle Constr. Co.*, 282 S.C. 140, 143, 318 S.E.2d 8, 9 (1984)).

65. TROY, *supra* note 60, at 7.

66. *Id.* § 8.

67. See, e.g., N.C. CONST. art. I, § 6 (“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”).

68. Richard W. Miller, *Simmons v. Greenville Hospital: An Unusually Stringent Rule Against Retroactive Legislation*, 56 S.C. L. REV. 707, 707 (2005).

69. Compare S.C. CONST. art. I, § 8, with N.C. CONST. art. I, § 6 (excluding “discharge the duties” language entirely).

70. See, e.g., *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 587–88, 586 S.E.2d 569, 572 (2003) (striking down a retroactive law and reaffirming that only prospective legislation is valid when it is contrary to a former judicial decision). There will be a more expansive analysis of similar cases in Part III.

and legislature.⁷¹ A timeline of three prominent “veins” of separation of powers case law will prove invaluable to understanding today’s current strife.⁷²

Rather than lump the case law together, regardless of their topic, the cases below are separated and organized chronologically by issue. The first Section will analyze a string of life insurance cases from the late twentieth century. The next Section will tackle conflicting tort statutes. The final Section will detail the road maintenance fees and *Burns*. However, Section III.C will stop just short of the *Burns* case to allow for a more thorough discussion of *Burns* in Part IV.

A. Life Insurance Cases

A string of statutes and cases pertaining to foreign life insurance providers who operated in South Carolina had a profound impact on the doctrine of separation of powers. These cases were also the first instance of the legislature attempting to retroactively amend a statute to better conform to their original intent at enactment—even if that is against what the South Carolina Supreme Court has held.

One of the earliest attempts by the state legislature to pass retroactive legislation began in 1962, when the general assembly passed S.C. Code Ann. § 37-132.⁷³ This retaliatory statute required life insurance providers not incorporated in South Carolina but doing business in South Carolina to pay “not less” than the fees that a foreign state required South Carolina incorporated life insurance providers to pay for doing business in that state.⁷⁴

In April 1972, the Supreme Court of South Carolina decided *Lindsay v. Southern Farm Bureau Casualty Insurance Co.*⁷⁵ In *Southern Farm*, South

71. Compare *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 590, 861 S.E.2d 31, 34 (2021) (invalidating Greenville County ordinances that imposed uniform service charges because the charges were taxes unauthorized by the South Carolina General Assembly), with S. 233, 2021–2022 Gen. Assemb., 124th Reg. Sess. (S.C. 2022) (authorizing local governments to collect the type of uniform service charges invalidated down in *Burns*).

72. This is, by no means, intended to be an exhaustive recantation of South Carolina’s separation of powers history. This Part merely aims to simplify and summarize the most impactful historical events that South Carolina has seen with regard to its separation of powers precedent.

73. S.C. CODE ANN. § 37-132 (1962); *Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 276, 188 S.E.2d 374, 376 (1972) (“Section 37–132 is usually referred to as the retaliatory law. It was derived from Act No. 793 of 1934 which is entitled as follows: ‘An Act to Require Insurance Companies Organized Under the Laws of the States Other Than South Carolina to Pay to the State of South Carolina Not Less than the Same Amount for Penalties, Certificates of Authority, License Fees, Filing Fees or Otherwise as is Required by Such State to be Paid in Such State by Insurance Companies Incorporated Under the Laws of South Carolina.’”).

74. *Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. at 276, 188 S.E.2d at 376.

75. *Id.* at 272, 188 S.E.2d at 374.

Carolina's Chief Insurance Commissioner⁷⁶ brought action against a Mississippi insurance corporation that was licensed to sell insurance in South Carolina for an additional one percent in allegedly owed net premium income, consistent with S.C. Code Ann. § 37-132.⁷⁷ The court had to decide whether S.C. Code Ann. § 37-132 or S.C. Code Ann. § 32-125—a statute that allowed for a fee reduction based on the amount that the foreign company invested in the local state—was applicable in this scenario.⁷⁸ The court held that the retaliatory statute required Southern Farm to pay the commissioner a specified amount to equalize the discrepancy between what a South Carolina insurer was required to pay to Mississippi.⁷⁹

Not three months later, in July 1972, the South Carolina General Assembly amended S.C. Code Ann. § 37-132. Through the General Appropriations Act of 1972, the legislature enacted this amendment because they disagreed with the supreme court's interpretation of § 37-132 and their ruling in *Southern Farm*.⁸⁰ This section was amended to include the following language: "(B) This enactment is declared to be declaratory of the existing provisions of Section 37-132."⁸¹ The legislature intended this amendment to be applied retroactively to the initial passage of the § 37-132.⁸²

76. In South Carolina, the Chief Insurance Commissioner is tasked with the duty of collecting statutorily imposed license fees on foreign insurers (among other, equally important duties). *Id.* at 274, 188 S.E.2d at 375.

77. *Id.* at 276, 188 S.E.2d at 375. This statute operated to equalize the amount each state was receiving from out-of-state life insurance providers proportionally. *Id.* at 275-76, 188 S.E.2d at 375.

78. *See id.* at 278-79, 188 S.E.2d at 377. S.C. Code Ann. § 32-125 provided a fee reduction based on the amount that the foreign company invested in select securities (as laid out in S.C. CODE ANN. § 37-123). *Id.* at 274, 188 S.E.2d at 375. For example, say that a South Carolina insurance company did business in Georgia. Georgia had a retaliatory statute and an investment-incentivizing statute, just as South Carolina did. The more investments that South Carolina company had in select Georgian securities (bonds or notes), the more reduction in net premium income derived from their business in Georgia. So, while it would not impact the South Carolina company's business in South Carolina, they would get a tax credit in Georgia for their Georgian investments. This operated to spur foreign company investors within foreign states. The *Southern Farm* court illustrated how the statutes both operated and affected the parties before it. *See id.* at 274-75, 188 S.E.2d at 375.

79. *Id.* at 281, 188 S.E.2d at 378.

80. Miller, *supra* note 68, at 708.

81. *Lindsay v. Nat'l Old Line Ins. Co. (Old Line)*, 262 S.C. 621, 628, 207 S.E.2d 75, 77 (1974) (internal citation omitted). This is one of the most cited South Carolina separation of powers cases and is also hotly debated (as will be discussed later). *See* discussion *infra* Section V.

82. Miller, *supra* note 68, at 708.

In 1974, the Supreme Court of South Carolina decided *Lindsay v. National Old Line Insurance Co.*⁸³ Relying on *Southern Farm*, the trial court had held that the separation of powers clause prevented the South Carolina legislature from enacting statutes that would operate retroactively contrary to a South Carolina Supreme Court decision.⁸⁴ The trial court judge had reasoned, “the provision in the 1972 amendment . . . is a legislative attempt to reverse a decision of the [s]upreme [c]ourt. In effect, the [g]eneral [a]ssembly has said as to *Lindsay vs. Southern Farm Bureau Casualty Insurance Company*, ‘We reverse.’”⁸⁵ The court continued by stating the state constitution requires the separation of powers, and the legislative branch lacks the authority to supersede it by essentially reversing a supreme court decision.⁸⁶ Thus, the 1972 amendment was only given *prospective* effect from the date of enactment (rather than retroactive effect back to 1962).⁸⁷ Old Line appealed, but the supreme court affirmed the trial court’s holding.⁸⁸

The primary lesson to be learned from these insurance cases is that the doctrine of separation of powers prevents the general assembly from amending a statute in an attempt to retroactively supersede or overturn a judicial decision.⁸⁹ Within twenty years following *Southern Farm*, a similar separation of powers and retroactive amendment power struggle would arise regarding two of South Carolina’s most prominent tort statutes.

B. *Conflicting Tort Statutes*

Two of South Carolina’s tort acts, the South Carolina Tort Claims Act (SCTCA) and the Uniform Contribution Among Tortfeasors Act (UCATA), and their interaction with each other were instrumental in continuing to define separation of powers. In this interaction, the question “what occurs when a newly passed statute contradicts an older statute” was answered by the Supreme Court of South Carolina. This is another example of the legislature retroactively amending a statute to better conform to its original intent, followed by the supreme court refusing to apply it anything but prospectively.

