THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Circuit Court Cases No. 2019-CP-10-00846, -02131, and -02539

Court of Appeals Case No. 2019-000903
Opinion No. 5966 (S.C. Ct. App. filed February 1, 2023)

Supreme Court Case No. 2023-000778

City of Charleston,

Petitioner,

v.

City of North Charleston and Millbrook Plantation, LLC,

Respondents.

and

Millbrook Plantation, LLC

Plaintiff,

v.

City of Charleston,

Defendant.

and

City of Charleston,

Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC

Defendants.

CITY OF CHARLESTON'S PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

By and through its undersigned counsel, pursuant to Rule 242(d)(1), SCACR, Petitioner, the City of Charleston ("Charleston"), certifies that the Court of Appeals filed its opinion in this matter on February 1, 2023 (the "Subject Opinion"); that Petitioner timely petitioned the Court of Appeals for rehearing; and that the Court of Appeals denied Petitioner's petition for rehearing by order filed April 14, 2023.

INTRODUCTION

This appeal concerns contests to two annexation ordinances enacted by Respondent the City of North Charleston ("North Charleston") pursuant to S.C. Code Ann. § 5-3-150(3), known as the "100% Annexation Method." The first ordinance was introduced on December 21, 2017 ("2017 Ordinance"). The second ordinance was introduced on March 15, 2018 ("2018 Ordinance").

The 2017 Ordinance included in the area subject to the annexation a parcel of land (the "Millbrook Parcel") owned by Respondent Millbrook Plantation, LLC ("Millbrook"). The description of the Millbrook Parcel in the 2017 Ordinance, as well as the sketches of the tract utilized for the annexation, showed its boundaries as extending to, and running along, the northernmost boundary of SC Highway 61. Since 2005, however, a portion of the Millbrook Parcel, specifically, a 100-foot-wide strip running along the northernmost boundary of SC Highway 61, had been within Charleston's corporate limits. Upon discovering the error, North Charleston introduced and ultimately enacted the 2018 Ordinance in an attempt to cure the defect of the 2017 Ordinance.

Prior to the 2017 and 2018 Ordinances being introduced or acted upon, however, Charleston, on December 19, 2017, had already commenced annexation proceedings pursuant to

S.C. Code Ann. § 5-3-15(1), known as the "75% Annexation Method" (the "Charleston Annexation"). Part of the area subject to the Charleston Annexation included the remainder of the Millbrook Parcel, the property North Charleston now claims was the only portion of the tract it sought to annex.

The circuit court rejected Charleston's challenge to the 2017 and 2018 Ordinances for lack of standing. Most respectfully, the Court of Appeals erred in affirming the circuit court via the Subject Opinion, overlooking and/or misapprehending a number of material points, and this Court should issue a writ of certiorari and correct such error, because this matter implicates important issues of public policy that require proper adjudication to provide clarity and guidance to annexation jurisprudence.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in affirming the circuit court's dismissal of Charleston's challenges to the 2017 and 2018 Ordinances for lack of standing?

A. Did the Court of Appeals err in affirming the circuit court where the circuit court erred in concluding that this Court has declined to adopt the prior jurisdiction doctrine?

B. Did the Court of Appeals err in affirming the circuit court where the circuit court erred in dismissing Charleston's claims because Charleston had standing to assert that the prior jurisdiction doctrine applies?

C. Did the Court of Appeals err in affirming the circuit court where the circuit court erred in denying standing to Charleston where Charleston asserted infringement of its proprietary interests and statutory rights?

1. Did the Court of Appeals err in affirming the circuit court where the circuit court misinterpreted the general standing framework in the context of annexation challenges?

2. Did the Court of Appeals err in affirming the circuit court where the circuit court misread *St. Andrews* as limiting

standing to challenge a 100% annexation to the state of South Carolina?

3. **Did the Court of Appeals err in affirming the circuit court where the circuit court misinterpreted *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights?**

4. **Did the Court of Appeals err in affirming the circuit court where the circuit court erred in finding Charleston lacked standing to challenge the 2017 and 2018 Ordinances, both of which infringe upon Charleston's proprietary interests or statutory rights?**

D. **Did the Court of Appeals err in affirming the circuit court where the circuit court erred in interpreting the 2017 Ordinance to annex only property outside Charleston's municipal limits?**

E. **Did the Court of Appeals err in affirming the circuit court where the circuit court erred in construing Charleston's allegations in a light most favorable to Millbrook?**

STATEMENT OF THE CASE

This appeal arises from three consolidated actions challenging cross-annexations by Charleston and North Charleston of the Millbrook Parcel.[1]

The Millbrook Parcel consists of approximately 31 acres of real property located on SC Highway 61, also known as Ashley River Road, in Charleston County, South Carolina. (R. pp. 44–45 ¶ 4, pp. 109–110 ¶ 4.) In 1998, the General Assembly designated this portion of Highway 61, which dates back to colonial times, as a South Carolina Scenic Byway, subjecting it to the rules and regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee for Scenic Byways, pursuant to S.C. Code Ann. §§

[1] These actions are individually designated as Cases Nos. 2018-CP-10-00846 ("*Millbrook I*"), 2018-CP-10-02131 ("*Millbrook II*"), and 2018-CP-10-02539 ("*Millbrook III*"). On December 19, 2018, the circuit court consolidated them for all purposes. (R. pp. 38–39.)

57-3-110 and 57-23-60. *See* S.C. Code Ann. § 57-23-230(A).

On May 10, 2005, Charleston adopted Ordinance No. 2005-093 (the "2005 Ordinance"), which annexed the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45 ¶ 9, p. 111 ¶ 14.) There is no dispute that the 2005 Ordinance included the portion of the Millbrook Parcel lying within 100 feet of Highway 61. (R. p. 45 ¶ 5, p. 50 ¶ 5, p. 111 ¶ 14, pp. 119–120 ¶ 14, p. 141 ¶ 5.) No party has ever challenged the validity of the 2005 Ordinance.

Charleston commenced the annexation of the remainder of the Millbrook Parcel (i.e., the Charleston Annexation) on December 19, 2017, by accepting an annexation petition under the 75% Annexation Method authorized by § 5-3-150(1) and ordering the statutorily-required public hearing. *See* S.C. Code Ann. § 5-3-150(1)(6) ("not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing . . . ."). (R. p. 45 ¶¶ 10–11, p. 111 ¶¶ 15-16.)

On December 21, 2017, North Charleston gave first reading to the 2017 Ordinance to annex the Millbrook Parcel under the auspices of the 100% Annexation Method in § 5-3-150(3). (R. p. 46 ¶ 14, p. 112 ¶ 19.) On December 28, 2017, North Charleston adopted the 2017 Ordinance. (R. p. 46 ¶ 15, p. 112 ¶ 20.) The 2017 Ordinance describes the property annexed as commencing in the middle of the Ashley River at the corporate limits of North Charleston, eventually extending as follows:

> [I]n a generally southwesterly direction a distance of 1,928 feet along the westernmost property line of the parcel designated TMS 361-00-00-006 to Point C, which point is at the intersection of the southwesternmost corner of parcel designated TMS #301-00-00-006 [sic] with the northernmost right-of-way line of Ashley River Road; thence, in a generally southeasterly direction a distance of 733 feet along the southwesternmost property line of parcel designated TMS #361-00-00-006 which is also along the northernmost right-of-way of Ashley River Road to Point D . . . .

