

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

MARITIME HOMES, LLC, MARITIME
INVESTMENTS, LLC, PALMETTO
BUILDING GROUP, LLC, and VILLAGE
HOLDINGS ASSOCIATES, LLC,

Plaintiffs,

v.

BRUNSWICK-GLYNN COUNTY JOINT
WATER AND SEWER COMMISSION,

Defendant.

CIVIL ACTION NO. CE25-00316

**PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS**

COME NOW Plaintiffs Maritime Homes, LLC, Maritime Investments, LLC, Palmetto Building Group, LLC, and Village Holdings Associates, LLC ("Named Plaintiffs") and file this Response in Opposition to Defendant's Motion to Dismiss, representing to the Court as follows:

INTRODUCTION

Defendant seeks the dismissal of Named Plaintiffs' Complaint largely on the grounds that it is entitled to sovereign immunity and such immunity has not been waived. Defendant's arguments fail under the plain language of the legislation creating the Brunswick-Glynn County Joint Water and Sewer Commission ("JWSC" or "Defendant"). This case seeks refunds on a class wide basis of taxes illegally assessed and collected by the JWSC in the form of water and sewer base charges and administrative fees (the "Base Fee"). Pursuant to its operative legislation, Defendant is provided *only* that immunity and exemption *from liability granted to Glynn County for torts and negligent acts*. Such limited grant of immunity leads to but one rational conclusion

– Defendant enjoys no more and no less immunity than Glynn County for torts and negligent acts and is consequently subject to the same waivers of immunity as the County. If JWSC enjoys only the same immunity (from tort and negligence liability) as Glynn County, it is necessarily subject to the same causes of action as Glynn County.

Despite this clear and unequivocal language, Defendant argues that it is to be treated as a county only to the extent such treatment entitles it to that broad immunity generally afforded to counties under the Georgia Constitution (and notably not just that immunity afforded to counties for liability from torts and negligent acts). However, Defendant contends, it should not be considered a county when determining whether waivers of immunity applicable to counties should likewise apply to it. Such picking and choosing is impermissible under the statutory construction rules. Defendant’s operative legislation and provision therein affording Defendant only that immunity granted to Glynn County must be read in light of all constitutional and statutory provisions both granting and waiving county immunity. Where Glynn County’s immunity has been waived, so too has Defendant’s immunity.

Particularly relevant here, Glynn County has specifically waived its immunity for class action claims under O.C.G.A. § 48-5-380 (the “Refund Statute”). Defendant, having been afforded only that immunity possessed by the County for torts and negligent acts, therefore likewise enjoys no immunity from suits seeking the refund of illegal taxes. Furthermore, declaratory and injunctive relief is appropriate to prevent Defendant from further assessing and collecting illegal taxes in the form of the Base Fee, and Defendant enjoys no immunity for claims seeking such relief as, again, Defendant enjoys only that immunity afforded to Glynn County from liability for torts and negligent acts, not actions sounding in law or equity. Defendant’s Motion to Dismiss arguing to the contrary must therefore be denied.

FACTUAL BACKGROUND

On April 19, 2006, the Governor of Georgia signed into law House Bill 1585 (Ga. L. 2006, p. 3661) (hereinafter referred to as the “JWSC Act”)¹ creating the JWSC for the general purpose of operating a unified water and sewer system to provide water and sewer services to all citizens and customers in the City of Brunswick (the “City”) and Glynn County (the “County”) utilizing the systems and assets of the City and the County. *See* JWSC Act, as amended, at § 6-7 (Complaint at Ex. E). As contemplated by the JWSC Act, the County and City entered into an Operational Agreement with JWSC, effective June 5, 2007, detailing the power of JWSC to operate a unified County and City water and wastewater system (the “Operational Agreement”), and adopted Ordinances regulating the maintenance, use, and operation of the water and wastewater systems in the City and the unincorporated areas of the County, aside from Jekyll Island.² *See* Operational Agreement, as amended (Complaint as Ex. F). Pursuant to the JWSC Act and the Operational Agreement, the service areas of the City are combined with the service areas of the unincorporated areas of the County to create a unified system of water and sewer systems under the authority of JWSC. The JWSC Act and, the Operational Agreement, Glynn County Ordinance, and City Ordinance (the “JWSC Governing Documents”) set forth the powers and duties of JWSC.