83. *Old Line*, 262 S.C. at 621, 207 S.E.2d at 75. In this case, the Commissioner brought action against an Arkansas corporation licensed in South Carolina as a foreign life insurance company. *Id.* at 624, 207 S.E.2d at 75–76. The Commissioner sued to obtain declaratory judgment as to whether the amendment to S.C. CODE ANN. § 37-132 applied retroactively. *Id.* at 624, 626, 207 S.E.2d at 75–76. If it did, Old Line’s gross life insurance premiums owed to the Commissioner would reduce from 2.5% to 2.25%. *See id.* at 625–26, 207 S.E.2d at 76.

84. *Id.* at 628, 207 S.E.2d at 77–78.

85. *Id.*

86. *Id.* at 628–29, 207 S.E.2d at 78.

87. *Id.* at 629, 207 S.E.2d at 78.

88. *Id.*

89. *See id.*

This interaction between the legislature and the supreme court began in 1986, when the South Carolina General Assembly passed the South Carolina Tort Claims Act.⁹⁰ Among other provisions, this act revoked sovereign immunity and limited the amount of recovery a plaintiff could receive from South Carolina or other governmental entities to \$250,000.⁹¹

Two years later, in 1988, the South Carolina General Assembly passed the Uniform Contribution Among Tortfeasors Act.⁹² Among other provisions, this abrogated the longstanding *Brown v. Southern Railway Co.* “No Contribution Rule”⁹³ that prohibited contribution among joint tortfeasors.⁹⁴ Rather, a new system of joint and several liability was implemented.

In April of 1994, the Supreme Court of South Carolina decided *Southeastern Freight Lines v. City of Hartsville*.⁹⁵ The circuit court held that the UCATA impliedly repealed sections of the SCTCA⁹⁶ and reformed the

90. South Carolina Tort Claims Act, S.C. CODE ANN. §§ 15-78-10 to -190 (1986).

91. *See id.* at § 15-78-120(a)(1); *Se. Freight Lines v. City of Hartsville*, 313 S.C. 466, 468, 443 S.E.2d 395, 396 (1994), *superseded by statutes*, S.C. CODE ANN. §§ 15-78-100(c) and 15-78-120(a)(1) (1997).

92. Uniform Contribution Among Tortfeasor Act, S.C. CODE ANN. §§ 15-38-10 to -70 (1988).

93. *Brown v. S. Ry. Co.*, 111 S.C. 140, 140, 96 S.E. 701, 704 (1918) (holding that in transactions where “parties are equally culpable . . . the rule of law is that one of the two joint wrongdoers can have no contribution from the other. Both the defendants are liable to pay the recovery in equal parts”).

94. *Id.*; Robert H. Brunson, *Contribution in South Carolina—Venturing into Uncharted Waters*, 41 S.C. L. REV. 533, 535–37 (1990) (discussing the longstanding common law rule of prohibiting contribution amongst joint tortfeasors along with the then-new UCATA, which abrogated that common law rule in favor of joint and several liability).

95. *Se. Freight Lines v. City of Hartsville*, 313 S.C. at 466, 443 S.E.2d at 395 (1994), *superseded by statutes*, S.C. CODE ANN. §§ 15-78-100(c) and 15-78-120(a)(1) (1997). Here, a wrongful death action was brought against Southeastern Freight by the estate of a woman who died after colliding with a Southeastern Freight vehicle at an intersection. *Id.* at 468, 443 S.E.2d at 396. Southeastern Freight brought third-party actions against the City of Hartsville and South Carolina, claiming that “their failure to place proper warning signs at the intersection was a contributing proximate cause of [decedent’s] death.” *Id.* The case settled for \$400,000, of which “a jury [] apportioned 70 percent responsibility to [Southeastern Freight], 20 percent to Hartsville, and 10 percent to the State.” *Id.* Unhappy with this apportionment, Southeastern Freight sought to amend the verdict, asserting UCATA “made each party liable for a pro rata share.” *Id.* The City and the State opposed the motion, arguing that “government entities are only responsible for their portion of liability under S.C. Code Ann. § 15-78-100(c) . . . and that the total liability of the government entities could not exceed \$250,000 under S.C. Code Ann. § 15-78-120(a)(1).” *Id.* In essence, the government entities argued they were protected by SCTCA despite the newly-enacted joint-and-several-liability provisions of UCATA.

96. *See id.* The relevant repealed provisions here are Sections 15-78-100(c) and 15-78-120(a)(1). *Id.* “Section 15-78-100(c) requires the trier of fact in any tort action against a government entity to ‘return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined’ and section 15-78-120(a)(1) limits the total monetary liability of all government entities for any one occurrence.” *Id.* at 469, 443 S.E.2d at 397.

verdict to hold the defendants, Hartsville and the state of South Carolina, liable for their pro rata share, so both defendants appealed.⁹⁷ The supreme court held that “[w]hen two statutes are incapable of reasonable reconciliation, the latest statute passed repeals any earlier statute to the extent of repugnancy between the two statutes”; the UCATA repealed the statutory limits set forth in the SCTCA.⁹⁸ Thus, the supreme court ruled in favor of Southeastern Freight by requiring pro rata shares of liability for the governmental entity defendants, which resulted in a greater share of liability being imposed on them than was previously allowed under the SCTCA.⁹⁹

Not three months later, in July of 1994, the general assembly applied the SCTCA’s damage limit retroactively over the UCATA. Through passing 1994 Act No. 497,¹⁰⁰ the general assembly showed they did not agree with the supreme court’s ruling in *Southeastern Farm*—they intended the SCTCA damage caps to override the UCATA.¹⁰¹ They amended this statute to read: “Section 15-78-120(a)(1) . . . [is] reenacted and made retroactive to April 5, 1988, the effective date of the [UCATA], except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.”¹⁰² This operated to retroactively recognize “a window of unlimited liability” only for cases that were filed in court between April 5, 1988 and July 1, 1994.¹⁰³

In 1997, the general assembly enacted 1997 Act No. 155, Part II § 55, which reenacted § 15-78-120, in whole, and established higher limits of liability.¹⁰⁴ This reenactment of § 15-78-120 states that it “applies to claims or actions pending on [June 14, 1997] or thereafter filed, except where final judgment has been entered before [then].”¹⁰⁵

97. *Id.* at 466, 433 S.E.2d at 396–97.

98. *Id.* at 469, 433 S.E.2d at 397 (citing *Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988)).

99. *Id.* at 470, 443 S.E.2d at 398. This pro rata ruling required Southeastern Freight to pay \$280,000, Hartsville to pay \$80,000, and the State of South Carolina to pay \$40,000, stemming from the \$400,000 settlement between the decedent and Southeastern Freight. *See id.* at 468, 443 S.E.2d at 396.

100. *See* H. 4820, 1993–1994 Gen. Assemb., 110th Reg. Sess. (S.C. 1994).

101. Miller, *supra* note 68, at 710.

102. H. 4820, § 107(B)(1). Note this Act applies to the time period immediately following the passage of the UCATA.

103. *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 585 n.3, 586 S.E.2d 569, 571 n.3 (2003). Note that neither this amendment nor *Southeastern Freight* addressed whether subsections (a)(3) and (a)(4) were also impliedly repealed by the UCATA. *See* H. 4820, § 107(B)(1); *Southeastern Freight*, 313 S.C. 466, 443 S.E.2d 395.

