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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-0846, 2131, and 2539 - Court of Appeals No. 2019-000903
Opinion No. 5966 - SC Court of Appeals, filed February 1, 2023
Supreme Court Case No. 2023-000778

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 North Charleston's Return to Revised Petition for Certiorari

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City of North Charleston's Return to Petition for Certiorari[1]

Statement of Issues on Appeal

The Petitioner's Statement of Issues does not efficiently organize the issues this Court has been asked to review. Accordingly, North Charleston will respond using a more straightforward organizational structure, though still touching each of Petitioner's Questions Presented. To ease the Court's review, footnotes are provided below to cross reference North Charleston's arguments back to the more convoluted, Charleston framework.

I. Petitioner's Questions Presented Do Not Implicate the "Special and Important Reasons" that Justify a Grant of Certiorari.

II. Prior Pending Proceedings Rule

   A. Judge Griffith Correctly Ruled that That This Court Has Not Previously Adopted the "Prior Pending Proceedings" Rule.[2]

   B. Charleston Was Not First In Line in Any Event[3]

III. North Charleston Did Not Annex Land Previously Annexed by Charleston.[4]

IV. Charleston Has No Standing To Challenge This 100% Annexation.[5]

V. The Courts Below Correctly Recited and Applied the Standard of Review.[6]

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[1] References herein relate to Petitioner's Revised Petition.
[2] See Petition for Cert. Questions Presented (hereinafter, "Q.P.") I(A) and I(B) (Arguing against Judge Griffith's correct acknowledgment that the "Prior Proceedings Rule" has not yet been adopted.)
[3] See latter portions of Petition for Cert Q.P. I(B). (Incorrectly arguing that Charleston was "first in line" if the Prior Proceedings Rule was to be adopted.)
[4] See Petition for Cert Q.P. I(C)(4) and I(D). (Arguing standing on theory that North Charleston annexed Charleston's existing territory.)
[5] See Petition for Cert Q.P. I(C)(1), (2), AND (3). (Arguing that Petitioner should be granted standing to mount this "outsider" challenge to a 100% annexation despite a well-established legal framework to the contrary.)
[6] See Petition for Cert. Q.P. I(E).

Statement of the Case

North Charleston has no material objection regarding Petitioner's history of proceedings, but differs in many instances regarding what facts are relevant. A far simpler factual basis is sufficient.

Facts

Timing

Prior to this dispute TMS 361-00-00-006 ("Parcel 006"), was bounded to the East by North Charleston and to the West by Charleston. Both cities sought to annex the property. Parcel 006's owner asked North Charleston to annex it by the 100% method. North Charleston completed annexation of Parcel 006 on December 28, 2017. R.OA. p. 303 (Ordinance No. 2017-083.)

Weeks later, in January of 2018, Charleston gave first reading to an annexation ordinance for the same Parcel 006 that North Charleston had previously annexed the prior year. On April 10, 2018, Charleston gave final reading to complete that ordinance.[7] By then Charleston was just closing the barn door after the horse had already escaped.

[7] Charleston City Council, at its meeting of December 19, 2017, claims to have "acted" by receiving or accepting a seventy-five percent annexation petition to take Parcel 006 against the owner's wishes. There was no annexation ordinance on the Charleston Council agenda for a reading that night. A municipality does not take official "action" by merely receiving delivery or "agreeing to accept something for possible consideration later."

Annexation Description

Next to unincorporated Parcel 006 lay a separate 100' shoestring parcel[8], TMS 361-00-00-006-1 ("Parcel 006-1".) This was not shown in existing Charleston County records, and thus unknown to North Charleston at the time Ordinance 2017-083 was framed.[9] Though Ordinance 2017-83 correctly listed its annexation target parcel by name (Parcel 006) and excluded any listing of Parcel 006-1 in the ordinance or map, the legal description was faithful to Charleston County records and thus described Parcel 006's boundary as Ashley River Road rather than stopping 100'

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[8] Back in 2005 when the City of North Charleston first annexed across the Ashley River the City of Charleston apparently annexed a curiously undevelopable one hundred (100') string along the edge of Ashley River Road parallel to North Charleston's prior boundary, the Ashley River.