Particularly relevant to this case, the JWSC Governing Documents authorize JWSC to establish a user charge system to assess and collect sufficient funds to support its operation. Accordingly, JWSC annually establishes rates for its services under an annual rate resolution (the “Rate Resolution”). *See* Complaint, Exhibit F at § 11(c). Such rates include a mandatory base rate

¹ The JWSC Act was subsequently amended by an Act approved April 11, 2012 (Ga. L. 2012, p. 5287) as well as House Bill 1114 (2016). *See* Def. Mtn. to Dismiss at Ex. A.

² Specifically, the County adopted the Glynn County Water and Sewer Ordinance, codified in Chapter 2-16 of the Glynn County Code of Ordinances, on June 3, 2010 (the “Glynn County Ordinance”), and the City adopted the City of Brunswick Water and Sewer Ordinance on May 4, 2010 (the “City Ordinance”).

paid monthly by “every customer”. *Id.* According to JWSC, the base rate, or Base Charge and Administration Fee (“Base Fee”), is a:

fee assessed to each customer on each monthly statement for the cost to provide for the fixed expenses of [the JWSC], known in the business world as overhead costs, and encompasses any day-to-day expenses that [the JWSC] face[s] ***regardless of the amount billed for water and/or sewer operational expenses***. The administration fee is broken down into both a water and sewer component as the rates are calculated based on a total number of customers that have water but not sewer service, sewer but not water service, or both water and sewer service. Effective 7/1/18, each customer now pays a base charge that includes the cost of the first 1,000 gallons of service provided in an effort to stabilize revenue.

See Complaint, Exhibit G. Thus, JWSC assesses each and every one of its customers, such customers being the owners of real property on which a water or sewer tap is installed, the Base Fee every month regardless of whether any water or sewer service is actually provided to or utilized on the assessed property. *See* City Ordinance, §22-61(a)(1) and County Ordinance, §2-16-61 (“Every customer connected to the utility system will pay a base rate each month regardless of usage.”). Indeed, over the last five (5) years, JWSC assessed Named Plaintiffs, owners of hundreds of vacant Glynn County properties, a monthly Base Fee despite the absence of any water or sewer service at the assessed properties. *See* Complaint at ¶¶ 29-31.³

Should a property owner, such as Named Plaintiffs, fail to pay the Base Charge, interest accrues thereon, and JWSC may assess fines and place a lien against the real property for such unpaid charges, “which shall rank on a parity with and be of equal dignity to other liens for special tax assessments.” *See* City Ordinance §22-73; County Ordinance §2-16-47. Moreover, use of the unified water and sewer system is required under the County and City Ordinance as no property owner within JWSC’s service area is permitted to install or operate on its property a private well

³ The Base Fee for Fiscal Years 2019-2023 was \$7.60 per month for water and \$13.06 for Sewer. *See* Complaint at Exhibits H-L. The JWSC increased the Base Fee for Fiscal Year 2024 to \$8.10 per month for water and \$13.56 for Sewer. *See* Complaint at Exhibit M.

or sewage treatment facility, and all property owners constructing new improvements on their property must connect to the public water and sewer lines operated by JWSC within sixty (60) days after such connection becomes available to the new construction. *See* City Ordinance §22-7(a)-(b); County Ordinance §2-16-7(a)-(b).

The Base Fee therefore has all the markings of an illegally assessed tax given its mandatory and flat rate nature, application against real property and the owners thereof based on their ownership of property, purpose of raising general revenue for the operation of water and sewer services, and lack of any direct or special benefit that may inure to the payer or property taxed or the payer's contribution to the burden on JWSC. Named Plaintiffs accordingly filed a Verified Class Action Complaint on or about February 5, 2025, alleging that the Base Fee is an illegal tax and asserting the following causes of action: refund under the Refund Statute; declaratory judgment; injunction; and attorney's fees for bad faith and stubborn litigiousness. *See* Complaint, generally. In response, the JWSC filed a Motion to Dismiss arguing essentially that JWSC is entitled to sovereign immunity on all claims asserted and the Refund Statute does not apply to JWSC.

STANDARD OF REVIEW

I. Motion to Dismiss for Lack of Subject Matter Jurisdiction Under O.C.G.A. § 9-11-12(b)(1).

Sovereign immunity insulates the state and its departments and agencies from liability except to the extent that the legislature enacts a specific waiver. Ga. Const., Art. I, Sec. II, Par. IX(e). The party seeking to benefit from a waiver of sovereign immunity has the burden to establish such waiver, and should said party fail to bear this burden, the court must dismiss the complaint for lack of subject matter jurisdiction. *In re Carter*, 288 Ga. App. 276, 283, 653 S.E.2d 860, 867 (2007). “[T]he applicability of sovereign immunity is [therefore] a threshold determination, and,

if it does apply, a court lacks [subject matter] jurisdiction”, requiring dismissal under O.C.G.A. § 9-11-12(b)(1). *Atlanta Metro Leasing, Inc. v. City of Atlanta*, 353 Ga. App. 785, 788 (2020).