104. H. 3400, 1997–1998 Gen. Assemb., 112th Reg. Sess. (S.C. 1997)).

105. *Id.*

In September 1999, the Supreme Court of South Carolina decided *Steinke v. South Carolina Dept. of Labor, Licensing, and Regulation*.¹⁰⁶ The court had to decide whether the legislative branch may, “by a retroactive amendment[,] overrule [the supreme] [c]ourt’s prior interpretation of a statute.”¹⁰⁷ Ultimately, the court held that the rule regarding retroactive application of *judicial decisions* is that “decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively.”¹⁰⁸ So, since the accident occurred in 1993, and the plaintiffs filed their complaint in 1994 (specifically, two days before the 1994 Act’s reinstatement of the caps became effective), the 1994 amendment did not apply to plaintiffs’ claim.¹⁰⁹ Thus, utilizing *Old Line*, the court held that the legislature may not retroactively amend a statute to overrule the supreme court’s prior interpretation of it.¹¹⁰

106. *Steinke v. S.C. Dept. of Lab., Licensing & Regul.*, 336 S.C. 373, 520 S.E.2d 142 (1999). *Steinke* concerned the tragic loss of two teenage boys, 17 and 19, who fell 160 feet to the ground at a bungee jumping attraction near Myrtle Beach. *Id.* at 382, 520 S.E.2d at 146–47. The metal elevator which lifted the passengers into the air was subject to constant breakdowns, so the owner hired a local shrimp boat mechanic to fix it. *Id.* at 383, 520 S.E.2d at 147. This spotty repair, poor design (in that it lacked an automatic shutoff), other “major defects,” and a distracted operator led to the cable snapping as the elevator reached the top. *Id.* at 384, 520 S.E.2d at 147. One of the teen’s parents saw the action and attempted to resuscitate him with CPR, to no avail. *Id.* at 382–83, 520 S.E.2d at 147. The plaintiffs—parents/representatives of the two deceased teenagers’ estates—brought action against the State Department of Labor, Licensing, and Regulation (SDLLR), alleging that their injuries and deaths occurred because the owners of a bungee jumping business made substantial modifications to the licensed device, and that the SDLLR failed to properly investigate after receiving reports concerning those modifications. *Id.* at 384, 520 S.E.2d at 147. The jury awarded each teenagers’ estate \$1 million; however, one teenager’s award was reduced because he was found to be ten percent at fault. *Id.* at 382, 520 S.E.2d at 146. The SDLLR appealed and asserted that the SCTCA required the awards for each to be limited to \$250,000. *Id.* at 401, 520 S.E.2d at 156. The South Carolina Court of Appeals certified this case for review by the South Carolina Supreme Court because it “involve[d] issues of significant public interest and legal principles of major importance.” *Id.* at 382, 520 S.E.2d at 146. The case against the bungee company itself can be found at *Steinke v. Beach Bungee, Inc.*, 105 F.3d 192 (4th Cir. 1997).

107. *Steinke*, 336 S.C. at 402, 520 S.E.2d at 157. This question had significant ramifications. To clarify the issue, consider this quote from *Steinke*: “The [l]egislature quickly responded by providing that the Uniform Contribution Act did not apply to governmental entities and by reinstating the statutory limits, ‘except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.’ Act No. 497, 1994 Acts 5793 (effective July 1, 1994). Thus, any case filed before July 1, 1994, is not subject to the \$250,000 cap for individual claims contained in the Tort Claims Act.” *Id.*

108. *Id.* at 399, 520 S.E.2d at 155 (citing *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 87, 508 S.E.2d 565, 574 (1998)).

109. *Id.* at 402–03, 520 S.E.2d at 157.

110. *Id.* at 403, 520 S.E.2d at 157–58. To clarify, since *Steinke*’s claim was filed before the 1994 and 1997 Acts became effective, the defendant’s liability was not limited by the caps. *See id.*

In September 2002, *Dykema v. Carolina Emergency Physicians, P.C.* was decided by the Supreme Court of South Carolina.¹¹¹ The supreme court held that the statutory caps set forth in § 15-78-120(a)(3) & (4) were impliedly repealed by the adoption of the UCATA.¹¹² The 1994 Act “simply reenacted” the statutory caps from § 15-78-120 (a)(1) and purported to make them retroactive to April 1988, exactly what the *Steinke* court held the legislature lacked authority to do.¹¹³ Thus, the 1994 Act effectively did nothing to reenact the remaining subsections.¹¹⁴ Therefore, the supreme court affirmed the trial court’s “correct ruling” that the statutory caps as outlined in subsections (3) & (4) were impliedly repealed from the adoption of the UCATA and not reenacted by the 1994 Act.¹¹⁵ Further, and most relevantly to this Note:

Although 1997 Act No. 155 was sufficient to *reenact* the remaining subsections, under *Steinke*, such reenactment could not be made *retroactive*, and therefore took effect upon approval by the Governor on June 14, 1997. Accordingly, as Dykema's claim was filed in 1995, the trial court properly ruled the statutory caps set forth in subsection[s] [(a)(3) & (a)(4)] do not apply in this case.¹¹⁶

In 2003, the Supreme Court of South Carolina decided *Simmons v. Greenville Hospital System*.¹¹⁷ Here, the court stated that “the [l]egislature's attempt to

111. *Dykema v. Carolina Emergency Physicians, P.C.*, 348 S.C. 549, 560 S.E.2d 894 (2002). In this case, a wife brought a wrongful death action on behalf of the estate of her deceased husband (who died from undiagnosed pulmonary emboli) against the Greenville Hospital System (GHS). *Id.* at 551, 560 S.E.2d at 894. The action arose in February 1994, before the amendments to S.C. Code Ann. § 15-78-120. *See id.* at 552, 560 S.E.2d at 895. GHS argued the \$1 million cap of § 15-78-120(a)(3) and (4) were “impliedly reenacted” by 1994 Act No. 497, or that the caps were reinstated by 1997 Act. No 155; however, the court disagreed. *Id.* at 557, 560 S.E.2d at 898.

112. *Id.* at 558, 560 S.E.2d at 898.

113. *Id.* at 557–58, 560 S.E.2d at 898 (citing *Steinke*, 336 S.C. at 403, 520 S.E.2d at 157).

114. *Id.* at 557, 560 S.E.2d at 898.

115. *Id.*

116. *Id.* at 558, 560 S.E.2d at 898 (emphasis in original). So, at that point in time, S.C. CODE ANN. §§ 15-78-120(a)(1), (3) and (4) had been “impliedly repealed” by the UCATA. *See supra* notes 99–103, 115–116 and accompanying text.

117. *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003). In yet another somber case, a premature baby was born at one of GHS’ hospitals, experienced respiratory distress, and was placed on a ventilator. *Id.* at 583, 586 S.E.2d at 569–70. During this time, the baby “became infected with *Flavobacterium Meningosepticum* (“FM”), a highly virulent organism.” *Id.* at 583, 586 S.E.2d at 570. The infection caused “permanent neurological injury.” *Id.* Plaintiffs sued GHS for medical malpractice relating to the negligent care of their premature baby. *Id.* The parties agreed to settle, stipulating to \$1.5 million in damages, but “a dispute existed regarding the applicability of the liability caps set forth in the South Carolina Tort Claims Act.” *Id.* GHS, believing that SCTCA capped their damages, paid out \$250,000, to

reach back and change the status of such claims that arose prior to the [l]egislature's 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 . . . in 1997, is, by definition, retroactive and violates the doctrine of separation of powers."¹¹⁸ Indeed, while "the [l]egislature had authority to reinstate the caps, [they] could only do so *prospectively* . . . [for] claims that arose or accrued *after* the effective date of the reenactments."¹¹⁹ In other words, *Simmons*, the final tort statute case analyzed here, held that the separation of powers clause prevented the South Carolina Legislature from acting retroactively, contrary to a judicial decision, and any legislation which tries to do so is ineffective.¹²⁰

From these tort statute discrepancy cases, the holding from the earlier insurance provider cases—that the legislature cannot amend statutes to give the amended provisions retroactive effect—is continued and confirmed. While the court never cited to the insurance provider predecessors, it is clear that the court maintained the same relationship between the judiciary and the legislative in its later holdings. And justly so; South Carolina's case law has been said to be closer to the "restrictive end" of separation of powers allowances.¹²¹

which plaintiffs filed declaratory judgment; both parties subsequently filed for summary judgment. *Id.* at 583–84, 586 S.E.2d at 570. The trial court ruled the caps were permissible, and plaintiffs appealed. *Id.* at 584, 586 S.E.2d at 570. In addressing the appeal, the appellate court had to first answer the *Steinke* issue from earlier: what is a future case? *See id.* at 587, 586 S.E.2d at 572; *Steinke*, 336 S.C. at 403, 520 S.E.2d at 158–59. More precisely, both *Steinke* and *Dykema* failed to answer "whether the liability caps within the 1994 and 1997 Acts are applicable to claims which arose or accrued prior to each Act's effective date, but which were not filed until after the effective date." *Simmons*, 355 S.C. at 587, 586 S.E.2d at 572 (emphasis omitted). Both *Steinke* and *Dykema* had been filed before the effective dates of the Acts, while *Simmons* accrued before the date but was not filed until 1998, after both Acts were effective. *Id.* Note that, at the time the Appellants' claim arose in this case, there were no statutory caps in place under the rule of *Southeastern Freight. Id.*; *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 470, 443 S.E.2d 395, 397 (1994).

118. *Simmons*, 355 S.C. at 587–88, 586 S.E.2d at 571–72 (citing *Steinke*, 336 S.C. at 403, 520 S.E.2d. at 157–58; *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 628–29, 207 S.E.2d 75, 78 (1974)).