[9] North Charleston's annexation descriptions for Parcel 006 were drawn in faithful compliance with the then-existing County RMC maps. See City of Charleston v. City of North Charleston and Millbrook Plantation, LLC, 439 S.C. 6, 9(SC App. 2023)("At the time North Charleston drafted the 2017 Ordinance, Charleston County records did not reflect the existence of Parcel 006-1.") Subsequent to North Charleston's annexation Charleston County amended its maps to effectively reduce the size of Parcel 006 and create a never-before-mapped parcel designated TMS 361-00-00-006-1. As a result of its discovery of this Charleston County record change, North Charleston passed on March 22, 2018, Ordinance 2018-017 (the "Corrective Ordinance.") R.O.A. 307 The Corrective Ordinance confirmed the intent stated in North Charleston's original annexation – namely to annex only Parcel 006. The Corrective Ordinance further confirmed that, to the extent Charleston County records had been updated to reduce the size of Parcel 006, that the City's annexation records would be similarly reduced. Given the Rule 12(b)(6) posture of the motion before the Court, Judge Griffith did not delve into such details about when various County RMC records were updated. Instead, he properly assumed to be true the City of Charleston's allegations that County records were correct as of December 27, 2017. Since this appeal is of a Rule 12(b)(6) dismissal North Charleston's argument herein will proceed in the same vein, but it reserves the right to argue all facts should reversal occur.

short as would have been consistent with the Parcel 006-1 boundary that was shown on later corrected County records. See R.OA. p. 303 (Ordinance No. 2017- 083.)

Parcel 006-1 is important here because in 2005 Charleston annexed that tract. Charleston thus argued below that the minor disparity in the Parcel 006 description in North Charleston Ordinance 2017-083 amounted to North Charleston trying to annex property already governed by Charleston.

Standard of Review

North Charleston has no material objection regarding Petitioner's statement of the Rule 12(b)(6) Standard of Review. Fortunately, the record shows that this Standard of Review was properly applied. However, the Petition largely overlooks the review factors set forth in SCAR 242(b) as to when a grant of Certiorari might be appropriate.

Argument

I. A Grant of Certiorari is Not Justified Based Upon the Five Factors Enumerated in SCAR 242(b) or General Considerations Related Thereto.

SCAR 242(b) lists five illustrative factors that might suggest Certiorari to be appropriate. These factors are: novel questions of law, dissent at the Court of Appeals, a conflict between the Court of Appeals and Supreme Court, the presence of serious and directly implicated constitutional issues, and a federal question on which the SC Court of Appeals ruling differs from the United States Supreme Court. Charleston's "Questions Presented" do not fall into the latter four categories. That leaves this Petition to rise or fall solely on whether this case contains "novel question of law" that can best be answered on the instant factual basis.

There are at least three reasons why the "novel question of law" ground is a poor basis on which to grant the Certiorari Petition drafted by Charleston.

First, this case can be readily resolved based on existing, black-letter law. There is no need, and no compelling judicial benefit, to ignore the answer provided by existing law in order to reach out and change the law of South Carolina. Yet Charleston asks this Court to do just that –avoid deciding the case on existing precedent in order to mint a newly adopted rule. There are a number of decisions already dealing with standing, 100% standing, outsider challenge standing, and public interest standing all specifically in the context of municipal annexations. While the facts of this current case may vary slightly from prior cases, the same may be said of nearly every case litigated in every field. The general path is for the judiciary to apply existing law to these slightly varying facts and only adopt new rules where absolutely necessary. That is the opposite of what Charleston asks of this Court today. The remaining sections of this Response Brief will make this clear.