II. Motion to Dismiss for Failure to State a Claim Under O.C.G.A. § 9-11-12(b)(6).

A motion to dismiss for failure to state a claim should only be granted when the complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of its claims and the defendant establishes that plaintiff could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. *See Cardinale v. Westmoreland, et al.*, 2023 WL 2491898 (Ga. Ct. App. Mar. 14, 2023); *Department of Human Resources v. Crews*, 278 Ga. App. 56, 628 S.E.2d 191 (2006). In evaluating a motion to dismiss, all pleadings must be viewed in the light most favorable to the plaintiff, all well-plead allegations in the complaint must be viewed as true, and all denials set forth in the answer must be viewed as false. *See PV Holding Company v. Poe, et al.*, 360 Ga. App. 381, 382, 861 S.E.2d 265, 266 (2021). Accordingly, “it is a rare case in which a motion to dismiss for failure to state a claim, as opposed to a motion for summary judgment, will provide an appropriate procedural device for securing summary adjudication of the issues raised in a complaint”. *Radio Perry, Inc. Cox Communications, Inc.*, 323 Ga. App. 604, 610, 746 S.E.2d 670, 676 (2013) (internal citations omitted). *See also* Davis and Shulman, Ga. Practice & Procedure, §9:5 (2017-2018) (“The areas of applicability for [a motion to dismiss] are very limited and do not frequently occur.”).

ARGUMENT AND CITATION OF AUTHORITY

I. The Court may properly exercise subject matter jurisdiction in this case because JWSC's sovereign immunity has been waived and limited to only that enjoyed by the County from liability for torts and negligent acts.

While acknowledging that its enacting legislation explicitly affords it “the *same* immunity and exemption *from liability for torts and negligence as Glynn County*”, JWSC argues that its immunity is in actuality that broad sweeping immunity afforded to the State and all of its departments and agencies under the Georgia Constitution and is unaffected by those waivers of immunity applicable to Glynn County. Defendant is mistaken. JWSC is plainly allowed no greater immunity than that enjoyed specifically by Glynn County from liability for torts and negligent acts and is consequently subject to the same waivers of immunity as Glynn County. Because Named Plaintiffs allege no tort or negligent act, but instead ultra vires acts and constitutional rights violations, and seek relief pursuant to waivers of immunity applicable to Glynn County and/or JWSC, JWSC is afforded no immunity for Named Plaintiffs' claims.

A. JWSC possesses only that immunity from liability for torts and negligent acts enjoyed by Glynn County.

JWSC enjoys no broader immunity than that afforded to Glynn County from liability for torts and negligent acts. The Georgia Constitution extends “sovereign immunity...to the state and all of its departments and agencies”, including counties and cities and all other political subdivisions, departments, and agencies of the state. Ga. Const., Art. I, Sec. II, Par. IX(e); *Gilbert v. Richardson*, 264 Ga. 744, 452 S.E.2d 476 (1994). Such immunity can only be waived by the Georgia Constitution itself or an act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver. Ga. Const., Art. I, Sec. II, Par. IX(e); *Lathrop v. Deal*, 301 Ga. 408, 424–25, 801 S.E.2d 867, 879 (2017). However, “[t]his does not mean...that the Legislature must use specific ‘magic words’ such as ‘sovereign immunity

is hereby waived’ in order to create a specific statutory waiver of sovereign immunity.” *Bd. of Regents of the Univ. Sys. of Georgia v. One Sixty Over Ninety, LLC*, 351 Ga. App. 133, 137, 830 S.E.2d 503, 507 (2019). Rather, the General Assembly may impliedly waive or limit sovereign immunity by, for example, creating a right of action against the government that would otherwise be barred by sovereign immunity. *See, e.g., City of Atlanta v. Barnes*, 276 Ga. 449, 452, 578 S.E.2d 110, 113 (2003) (“[w]hen a statute provides the right to bring an action for a tax refund against a governmental body, that statute provides an express waiver of immunity and establishes the extent of the waiver (the amount of the refund)”).