(R. pp. 12–15, pp. 303–306 (emphasis added).) The description clearly includes 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River Road. (R. pp. 304–305.) As a result, the description includes the portion of the Millbrook Parcel lying within 100 feet of SC Highway 61, annexed by Charleston in 2005. (R. pp. 303–306.)

On January 23, 2018, Charleston held a public hearing on, and gave first reading to, its annexation ordinance with respect to the portion of the Millbrook Parcel lying outside Charleston's then-existing corporate limits (the "Charleston Ordinance"). (R. p. 46 ¶ 12, p. 111 ¶ 17.) On April 10, 2018, Charleston adopted the Charleston Ordinance. (R. p. 111 ¶ 18.)

In the meantime, on March 15, 2018, North Charleston gave first reading to the 2018 Ordinance, purporting to amend or clarify the 2017 Ordinance by removing the portion of the Millbrook Parcel annexed by Charleston under the 2005 Ordinance. (R. pp. 307–309.) On March 22, 2018, North Charleston adopted Ordinance No. 2018-017, i.e., the 2018 Ordinance. (R. p. 113 ¶ 37.) The 2018 Ordinance includes recitals based upon the following summary explanation, in pertinent part:

> The City of North Charleston recently annexed Parcel TMS #361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel, 361-00-00-0061. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of any another City. The attached ordinance would amend Ordinance 2017-083 to make the boundaries consistent with this intent and consistent with the now corrected County data.

(R. p. 17 (emphasis added).)

By the time North Charleston took these actions, Charleston had not only accepted the annexation petition for the Millbrook Parcel and ordered a public hearing, but had also held the required public hearing and given first reading to the Charleston Ordinance. (R. p. 114 ¶ 40.)

On February 15, 2018, Charleston filed a notice of intent in *Millbrook I* to contest the 2017 Ordinance. (R. pp. 40–41.) The following day, Charleston served and filed the notice of intent with North Charleston's Clerk of Council. (R. pp. 40–41, p. 46 ¶ 17.)

On March 27, 2018, Charleston filed the summons and complaint in *Millbrook I*, asserting that the 2017 Ordinance was invalid because (1) the 2017 Ordinance illegally included property annexed by Charleston in 2005, and (2) Charleston took the first step to annex the remainder of the property before North Charleston, entitling Charleston to proceed with its annexation without interference from North Charleston. (R. p. 45 ¶ 5, 46 ¶ 16, pp. 46–47 ¶ 19.)

On April 24, 2018, Millbrook filed a notice of intent, summons, and complaint in *Millbrook II*, challenging the Charleston Ordinance annexing the balance of the Millbrook Parcel, a portion of which had already been annexed by Charleston in 2005. (R. pp. 85–99.)

On May 18, 2018, Charleston filed a notice of intent, summons and complaint in *Millbrook III*, challenging the 2018 Ordinance attempting to amend or clarify the property previously annexed by North Charleston by omitting territory annexed by Charleston in 2005. (R. pp. 105–117.) Charleston alleged in *Millbrook III* that it had obtained prior jurisdiction over the Millbrook Parcel "by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing the Millbrook Parcel into the City prior to North Charleston's beginning the process of passing [the 2018 Ordinance]." (R. p. 114 ¶ 40.) Charleston also alleged that the 2018 Ordinance could not "cure" the substantive defect

regarding the legal description of the area purportedly annexed under the 2017 Ordinance. (R. p. 114 ¶¶ 38–39.)

On October 4, 2018, Millbrook moved to dismiss *Millbrook I* and *Millbrook III*, arguing that Charleston lacked standing to challenge the annexations. (R. pp. 144–147.) On October 24, 2018, the circuit court held a hearing on Millbrook's motions and took them under advisement. (R. pp. 196–243.)

On March 1, 2019, the circuit court entered an order granting Millbrook's motion to dismiss (the "Order"). (R. pp. 1–18.) Charleston received written notice of entry of the Order on March 4, 2019. (R. p. 182.) On March 5, 2019, the circuit court refiled the same order (the "Refiled Order"), and Charleston received written notice of entry of the Refiled Order on March 6, 2019. (R. pp. 19–36, p. 182.)

On March 14, 2019, Charleston served a notice of motion and motion to alter, amend, and reconsider the Order and the Refiled Order. (R. pp. 181–195.) On May 1, 2019, the circuit court entered an order denying Charleston's motion. (R. p. 37.)

This appeal (of the Order, the Refiled Order, and the order denying Charleston's motion to alter, amend or reconsider) timely followed by notice served and filed May 24, 2019,[2] and in due course, it was briefed and made ready for decision. Following oral argument on October 11, 2022, the Court of Appeals decided the appeal on February 1, 2023, via the Subject Opinion, affirming the circuit court. As certified above, the Court of Appeals denied Charleston's timely petition for rehearing on April 14, 2023.

This petition for a writ of certiorari timely follows.

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[2] (R. pp. 314–317.)

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). "A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

ARGUMENT

I. The Court of Appeals erred in affirming the circuit court's dismissal of Charleston's challenges to the 2017 and 2018 Ordinances for lack of standing.

A. The Court of Appeals erred in affirming the circuit court where the circuit court erred in concluding that this Court has declined to adopt the prior jurisdiction doctrine.

Before North Charleston gave first reading to either the 2017 Ordinance or the 2018 Ordinance, the City Council of Charleston had, in accordance with § 5-3-150(1), already accepted a petition to annex the portion of the Millbrook Parcel not annexed by Charleston in 2005 and ordered a public hearing on the matter. (R. p. 17, p. 111 ¶¶ 15–16, p. 112 ¶ 19, p. 113 ¶ 37.) Charleston pled these acts as entitling Charleston to complete the annexation without interference from North Charleston under the common law "prior jurisdiction doctrine," also called the "prior pending proceedings rule." (R. p. 45 ¶ 5, p. 46 ¶ 16, p. 47 ¶ 19.b, p. 114 ¶ 40, p. 115 ¶ 46.a.)

The circuit court disagreed, holding: "The Supreme Court of South Carolina has declined to adopt this rule as the law in this state, and this court likewise declines." (R. pp. 28–29.) This holding is erroneous, as this Court has not declined to adopt the prior jurisdiction doctrine. It merely found the doctrine was not applicable to the case then before it.

"The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) (emphasis added), citing 1 Antieau *Municipal Corporation Law* § 1A.16 (1993); 2 McQuillan *Municipal Corporations* § 7.22A (1966). The *Irmo* Court declined to address Irmo's argument in favor of the doctrine because Irmo failed to commence a valid annexation proceeding before Columbia:

> We decline to reach the issue of whether the 'prior pending proceedings' rule should be adopted by this Court . . . . Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31.

