THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Hon. Eugene Griffith

Case No. 2018-CP-10-851
Appeal No. 2023-930

National Trust for Historic Preservation
In the United States and The City of Charleston, Respondents/Appellants

v.

City of North Charleston, Appellant / Respondent.

City of North Charleston's Return to National Trust's Petition for Certiorari

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Questions Presented for Review

A simple framework quickly demonstrates that Judge Griffith and the Court of Appeals got it right. Through this framework North Charleston will respond to the National Trust's Questions Presented.

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

II. **The Trust Does Not Meet the Traditional Test for Standing Set Forth in Vicary v. Town of Awendaw.**

   a. **North Charleston Did Not Acquire Any Property Owned by the Trust**

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III. **The Forsberg Affidavit Does Not Change the Analysis Above Because the Four Inch Sliver is Legally Immaterial.**

IV. **Vicary Does Not Provide for Special Public Interest Standing Here.**

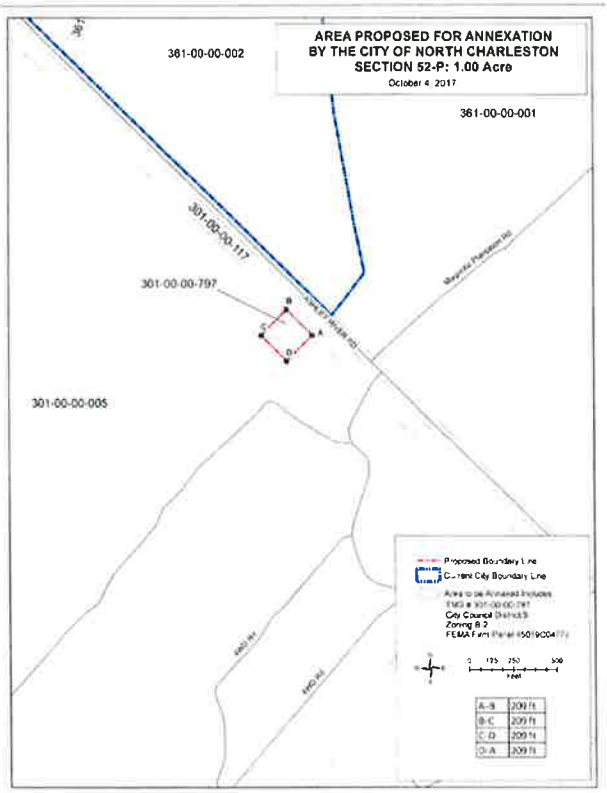
Statement of the Case

North Charleston has no material objection regarding Petitioner's history of court proceedings, but differs in many instances regarding what facts are relevant.

Facts

North Charleston, in late 2017, annexed land west of the Ashley River. This began when North Charleston annexed the 113 acre Runneymede Plantation parcel (TMS 361-00-00-002) (hereinafter, "Runneymede"). ROA p. 3, Order, pg. 3, Para 7. No annexation challenge was filed. Id.

North Charleston later obtained title from Whitfield to a one-acre parcel (TMS# 301-00-00-797) (hereinafter, "the Acre") that lies about one hundred (100') feet to the Southwest of Runneymede. ROA p. 4, Order, pg. 4. Runneymede and the one-acre parcel do not share a common boundary. As shown on the map below[1], they are separated by Ashley River Road and a slender 100' wide x 11,000' long shoestring parcel designated TMS 301-00-00-017 (hereinafter, the "Shoestring.")[2] ROA pp. 3-4, Order, pg. 3-4. North Charleston later annexed The Acre it owns. ROA p. 4, Order, pg. 4, Para. 12. This annexation was accomplished by way of S.C. Code Ann. 5-3-100 which authorizes only the annexation of land entirely owned by the annexing municipality.



[1] This map may be found on page 3 of Judge Griffith's Order. ROA p. 3.

[2] All references to 100' are approximate.

Charleston and the Trust filed annexation objections and lawsuits regarding The Acre.

The Trust most directly claims standing based on an argument that North Charleston annexed part of the Trust's Shoestring. Thus, the annexation boundary between the Acre and the Shoestring was a key focus of the courts below. The Trust claimed a four-inch (4") boundary error, creating a 1/1000th of an acre discrepancy, and argued that the error was sufficient to confer standing and invalidate everything. Ultimately, Judge Griffith determined that North Charleston had not actually annexed any acreage it did not own.

Argument[3]

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. The Trust'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 this factual basis.

The Standing issue that controls the outcome of this case is not novel. There is no need, and no compelling judicial benefit, to ignore the answer provided by existing standing law in order to change the law of South Carolina by: (a) directing lower courts to read passages in isolation so

[3] To the extent that North Charleston may not directly mention some particular case or assertion by the Trust such a failure to mention is not intended to indicate acquiescence or agreement.

as to ignore the plain meaning as a whole of legal documents and ignore clearly expressed legislative intent, (b) creating a standard of measurement so exacting it could through the validity of countless deeds and plats into question and create chaos in the reliability of existing property records, and (c) altering the public interest standing rules this court so clearly stated for third-party annexation challenges. All this the Trust asks be done so that the Court might then get to interpret SC Code Sec. 5-3-100. That is a heavy burden just to speak on a relatively unknown statute.