119. *See Simmons*, 355 S.C. at 588, 586 S.E.2d at 572 (original emphasis omitted) (emphasis supplied).

120. *See id.* at 587–88, 586 S.E.2d at 572.

121. Miller, *supra* note 68, at 712 ("On the permissive end of the [separation of powers] continuum are governments that allow retroactive legislation in any situation. Conversely, on the restrictive end of the spectrum are governments that allow no retroactive legislation whatsoever. In the United States, the federal government is close to the permissive end, while South Carolina occupies a position close to the restrictive end of the spectrum.").

C. Road Infrastructure Maintenance Fees

The following road infrastructure cases were influenced by South Carolina's earlier separation of powers precedent; however, the South Carolina Supreme Court took a more relaxed approach regarding separation of powers issues relating to the state's road infrastructure—especially with *Burns* and S. 233. Once again, the legislature attempted to correct a misunderstanding by amending a statute retroactively, directly contrary to a chain of supreme court decisions.

In 1975, S.C. Code Ann. § 5-7-10, The Home Rule Act, was signed into law.¹²² The Home Rule Act was designed to free South Carolina's municipal governments from the “fiscal limitations” imposed by the state legislature as well as the supreme court.¹²³ This Act expanded the authoritative capabilities of county governments; it allowed each county to provide “municipal-type services” to its citizens.¹²⁴ It essentially structured the authority for county governments and granted the power for individual counties to begin levying taxes and performing other administrative functions that were previously left to the state.¹²⁵

In 1991, South Carolina passed 1991 Act. No. 114, amending S.C. Code Ann. § 4-9-30 and clarifying county Home Rule powers.¹²⁶ The amended statute described the general powers that counties may exercise under the Home Rule Act, including the power to “assess property and levy ad valorem property taxes and uniform service charges . . . and make appropriations for functions and operations of the county, including . . . roads”¹²⁷

122. S.C. CODE ANN. § 5-7-10 to -310 (1975). The purpose of this legislation was “to provide county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would have to be borne by taxpayers generally.” *Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992), *superseded by statute*, S.C. CODE ANN. § 6-1-300(6) (1997).

123. *Home Rule Turning Point for Local Governments*, UPTOWN (Mun. Ass'n of S.C., Columbia, S.C.), June 2012, at 12, 13, https://www.masc.sc/sites/default/files/uploads/home_rule_uptown.pdf [<https://perma.cc/AM23-8RTN>].

124. *Id.*

125. S.C. CODE ANN § 5-7-30 was one of the more popular sections that showed up in later case law. *See, e.g., Williams v. Town of Hilton Head*, 311 S.C. 417, 420–21, 429 S.E.2d 802, 804 (1993).

126. *See* S. 789, 1992–1992 Gen. Assemb., 109th Reg. Sess. (S.C. 1991) (amending S.C. CODE ANN. § 4-9-30 (1991)).

127. S.C. CODE ANN § 4-9-30(5)(a) (1991); *see also* H. 3666, 1991–1992 Gen. Assemb., 111th Reg. Sess. (S.C. 1991) (“In furtherance of the powers granted to the counties of this State . . . each of the counties of this State is authorized to establish transportation authorities and to finance . . . the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities including, but not limited to, the South Carolina Department of Transportation.”).

In 1992, the Supreme Court of South Carolina decided *Brown v. County of Horry*.¹²⁸ The court—after looking to persuasive authorities¹²⁹—held that a fee is a uniform service charge, and therefore valid, if (1) the revenue generated is used to benefit those who pay it, even if the general public also benefits; (2) the revenue generated is used only for the specific improvement it is intended; (3) the revenue generated does not exceed the improvement’s cost; and (4) the fee is imposed uniformly on all who pay it.¹³⁰ The court here determined that (1) the revenue generated benefited those who paid it by repairing the roads; (2) the revenue generated was only used for road maintenance, thus meeting its intended improvement; (3) the revenue generated from this fee was \$1.2 million while the cost of the Horry County road system was \$5 million; and (4) there was no inequality or discrimination to invalidate the fee.¹³¹ Thus, the fee met the test implemented, did not violate equal protection, and, therefore, was a valid uniform service charge.¹³²

128. *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), *superseded by statute*, S.C. CODE ANN. § 6-1-300(6) (1997). The Supreme Court of South Carolina decided whether Horry County could impose a \$15 road maintenance fee per vehicle licensed in Horry County, the proceeds of which would go into the County General Fund to be specifically used for maintenance and improvement of the county road system. *Id.* at 181–82, 417 S.E.2d at 566. In making this decision, the court analyzed: whether the county was allowed to impose the fee; whether the fee was a service charge or a tax; whether the fee was uniform; and whether the fee complied with the equal protection clause. *Id.* at 182, 417 S.E.2d at 566. Utilizing the 1991 Home Rule Act amendments, the court determined that “[u]nder Home Rule, a county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided.” *Id.* at 184, 417 S.E.2d at 567. The appellant argued this fee was a tax rather than a service charge, and the county conversely argued that it was a valid service charge. *Id.* Rather than look to the name of the charge to decide, the court stated that the determination “depend[ed] on [the charge’s] real nature and not its designation,” pursuant to *Jackson v. Breeland*, where “in distinguishing assessments from taxes the court held that courts will look behind mere words.” *Id.* (citing *Powell v. Chapman*, 260 S.C. 516, 520, 197 S.E.2d 287, 289 (1973); *Jackson v. Breeland*, 103 S.C. 184, 190, 88 S.E. 128, 130 (1916)).

129. *See Long Run Baptist Ass’n v. Louisville Cnty. Metro. Sewer Dist.*, 775 S.W.2d 520, 522 (Ky. App. 1989) (“A tax is universally defined as an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular service”) (citing *Dickson v. Jefferson Cnty. Bd. of Educ.*, 225 S.W.2d 672, 675 (1950)); *Craig v. City of Macon*, 543 S.W.2d 772, 774 (Mo. 1976) (“Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose . . . are not taxes”) (citing *Leggett v. Mo. State Life Ins. Co.*, 342 S.W.2d 833, 875 (Mo. 1960) (en banc)).

130. *See Brown*, 308 S.C. at 184–87, 417 S.E.2d at 567–68.

131. *Id.*

132. *Id.*

In 1993, *Williams v. Town of Hilton Head Island* was decided by the Supreme Court of South Carolina.¹³³ The trial-level decision was that Article 8, §§ 8 and 17 of South Carolina’s Constitution and S.C. Code Ann. § 5-7-30 (The Home Rule Act) authorized Hilton Head to enact legislation imposing a percentage-based-property-transfer fee.¹³⁴ This had large ramifications: municipalities could validly implement massive transaction fees on their citizens just for selling property within their city limits.¹³⁵ On direct appeal, the South Carolina Supreme Court had to answer (1) whether the Home Rule granted Hilton Head the power to adopt the ordinance, or whether there still existed the requirement for express statutory authorization; and (2) whether the purchase of land with revenue generated from the transfer fee was necessary and proper for the security, general welfare, and convenience of the municipality or for the preservation of its health, peace, order and good government—consistent with S.C. Code Ann. § 5-7-30.¹³⁶

Plaintiffs argued that “Dillon’s Rule”¹³⁷ controlled regarding the powers that could be vested to municipalities, rather than S.C. Code Ann. § 5-7-30.¹³⁸ They attempted to persuade the court that the ordinance was invalid since there were no “subsequent Constitutional amendments or legislation” that

133. *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993). In this Beaufort County case, plaintiffs brought a declaratory judgment action against the Town of Hilton Head Island, seeking to have the town’s Real Estate Transfer Fee Ordinance struck down, arguing that it “levie[d] a tax on the transfer of realty without statutory authority.” *Id.* at 419, 429 S.E.2d at 803. This ordinance required any real property purchaser to pay the town a 0.0025% transfer fee. *Id.* The town argued the ordinance was valid under “Home Rule” authority via Art. VIII, § 9 of the South Carolina Constitution. *Id.*

134. *Id.* at 419, 429 S.E.2d at 803.