When reviewing legislation granting or waiving sovereign immunity, as with any other legislation, it is axiomatic that if the relevant enactment is plain and unambiguous, the Court must give its words their plain and ordinary meaning, except for words which are terms of art or have a particular meaning in a specific context. O.C.G.A. § 1–3–1(b). Certainly, the Court must seek “to give meaning to each part of the statute and to avoid constructions which render a portion of the statute mere surplusage.” *Moritz v. Orkin Exterm. Co.*, 215 Ga. App. 255, 256–257, 450 S.E.2d 233 (1994). “[A] statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes “in pari materia,” are construed together, and harmonized wherever possible, so as to ascertain the legislative intent and give effect thereto.” *Bennett v. Wood*, 188 Ga. App. 630, 632, 373 S.E.2d 645 (1988). Finally, “[i]t is a basic rule of construction that a statute or constitutional provision should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the legislature intended that any part would be without meaning.” *Gilbert*, 264 Ga. at 747–748, 452 S.E.2d 476 (punctuation omitted).

In this case, it is clear that JWSC enjoys *some* level of sovereign immunity. Nevertheless, a review of the legislation creating JWSC and amendments thereto reveals that the General Assembly specifically *limited* JWSC's immunity to that afforded to Glynn County from liability for torts and negligent acts. As enacted in 2006, the Brunswick-Glynn County Joint Water and Sewer Commission Act, or the JWSC Act, contained no explicit immunity language but defined JWSC as a political subdivision of the State, specifically stating as follows:

There is hereby created a body corporate and politic, to be known as the Brunswick-Glynn County Joint Water and Sewer Commission, *which shall be a political subdivision of the State of Georgia* and a public corporation, and by that name, style, and title said body may contract and be contracted with, sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity. The commission shall have perpetual existence, and shall be deemed a governmental body within the meaning of the Georgia Revenue Bond Law, Article 3 of Chapter 82 of Title 36 of the Official Code of Georgia Annotated, specifically under subparagraph (2)(C) of Code Section 36-82-61.⁴

See House Bill 1585 (Ga. L. 2006, p. 3661), §2 (Complaint at Ex. E). Thus, pretermittting whether such grant was proper or even possible given the purpose, governance, and funding of JWSC, the General Assembly, by acknowledging JWSC as a political subdivision of the State, presumably intended to and did grant JWSC that level of immunity generally afforded under the Georgia Constitution "to the state and all of its departments and agencies" and subject to only those waivers applicable to the state and its departments and agencies, such as the Georgia Tort Claims Act. See Ga. Const., Art. I, Sec. II, Par. IX(e).⁵

⁴ O.C.G.A. § 36-82-61(2)(C) provides that the term "governmental body" shall also mean and include "state and local public authorities having corporate powers which have been or may hereafter be created by general, local, or special Act of the General Assembly."

⁵ "The creation of a political subdivision of the state and the extension of immunity to that subdivision is within the authority of the legislature." *Henderson v. Walton Cty. Water and Sewage Auth.*, 271 Ga. App. 192, 193 (1999) (citing *Bowen v. Columbus*, 256 Ga. 462 (1986)).

The General Assembly has, however, since amended the JWSC Act to remove the language defining JWSC as a political subdivision of the state and add a *limited* immunity provision. Indeed, the JWSC Act currently provides as follows:

There is hereby created a body corporate and politic, to be known as the Brunswick-Glynn County Water and Sewer Commission, ~~which shall be a political subdivision of the State of Georgia and a public corporation,~~ and by that name, style, and title said body may contract and be contracted with, sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity, **except that the commission and its officers, agents, and employees when in the performance of their public duties or work of the commission, shall in no event be liable for any torts or negligent acts and shall have the same immunity and exemption from liability for torts and negligence as Glynn County** and its County Commissioners, nor shall the commission be vicariously liable for any torts committed by its officers, agents, and employees. The commission shall have perpetual existence, and shall be deemed a governmental body within the meaning of the Georgia Revenue Bond Law, Article 3 of Chapter 82 of Title 36 of the Official Code of Georgia Annotated, specifically under subparagraph (2)(C) of Code Section 36-82-61.⁶

See House Bill 1114 (2016), §2 (Def. Mtn. to Dismiss at Ex. A) (deletions and additions emphasized). The JWSC Act, an act of the General Assembly, therefore specifically waives and limits the immunity presumably previously afforded to JWSC to only that immunity and exemption from liability enjoyed specifically *by Glynn County for torts and negligent acts*.⁷

While surely having the result of removing JWSC from the grasp of those waivers specific to the state and not applicable to counties, such as the Georgia Tort Claims Act, the General Assembly's amendment of the JWSC Act also clearly limited JWSC's immunity to only that

⁶ Named Plaintiffs further note that the General Assembly's removal of the provision defining JWSC as a political subdivision of the State and retention of the language defining JWSC as a body corporate public and direction that JWSC shall be deemed a governmental body within the meaning of O.C.G.A. § 36-82-61(2)(C) (*i.e.*, a state and local public authority created by general, local, or special Act of the General Assembly and having corporate powers) arguably further signals the General Assembly's intention to define JWSC as a local authority as opposed to a political subdivision of the State. See *Holmes v. Chatham Area Transit Auth.*, 234 Ga. App. 42, 45, 505 S.E.2d 225, 228 (1998) (transportation authority governed, audited, and funded locally to serve Chatham County's local transportation needs was a creature of local government and local authority, not a state government entity).