Second, even if this Court were interested in speaking on a novel issue of law, the convoluted facts and law Petitioner argues here do not provide a platform that would allow this court to offer clear, easily applicable guidance as a "rule" to carry forward. One indicator of this is the actual Petition for Certiorari, in which Charleston itself needs thirty-four pages (far over the SCAR 242 limit) to articulate its position. Clearly, the situation Charleston pitches is the opposite of clear! If this Court wished to adopt a "Prior Pending Proceeding" rule for South Carolina, presumably the best case in which to announce such a rule would be one in which the Petitioner based its claim on a valid, official action, was

the first to take official action, and was "first in line." As will be discussed more fully in the arguments below, Charleston offers none of these things!

Third, Charleston's Petition for Certiorari fundamentally miscasts the systemic role of this Court. The Supreme Court is **not** merely some automatic, second tier appeal body in which a losing party should re-hash every argument ever presented below. Absent complete incompetence one would expect the trial judge to get at least one answer "right" below. So the Court of Appeals should typically be presented with fewer issues than at trial. Again, one would hope that the Court of Appeals would get at least one answer "right." So the Petition for Rehearing should present fewer issues than the original appeal. It should be *extraordinary*, then, for the Supreme Court to review every issue presented to the Court of Appeals because that would mean the lower judges got *every single question presented* wrong. And even if that were the case, not every issue presented below would present the special circumstances countenanced by SCAR 242(b). With this in mind, the City of Charleston's request for Certiorari on every issue should be viewed with grave skepticism. For the judiciary to run efficiently, decisions of the Court of Appeals must have meaning. They cannot be reduced to be "jump balls" for litigants to swat endlessly.

Judge Griffith and the Court of Appeals Got It Right Based on Black-letter Law.

The City of Charleston lost below because it lacks standing. Absent fraud and deceit, only an annexed landowner or the South Carolina Attorney General may challenge a 100% method annexation. <u>Vicary v. Town of Awendaw</u>, 417 S.C. 631, 637-38 (SC App. 2016), and <u>Vicary</u>, 425 S.C. 350, 358-59, 822 S.E.2d 604 (SC 2018). Charleston fits neither category and there is no

allegation of fraud / deceit. Charleston offers two basic arguments to try to avoid this elephant in the room:

- Charleston claims the Prior Pending Proceedings Rule let it beat North Charleston to the punch to annex Parcel 006. The problem? That rule has never been adopted and Charleston wasn't first!

- Charleston claims that North Charleston annexed two parcels (not one) including Charleston territory. The problem? North Charleston did not!

II. Prior Pending Proceedings Rule

A. Judge Griffith Correctly Ruled That This Court Has Not Previously Adopted the "Prior Pending Proceedings" Rule.[10]

Charleston faults Judge Griffith for concluding that this Court has to date declined to adopt its preferred rule, but that is the exact practical result of the Irmo decision. See City of Columbia v. Town of Irmo, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (SC 1994) ("We decline to reach the issue of whether the 'prior proceedings' rule should be adopted by this Court....") While Charleston may wish for the rule, Judge Griffith correctly applied the law as it existed. The Court of Appeals was correct to affirm that. See City of Charleston, 439 S.C. at 13-14 ("[O]ur Supreme Court has previously declined to address whether these common law doctrines [the Prior Pending Proceedings rule] apply in South Carolina.... As such, the circuit court did not err in holding that Charleston lacks current or existing precedent supporting this alternative argument for standing.")

[10] See Pet. for Cert. QP I(A) and (B).

B. Charleston Was Not First in Line in Any Event[11] [12]

Even were this Court interested in announcing a new rule, this would hardly be the case in which to do it. Ironically, Charleston's own Petition for Cert. makes North Charleston's point. The Petition for Cert. tries to distinguish this Court's Irmo decision (in which it did not adopt the Prior Proceedings Rule) as being different because "Irmo failed to commence a *valid* annexation proceeding before Columbia." Petition for Cert. p. 7. (Emphasis in original.)