135. *See id.* Indeed, when discussing the procedural history, Justice Ernest A. Finney framed it as such: “By order dated March 6, 1992, the master declared the transfer fee constitutional. The master concluded that the 1973 amendment to the South Carolina Constitution, Art. VIII, § 1, et seq., which authorized home rule for counties and municipalities was given effect by subsequently enacted legislation. The master held that, when read together, Art. VIII, § 7, S.C. CONST., and S.C. CODE ANN. § 5-7-30 (Supp.1991), confer[ed] authority to enact the ordinance.” *Id.*

136. *Id.* at 420, 429 S.E.2d at 803–04. The former issue involved whether Hilton Head Island was able to enact the ordinance in the first place, while the latter handled whether the revenue gained from the 0.0025% fee (and what it went towards) was constitutional. *See id.*

137. *See generally* Frayda Bluestein, *Is North Carolina a Dillon’s Rule State?*, U.N.C. SCH. OF GOV’T: COATES’ CANONS (Oct. 24, 2012), <https://canons.sog.unc.edu/2012/10/is-north-carolina-a-dillons-rule-state/> [<https://perma.cc/3NK3-BTTS>] (“[A] municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable.”).

138. *Williams*, 311 S.C. at 421, 429 S.E.2d at 804.

would have supplanted Dillon's Rule.¹³⁹ So the court had to decide whether § 5-7-30's enactment abolished Dillon's Rule.¹⁴⁰

Looking to persuasive authority,¹⁴¹ the court held that the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government when they enacted Home Rule.¹⁴² The court also held that Article VIII and § 5-7-30 authorized municipalities to enact regulations for government services, so long as they were constitutional and legal.¹⁴³ Thus, the court affirmed the lower court's judgment that the statute in question, and the expenditure of the revenues from said statute, were necessary and proper for the general welfare of Hilton Head's citizens.¹⁴⁴

In January of 1997, S.C. Code Ann. 6-1-300(6) took effect.¹⁴⁵ This statute allowed municipalities to impose a uniform service fee, so long as it "benefits the payer *in some manner different* from the members of the general public not paying the fee. 'Service or user fee' also includes 'uniform service charges.'"¹⁴⁶ Notice how this statute differed from the language above from *Brown*.

A month later, in February 1997, *C.R. Campbell Construction Co. v. City of Charleston* was decided by the Supreme Court of South Carolina.¹⁴⁷ The court first clarified that, under *Brown v. County of Horry*, "a fee is valid as a

139. *Id.*

140. *Id.*

141. *Id.* at 422, 429 S.E.2d at 805 (citing *Kasperek v. Johnson Cnty. Bd. of Health*, 288 N.W.2d 511, 514 (Iowa 1980)); *Simpson v. Municipality of Anchorage*, 635 P.2d 1197, 1200 (Alaska 1981). Indeed, the court described the two cases as follows: "Dillon's Rule is no longer valid following adoption of home rule amendments [in Iowa]," *id.* (citing *Kasperek*, 288 N.W.2d at 514); and "Alaska's . . . home rule constitutional provisions were adopted in order to abrogate traditional restrictions on the exercise of local autonomy," *id.* (citing *Simpson*, 635 P.2d at 1200).

142. *Williams*, 311 S.C. at 422, 429 S.E.2d at 805.

143. *Id.*

144. *Id.* at 423, 429 S.E.2d at 805. The court also made a note that "the thrust of the ordinance comports with the general scheme, policies, legislation and prevailing law of the state to protect, develop and preserve the coastal region for the benefit of the public and posterity." *Id.*

145. See S.C. CODE ANN. § 6-1-300(6) (1997).

146. *Id.* (emphasis added).

147. *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997). In this case, the taxpayer plaintiff bought a parcel of land, paid a transfer fee (under protest), and then brought suit, alleging the fee was an illegal tax. *Id.* at 235, 481 S.E.2d at 438. The city had passed an ordinance that imposed a 0.25% transfer fee for the purchase of real property. *Id.* at 235, 481 S.E.2d at 437. All transfer fee revenue was "used solely for acquiring, improving, operating, and maintaining parks and public recreational facilities." *Id.* Charleston City Council had "made a specific finding that parks and recreational facilities add to the value of real estate within the City"; Charleston introduced this evidence into the record. *Id.* The city also introduced evidence that it "spen[t] more on parks and recreational facilities than the amount generated by the transfer fee." *Id.* at 235, 481 S.E.2d at 437-38. The trial court ruled for the city in finding the fee a valid uniform service charge. *Id.* at 235, 481 S.E.2d at 438. On appeal, the court had to answer whether the transfer fee was a tax or a uniform service charge. *Id.*

uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.”¹⁴⁸ Then, applying the *Brown* framework to the facts in *C.R. Campbell*, the court stated that the fee was used only for parks and recreational facilities, the taxpayers benefited from increases in real property values, the transfer fee did not generate more revenue than that spent on such facilities, and all payers pay a uniform percentage of the sale price of property conveyed.¹⁴⁹ Thus, the court found the transfer fee a valid uniform service charge and affirmed the lower ruling in favor of Charleston.¹⁵⁰

In March of 2017, Greenville County enacted Ordinance 4906, increasing the road maintenance fee to \$25 annually per registered vehicle, and Ordinance 4907, imposing a telecommunications fee of \$14.95 on each parcel of real property within Greenville.¹⁵¹ Shortly thereafter, three general assembly members filed suit against Greenville County.¹⁵²

That suit—*Burns v. Greenville County Council*—would involve both separation of powers jurisprudence and the more recent road maintenance developments.¹⁵³ Among the most important were the uniform service fee test in *Brown*, the ban on retroactive legislation in *Simmons*, and the explicit revocation of Dillon's Rule in *Williams*.

IV. *BURNS V. GREENVILLE COUNTY COUNCIL*

The general assembly members brought suit in March of 2017¹⁵⁴ and asserted that Ordinances 4906 and 4907 were invalid and violated equal protection rights.¹⁵⁵ The plaintiffs sought an injunction that would restrain Greenville from implementing and enforcing the ordinances.¹⁵⁶

148. *Id.*

149. *Id.*

150. *Id.*

151. GREENVILLE, S.C., CODE OF ORDINANCES §§ 14-11, 6-7 (2022).

152. Complaint, *supra* note 31, ¶¶ 3, 5.

153. See discussion *supra* Parts I and III.

154. See generally Complaint, *supra* note 31, ¶¶ 3, 5, 33 (showing an electronic filing date of Mar. 23, 2017); see also *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 586, 861 S.E.2d 31, 32 (2021). The plaintiffs alleged that state law prohibited the local government from imposing the taxes because they were neither value-based property taxes nor specifically authorized by the general assembly. Complaint, *supra* note 31, ¶ 3.

155. Complaint, *supra* note 31, ¶¶ 31, 33–34.

156. *Id.* ¶ 39.

Both parties consented to an order referring the case to the Master-in-Equity for trial.¹⁵⁷ By November 2018, the Master found that the ordinances were validly implemented and ruled against the plaintiffs; however, since one of the grounds plaintiffs asserted was based in equal protection,¹⁵⁸ they were able to file their appeal with the Supreme Court of South Carolina.¹⁵⁹ S.C. Code Ann. § 14-11-85 also allowed an appeal directly to the supreme court.¹⁶⁰ Consistent with these two appellate avenues to the highest court in the state, in August 2020, the Supreme Court of South Carolina heard this case and had to decide if the Master was correct in validating these ordinances.¹⁶¹

The court first noted that counties were allowed to “levy ad valorem property taxes and uniform service charges”¹⁶² pursuant to multiple South Carolina statutes.¹⁶³ Since neither ordinance imposed a value-based property tax, nor did the general assembly authorize Greenville to impose any other new taxes, the ordinances must have been classified as either a “uniform service fee” or a “service user fee” to be valid under state law.¹⁶⁴ So, to summarize, any charge implemented by local government, post-1997 (when § 6-1-300(6) was enacted), “arguably must meet the [*Brown* test] but certainly must meet the requirements the [g]eneral [a]ssembly set forth in subsection 6-1-300(6).”¹⁶⁵

157. *Burns*, 433 S.C. at 586–87, 861 S.E.2d at 32. A Master-in-Equity is a county judge who can hear and decide cases, referred by the circuit courts, without a jury. *See generally* S.C. CODE ANN. §§ 14-11-10 to -310 (2022) (outlining the powers and duties of a Master-in-Equity); SCRCP 53 (indicating that a Master-in-Equity has “all power and authority which a circuit judge sitting without a jury would have in a similar matter.”).

158. *Burns*, 433 S.C. at 586, 861 S.E.2d at 32.