⁷ "We... presume that when enacting a statute the General Assembly meant what it said and said what it meant." *West v. City of Albany*, 300 Ga. 743, 745, 797 S.E.2d 809 (2017) (citation and punctuation omitted).

exemption from liability for torts and negligence granted to Glynn County and made applicable any waivers of Glynn County's immunity.

B. JWSC is subject to the same waivers of immunity as the County, including the waiver for tax refunds under O.C.G.A. § 48-5-380.

In the confines of the limited immunity granted to JWSC in the JWSC Act, JWSC both enjoys the benefits of the immunity provided to Glynn County and suffers the effects of all waivers of that immunity, including that waiver for tax refunds under the Refund Statute. Although JWSC encourages the Court to read the JWSC Act together with those constitutional provisions *granting* counties sovereign immunity, it argues the Court should not do the same when it comes to acts of the General Assembly specifically *waiving* that immunity. Such picking and choosing is impermissible under the rules of statutory construction. As noted previously, to ascertain the extent or amount of immunity granted to the JWSC, the JWSC Act must be “construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes “in pari materia,” are construed together, and harmonized wherever possible, so as to ascertain the legislative intendment and give effect thereto.” *Bennett v. Wood*, 188 Ga. App. 630, 632, 373 S.E.2d 645 (1988). The JWSC Act must accordingly be read in light of not only those statutes and constitutional provisions claiming to grant Glynn County sovereign immunity, but also those limiting and waiving such immunity.

Here, the JWSC Act plainly purports to grant the JWSC “the *same immunity and exemption from liability for torts and negligence as Glynn County*”. JWSC therefore possesses only that immunity enjoyed by Glynn County for torts and negligent acts. Turning to the Georgia Constitution, case law, and relevant statutory law to determine the extent of that immunity, it is beyond dispute that Glynn County enjoys sovereign immunity *limited by certain waivers*. See Ga. Const., Art. I, Sec. II, Par. IX(e) (the Georgia Constitution extends “sovereign immunity...to the

state and all of its departments and agencies”); *Gilbert*, 264 Ga. 744, 452 S.E.2d 476 (1994) (sovereign immunity extends to counties); O.C.G.A. §§ 36-92-1, *et al.*, and O.C.G.A. § 33-24-51 (waiving county sovereign immunity for losses arising out of claims for the negligent use of a motor vehicle). One such waiver appears in O.C.G.A. § 48-5-380, which affords taxpayers the right to bring an action against a county for illegal or erroneous taxes. *See Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue*, 279 Ga. 22(3), 608 S.E.2d 611 (2005); *City of Atlanta v. Barnes*, 276 Ga. 449, 452(3), 578 S.E.2d 110 (2003) (“When a statute provides the right to bring an action for a tax refund against a governmental body, that statute provides an express waiver of immunity and establishes the extent of the waiver (the amount of the refund).”). Glynn County therefore has no immunity for tax refund claims.

Construing the JWSC Act together with and in light of both the constitutional provisions granting Glynn County sovereign immunity and the acts of the General Assembly waiving that immunity, it is clear that JWSC, identical to Glynn County, enjoys sovereign immunity ***limited by certain waivers***, including, but not limited to, that waiver for tax refund claims contained in O.C.G.A. § 48-5-380. Again, the JWSC Act explicitly purports to grant JWSC only “the same immunity and exemption from liability for torts and negligence as Glynn County”. It does not contain any language whatsoever indicating that the General Assembly intended to grant JWSC more immunity than that enjoyed by Glynn County or otherwise exempt JWSC from any waivers applicable to Glynn County. Rather, it must be “presume[d] that when enacting [the JWSC Act] the General Assembly meant what it said and said what it meant” and acted with knowledge of all existing law granting and limiting Glynn County’s immunity. *West v. City of Albany*, 300 Ga. 743, 745, 797 S.E.2d 809 (2017) (citation and punctuation omitted). The General Assembly afforded JWSC “the same immunity and exemption from liability for torts and negligence as Glynn County”.