Id. at 196, 447 S.E.2d at 857 (emphasis in original). At the very least, the erroneous reading of *Irmo* (by the circuit court, which the Court of Appeals erroneously affirmed) warrants reversal to consider whether and under what circumstances the prior jurisdiction doctrine should apply.

In affirming the circuit court, the Court of Appeals overlooked and/or misapprehended the reason that this Court determined not to reach the issue of the efficacy of the prior pending proceedings doctrine in *Irmo.* Again, the *Irmo* Court did not *reject* the prior pending proceedings rule, but rather simply declined to *reach* the issue because the circumstances of *Irmo* where such that the *Irmo* Court did not need to reach the issue to decide the case. In particular, the *Irmo* Court declined to address Irmo's argument for the adoption of the rule because the record there did not show that Irmo had commenced a valid annexation proceeding before

Columbia.

In stark *contrast* to the instant case, the record in *Irmo* suggested flaws in Irmo's annexation, with the *Irmo* Court noting that Irmo had not refuted the alleged flaws and thus could not claim it had instituted valid legal proceedings. That fact served as the basis of the *Irmo* Court's determination not to reach the issue of the prior pending proceedings rule. Here, however, the sole issue is Charleston's standing. There is no contention, much less any showing, that the Charleston Ordinance was invalid or illegal. Most respectfully, the Court of Appeals (like the circuit court) overlooked and/or misapprehended this material distinction between *Irmo* and the instant case.

B. The Court of Appeals erred in affirming the circuit court where the circuit court erred in dismissing Charleston's claims because Charleston had standing to assert that the prior jurisdiction doctrine applies.

The issue of whether, and to what extent, the prior jurisdiction doctrine should be recognized in South Carolina is novel. "In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court." *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 656 (2006). The Court of Appeals should have tackled the issue, for reasons of sound public policy, and most respectfully, this Court should do the same.

"The rule that among separate equivalent proceedings relating to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted, applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory." 2 McQuillin, *Municipal Corporations* § 7.39 (3d ed. 2006). "In proceedings of this character, while the one first commenced is pending, jurisdiction to consider and determine others concerning the same

territory is excluded." *Id.* "Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity." *Id.*

"This principle of the common law is based upon the general public policy of the promotion of orderly administration of government and justice." *Id.* "Thus, the first of two or more annexation proceedings prevails over those subsequently commenced relating to the same territory." *Id.* "The jurisdictional priority based on priority in time ordinarily is determined by the time of commencement or initiation of the proceedings, and not by the time of completion, nor by another time or date." *Id.* "The taking of the first mandatory public procedural step in the statutory process for incorporation or annexation of territory ordinarily fixes the date of the commencement of the proceedings, for the purpose of the rule as to jurisdictional priority." *Id.*; *see also Lincolnshire v. Highbaugh Realty Co.*, 278 S.W.2d 636, 637 (Ky. 1955) ("It seems to be the general rule that in the case of rivalry between two annexing municipalities the one that takes the first 'public' procedural step takes priority.").

In *City of Burlington v. Town of Elon College*, 314 S.E.2d 534 (N.C. 1984), the Supreme Court of North Carolina applied the prior jurisdiction doctrine under facts practically identical to those in the present case. The City of Burlington had taken the "first mandatory public procedural step" to annex certain real property by adopting a resolution of its intent under the North Carolina procedures for involuntary annexations. *Id.* at 537. The Town of Elon College then commenced several voluntary annexations of some of the same territory. *Id.* Elon College concluded its annexations before Burlington. *Id.* at 536.

Under the prior jurisdiction doctrine, the Supreme Court of North Carolina concluded that Burlington had jurisdiction to complete its involuntary annexation without interference from

Elon College. *Id.* at 537. The Court explained: "[T]he prior jurisdiction rule is the majority rule and is applied 'universally' in 'conflicts between two municipalities attempting to assert jurisdiction over the same territory.'" *Id.* at 537, quoting *Comment, Municipal Corporations: Prior Jurisdiction Rule*, 7 W.F.L. Rev. 77, 79 (1970). The Court continued:

> [I]n cases where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. We believe adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of our annexation statutes.

Id. at 538.

"The prior jurisdiction rule applies where the proceedings are equivalent." 2 McQuillin, *Municipal Corporations* § 7.39 (3d ed. 2006). In *Burlington*, the Court rejected Elon College's argument that the prior jurisdiction doctrine should not apply because Burlington's involuntary annexation and Elon College's voluntary annexations were not "equivalent" proceedings:

> For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are 'equivalent proceedings,' and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the *involuntary* annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes.

Id. at 538 (emphasis in original).

Courts and commentators overwhelmingly endorse the prior jurisdiction doctrine in the context of annexation litigation. And not without good reason. "Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings." *Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule*, 63 N.C.L. Rev. 1260, 1265 (Aug. 1985). "Because the prior jurisdiction rule

looks to the time of commencement rather than to the time of completion of proceedings, it guarantees that the first annexation proceedings begun will not be undermined by subsequently initiated plans." *Id.* at 1265-66. "Thus, the rule ensures predictability and eliminates the incentive for a rush to the finish line." *Id.* at 1266.

The prior jurisdiction doctrine affords protection to a municipality taking the first public procedural step toward annexation. It ensures that municipal annexations result from thoughtful decisions, made by informed councils, after considering the impact of an annexation on the municipality's comprehensive plan, existing facilities, and its residents. It promotes order in the workings of government. *See* 63 N.C.L. Rev. at 1267 ("Although none of the alternatives . . . is without drawbacks, the policy statements and the universal acceptance of the prior jurisdiction rule suggest widespread agreement that proceedings first begun are more likely to be well conceived than those subsequently begun.").

To eschew the rule will invite competing municipalities to "race to the finish line." *Cf. Lincolnshire*, 278 S.W.2d at 637 ("It is contended by the appellants that neither party has actually annexed the territory until all procedural steps toward that end have been taken, and, as a consequence, the municipality which gets there 'firstest with the mostest' should be the victor. But the true rule to apply appears to be to the contrary."). "A rule declaring as the winner the first municipality to *complete* its proceedings would only encourage North Carolina municipalities to rush annexation proceedings in order to thwart the success of other proceedings begun earlier." 63 N.C.L. Rev. at 1265 (emphasis in original).

Such a practice would discourage municipalities from investing the necessary time and resources to evaluate an annexation and would promote "jurisdiction shopping" by those seeking to obtain, and the government willing to give, maximum development rights. "Individuals are

more likely to resist annexation because of personal grievances or fears about a neighboring municipality and to seek annexation by one municipality solely to prevent annexation by another . . . ." 63 N.C.L. Rev. at 1266. "In doing so individuals probably will not consider either the likely impact of annexation on an entire urban area or whether one municipality is better equipped than another to extend municipal service to an annexed area." 63 N.C.L. Rev. at 1266-67.