Charleston finds itself in exactly the same boat! Charleston claims that it commenced its annexation of Parcel 006 prior to North Charleston, but the record shows the opposite is true. Charleston was not first by any legally valid marker. So just as the Irmo court's facts were a poor basis to adopt a new "first in line" rule to change the outcome, the facts of this case are also inappropriate.

Charleston did not initiate an annexation first. Charleston's dating argument, based upon the December 2017 *receipt* of a 75% petition, is hardly based on official "action." Charleston "receives" an annexation petition when a landowner decides to deliver it. This cannot be City "action." Charleston could not have denied having received the petition if it tried. Once delivered to Charleston it was "received" by Charleston whether Charleston wanted to accept it or not! Moreover, acknowledging delivery or agreeing to "accept" something for possible consideration later does nothing to change that or constitute "action" any more than a future "agreement to agree"

[11] See Pet. for Cert. QP I(B).

[12] Given the 12(b)(6) setting before Judge Griffith he assumed Charleston's claim of being first in line to be correct. R.O.A. p. 2. However, under SCAR 220(c) an order may be affirmed for any ground appearing in the record. Under this authority North Charleston argues herein that Charleston's own description of the event ("accepting" a petition (Pet. Brief, p. 3, 10)) giving rise to its claimed first in line status is not sufficient even under a Prior Proceedings Rule.

can constitute a contract. The only official action Charleston could take was for Council to take up consideration of an ordinance under the statutorily proscribed procedure in response to the submittal. That was not done until after the property had been fully annexed by North Charleston.

Focusing instead on Charleston's action (annexation ordinance) instead of focusing on a landowner's action (petition submittal) is completely consistent with Title 5 of the South Carolina Code of Laws. SC Code Ann. 5-7-260 tells us that a municipality may take "action" by "resolution" or "ordinance." S.C. Code Ann. 5-7-260 ("In matters other than those referred to in this section council may act either by ordinance or resolution.")(emphasis added.) Action on an annexation must be taken by ordinance. See S.C. Code Ann. 5-3-150. The City of Charleston's own procedure for taking action on an ordinance requires that the ordinance "shall be introduced in writing and in the form required for final adoption" and that it must be read by council on two separate occasions. R.O.A. p.310. City of Charleston Ordinance 2-24. No statute creates a third way for city council to "act" called "having a delivery dropped off", "receiving the mail", or "accepting for consideration of possible approval / disapproval later."

Against this backdrop, Charleston cannot prevail based on date of "receipt." Receipt is not "legal proceedings first instituted." It may reflect action by a landowner, but it is not government "action" (i.e. a reading of an "ordinance" or "resolution".)

"Accepting" a document is no different. This is particularly true in this instance where Section 5-3-150's requirement that an ordinance be passed means that "acceptance" of a petition expressly has no bearing on ultimate approval or rejection.[13] Before Charleston ever even had a

[13] Other than perhaps signaling staff administratively to frame an ordinance for possible later consideration, the phrase "agreement to accept the petition" cannot have any legal significance in terms of annexation approval. Charleston City Council would clearly be free to vote down an annexation ordinance even after "agreeing to accept a petition", making clear that accepting a

public hearing and gave first reading on its annexation ordinance, the City of North Charleston fully completed passage of its own earlier annexation. Considering the fact that this Court previously declined to adopt the Prior Proceedings rule, the fact pattern here is hardly the place for Judge Griffith in Common Pleas to try to predict a change to prior Supreme Court guidance.[14]

Briefly, there are two arguments by Petitioner here to which North Charleston would like to specifically respond.

> *First*, Charleston fails in its effort to claim first place in line by using the date of North Charleston's 2018 corrective ordinance as the reference point. Obviously, there is no question that Charleston's invalid annexation attempt commenced prior to the 2018 date of North Charleston's corrective ordinance.[15] But the 2018 North Charleston Ordinance was never an annexation ordinance – after all, North Charleston had fully completed the annexation on December 28, 2017. Notably, the City of Charleston does not offer any 2017 City of Charleston agenda showing an earlier annexation ordinance there.