There is no novel question about the idea that courts read documents as a whole to glean meaning or the idea that courts consider legislative intent as written on the face of the very documents under review. South Carolina courts have a long history of reading a document as a whole and recognizing an unintended sliver of inconsistency as just that. See Holden v. Alice Mfg., 317 SC 215, 221, 452 SE2d 628, 631 (SC App. 1994)[4]. Our courts also have a long history of taking into account expressly stated legislative intent. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844.[5] Doing this, the court below recognized that North Charleston did not, and never intended to, annex Trust land. See Nat. Trust and Charleston v. N. Charleston, 439 SC 222, 228-229, 886 S.E.2d 487, 490 (SC App. 2023). And the Trust cannot avoid this by claiming evidence of North Charleston's intent to be extrinsic here – it is written into the very annexation ordinance

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[4] "The subject matter and purpose of a contract are to be considered in ascertaining the intention of the parties and the meaning of the terms use. *Stuckey*, 325 S.E.2d at 711. Appellants attempt to focus on one phrase to support their position. However, in determining the intent and purport of a contract, the court should not look solely to one clause read in isolation from the rest of the document; rather, it should consider the contents of the whole instrument, *J.T.M. Co., Inc.*, 323 S.E.2d at 796."

[5] "The cardinal rule of statutory construction is for a court to give effect to the Legislature's intent. .... 'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.'" (internal citations omitted) "Additionally, courts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers....To obtain the real purpose and intent of the lawmakers a court must not look to the 'phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose." Id. (internal citations omitted)

package the Trust is suing to invalidate. See ROA p. 293-295.[6] The Trust's Petition for Certiorari would require ignoring all this well settled law in order shoehorn for itself non-existent standing.

Another reason this Court should allow settled law to stand as applied below is the uncertainty the Trust's argument would introduce if accepted. Echoing the argument above, if the standard approach of reading a document as a whole is thrown into question here then every isolated word or sentence error will change the meaning of contracts despite the fact that a contract is otherwise crystal clear overall. Every minor wording mistake will become a collapsed bridge rather than just an interpretation pothole easily passed.

Even worse would be the uncertainty resulting from the Trust's proposed measurement standard and remedy. Property lawyers, buyers, sellers and owners rely on a daily basis on deeds and plats that may go back decades or even centuries. Not all distances were taken in the era of laser measurement. Not all plats or deeds recite every number right. The law does not invalidate a transaction in such instances. Instead, the intent as a whole is honored and the law interprets the competing language to quiet title or otherwise solve the minor quibble while leaving the substance of the transaction intact. The Trust's argument, if accepted, would do just the opposite and thus create unpredictability. Accordingly, this is not the kind of "novel argument" worthy of certiorari.

Finally, the Trust's invitation to create a specific new exception for Third Party standing in annexation challenges might be novel, but it is far from needed and far from desirable. There are a number of decisions already dealing with standing, 100% standing, outsider challenge standing, and public interest standing in the context of municipal annexations. And there is already

[6] Significantly, the ordinance itself notes that the "property to be annexed belongs entirely to the city of North Charleston", that the area is "approximately" one acre (not "exactly"), that all listed distances in the legal description or "being more or less", and include a map showing a common boundary with the Trust rather than the City crossing over the Trust's line. See ROA 293-295.

a clearly stated method by which public interest may be vindicated – the Attorney General may intervene. The Attorney General is far better positioned to consider the needs of the entire public of this state than would be a special interest group like the Trust. The Attorney General does not need the National Trust's help – had he, he could have asked for it. Thus, there is no compelling reason that a new category of standing needs to be created here when existing standing rules already allow for the vindication of public interest.