No more. No less. Because Glynn County has no immunity for claims seeking refunds for taxes illegally or erroneously assessed, neither does JWSC.

In its efforts to persuade this Court otherwise, JWSC argues that the Refund Statute does not waive its sovereign immunity because the Refund Statute is only applicable to counties and municipalities.⁸ In support of such argument, the JWSC relies on *City of Dublin Sch. Dist. v. MMT Holdings, LLC*, 346 Ga. App. 546, 547, 816 S.E.2d 494, 495 (2018), for the proposition that the Refund Statute permits a taxpayer to seek a refund only from those governmental authorities specifically listed therein – counties and municipalities. *MMT Holdings, LLC* is, however, inapposite. Unlike in the instant action, there is no indication that the City of Dublin School District’s charter contained a waiver of sovereign immunity co-extensive with the City of Dublin.⁹

⁸ Importantly, the inherent power to tax belongs to the General Assembly, and instrumentalities of the State “can only exercise the power of taxation as conferred upon it either directly by the Constitution or by the General Assembly when authorized by the Constitution.” *DeKalb Co. v. Brown Builders*, 227 Ga. 777, 778, 183 S.E.2d 367, 369 (1971) (internal citations omitted). Undeniably, the Constitution and General Assembly authorizes counties and municipalities to tax in certain specific circumstances. *See, e.g.*, Ga. Const. Art. 9, §4, ¶I. However, neither the Constitution nor the General Assembly grants entities such as the JWSC the power to tax. Indeed, the only political subdivisions of the State afforded the explicit power to levy and collect taxes are municipalities and counties. Other political subdivisions and entities must rely on their local municipality, county, or the State itself to levy and collect taxes for their benefit. *See, e.g.*, Ga. Const. Art. VIII, § 6, ¶ I(a) (directing the board of education of each school system to “annually certify to its fiscal authority or authorities a school tax not greater than 20 mills per dollar for the support and maintenance of education” and authorizing said fiscal authority or authorities to “annually levy said tax upon the assessed value of all taxable property within the territory served by said school system”); O.C.G.A. § 31-7-84(a)-(b) (noting hospital authorities “shall have no power to tax” but authorizing local governing bodies to contract with hospital authorities and levy ad valorem taxes to pay for the services and facilities of the authority used by the local governing bodies or the residents thereof).

The Refunds Statute was enacted with the General Assembly’s knowledge of those entities afforded the power to tax. Such authority being limited to the State itself, counties, and municipalities, the Refund Statute reasonably notes that it applies to counties and municipalities but, recognizing the reality that counties and municipalities often levy and collect taxes on behalf of other entities, requires that any approved refunds “be paid from funds of the county, the municipality, the county board of education, the state, or any other entity to which the taxes or license fees were originally paid.” O.C.G.A. § 45-5-380(d).

⁹ Moreover, it was not the City of Dublin Board of Education that levied and assessed the tax at issue as it lacked any power to itself levy and collect taxes. Rather, it was the City of Dublin. *MMT Holdings, LLC*, 346 Ga. App. at 546; *see also* Ga. Const. Art. VIII, § 6, ¶ I(a) (directing the board of education of each school system to “annually certify to its fiscal authority or authorities a school tax not greater than 20 mills per dollar for the support and maintenance of education” and authorizing said fiscal authority or authorities to “annually levy said tax upon the assessed value of all taxable property within the territory served by said school system”). The proper entity from which to seek a refund was therefore the City of Dublin. Recognizing as much, the taxpayer similarly sought a refund from

Rather, the Court was simply tasked with determining whether the Refund Statute on its face applied to waive a school district's sovereign immunity although the Refund Statute lists only counties and municipalities. *Id.* That is not the question presented in this case. Here, the question is whether the specific extension of a county's immunity to a newly created governmental authority (a governmental authority tasked with handling essential government functions previously provided by the county) likewise includes the extension of the county's waivers of immunity, including, but not limited to, the waiver for tax refunds under the Refund Statute. For the reasons stated above, the JWSC Act waives any such immunity and subjects JWSC to the same causes of action that can be brought against Glynn County which includes claims under the Refund Statute.¹⁰

C. The General Assembly has waived JWSC's immunity for constitutional violations.

In addition to being subject to the same waivers of immunity as Glynn County, JWSC's immunity is specifically limited to only that immunity and exemption *from liability for torts and negligence* granted to Glynn County. JWSC consequently enjoys no immunity for ultra vires acts and constitutional violations. Here, although primarily seeking relief under the Refund Statute, the basis for Named Plaintiffs' claims stems not from some tortious or negligent act, but from JWSC's

the City of Dublin, and the Court of Appeals made clear that "nothing in [its] opinion [was] intended to address [the taxpayer's] claims against the City..." *Id.* at 548. *See also Atlanta Board of Education v. City of Atlanta*, 262 Ga. 15 (1992) (recognizing City of Atlanta's claim against Atlanta Board of Education for restitution of refunds paid to taxpayer which had been collected by City on behalf of school board). This reasoning or alternative refund action against the County or City has no application here as it was JWSC that levied the tax at issue, not the County or City.