Such a practice would also create a disincentive for municipalities to plan for adequate public facilities, increased population densities, and intensification of uses. *See* 63 N.C.L. Rev. at 1265 ("Such a rule should ensure that annexation proceedings are predictable and orderly and that the better conceived plan, which furthers the interests of the greatest number of persons in an urban area, prevails.").

On the other hand, the prior jurisdiction doctrine is in keeping with the General Assembly's mandate for comprehensive planning in the field of local government planning and land development, as set out in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, codified in Chapter 29 of Title 6 of the South Carolina Code. *See, e.g.,* S.C. Code Ann. § 6-29-510 (instructing local planning commissions to "develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction," based on "surveys and studies," including "an inventory of exiting conditions," "a statement of needs and goals," and "implementation strategies").

As applied here, Charleston is entitled to assert protection under the prior jurisdiction doctrine because Charleston took the first mandatory public procedural step of accepting an

annexation petition and calling for the statutorily required public hearing before North Charleston did anything. *Cf. Sherman v. Reavis*, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979) ("An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.").

Charleston is also entitled to the protection of the rule because Charleston gave first reading and held a public hearing on its annexation of the remainder of the Millbrook Parcel prior to North Charleston commencing any *valid* legal proceedings to annex the same territory. *See City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("Here, there is no showing that Irmo commenced *valid legal* proceedings prior to the effective date of City's Ordinances 90-30 and 90-31." (emphasis in original)); *Bostick v. Beaufort*, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive defect" that may not be corrected through a subsequent ordinance). As discussed *infra,* the 2018 Ordinance, passed after Charleston had accepted a petition to annex the remainder of the Millbrook Parcel, held a public hearing on the annexation, and given first reading to its annexation ordinance, could not cure the defects of the 2017 Ordinance.

The circuit court did not address how and when the prior jurisdiction rule should apply, having erroneously concluded that this Court had refused to adopt the rule, and the Court of Appeals followed suit, erroneously affirming the circuit court. Charleston respectfully urges the adoption of the rule and its application to the facts of this case. At the very least, the circuit court's order should have been reversed and the matter remanded, either with instructions to consider the novel issues associated with applying the prior jurisdiction rule or with instructions

clarifying when and to what extent the rule applies, with the instructions also directing the circuit court to consider whether any facts need to be developed further before rendering a final judgment on the issue. *See McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 196, 743 S.E.2d 843, 849 (Ct. App. 2013) ("The trial court failed to consider whether this case posed a novel issue and whether the facts should have been developed further.").

C. The Court of Appeals erred in affirming the circuit court where the circuit court erred in denying standing to Charleston where Charleston asserted infringement of its proprietary interests and statutory rights.

Charleston alleges that the 2017 and 2018 Ordinances infringe on its "proprietary interests or statutory rights" because the 2017 Ordinance included lands already in Charleston and because the 2018 Ordinance could not cure the substantive defect contained in the 2017 Ordinance. (R. p. 45 ¶ 5, p. 46 ¶ 16, pp. 46–47 ¶ 19, p. 110 ¶¶ 5 & 10, p. 111 ¶ 11, p. 115 ¶¶ 44 & 46.)

The circuit court limited standing to the State of South Carolina to contest 100% annexations, ignoring well-recognized precedent that parties such as Charleston have standing to challenge annexations infringing upon their proprietary interests or statutory rights. It is also axiomatic that a municipality has standing to challenge the annexation of property already lying within such municipality's corporate limits, and Charleston asserted a number of statutory rights that are infringed by the 2017 and 2018 Ordinances. Most respectfully, the Court of Appeals should have found that the circuit court's ruling that Charleston lacked standing to assert a violation of these rights was erroneous and should be reversed.

1. The Court of Appeals erred in affirming the circuit court where the circuit court misinterpreted the general standing framework in the context of annexation challenges.

The circuit court held Charleston lacked standing to contest the 2017 and 2018 Ordinances because, unlike the statute authorizing the 75% Annexation Method and listing who may challenge such an annexation, the statute authorizing the 100% Annexation Method does not accord standing to specific parties. The circuit court relied on this Court's decision in *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991), in reaching this conclusion. (R. pp. 6–8.) The circuit court misconstrued *Quinn*.

The *Quinn* Court held that none of the parties had standing to challenge the annexation as owners of property within the area annexed. *See Quinn*, 303 S.C. at 407, 401 S.E.2d at 166 ("It is undisputed that none of the Respondents own real property in the annexed portions of the Subdivision and, therefore, lack standing under § 5-3-150(3)."). However, nothing in *Quinn* suggests that any other basis for standing was offered, and appellate courts do not address questions which have never been raised. *Cf. Langley v. Boyter*, 284 S.C. 162, 181-82, 325 S.E.2d 550, 561 (Ct. App. 1984) ("The question here before us has never been answered because it has never been asked.").

The standing issue in *Quinn* turned, not on statutorily-accorded standing under the 100% Annexation Method, but on whether the challenged annexation was of such public importance so as to imbue standing to other interested parties—often designated as "non-statutory" parties or "strangers" to the annexation. *Quinn* acknowledged that, unless an ordinance was absolutely void, it was not subject to challenge by private individuals, *i.e.*, non-statutory parties, who were "strangers" to the annexation. *Id.* at 407, 401 S.E.2d at 166. As the challengers in *Quinn*

contested the method of annexation, but did not contend the ordinance was unauthorized by law, the *Quinn* Court held that they did not establish standing:

> Similarly, we reject the contention that the matter is of such public importance as to confer standing. Generally, unless an annexation ordinance is "absolutely void", i.e., *not authorized by law,* private individuals may not challenge its validity. *See, Annot.* 13 A.L.R.2d 1279, 1292 (1950).
>
> Here, although Respondents challenge the *method* of annexation in seeking to have it declared void, they raise no claim that it was unauthorized by law. Accordingly, we find that Respondents lack standing to challenge the ordinance.

Id. at 407, 401 S.E.2d at 166-67 (emphasis in original).

Post-*Quinn* case law repeatedly confirms that standing to challenge a 100% Annexation is accorded to those who can allege the annexation infringes on their own "proprietary interests or statutory rights." *See County of Lexington v. Columbia*, 303 S.C. 300, 300, 400 S.E.2d 146, 147 (1991) ("Absent an issue of overriding public concern, a political subdivision must establish it is a real party in interest in order to maintain a suit . . . . It must allege an infringement of its own propriety interests or statutory rights to establish standing."); *State v. City of Columbia*, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992) ("In [*Quinn* and *Lexington*] we held that the challenging party must assert an infringement of its own proprietary interests or statutory rights in order to establish standing under statutory provisions governing challenges to the one hundred percent landowner petition method of annexation."); *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000) ("A party may ask the court to declare his or her statutory or proprietary rights affected by the annexation in a declaratory judgment action.").