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petition has no legal significance at all. This conclusion is actually consistent with the City of Charleston's own online guidance to property owners interested in annexation. On its own website Charleston unambiguously explains "How to Annex. To annex into the City of Charleston, your property must be: - approved by the City Council – Contiguous or 'touching' the city limits." ROA p. 311. https://www.charleston-sc.gov/839/Annexation-Eligibility . Charleston lists only one step by Council (approval), not the two (i.e. "accept petition" *and* "approve ordinance") it argues for this appeal.

[14] Charleston's request for a remand for further factual development based on McNeil is inappropriate. Petition for Cert. p.11. Whether a new rule is to be announced here or not is totally unrelated to the state of development of the factual record. In fact, this is a rare case in which all facts are known with certainty and written in black and white. This is a case that turns on the application of law.

[15] Notably, North Charleston's 2018 Ordinance was not even styled as an annexation ordinance. It was a corrective ordinance designed to correct details to reflect recent County record changes and is labeled as such. Charleston's effort to present the North Charleston 2018 ordinance as an "Annexation Ordinance" that it got ahead of is like a chimera tilting at a windmill.

Second, North Charleston commends Petitioner for citing Sherman v. Reavis, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979), though it is unorthodox given that Sherman unmistakably supports the argument of North Charleston rather than Petitioner. See Petition for Cert. p.10. According to Charleston, "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." Petition for Cert. P. 10. There's a lot to unpack in that.

The actual details of Sherman are a good place to start. Sherman involved a property owner who applied for a contrary building permit after the City was already mid-stream in the statutorily mandated rezoning process for the parcel. The Sherman court listed as the first steps in the state statutory rezoning scheme, that the City's Zoning Commission must conduct a public hearing and then refer the matter to City Council for public hearing. Sherman, 273 S.C. at 543-544, 257 S.E.2d at 736. The Sherman court then notes that the Planning Commission held its hearing, and City Council published advertised notice of its own public hearing to follow the Planning Commission meeting, all several weeks prior to the Plaintiff ever filing an application. Id. On these facts, the court held "that a municipality may properly refuse a building permit for a land use … when such use is repugnant to a pending and later enacted zoning ordinance." Id at 545. But not cited by Petitioner is the following: "While in the present case respondent's application for a building permit was made five days prior to the public hearing before City Council. We think the City's previously publicized declaration of its intention to zone the 'Neck' area when coupled

with the Planning and Zoning Commission's final action on the matter was sufficient to bring this case within the 'pending ordinance doctrine.'" Id. At 546 (emphasis added.)

Charleston's annexation argument here goes against the significant prongs of Sherman. Annexation and rezoning are similar in that they both have statutorily required procedural steps. In Sherman, the city had completed various statutorily required steps (Zoning Commission hearing completed, matter referred to City Council, Meeting of Council set, and advertisement of same complete.) Here, Charleston cannot show ANY statutory annexation step that THE CITY took in 2017. Charleston points to "accepting" a petition. As discussed, one doesn't "take action" to receive something – the person giving it takes the action to place it with you. To avoid this Charleston tries to recast this as a municipal "act", ultimately landing on the idea of "accepting." With all due respect, this "accepting" is not a valid municipal "action." The statutory procedures described for annexation require Council to "take action" that consists of ordinance readings and hearings. There was no ordinance written or presented in 2017, no ordinance reading in 2017, or even a date set by Charleston Council in 2017 for future ordinance completion in 2018. Finally, Charleston's theory on how it took "action" on this in 2017 appears to violate its own procedural ordinances. See ROA 310, Charleston Ord. 2-24 (requiring that proposed ordinances be "introduced in writing and in the form required for final adoption.") So while Sherman may set the test for when the pending ordinance doctrine will apply, the City of Charleston here blatantly fails it.