¹⁰Georgia Courts have recognized that the Refund Statute is applicable to governing entities expressly granted a county's immunity, such as consolidated governments, despite consolidated governments not being explicitly mentioned there in the text of the Refund Statute. *See, e.g., Homewood Associates, Inc., et al. v. Unified Government of Athens-Clarke County*, Superior Court of Athens-Clarke County, State of Georgia, Case Nos. SU16CV0845-SW, SU17CV1134 (on appeal to Supreme Court of Georgia, 2025 WL 1270346); *Pinkston v. Cnty. of Macon-Bibb, Georgia*, 2024 WL 532313, at *2 (M.D. Ga. Feb. 9, 2024) (recognizing applicability of the Refund Statute to consolidated government Macon-Bibb despite the absence of the words "consolidated government" therein). Clearly, both cities and counties are subject to the Refund Statute. Where a government entity is created by a city and county, such as a unified government or JWSC, to discharge the duties of the city and county and afforded the same immunity granted to counties generally, such entity must be subject to the same waivers of immunity as the county, including the Refund Statute.

failure to adhere to the Constitution’s command that “[t]axation on all real and tangible personal property subject to be taxed is required to be ad valorem”. *Hutchins, et la. v. Howard, et al.*, 211 Ga. 830, 89 S.E. 2d 183, 186 (1955). *See also* Ga. Const. Art. VII, § I, ¶¶ I, III. Furthermore, Named Plaintiffs contend that JWSC lacks any legal authority to levy taxes. *See Lane v. Mayor & Council of City of Unadilla*, 154 Ga. 577, 114 S.E. 636 (1922) (“The burden is upon every political division of the state, which demands taxes from the people, to show the authority to exercise it in the manner in which it has been imposed.”); *Bellsouth Telecommunications, LLC v. Cobb Cnty.*, 305 Ga. 144, 152, 824 S.E.2d 233, 240 (2019) (citing *City of Atlanta v. Gower*, 216 Ga. 368, 370, 116 S.E.2d 738 (1960) (“Such authority must be ‘plainly and unmistakably granted by the State[.]’”). Named Plaintiffs therefore allege that JWSC, acting ultra vires, is illegally taxing its customers in violation of the Georgia Constitution, specifically, the Uniformity of Taxation, Due Process, and Equal Protection Clauses of the Georgia Constitution.¹¹ *See* Ga. Const. Art. I, § I, ¶¶ I-II; Art. VII, § I, ¶ III (“All taxes shall be levied and collected under general laws and for public purposes only...all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.”); Ga. Const. Art. VII, §II, ¶ I (“Except as authorized in or pursuant to this Constitution, all laws exempting property from ad valorem taxation are void.”).

JWSC, by the plain terms of its creating legislation, is afforded no immunity for such ultra vires acts and constitutional violations. Accordingly, Named Plaintiffs’ claims seeking relief for JWSC’s illegal assumption of the authority to tax and violation of Named Plaintiffs’ constitutional rights are not barred by sovereign immunity.

¹¹ To further clarify that they seek relief for JWSC’s violation of their constitutional rights, Named Plaintiffs have this day filed an Amended Complaint explicitly including counts seeking relief under the Due Process and Equal Protection Clauses of the Georgia Constitution and alleging a violation of the Uniformity Clause.