159. *Id.* Although the supreme court found the equal protection issue was not significant, they elected to keep the case rather than transfer it to the court of appeals, as would have been permitted by SCACR 203(d)(1)(A)(ii) (“[W]here the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.”).

160. S.C. CODE ANN. § 14-11-85 (2022) (“When some or all of the causes of action in a case are referred to a master-in-equity . . . an appeal from an order or judgment of the master or referee must be to the Supreme Court.”)

161. *Burns*, 433 S.C. at 585, 861 S.E.2d at 31.

162. *Id.* at 586, 681 S.E.2d at 32 (quoting S.C. CODE ANN. § 4-9-30(5)(a) (2021)).

163. *See* S.C. CODE ANN. § 4-9-30(5)(a) (2022); S.C. CODE ANN. § 6-1-330(A) (2004) (“A local governing body . . . is authorized to charge and collect a service or user fee.”); S.C. CODE ANN. § 6-1-300(6) (2004) (“‘Service or user fee’ also includes ‘uniform service charges.’”); S.C. CODE ANN. § 6-1-310 (2004) (stating that, aside from value-based property taxes, a county “may not impose a new tax . . . unless specifically authorized by the [g]eneral [a]ssembly.”).

164. *Burns*, 433 S.C. at 586, 861 S.E.2d at 32.

165. *Id.* at 587, 861 S.E.2d at 33 (citing *Brown v. County of Horry*, 308 S.C. 180, 182, 417 S.E.2d 565, 566 (1992)). Recall that, under the *Brown* test, a uniform service charge is valid “if (1) the revenue generated is used to benefit those who pay it, even if the general public also

Greenville first argued that “Ordinance 4906 met the § 6-1-300(6) requirement [that] a ‘government service or program . . . benefits the payer in some manner different from the members of the general public’ because ‘the funds collected by Greenville were specifically allocated for road maintenance.’”¹⁶⁶ The court was not persuaded; they stated that just because the funds are allocated towards maintenance did not specifically show they benefitted the fee payer in particular.¹⁶⁷ They continued in pointing out that these fees – even though they are specifically for road maintenance – benefit any driver on any Greenville County road the same.¹⁶⁸ Greenville also argued that since the property owners who pay the charge use the roads the most, § 6-1-300(6) was met.¹⁶⁹ The court was unpersuaded again, holding that the benefit is the same, regardless of whether one benefits more than another.¹⁷⁰

Next, Greenville argued that Ordinance 4907 satisfied § 6-1-300(6) because of the subsequent increase in real property values stemming from the improvements to local telecommunications.¹⁷¹ One unique benefit to taxpayers is an increase in property values.¹⁷² Greenville cited *C.R. Campbell Construction* and argued that, in that case, the taxpayers benefited from real property increases, which the court held that to be a valid benefit different than that to the general public.¹⁷³ Plaintiffs countered this by arguing that the claim of increased property values is too tenuous to meet § 6-1-300(6).¹⁷⁴

The court did not agree with Greenville’s use of *C.R. Campbell*.¹⁷⁵ Indeed, in that case, there was specific evidence “that parks and recreational facilities add to the value of real estate within the [c]ity.”¹⁷⁶ Comparing that case to the facts of *Burns*, the court stated that there was no evidence anywhere in this case that the new telecommunications system would enhance property values.¹⁷⁷ In their eyes, every local government action should benefit property

benefits; (2) the revenue generated is used only for the specific improvement it is intended; (3) the revenue generated does not exceed the improvement’s cost; and (4) the fee is imposed uniformly on all who pay it.” *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 235, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184–86, 417 S.E.2d at 567–68).

^{166.} *Burns*, 433 S.C. at 587, 861 S.E.2d at 33 (quoting S.C. CODE ANN. § 6-1-300(6) (2004)).

^{167.} *Id.*

^{168.} *Id.* at 587–88, 861 S.E.2d at 33.

^{169.} *Id.* at 588, 861 S.E.2d at 33.

^{170.} *Id.*

^{171.} *Id.*

^{172.} *See id.*

^{173.} *Id.* (quoting *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 236, 481 S.E.2d 437, 438 (1997)).

^{174.} *Id.*

^{175.} *Id.*

^{176.} *Id.* at 588, 861 S.E.2d at 33 (quoting *C.R. Campbell Constr. Co.*, 325 S.C. at 236, 481 S.E.2d at 437).

^{177.} *Id.* at 588–89, 861 S.E.2d at 33.

values; however, only instances where the anticipated enhancement is “significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives” are likely to be upheld.¹⁷⁸

The issue here was that Ordinance 4907 was silent on whether property owners would reap any benefits from the new network, so the court was unaware whether the impact was significant enough to affect property value.¹⁷⁹ Lacking this crucial evidence, the court ultimately held that Greenville County could not meet the § 6-1-300(6) requirement that “the government service or program benefit the payer in some manner different from the members of the general public.”¹⁸⁰ Thus, both ordinances were deemed taxes rather than uniform service charges and were invalidated.¹⁸¹ Interestingly, the court never mandated a refund in their ruling.

However unlikely, Greenville County might have prevailed had Ordinance 4907 or the Greenville County Council introduced specifics regarding how property taxes would be increased. Even then, 4906 still would have been invalidated for the same reasons. Regardless, this case built upon not only the road maintenance separation of powers case law but also a few general principles and themes from the life insurance and tort cases as well. The most prominent theme in all of this Part’s cases is how the legislature reacts after a judicial decision that interprets a statute contrary to what the drafters intended.¹⁸² Just like most other precedents discussed, *Burns*, too, led to the passage of a retroactive amendment: S.C. Code Ann § 6-1-300(6).¹⁸³ The next Section will analyze this amendment and discuss whether it would constitute retroactive legislation, and therefore, should be invalidated.

178. *Id.* at 589, 861 S.E.2d at 34 (“If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in *C.R. Campbell Construction*. . . . In Ordinance 4907, County Council described the aged equipment previously used in multiple networks, and it stated the new single network would improve the delivery of emergency and public safety communications in multiple ways. But the ordinance says nothing of whether property owners would see any benefits from the new network.”)

179. *Id.*

180. *Id.*

181. *Id.* at 590, 861 S.E.2d at 34. Interestingly, in his concurrence, Justice John W. Kittredge wrote, “I believe today’s decision sends a clear message that the courts will not uphold taxes masquerading as ‘service or user fees.’ Going forward, courts will carefully scrutinize so-called ‘service or user fees’ to ensure compliance with section 6-1-300(6).” *Id.* (Kittredge, J., concurring). Chief Justice Donald W. Beatty concurred with this. *Id.*

182. See discussion *supra* Sections III.A, III.B.

183. See S. 233, 2021–2022 Gen. Assemb., 124th Reg. Sess. (S.C. 2022).

V. S. 233'S RETROACTIVITY

On June 22, 2022, in response to *Burns*, the general assembly passed S. 233, amending S.C. Code Ann. § 6-1-300 and S.C. Code Ann. § 6-1-330.¹⁸⁴ This was not the first attempt at passage and there exists significant (to say the least) controversy regarding S. 233 and the amendments.¹⁸⁵ The original S.C. Code Ann. § 6-1-300 dictated that a service or user fee was a “government service or program . . . that benefits the payer in some manner different from the members of the general public.”¹⁸⁶ That language was amended to omit the “different manner” language, and read “. . . be used to the benefit of the payers, *even if the general public also benefits.*”¹⁸⁷ S.C. Code Ann. § 6-1-330(E) was also added which would “[apply the amendments] retroactively to any service or fee imposed after December 31, 1996.”¹⁸⁸ These two amendments operated to, as one disgruntled writer said, “retroactively ‘bless’ all previous fee hikes and new fees *even though they were clearly imposed on citizens illegally.*”¹⁸⁹

In the aftermath of the *Burns* decision—and with very clear approval from the general assembly—counties all across South Carolina found themselves defending class action lawsuits.¹⁹⁰ From Beaufort to Richland to Greenville, Palmetto plaintiffs sued for the return of these invalid telecommunications and road maintenance fees; however, the counties were not so willing to return them.¹⁹¹ In the meantime, counties began to re-implement the increased fees pursuant to S. 233—directly contradicting *Burns*' holding.¹⁹² Indeed, counties

184. *See id.*; S.C. CODE ANN. §§ 6-1-300, -330 (2022).