III. North Charleston Did Not Annex Land Previously Annexed by Charleston.[16]

North Charleston's original annexation ordinance was clear – it sought to annex the unincorporated land known as Parcel 006. That is exactly what it did. Charleston's argument is that North Charleston annexed both unincorporated Parcel 006 and the separate incorporated Parcel 006-1. However, North Charleston's ordinance listed only Parcel 006 as the parcel annexed. Parcel 006-1 was nowhere listed. Similarly, the accompanying annexation map showed a parcel labeled 006 and nowhere listed a Parcel 006-1. Judge Griffith found that noteworthy. See ROA p. 10 (Order at Pg. 10 of 11.)

Admittedly, North Charleston's boundary description contained a factual error based on then existing RMC records - it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1. However, the intent of North Charleston's council here was easy to discern. The Ordinance identified Parcel 006 by name and made no reference to Charleston's Parcel 006-1. That is unmistakable. Regarding the Ordinances' other description of Parcel 006, that description ended with the phrase "all distances being more or less." ROA p. 10 (Order of Judge Griffith, Pg. 10 of 11.) North Charleston Council told the world that if the boundaries of Parcel 006 might be slightly smaller described in the Ordinance, so be it. Here we are dealing with a roughly three percent (3%) annexation area disparity. That is hardly reversible error where the ordinance otherwise identified by the target parcel perfectly by name and expressly provided that boundary deviations might exist. Based on this, the Court of Appeals

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[16] Petition for Cert. QP I(C)(4) and I(D)(Arguing standing on theory that North Charleston annexed Charleston's existing territory.).

noted "[w]e therefore affirm the circuit court's finding that the [North Charleston] 2017 Ordinance was lawful as it did not attempt to annex parcel 006-1...." City of Charleston, 439 SC at 13.

Charleston cannot reasonably fault North Charleston for the corrective ordinance. ROA p. 307 (Ord. 2018-17.) At the time of the initial ordinance North Charleston's paperwork reflected known public information. When updated information came to light, a potential for confusion arose. To alleviate any confusion North Charleston did the right thing – it updated its public records to reflect updated County information. In so doing it expressly confirmed its original intent to annex only Parcel 006 (as stated in the original annexation) and disavowed any claim to lands previously annexed by Charleston under a different TMS number never mentioned in North Charleston's ordinance. It is hard to imagine what more could or should have been done.[17] North Charleston does not claim land previously annexed by Charleston. See City of Charleston, 439 SC at 10 ("[T]he circuit court examined the language of the 2017 Ordinance and found it never made any claim to annex parcel 006-1 and thus did not attempt to annex it.") Charleston cannot manufacture standing by pointing to annexation of a parcel that was never annexed!

[17] Charleston tries to pass this off by dismissively saying "It was the responsibility of North Charleston to ensure the sufficiency of the legal description of the property being annexed." Petition for Cert, at p. 16. But no where does Charleston explain what North Charleston could have done better, how North Charleston could possibly have known that the County records contained a minor error, or how North Charleston could have more diligently and better reacted when notified that the County had updated its records. Charleston then points to Bostick as fatal to North Charleston's case. Charleston is in the minority in this view, however. The Court of Appeals specifically cited Bostick as supporting North Charleston: "North Charleston's inadvertent inclusion of Parcel 006-1 based upon then existing county information was a technical deficiency cable of correction by the 2018 Ordinance. See Bostick, 307 S.C. at 350...." City of Charleston, 439 S.C. at 13.

IV. Charleston Has No Standing To Challenge This 100% Annexation.[18]

Standing is required in order to pursue an annexation challenge. Vicary, 417 S.C. at 637-38 (SC App. 2016) and Vicary, 425 SC 350 (SC 2018). Absent fraud and deceit, there are only two groups with standing to challenge a 100% annexation: (1) property owners of annexed land and (2) the Attorney General of South Carolina. Id.[19] Charleston falls into neither category.[20]

It is uncontested that North Charleston annexed Parcel 006 by way of the 100% method. It is uncontested that Charleston is not the owner of Parcel 006. (That property is owned by Respondent Millbrook Plantation, LLC. who asked North Charleston to annex it.) There is no allegation that North Charleston engaged in fraud or deceit. It is uncontested that Charleston is not the South Carolina Attorney General. Finally, it is uncontested that the South Carolina Attorney General did not file an objection and is not a party to this action. Application of Vicary to these facts is clear: Charleston lacks standing to challenge the annexation of main Parcel 006. What

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[18] Petition for Cert. QP I(C)(1), (2), and (3). (Arguing that Petitioner should be granted standing to mount this "outsider" challenge to a 100% annexation despite a well-established legal framework to the contrary.)