It is clear under *Quinn* and subsequent case law that Charleston has standing to challenge any annexation infringing upon its proprietary interests or statutory rights. Most respectfully, the Court of Appeals should have reversed the circuit court's contrary conclusion.

2. The Court of Appeals erred in affirming the circuit court where the circuit court misread *St. Andrews* as limiting standing to challenge a 100% annexation to the state of South Carolina.

In *St. Andrews Pub. Serv. Dist. v. City Council*, 349 S.C. 602, 603, 564 S.E.2d 647, 647–48 (2002), the this Court reviewed a decision by the Court of Appeals that held a public service district had standing to contest 100% annexations because the district had alleged that the annexations were unauthorized by law, and, thus, met the public importance exception articulated in *Quinn*. The Court reversed the decision of the Court of Appeals and overruled the public importance exception established by *Quinn*. *Id.* It did not, however, displace or alter the law according standing to those who can demonstrate an annexation infringes on their proprietary interests or statutory rights.

Instead, *St. Andrews* laid out the requisites necessary to support standing to contest an annexation:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. *State by State Budget & Control Bd. v. City of Columbia*, 308 S.C. 487, 419 S.E.2d 229 (1992).
>
> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. *Tovey, supra*; *St. Andrews Public Serv. Dist. v. City of Charleston*, 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.

Id. at 604–05, 564 S.E.2d at 648.

> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in *Quinn v. City of Columbia*, *supra*. In *Quinn*, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law* . . . ." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." *State ex rel. Condon v. City of Columbia,* 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule *Quinn*, and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of Appeals' holding that respondent has standing to challenge these annexations.

Id. at 605, 564 S.E.2d at 648 (emphasis in original).

St. Andrews specifically identifies parties with **statutory standing** to challenge annexations under section 5-3-150, *to wit*: "Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area." *Id.* at 605, 564 S.E.2d at 648. "In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights." *Id.* at 604, 564 S.E.2d at 648. *St. Andrews* stands for the proposition that, absent statutory standing, only the State may challenge a 100% annexation, when acting in the public interest.

The continued efficacy of this premise is established by post-*St. Andrews* case law. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 579, 707 S.E.2d 402, 410 (2011) ("We made clear in *St. Andrews Public Service District* that a party seeking to challenge a 100% petition annexation 'must assert an infringement of its own proprietary interests or statutory rights.'"); *Vicary v. Town of Awendaw*, 425 S.C. 350, 356, 822 S.E.2d 600, 603 (2018) ("In *St. Andrews*, the Court held non-statutory parties lacked standing to challenge a purportedly unauthorized annexation.").

The circuit court's conclusion that only the State may challenge a 100% Annexation contradicts *St. Andrews* and subsequent decisions, requiring reversal, as, most respectfully, the Court of Appeals should have found.

3. The Court of Appeals erred in affirming the circuit court where the circuit court misinterpreted *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights.

Relying on *Vicary v. Town of Awendaw*, 425 S.C. 350, 822 S.E.2d 600 (2018), the circuit court held: "In *Vicary*, the court also noted the public importance exception to standing." (R. pp. 7–8.) "More importantly, the court failed to note an exception, which [Charleston] argues, that when a party alleges an infringement of a statutory and proprietary right [sic]." (R. p. 8.)

Vicary does not abrogate the general framework for standing to challenge 100% annexations set forth in *Quinn*, *St. Andrews*, and other cases, as the circuit court held. Instead, *Vicary* establishes that the public importance *exception* to the general standing requirements would apply, at the very least, when "nefarious conduct" is alleged. *See id.* at 358, 822 S.E.2d at 603-04 ("Although *St. Andrews* and *Town of Yemassee* set forth the general framework for resolving questions of standing pursuant to section 5-3-150, those cases are premised on a good faith attempt by the annexing body to comply with the statutory requirements."); *id.* at 360, 822 S.E.2d at 605 ("While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision.").

Charleston does not seek, as the circuit court suggests, to establish a "sliding scale" approach to standing in challenges to 100% annexations. (R. p. 7.) Instead, Charleston simply seeks to protect its proprietary interests and statutory rights in and to land legally within its

borders, consistent with precedent of this State, as, most respectfully, the Court of Appeals should have recognized.

4. The Court of Appeals erred in affirming the circuit court where the circuit court erred in finding Charleston lacked standing to challenge the 2017 and 2018 Ordinances, both of which infringe upon Charleston's proprietary interests or statutory rights.

North Charleston twice attempted to annex the Millbrook Parcel utilizing the 100% Annexation Method. There is no question that, in *Millbrook I* and *Millbrook III*, Charleston alleges that the 2017 and 2018 Ordinances infringe upon Charleston's own statutory and proprietary rights over the Millbrook Parcel. (R. p. 46 ¶ 16, p. 110 ¶¶ 7–10, p. 111 ¶ 11, p. 115 ¶¶ 44 & 46.)

It is undisputed that the 2005 Ordinance annexed a portion of the Millbrook Parcel to Charleston. (R. p. 45 ¶ 5, p. 50 ¶ 5, p. 111 ¶ 14, pp. 119–120 ¶ 14, p. 141 ¶ 5.) Thus, since 2005, Charleston has had the statutory right to exclusive municipal jurisdiction over this property, as well as proprietary functions and interests of governmental dominion and control over this property, to include matters pertaining to taxation, land use, and the like. *See, e.g.,* S.C. Code Ann. § 5-7-30 (listing municipality's statutory rights with respect to property within its boundaries); S.C. Code Ann. § 5-21-110 (right to levy and collect taxes on personal and real property); S.C. Code Ann. § 5-7-80(1) (authority to abate nuisances); S.C. Code Ann. § 6-29-330(A) ("A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits."); S.C. Code Ann. § 6-1-950 (establishing procedure for imposing development impact fee); S.C. Const. Ann. Art. VIII, § 15 (outlining constitutional right of municipal consent); S.C. Code Ann. § 5-3-150(1) (statutory right to annex property under 75% Annexation Method); S.C. Code Ann. § 5-7-280 (prescribing procedure under which corporate limits may be reduced).

Charleston has statutory standing because the 2017 Ordinance infringes on these statutory and proprietary rights by attempting to annex land within Charleston's municipal limits since 2005. It defies logic to suggest that one municipality may not challenge the annexation by another of property already within such municipality's corporate limits. *See Glaze v. Grooms*, 324 S.C. 249, 255-56, 478 S.E.2d 841, 845 (1996) (holding Charleston, "which owns the territory Town seeks to use to establish contiguity, claims a sufficient infringement of its interests to confer standing."); *St. Andrews Pub. Serv. Dist. v. City Council*, 349 S.C. 602, 605 n.2, 564 S.E.2d 647, 648 (2002) (recognizing Charleston had standing under *Glaze* to challenge an attempted incorporation of property already within its borders). The circuit court erred in its interpretation of the 2017 Ordinance, and erred in finding Charleston lacked standing to contest it.

