

**IN THE SUPERIOR COURT OF MUSCOGEE COUNTY**  
**STATE OF GEORGIA**

2016 JAN 25 PM 2:31

LINDA PIERCE, Clerk of Superior,  
State, and Juvenile Courts of  
Muscogee County, and the  
Columbus Board of Equalization,

LINDA PIERCE  
MUSCOGEE COUNTY  
SUPERIOR COURT

Plaintiff,

v.

Civil Action Number:  
SU14CV3472

COLUMBUS, GEORGIA, et. al.,

Defendants.

**DEFENDANTS' STATEMENT OF THEORIES SUPPORTING SUMMARY  
JUDGMENT AND STATEMENT OF UNDISPUTED FACTS**

COME NOW all Defendants and pursuant to Uniform Superior Court Rule 6.5, hereby file this Statement of the Theories Supporting Summary Judgment and this Statement of Undisputed Facts, respectfully showing the Court the following:

**STATEMENT OF THEORIES SUPPORTING SUMMARY JUDGMENT**

Defendants are entitled to summary judgment for the following reasons:

1. The Clerk's FY 2014 and FY 2015 budget years are over and the Clerk operated her office within the budgets appropriated for her office by the Council. All of the Clerk's bills for FY 2014 and FY 2015 have been paid. The Clerk's FY 2014 and FY 2015 claims are moot.

2. This Court lacks jurisdiction to grant the Clerk the relief she requests. The Clerk admits that she presented her budget requests to the Council, and she admits she has no evidence that her budget requests were not considered by the Council. The Council as part of the deliberative budget process chose to appropriate less money for the Clerk's budget than she requested. The Clerk cannot turn to this Court and ask it to substitute its discretion for the duly elected Council of the CCG. *See, e.g., Turner County v. City of Asburn*, 293 Ga. 739, 744, 749 S.E.2d 649, 690 (2013); O.C.G.A. § 36-5-22.1 (The "governing authority" [here the Council] of each county has "*original and exclusive jurisdiction*" over funds and property of county) (Emphasis added).

3. The Clerk's claims against the Individual Defendants are all barred by legislative and/or official immunity. *See, e.g., Saleem v. Snow*, 217 Ga. App. 883, 886, 460 S.E.2d 104, 107 (1995) ("Individuals acting in a legislative capacity are absolutely immune from suit."); *Butler v. Carlisle*, 299 Ga. App. 815, 683 S.E.2d 882 (2009) (official immunity insulated public officials from personal liability).

4. The Clerk admits she has no evidence that the Council Members did not deliberate over her budget requests and that she has no evidence that the Council Members abused their discretion.

5. The Clerk's remaining claims have no merit. The law is clear that the Clerk is not a "unit of local government" and is not a "budget officer." Likewise, the

CCG cannot breach a contract with the Clerk when there was no mutuality of contract with the Clerk. Finally, the Clerk is not entitled to have this Court direct that attorney's fees expended by the CCG be re-allocated by order of the Court against the Individual Defendants.

### **STATEMENT OF UNDISPUTED FACTS**

1. The fiscal years of the CCG begin on July 1 and end on June 30 of each successive year. Fiscal years 2014 and 2015 for the CCG are over.
2. The Clerk has admitted that she has never shut down her office due to a lack of funding. (Pierce Dep., p. 191).
3. Every invoice the Clerk submitted for her office for Fiscal Years 2014 and 2015 were paid by the CCG. (*Id.*, pp. 122-24).
4. With regard to each fiscal year about which the Clerk complains, the Mayor submitted a proposed budget to Council. (*Id.*, pp. 50, 67-68, 108-09).
5. The Clerk prepared a budget request for each of these fiscal years. (*Id.*).
6. Council scheduled a hearing on the Clerk's budget requests in every year. (*Id.*).
7. The Clerk attended the Council hearing in FY 2014, but voluntarily chose not to attend the Council hearings in FY 2015 and FY 2016. (*Id.*, pp. 68-69, 108).
8. The Clerk admits that Council has the discretion to allocate funds between constitutional officers and other city departments and agencies. (*Id.*, p. 147).

9. The Clerk admits that she has no evidence that Council failed to exercise its discretion in allocating funds for her budget. (*Id.*, p. 88, 104, 107-108).
10. The only reason the Clerk believes Council did not exercise its discretion is that Council did not allocate her the money she requested. (*Id.*, p. 107).
11. The Clerk admits that Council does not have to allocate her all the money she asks for in her budget request. (*Id.*, p. 67).
12. The Clerk claims that the Individual Defendants were “harming the office” by “refus[ing] to basically provide funding to preserve the records of this county....” (*Id.*, p. 229). The Clerk has offered no evidence of actual malice.
13. No CCG Charter provision references the Clerk’s office as a separate unit of local government.
14. The Clerk admits that she cannot levy taxes, does not have the authority to issue bonds, and that she is not registered as a unit of local government with the Department of Community Affairs. (*Id.*, pp. 113-14).
15. Prior to institution of this lawsuit, the Clerk never made a claim against the CCG for breach of contract related to the Tyler Contract.
16. The Tyler Contract is between the CCG and the Clerk as the “Client” and Tyler Technologies (“Tyler”) as the “Company.” (Pierce Dep., Ex. “8”).
17. The CCG and the Clerk were co-contracting parties to the same contract. (*Id.*).

Respectfully submitted, this 25<sup>th</sup> day of January, 2016.

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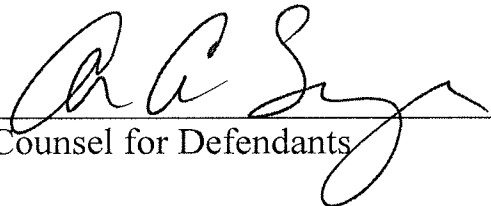
**CERTIFICATE OF SERVICE**

I do hereby certify that I am counsel for Defendants and that a true and exact copy of the foregoing document has been served upon counsel of record in the within matter by email, as follows:

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This 25<sup>th</sup> day of January, 2016.

  
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Counsel for Defendants