[19] Vicary v. Town of Awendaw, 417 S.C. at 637-638("Our case law provides that 'to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights,' and the State of South Carolina is the only non-statutory party which may challenge a municipal annexation. *See St. Andrews*, 349 S.C. at 604–05, 564 S.E.2d at 648.") See also Vicary, 425 S.C. 350 (SC 2018)(Generally retaining this framework, but adding an exception for fraud / deceit.)

[20] Charleston argues in favor of a third category of standing for cases where one municipality claims to annex property already incorporated into another municipality. Pet. for Cert. P. 15. As discussed in the previous section, that did not occur in this case. Thus, standing analysis for Charleston's further involvement in this challenge is governed by Vicary. There is no need to speculate about whether this Court would further expand standing based on a scenario not before the Court in this case. (Generally speaking, though, North Charleston does not disagree that standing might exist if one municipality *actually* claimed jurisdiction over territory previously annexed by a neighbor. In this case, however, North Charleston has from the start made unmistakable that it does NOT.

Charleston really seeks to do is challenge based on sub-parcel 006-1, which is not a parcel North Charleston ever annexed. City of Charleston, 439 S.C. at 10.

V. The Courts Below Correctly Recited and Applied the Standard of Review.[21]

The courts below correctly recited the standard of review. The second page of Judge Griffith's Order is textbook perfect in this regard: "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." ROA 2 (Citing Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007.)) However, as Judge Griffith also noted, this does not override the requirement that a plaintiff establish standing. ROA 6, and Vicary v. Town of Awendaw, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (SC 2018) ("The party seeking to establish standing has the burden of proving it.") The Court of Appeals similarly recognized the proper standard of review, this time citing Sloan Construction Co. v. Southco Grassing, Inc, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (SC 2008), Toussaint v. Ham, 292 SC 415, 416, 357 S.E.2d 8, 9 (SC 1987), and Plyler v. Burns, 373 SC 637, 645, 647 SE2d 188, 192 (SC 2007).

The lower courts correctly applied these standards of review. The questions presented in this case are questions of how the law is applied to facts and not questions of what the facts are. North Charleston's annexation petition and meeting dates are uncontroverted. The same may be said of Charleston's. North Charleston's annexation petition and description are written and "are what they are." The same may be said of Charleston's. TMS numbers "are what they are." What Judge Griffith faced here was a case in which the material facts were all written in black and white. The only question was how the law applied to those facts. While Charleston was entitled to (*and*

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[21] See Petition for Cert. Q.P. I(E).

received) the benefit of factual disputes being viewed in the light most favorable, the Rule 12(b)(6) review standard did not entitle Charleston to have Judge Griffith ignore the law to rule in its favor. Whether this case is denied certiorari, affirmed, or reversed, it will turn on an application of law by this Court rather than second guessing a factual determination.

Conclusion

Charleston's Petition for Certiorari should be denied. Charleston cannot invalidate North Charleston annexation of Parcel 006 by use of the Prior Proceedings Rule because (a) that rule is not the law of South Carolina and (b) Charleston was not first in any event. Charleston cannot invalidate North Charleston's action (or claim standing for further challenges) based upon North Charleston's annexation of Sub-parcel 006-1 because North Charleston did not annex that Sub-parcel. No other standing for challenges exists. Finally, this case, which is easily solved using existing precedent and which offers a murky scenario on which to announce a new rule of law, is not a good candidate for Certiorari.

Respectfully submitted:

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