Charleston also has statutory standing to contest the 2018 Ordinance, as its viability directly impacts Charleston's statutory and proprietary rights acquired in annexing the remainder of the Millbrook Parcel. As discussed, *supra*, the prior jurisdiction rule protects Charleston's annexation of the remainder of the Millbrook Parcel because, prior to North Charleston giving the 2018 Ordinance its first reading, Charleston had accepted a petition for the annexation of the remainder of the Millbrook Parcel, held the required public hearing, and given the ordinance first reading. (R. p. 17, p. 114 ¶ 40.) However, even if Charleston cannot avail itself of the protection of the prior jurisdiction rule, it nonetheless has standing to contest the 2018 Ordinance, as the validity of the 2018 Ordinance may have a direct bearing on the validity of the Charleston Ordinance.

The 2018 Ordinance attempted to amend the legal description of the property annexed by the 2017 Ordinance, to exclude land already in Charleston. (R. pp. 16–18.) It was the

responsibility of North Charleston to ensure the sufficiency of the legal description of the property being annexed. If that description was fatally defective, it cannot be cured by way of a corrective ordinance. *See Bostick v. Beaufort*, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) ("We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property. Ordinance 0-07-89 bestowed authority to annex only the property listed and described in the petitions. Hence, no subsequent action by the City could validate a portion of the ordinance which was a nullity upon origination."); 2 McQuillin, *Municipal Corporations* § 7.5 (3d ed. 2006) ("The description of municipal boundaries or of municipal territory is invalid and ineffective where it is indefinite and uncertain"). Under Millbrook's reasoning, one municipality may destroy another's statutory standing through the simple expedient of passing an amendatory or clarifying ordinance. It is self-evident that a party has standing to challenge any action intended to deprive it of its existing standing.

The description of the annexed area in the 2017 Ordinance was "flawed from its inception" because it included land within Charleston. Because the 2018 Ordinance attempted to cure that deficiency, and if upheld, will affect Charleston's statutory and proprietary rights, including its rights relating to the remainder of the Millbrook Parcel and its standing to challenge the 2017 Ordinance, Charleston has standing to have the 2018 Ordinance judicially vetted.

In affirming the circuit court, the Court of Appeals overlooked and/or misapprehended the holding of *Bostick v. City of Beaufort*, 307 S.C. 347, 415 S.E.2d 389. The defect found to be incurable in *Bostick* was an omission from the property description and map of a part of the area annexed. Here, the defect was the inclusion, in what must be admitted as a meticulously drawn property description and map, *of property already in another municipality*. Respectfully, such is hardly a mere technical error. Annexation jurisprudence, by its very nature, is a property-centric

exercise. Annexation establishes the boundaries of municipal jurisdiction, to the exclusion of any other municipality. Property descriptions and maps are thus crucial to the exercise. Thus, errors in depicting property annexed by an ordinance are substantive, whether the error be one of omission or inclusion, or inadvertent or intentional.

The circuit court erred in disregarding Charleston's allegations that the 2017 and 2018 Ordinances infringed upon Charleston's proprietary interests and statutory rights, as, most respectfully, the Court of Appeals should have found.

D. The Court of Appeals erred in affirming the circuit court where the circuit court erred in interpreting the 2017 Ordinance to annex only property outside Charleston's municipal limits.

The circuit court held that the 2017 Ordinance "did not attempt . . . to annex property (the 100' strip) which was part of [Charleston]." (R. p. 10.) As a result, the circuit court concluded: "Without this, City's claim fails to state any valid claim for relief." (R. p. 10.) This holding and conclusion do not comport with the pleadings, the annexation ordinances attached to the Order, or the arguments of counsel.

As a preliminary matter, such a ruling would not impact Charleston's standing to assert that, under the prior jurisdiction doctrine, the 2017 Ordinance was invalid because Charleston took the first public step toward annexing the remainder of the Millbrook Parcel before North Charleston, as discussed, *supra*.

The ruling is also an inaccurate legal conclusion. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mikell v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009). "When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Id.* "The determination of legislative intent is a matter of law." *Charleston Cty. Parks & Rec.*

Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). "An appellate court may decide questions of law with no particular deference to the trial court." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772–73 (2010).

The 2005 Ordinance annexed to Charleston the portion of the Millbrook Parcel lying within 100 feet of the right-of-way line for Highway 61, i.e. Ashley River Road. The 2017 Ordinance is attached as Exhibit 1 to the Order. The description of the area to be annexed clearly runs 733 feet lying along the "northernmost right-of-way line of Ashley River Road," and the exhibit attached to the 2017 Ordinance shows that the area to be annexed lies immediately adjacent to Ashley River Road. (R. pp. 12–15.) These facts are uncontroverted and belie the holding of the circuit court that the 2017 Ordinance did "not attempt to annex" land in Charleston. (R. p. 10.)

The 2018 Ordinance, which is attached as Exhibit 2 to the Order and which attempted to fix the delict in the 2017 Ordinance, provides, in pertinent part: "[B]ased upon the then-existing Charleston County TMS mapping data, the accompanying map and legal description described Parcel TMS #361-00-00-006 as extending all the way to Ashley River Road . . . ." (R. p. 17 (emphasis added).)

During the October 24, 2018 hearing before the circuit court, North Charleston explained:

> When The City of North Charleston in December annexed the Millbrook tract as everybody has mentioned, The City of Charleston's hundred foot strip was not shown on the county records and so when you go down and you check the county property records and get the TMS numbers to annex, we annexed TMS 006 which is the Millbrook TMS number and later the county came back, I think The City of Charleston notified the county that their records were wrong and the county assigned a different TMS number to that hundred foot strip on the front. It was like 006-1. And so at that point we came back at The City of North Charleston and passed an ordinance that said we meant what we said when we

> were taking 006 and there's the newly identified 006-1 and we never said that we took it and we don't claim to have taken it.

(R. pp. 219:21–220:13 (emphasis added).)

North Charleston's protests to the contrary notwithstanding, legislation must be construed in light of the conditions obtaining at the time the legislation was passed, not based on after-acquired knowledge. *See Durant v. Bennett*, 54 F.2d 634, 639 (D.S.C. 1931) ("As has been pointed out by the Supreme Court in many cases, a statute must be construed . . . in the light of the condition obtaining at the time the statute was passed."); *see also State ex rel. Attorney Gen. v. Kizer*, 164 S.C. 383, 397, 162 S.E. 444, 449 (1932) (adopting *Durant* as the opinion of the Supreme Court of South Carolina); *Soc'y of Divine Word v. Cty. of Cook*, 247 N.E.2d 21, 25 (Ill. App. Ct. 1969) ("[W]e believe the intention should properly be determined with regard to general conditions at the time of enactment.").