185. To summarize, the original bill stalled in the House. Folks, *supra* note 13. So, several lawmakers from Horry County attached the old language to another, unrelated bill pertaining to homeowner tax exemptions—S. 233 (or, rather than “attached,” as one writer put it: legislators “hijacked” the original S. 233). *Id.* This initiative was led by Heather Crawford, a Republican Representative. *Id.* Cam Crawford—Representative Crawford’s husband—was a member of the Horry County Council and potentially liable for the return of the ill-obtained fees. *Id.* Additionally, Representative Crawford served on the panel of lawmakers who “championed” S. 233’s passage back in June. *Id.* For additional coverage, see also Editorial Staff, *supra* note 13.

186. S.C. CODE ANN. § 6-1-300.

187. *See* S. 233; S.C. CODE ANN. § 6-1-300(6)(a).

188. S. 233; S.C. CODE ANN. § 6-1-330(E).

189. Folks, *supra* note 13.

190. *See, e.g.*, Complaint, *Mitchell v. Richland County*, No. 2021-CP-40-03410 (S.C. Ct. C.P. July 9, 2021).

191. Contino, *supra* note 18.

192. *See* Zach Prelutsky, *Increase in Road Maintenance Fee Proposed in Greenville Co.*, FOX CAROLINA (Oct. 4, 2022, 11:12 PM), <https://www.foxcarolina.com/2022/10/05/increase-road-maintenance-fee-proposed-greenville-co/> [<https://perma.cc/X3GL-XPFP>]. The article explains that, even though the Supreme Court of South Carolina held these fees unconstitutional, Greenville reimposed their \$25 fee since the general assembly’s amendment to 6-1-300(6)

like Greenville began fighting tooth and nail to retain the \$30 million in collected revenues, even going so far as hiring some of South Carolina's top law firms to retain them.¹⁹³ Regardless of the questionable behavior by certain county council members,¹⁹⁴ the question here is whether this behavior by the legislature was constitutional.

South Carolina's Constitution makes it abundantly clear that no branch may "discharge the duties" of another branch.¹⁹⁵ One of the most prominent judiciary duties is judicial review: the ability for judges to, in the face of two conflicting laws, "decide on the operation of each . . . which of these conflicting rules governs the case. *This is the essence of judicial duty.*"¹⁹⁶ Therefore, the passage of S. 233 would discharge the judiciary's most important duty: judicial review. If the general assembly may go back and retroactively validate a law that was already decidedly invalid—in direct contradiction of an explicit judicial decision—then the supreme court essentially lacks the ability to decide whether a law is valid in the first place, since lawmakers may just change it.

When looking to compelling separation of powers ideologies, it is clear that the Supreme Court of South Carolina should review this amendment and use its judicial review power to strike it down. S. 233 is a strongly retroactive law since it applies retroactively rather than prospectively. It cannot be classified as curative, procedural, or remedial because it does not restore the status quo; there was nothing to "cure" in 2017 regarding the original S.C. Code Ann. § 6-1-300. In operation, the South Carolina General Assembly changed the statute that decided *Burns* and attempted to apply the new "even

reopened the door for counties to reimpose the fees. *Id.* When asked about this, Greenville Councilmember Fant stated that "[the fee] is the one that we had, that we had to repeal, *then the legislature now said you can put back.*" *Id.* (emphasis added).

193. Genna Contino, *Greenville County Settles Lawsuit Over Invalid Road Fees as Refund Discussion Lingers*, GREENVILLE NEWS (Oct. 13, 2021, 12:14 PM), <https://www.greenvilleonline.com/story/news/local/2021/10/13/lawsuit-alleges-road-telecommunication-fees-collected-from-greenville-sc-resident-were-illegal/8422361002/> [<https://perma.cc/QHF7-NDCJ>]; *see, e.g.*, Brown Order, *supra* note 41; Order Granting Defendants' Motion to Dismiss, *Thompson v. Killian*, No. 2021-CP-0202323 (S.C. Ct. C.P. Aiken Cnty. Nov. 2, 2021); Order Granting Defendants' Motion to Dismiss, *Hyman v. Gosnell*, No. 2021-CP-2607309 (S.C. Ct. C.P. Horry Cnty. Nov. 2, 2021).

194. Some, but not all. *See* Contino, *supra* note 193. For example, Greenville County Council member Stan Tzouvelekas not only voted to return the fees, but also to put every last penny of the ill-gotten monies towards infrastructure: "If we're not going to give the money back, we need to give a minimum of \$30 million to roads." *Id.*

195. S.C. CONST. art. I, § 8; *see also* *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 8, 558 S.E.2d 511, 514–515 (2002) ("A Legislature may 'engage in the discharge of such functions to the extent only that their performance is reasonably incidental to the full and effective exercise of its legislative powers.'" (quoting *Aiken Cnty. Bd. of Educ. v. Knotts*, 274 S.C. 144, 150, 262 S.E.2d 14, 17 (1980))).

196. *Marbury v. Madison*, 5 U.S. 137, 178 (1803) (emphasis added).

if the general public also benefits”¹⁹⁷ parameter retroactively in order for counties to hold onto and continue issuing these taxes. If the fees were invalid at the time *Burns* was decided, they should still be so, regardless of any retroactive amendment. The general assembly may *prospectively* change the parameters for a tax to be a valid fee; however, they cannot unconstitutionally and retroactively supersede the Supreme Court of South Carolina’s decision in *Burns*.

This Note’s conclusion that the S. 233 amendments are retroactive, and therefore unconstitutional, invalid, and should be struck down, is only amplified when considering South Carolina case law. Applying the holding of *Lindsay v. National Old Line*¹⁹⁸ to the instance here, it is clear that S. 233 cannot be constitutional. The South Carolina Legislature’s decision to retroactively change the parameters for a valid fee in § 6-1-300 operated similarly to the legislature’s amendment of § 37-132 in 1972.¹⁹⁹ The South Carolina Supreme Court then said that the legislature was barred by the doctrine of separation of powers from doing so and that they lacked the authority to supersede the court by basically “reversing” a supreme court decision.²⁰⁰ By the end of *Old Line*, the statute was given only prospective effect.²⁰¹ The same should hold true here: S. 233 should only be effective for fees imposed *after* June 22, 2022—the date of its enactment.

The tort statute cases confirm this. In July of 1994, unhappy with the court’s interpretation in *Southeastern Freight* that the UCATA impliedly repealed provisions of the SCTCA,²⁰² the general assembly amended § 15-78-120(a)(1) and made it retroactive to April 5, 1988.²⁰³ Nearly a decade later, in *Steinke*, the court again held that the legislature may not do this; the legislature may not amend a statute to overrule the court’s prior interpretation of that statute.²⁰⁴ Yet again, in *Simmons v. Greenville Hospital Systems*, the court held that the amendment and reinstatement of § 15-78-120(a)(1) was

197. S. 233, 2021–2022 Gen. Assemb., 124th Reg. Sess. (S.C. 2022).

198. *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1964).

199. *Id.* at 628, 207 S.E.2d at 77.

200. *Id.* at 628–29, 207 S.E.2d 77–78.

201. *Id.* at 629, 207 S.E.2d at 78.

202. *Se. Freight Lines v. City of Hartsville*, 313 S.C. 466, 469, 443 S.E.2d 395, 397 (1994), *superseded by statutes*, S.C. CODE ANN. §§ 15–78–100(c) and 15–78 120(a)(1) (1997) (citing *Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co.*, 295 S.C. 243, 247, 368 S.E.2d 64, 66 (S.C. 1988)).

203. *Id.* at 469, 443 S.E.2d at 397; 1994 Act. No. 497, Part II, § 107(B)(1).

204. *Steinke v. S.C. Dept. of Lab., Licensing & Regul.*, 336 S.C. 373, 402, 520 S.E.2d 142, 157–58 (1999) (citing *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974)).

retroactive and violated the doctrine of separation of powers.²⁰⁵ The court gave that amendment only prospective effect from the date of reenactment as well.²⁰⁶ Thus, consistent with the totality of the aforementioned cases, S. 233 must be only given prospective effect. Allowing any retroactive application would be a stark, concerning divergence from precedent and could lead to a dangerous consolidation of power in the legislature.