D. The General Assembly has waived JWSC's immunity for actions seeking declaratory judgment and injunctive relief.

JWSC likewise enjoys no immunity for Named Plaintiffs' claims for declaratory and injunctive relief as the General Assembly specifically limited JWSC's immunity to only that immunity and exemption from liability for torts and negligence granted to Glynn County. Named Plaintiffs' request for declaratory judgment is considered an action at law, and their claims for injunctive relief sound in equity. Neither involves tort liability. *See GeorgiaCarry.org v. Atlanta Botanical Garden, Inc.*, 299 Ga. 26, 30–31, 785 S.E.2d 874, 878 (2016) (“The Declaratory Judgment Act provides a means by which a superior court ‘simply declares the rights of the parties or expresses [its] opinion ... on a question of law, without ordering anything to be done.’”) (citing *Baker v. City of Marietta*, 271 Ga. 210, 213(1), 518 S.E.2d 879 (1999)); *Spinner v. City of Dallas*, 292 Ga. App. 251, 252, 663 S.E.2d 815, 816 (2008) (“Injunction is distinctly an equitable remedy”); *Danos v. Thompson*, 272 Ga. App. 69, 72, 611 S.E.2d 678, 680 (2005) (“Equity permits a court to enjoin an act which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.”) (citation and punctuation omitted). JWSC, by the plain terms of its creating legislation being afforded only that immunity and exemption from liability for torts and negligent acts as granted to Glynn County, consequently enjoys no immunity from actions seeking declaratory or injunctive relief and Named Plaintiffs' claims seeking such relief are not barred by sovereign immunity.

II. Named Plaintiffs' claims for refunds and other non-monetary relief may be compelled by way of equity, injunction, and declaratory relief.

Lastly, JWSC argues Named Plaintiffs' claim for declaratory relief must be dismissed for failure to allege a justiciable controversy. JWSC, however, misunderstands the relief sought. Named Plaintiffs seek a declaration that the Base Fee is an illegal tax and a corresponding

injunction preventing its future assessment and collection. Pursuant to O.C.G.A. § 9-4-1 *et seq.*, the Declaratory Judgment Act gives this Court the power “to declare rights and other legal relations of any interested party in ‘cases of actual controversy’ ...and ‘in any civil case in which it appears to the court that the ends of justice require that the declaration should be made.’” *Leitch v. Fleming*, 291 Ga. 669, 670, 732 S.E.2d 401, 403 (2012) (citing O.C.G.A. §§ 9–4–2(a), (b)). “To state a claim for declaratory judgment, a party need only allege the existence of a justiciable controversy in which future conduct depends on resolution of uncertain legal relations.” *Cobb County v. Floam*, 319 Ga. 89, 97 (2), 901 S.E.2d 512 (2024) (citation and punctuation omitted).

Named Plaintiffs have alleged a justiciable controversy. As stated in the Complaint, JWSC continues to assess its customers the Base Fee, an alleged illegal tax, month after month, and every month Named Plaintiffs are uncertain as to whether they are required to pay the Base Fee in light of its alleged illegality. *See* Complaint at ¶ 22. Should Named Plaintiffs fail to pay the Base Fee, they will be subject to fines, interest, and the imposition of a lien against their real property. *Id.* at ¶ 36; County Ordinance §2-16-47; City Ordinance §22-47. Thus, every month Named Plaintiffs are forced to make an impossible decision – pay a fee they allege is in actuality an illegal tax or refuse payment and risk JWSC imposing further penalties and filing a lien against and foreclosing on their property.

Resolution of this issue is the proper subject of a declaratory judgment. Indeed, it has long been noted by the Courts of this State that “[e]quity has jurisdiction to interfere on behalf of a taxpayer and to enjoin the collection of alleged taxes which have not been assessed in accordance with the law, and therefore are not in fact taxes, although erroneously so called.” *Blackmon v. Ewing*, 231 Ga. 239, 240, 201 S.E.2d 138, 140 (1973) (citation omitted). That is precisely what Named Plaintiffs ask the Court to do here – declare the Base Fee an illegal tax, assure Named

Plaintiffs they are not legally obligated to pay it and may refuse payment in the future without risk of penalty, and enjoin its future collection. Declaratory and injunctive relief are therefore proper and necessary in this case to direct the future conduct of Named Plaintiffs, and dismissal of such claims at this stage is unwarranted.

CONCLUSION

Pursuant to its operative legislation, Defendant is provided only that immunity and exemption from liability granted to Glynn County, Georgia for torts and negligent acts. Defendant therefore enjoys no more or no less sovereign immunity than Glynn County for torts and negligent acts and is subject to the same waivers of immunity as the County. Glynn County has specifically waived its immunity for class action claims under the “Refund Statute” seeking refunds for illegal taxes. Defendant therefore likewise enjoys no immunity for such claims. Moreover, Defendant is afforded no immunity for claims asserting constitutional violations, involving actions at law, or sounding in equity, such as claims seeking declaratory or injunctive relief. For the foregoing reasons, Defendant’s Motion to Dismiss must be denied.

Respectfully submitted this 4th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing NAMED PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS upon all parties to this matter by electronically by filing the original with the Clerk of Court through Odyssey eFileGA, and via electronic service to their attorney of record as follows:

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This 4th day of June, 2025.

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