The record demonstrates that, when the 2017 Ordinance was enacted, North Charleston believed, rightly or wrongly, inadvertently or otherwise, that the entire Millbrook Parcel lay within unincorporated Charleston County. As a result, North Charleston intended to, and in fact did, annex to the right-of-way line of Highway 61. (R. pp. 12–18.) The record demonstrates that, when the 2017 Ordinance was enacted, it included land annexed by Charleston in 2005. If such were not the case, the enactment of the 2018 Ordinance would be tantamount to an exercise in futility. Legislative bodies are not presumed to engage in futile acts. *Cf. Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 145, 750 S.E.2d 65, 72 (2013) ("Because the legislature is presumed to be aware of prior legislation and does not perform futile acts, we find the 2008 amendment represents a conscious decision by the legislature to preclude partnerships from earning and passing through certain tax credits.").

The circumstance of the 2017 Ordinance reciting that "[t]he area proposed for annexation includes the parcel designated TMS # 361-00-00-006" is not dispositive of the issue of whether other property was also annexed. (R. p. 13.) That becomes especially clear when considering the annexed area does, in fact, include other property, that being the waters and river bottom of the Ashely River. (R. pp. 12–15.)

The circumstance of the 2017 Ordinance reciting all distances being more or less does not affect the placement of points described in the Ordinance, but would only affect, perhaps, the exact distances between those points. *See Kirven v. Bartell*, 266 S.C. 385, 389, 223 S.E.2d 597, 599 (1976) (explaining that the words "more or less," when used in connection with distance, intend to "cover some slight or unimportant inaccuracy" and enable an adjustment of distances "to the imperative demands of fixed monuments and boundaries"). But it is undeniable that the 2017 Ordinance establishes points at the northern right-of-way line of Ashley River Road and describes the southwestern line of the area annexed as "along the northernmost right-of-way of Ashley River Road." (R. pp. 12–13.)

In affirming the circuit court, the Court of Appeals overlooked and/or misapprehended the proven fact that the 2017 Ordinance included land already in Charleston, instead finding the 2017 Ordinance did not intend to annex what is now described Parcel 006-1. The Court deemed its inclusion in the 2017 Ordinance as being inadvertent, due to faulty County records. The consequence of these findings, however, is that Charleston is precluded from pursuing its statutory right to annex the remainder of the Millbrook Parcel, an undertaking Charleston had indeed commenced before North Charleston had even introduced the 2017 Ordinance. The consequence of the Court's ruling is to withhold from Charleston statutory rights to annex because North Charleston and the property owner made a mistake, a mistake in which Charleston

had no hand and of which it had no knowledge at the time it instituted its annexation proceedings of the remainder of the Millbrook Parcel. That North Charleston relied on faulty records should not serve as a barrier to Charleston pursuing its statutory rights to annex, especially when Charleston commenced its annexation effort of the remainder of the Millbrook parcel before North Charleston made its mistake. Moreover, the 2017 and 2018 Ordinances, being pursuant to the 100% method, beg the question of what property was described in the annexation petitions, a matter not in the record and one ripe for discovery. And in this regard it must be noted that, while the 2017 and 2018 Ordinances describe the area annexed as including Parcel 006, the area annexed includes other properties, those being the waters, marshes and river bottoms of the Ashley River.

Whether intentionally or not, the area annexed by the 2017 Ordinance includes the territory annexed by Charleston in 2005. This circumstance gives Charleston standing to contest its validity, as, most respectfully, the Court of Appeals should have found. *See Glaze v. Grooms*, 324 S.C. 249, 235, 478 S.E.2d 841, 845 (1996) (finding the City of Charleston had standing to contest incorporation of the Town of James Island because areas of the Town included lands already in Charleston); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (upholding North Charleston's challenge to Summerville's invalid attempt to annex territory which North Charleston also annexed). As discussed, *supra*, this circumstance also casts a cloud on whether, and when, North Charleston commenced a valid attempt to annex the Millbrook Parcel, for purposes of the prior jurisdiction rule.

E. The Court of Appeals erred in affirming the circuit court where the circuit court erred in construing Charleston's allegations in a light most favorable to Millbrook.

The circuit court, in interpreting the allegations in Charleston's complaints, concluded: "Examining the complaints, it is clear that the 100' strip of land was identified by the court records, prior to and on December 21, 2017, as TMS 361-00-00-006-1." (R. p. 8.) "This is the land City had annexed in 2005." (R. pp. 8–9.) "To succeed under any of City's causes of action, this court must interpret the 2017 Ordinance that it was annexing TMS 361-00-00-006-1." (R. p. 9.)

Neither this ruling nor the conclusion drawn therefrom comports with the allegations or the law requiring construction in a light most favorable to Charleston. *See McCormick v. England*, 328 S.C. 627, 633, 494 S.E.2d 431, 433-34 (Ct. App. 1997) (in ruling on a motion to dismiss, "[t]he question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief.").

Initially, Charleston can prevail under the prior jurisdiction doctrine regarding of what North Charleston intended to annex under the 2017 Ordinance because Charleston took the first public procedural step to annex the balance of the Millbrook Parcel before North Charleston did anything relating to the 2017 Ordinance.

The circuit court misconstrued Charleston's allegations, as emphasized in Charleston's motion to reconsider. (R. pp. 190–192.) Specifically, the circuit court construed the complaints as alleging that TMS No. 361-00-00-006-1 had been established before North Charleston's purported annexation of the Millbrook Parcel, such that the 2017 Ordinance's reference to TMS No. 361-00-00-006 could only be interpreted to include property outside Charleston's municipal limits. This construction is not correct.

The allegations in *Millbrook I*, read in a light most favorable to Charleston, establish that, at the time North Charleston passed the 2017 Ordinance, North Charleston's City Council purported to annex property, **currently** designated as Charleston County TMS 361-00-00-006 and 361-00-00-006-1." (R. pp. 44–45 ¶ 4 (emphasis added).) This allegation clearly indicates that TMS 361-00-00-006-1 had been created by the time the complaint in *Millbrook I* was filed. It does not suggest that TMS 361-00-00-006-1 had been created at the time the 2017 Ordinance was given first reading or adopted, as the circuit court concludes.

In *Millbrook III*, challenging the 2018 Ordinance, Charleston alleges:

> This action is brought pursuant to section 5-3-270 of the South Carolina Code, challenging Ordinance No. 2018-017 (the "Contested Ordinance" or "Ordinance"), adopted by the City Council of North Charleston on March 22, 2018, purporting to amend and supplement Ordinance No. 2017-083, adopted by the City of North Charleston on December 28, 2017, whereby the City of North Charleston purported to annex, upon petition of Millbrook that certain tract of land **previously designated as Charleston County TMS Nos. 361-00-00-006 and presently designated as Charleston County TMS Nos. 361-00-00-006 and 361-00-00-006-1 (the "Millbrook Parcel")**."

(R. pp. 109–110 ¶ 4 (emphasis added).)