Alternatively, there exists another school of thought found in the dissent of Justice Costa M. Pleicones in *JRS Builders, Inc. v. Neunsinger*.²⁰⁷ In that case, a question arose of which statute to apply—either an original or the amended version—to a cause of action filed before the amendment.²⁰⁸ Citing *Steinke* and *Old Line*, the majority ruled that the earlier, unamended statute should apply and the amended statute could not apply retroactively.²⁰⁹ In his dissent, however, Justice Pleicones argued that *Old Line* had been too broadly construed over the course of the past half-century; precedent and statutory construction (rather than constitutional law) allowed the legislature to retroactively amend a statute contrary to a prior judicial interpretation.²¹⁰

He believed that *Old Line* created an incorrect rule split where, if the court never interpreted the statute before an amendment, “statutory enactments are to be considered prospective rather than retroactive unless there is a specific provision in the enactment or clear legislative intent to the contrary. However, statutes which are remedial or procedural in nature are generally held to operate retrospectively.”²¹¹ On the other hand, “if . . . the [c]ourt has issued an opinion interpreting a statute, any legislative change to that statute is deemed prospective only” so the legislature cannot “invade the province of the [c]ourt.”²¹² In his opinion, the split in *JRS Builders, Inc. v. Neunsinger*—

205. *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 587–88, 586 S.E.2d 569, 572 (2003) (citing *Steinke*, 336 S.C. at 402–03, 520 S.E.2d at 157) (“At the time [the] claim arose . . . there were no statutory caps in place Therefore, the Legislature’s attempt to reach back and change the status of such claims that arose prior to the Legislature’s 1994 reinstatement of the liability caps . . . is, by definition, retroactive, and violates the doctrine of separation of powers.”).

206. *Id.* at 588, 586 S.E.2d at 571.

207. *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 601–02, 614 S.E.2d 629, 632 (2005) (Pleicones, J., dissenting).

208. *Id.* at 599, 614 S.E.2d at 631 (majority opinion).

209. *Id.* at 601, 614 S.E.2d at 632 (citing *Steinke*, 336 S.C. at 401, 520 S.E.2d at 156; *Old Line*, 262 S.C. at 629, 207 S.E.2d at 78)).

210. *Id.* at 602, 614 S.E.2d at 632 (Pleicones, J., dissenting) (citing *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 (1994)) (“Congress, of course, has the power to amend a statute that it believes we have misconstrued. It may even, within broad constitutional bounds, make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product.”)

211. *Id.* at 602, 614 S.E.2d at 633 (quoting *S.C. Dep’t of Revenue v. Rosemary Coin Machs., Inc.*, 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000)) (internal citations omitted).

212. *Id.* at 603, 614 S.E.2d at 633.

which was originally rooted in the theory that the legislative branch violated the separation of powers doctrine—has led to a separation of powers violation on behalf of the judiciary by restricting the legislative branch.²¹³ The only bar against “retroactivity in a civil context,” he argued, “derives from due process guarantees, and from S.C. Const. art. 1, § 4.”²¹⁴ He ended his dissent urging the court to abandon the *Old Line* retroactivity jurisprudence.²¹⁵

While no justices concurred with Justice Pleicones’s dissent, he does raise a few interesting points. It is true that nothing in the State or Federal Constitution explicitly bars the general assembly from enacting retroactive legislation, so long as it does not impede due process, impair the obligation of a contract, or divest vested rights of property.²¹⁶ Further, the legislature does have plenary power to amend statutes, so long as its amendments remain within the bounds of the State Constitution.²¹⁷ Thus, entertaining Justice Pleicones’s argument, the judiciary’s actions in *Burns* could be viewed as an improper restriction on the legislature’s power to retroactively amend legislation. This, too, could be construed as a separation of powers violation; however, this time, it is actually the *judiciary* unconstitutionally infringing on the legislature in *Old Line*.

Notwithstanding that argument, the Due Process Clause could still invalidate the S. 233 amendments. To prove a violation of substantive due process, a plaintiff must show that South Carolina’s deprivation of a citizen’s property interest fell “so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency.”²¹⁸ Since Greenville Ordinances 4906 and 4907 were found to be illegal taxes, the continued deprivation of citizens’ monies arguably constitutes a due process violation, thus invoking the protection of the United States Constitution.²¹⁹ Even lacking a direct order from the Supreme Court of South Carolina to return the “illegal taxes,” withholding citizen’s property that the state should not have obtained in the first place arguably falls far beyond the

213. *Id.*

214. *Id.* at 602, 614 S.E.2d at 633.

215. *Id.* at 603, 614 S.E.2d at 633.

216. S.C. CONST. art. 1, § 4; *see, e.g.*, *McLure v. Melton*, 24 S.C. 559, 570, 58 Am. Rep. 272, 277 (1886) (“Nor is there any provision in the constitution of this State . . . forbidding the enactment of retrospective laws, or any provision which, in express terms, forbids the enactment of a law divesting vested rights, though certain safeguards are thrown around such rights by the provisions of sections 14 and 23 of article I. of the constitution.”).

217. *Boatwright v. McMurray*, 247 S.C. 199, 207, 146 S.E.2d 716, 720 (1966).

218. *Harbit v. City of Charleston*, 382 S.C. 383, 394, 675 S.E.2d 776, 782 (Ct. App. 2009) (citing *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005)).

219. U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

outer boundaries of any legitimate government authority. If the Supreme Court of South Carolina—the entity that is supposed to hold the legislature accountable—cannot remedy the improper confiscation and holding of citizens’ property, what other process could remedy this situation? There is none. This alone should effectively bar any retroactivity on behalf of the legislature. Thus, even agreeing with Justice Pleicones’s dissent, the S. 233 amendments would still be an unconstitutional due process violation. The revenues generated from these “illegal taxes” should be returned to South Carolinians.

VI. CONCLUSION

South Carolina’s dilapidated roads are badly in need of repair. The state’s road infrastructure troubles led many counties to implement road maintenance fees, including Greenville County. Greenville County’s failure to meet the statutory requirements in S.C. Code Ann. § 6-1-300 to implement uniform service charges triggered a power struggle between the state legislature and the state judiciary. This strife is reminiscent of past attempts on the part of the state legislature to pass retroactive statutes, which clearly violated the state constitution. Indeed, South Carolina’s legislature has attempted several times in the past to override the South Carolina Supreme Court’s rulings by passing retroactive statutes,²²⁰ and each time, the supreme court has held that they may not do so.

The legislature’s attempt in S. 233 to retroactively legitimize the road maintenance fees imposed by various counties is no different—the South Carolina Supreme Court has explicitly held that the legislature may not, by a retroactive amendment, overrule the court’s prior interpretation of a statute.²²¹ By amending the requisite criteria for uniform service charges and applying those criteria retroactively, the legislature has effectively overruled *Burns* and the court’s interpretation of S.C. Code Ann. § 6-1-300.

It is no secret that South Carolina needs more funds to repair its roads. Nevertheless, straying from the state constitution and decades of precedent would potentially cause more damage than any pothole or sunken manhole cover. This situation has effectively substituted one problem—poor roads—for another: a blatant, unconstitutional separation of powers violation. These

220. Again, these are just three categories of separation of powers issues that South Carolina has dealt with recently. There are certainly others; however, these were the most applicable to *Burns*. See, e.g., *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 31, 736 S.E.2d 651, 659 (2012) (holding a retroactive provision of an act is unconstitutional in violation of the state and federal Contract Clauses; therefore, it only may apply prospectively).

221. *Steinke v. S.C. Dept. of Lab., Licensing & Regul.*, 336 S.C. 373, 402, 520 S.E.2d 142, 157–58 (1999) (citing *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974)).

fees would undoubtedly be an excellent source of revenue for the counties *prospectively*; however, the retroactive application of S.C. Code Ann. § 6-1-300 and S.C. Code Ann. § 6-1-330 contrary to the supreme court's decision in *Burns* is unconstitutional. South Carolina's legislature can fix the state's roads and still abide by the state constitution—the two are not mutually exclusive.

Counties holding onto the revenues generated from these ordinances during the retroactive period is also unconstitutional. South Carolina's citizens need protection; their supreme court is the only entity that could provide it. The S. 233 amendment attempted to validate the collection of the road maintenance fees retroactively. This attempt is inconsistent with the discussed veins of South Carolina's case law occurring over the past half century that explicitly prohibit retroactive legislation that overrules a Supreme Court of South Carolina decision. It is a direct violation of the South Carolina Constitution. The Supreme Court of South Carolina should strike this amendment down with its judicial review power and mandate the return of these invalid taxes to the populace, thereby ensuring that good, balanced government prevails.