While Charleston alleged in the *Millbrook III* complaint (¶ 21), relied upon by the circuit court, that "[p]rior to and on December 21, 2017, Charleston County's records showed a portion of the Millbrook Parcel lying within the municipal limits of the City of Charleston," Charleston never alleged that this portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 21, 2017. (R. p. 112 ¶ 21.) The same may be said for Paragraph 22 of the *Millbrook III* Complaint, also relied upon by the circuit court, which contains no allegations that a portion of the Millbrook Parcel had been designated as TMS No. 361-00-00-006-1 on or before December 28, 2017. (R. p. 112 ¶ 22.)

Although a portion of the Millbrook Parcel was annexed to Charleston in 2005, and although the County's records reflect this annexation, it is unclear when a separate TMS number was created for the portion annexed by Charleston in 2005. The allegations in Charleston's complaint, construed in a light most favorable to Charleston, establish that Charleston pled: (1) the County's records reflected that a portion of the Millbrook parcel had been annexed into Charleston in 2005, and (2) TMS No. 361-00-00-006-1 was shown at the time Charleston filed its complaints. This construction is buttressed by the recitations in the 2018 Ordinance that the new TMS number was created after North Charleston adopted the 2017 Ordinance on December 28, 2017, and by North Charleston's explanation at the hearing on Millbrook's motions to dismiss. (R. pp. 219:24–220:13, p. 308.)

In affirming the circuit court, the Court of Appeals overlooked and/or misapprehended the posture of the cases, that being motions to dismiss pursuant Rule 12(b)(6), SCRCP, the sole ground of which was Charleston's supposed lack of standing. The inquiry on such motions is, of course, limited to the allegations of the pleadings, the question being "whether, in the light most favorable to the plaintiff, with every doubt being resolved in his behalf, the complaint states any valid claim for relief." *Plyer*, 373 S.C. at 645, 647 S.E.2d at 192.

The Court of Appeals overlooked and/or misapprehended the fact that, as to the 2017 Ordinance, Charleston pleaded and the 2017 Ordinance itself on its face proved, the property sought to be annexed extended to the northernmost right-of-way line of SC Highway 61 and that, in doing so, plainly included property that had been in Charleston since 2005. The pleadings thus plainly demonstrated Charleston's statutory rights and governmental interests in a portion of the area sought to be annexed, the cornerstone for standing to contest an annexation accomplished under the 100% petition method of annexation. The Court of Appeals overlooked

and/or misapprehended this circumstance and instead rendered a decision on the merits of the question of whether the apparent defect of the 2017 Ordinance could be cured, an issue not argued to, or ruled on by, the circuit court. The only matter before the court was whether the pleadings, viewed in a light most favorable to Charleston, supported its standing.

The circuit court misconstrued Charleston's complaints and misapplied its standard of review. This error colored its ruling both on whether Charleston had standing to challenge the 2017 and 2018 Ordinances as violating Charleston's statutory rights *and* the acts which Charleston had undertaken to annex the remainder of the Millbrook Parcel prior to North Charleston's commencing any valid annexation proceeding of its own, implicating the pending jurisdiction doctrine, as, most respectfully, the Court of Appeals should have found.

CONCLUSION

Again, this Court should issue a writ of certiorari and correct the Court of Appeals' erroneous affirmance of the circuit court, because this matter implicates important issues of public policy that require proper adjudication to provide clarity and guidance to annexation jurisprudence.

Charleston has standing because, prior to North Charleston taking any action on the 2017 Ordinance or the 2018 Ordinance, Charleston commenced valid legal proceedings to annex the same property. The Court of Appeals should have so found and reversed the circuit court and remand the matter accordingly. In the alternative, the Court of Appeals should have reversed the circuit court and remanded the matter either for a consideration of the circumstances under which the prior jurisdiction rule applies or with instructions as to when the prior jurisdiction rule applies.

Additionally, or in the alternative, Charleston has statutory standing to challenge the 2017 and 2018 Ordinances because these ordinances infringe on Charleston's proprietary interests or statutory rights, and the Court of Appeals should have found that the circuit court misinterpreted *Quinn* and its progeny, which limits only "outsider" standing to the State of South Carolina.

Like the circuit court, the Court of Appeals also misinterpreted the 2017 Ordinance and the pleadings in ruling that the 2017 Ordinance annexed only portions of Millbrook's property lying outside Charleston's municipal boundaries. These errors not only impact Charleston's standing under *St. Andrews* to challenge the 2017 and 2018 Ordinances, but also affect the application of the prior jurisdiction doctrine.

Under any or all of these scenarios, the motions to dismiss should have been denied, and the circuit court's order should therefore have been reversed.

For the foregoing reasons, Charleston asks this Honorable Court to grant the instant petition, to reverse the Subject Opinion, and, in turn, to reverse the circuit court.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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June 5, 2023

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Circuit Court Cases No. 2019-CP-10-00846, -02131, and -02539

Court of Appeals Case No. 2019-000903
Opinion No. 5966 (S.C. Ct. App. filed February 1, 2023)

Supreme Court Case No. 2023-000778

City of Charleston,

Petitioner,

v.

City of North Charleston and Millbrook Plantation, LLC,

Respondents.

and

Millbrook Plantation, LLC

Plaintiff,

v.

City of Charleston,

Defendant.

and

City of Charleston,

Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC

Defendants.

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Attorneys for the City of Charleston

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for the City of Charleston, hereby certify that the **CITY OF CHARLESTON'S PETITION FOR A WRIT OF CERTIORARI** and **CITY OF CHARLESTON'S MOTION TO EXECEED PAGE LIMIT** were served on June 5, 2023, on all parties to this matter via emailing (see attached) a copy of the same to the following:

Frances I. Cantwell, Esquire
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Attorney for Millbrook Plantation, LLC

I also certify that, on June 5, 2023, the **CITY OF CHARLESTON'S PETITION FOR A WRIT OF CERTIORARI** and **CITY OF CHARLESTON'S MOTION TO EXECEED PAGE LIMIT** were filed with the South Carolina Court of Appeals via emailing the same to ctappfilings@sccourts.org.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for the City of Charleston

Charleston, South Carolina

June 5, 2023

Bell, Pollyana (Polly)

From: Bell, Pollyana (Polly)
Sent: Monday, June 5, 2023 2:17 PM
To: 'fcantwell054@gmail.com'; 'copelandj@charleston-sc.gov'; 'brady@bradyhair.com'; 'dvanraalte@northcharleston.org'; 'bmiller@brucemillerlaw.com'
Cc: Russell, Karen; Johnson, Wilbur; Justman, Aimee; Hines, Russell
Subject: City of Charleston v. City of North Charleston (Sup. Ct. 23-000778 // Ct. App. 19-000903) - (CR 210598)
Attachments: Charleston v. N. Chas. -- Cert Petition.pdf; Charleston v. N. Chas. -- Mot. to Exceed Page Limit.pdf

Enclosed please find the City of Charleston's Petition for a Writ of Certiorari and Motion to Exceed Page Limit which will be filed today in the above-referenced matter.

Thank you,

Pollyana Bell
Project Assistant
Commercial Litigation Practice Group
Phone:(843)720-5488 | Fax:(843)579-1369