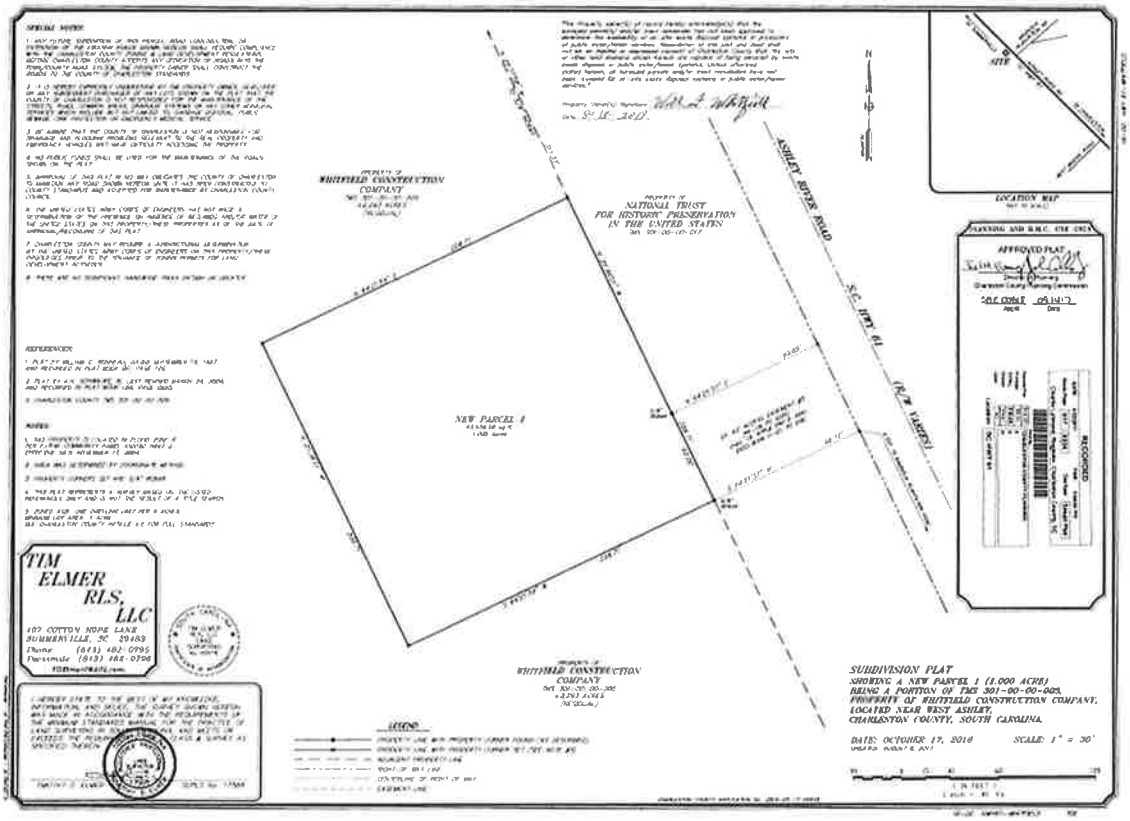
In summary, the general path is for the judiciary to apply existing law to these slightly varying facts and only adopt new rules where absolutely necessary. That is the opposite of what the Trust asks of this Court today.

II. The Trust Does Not Meet the Test for Standing in Vicary v. Town of Awendaw.

Standing is required in order to pursue an annexation challenge. Vicary v. Town of Awendaw, 425 SC 350, 822 SE2d 600 (SC 2018). The two principal groups with standing to challenge a 100% annexation are: (1) property owners of annexed land and (2) the Attorney General of South Carolina. Id. The Trust falls into neither category and the Attorney General did not file a challenge. Further, there is no allegation of fraud or deceit in this case.

To gain standing, the Trust argues that one property line on The Acre's boundary was off by approximately four inches (4"), thus causing North Charleston to take ownership and annex about 1/1000th of an acre of the Trust's Shoestring.[7] See Complaint, Para. 28-30 and 38(b). The plat reproduced below illustrates the argument. See ROA p. 269.

[7] It is ironic that the Trust argues fiercely that North Charleston acquired or annexed Trust land that the Trust does NOT want taken. If the Trust's real concern was avoiding having North Charleston controlling Trust land then the trial court's ruling, and North Charleston's agreement, would thrill the Trust. Instead we have a bizarre situation where the Trust is claiming that North



This plat shows the eastern boundary line, shared in common with the Trust, as being 99.7' away from Ashley River Road. The original deed by which the Trust obtained title to the Shoestring described the Trust parcel as extending in 100' from Ashley River Road.

The problem? The Trust's attempt to claim "property owner" standing is legally insufficient because, regardless of the claimed 4" error, North Charleston did not, and does not,

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Charleston took something never taken so as to let them argue that North Charleston isn't allowed to take it! This did not escape Judge Griffith. See ROA p.8. Order at p. 8 ("It appears disingenuous to the Court that the National Trust is not pursuing a claim to correct the error and clear the 'cloud' but is arguing that the 'cloud' gives it, and thus Charleston, the legal standing to challenge the annexation....")

claim to own or have annexed any portion of the Trusts' Shoestring. This becomes dispositive because North Charleston only sought to annex, and did annex, the land North Charleston owned.

a. North Charleston Did Not Acquire Any Property Owned by the Trust

No error in the legal description or plat for The Acre could have resulted in North Charleston obtaining ownership of land belonging to the Trust. A grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.[8] Thus, no matter what Whitfield's deed to North Charleston might say, the Acre deed cannot give North Charleston title to any of the Trust's land. That is even more apparent here given that North Charleston received a Quit Claim, rather than Warranty, deed to the property.[9] Even if the Trust is correct that its boundary is 100' from Ashley River Road rather than 99.7', the result would not be that North Charleston owns any of the Trust's Shoestring parcel. As a matter of law, the Trust would retain its full undiminished acreage. Any error could only reduce the amount of land obtained by North Charleston from a perfect 1.0 acre to .999 of an acre. Accordingly, there is no way the Trust can show it owns any portion of North Charleston's Acre parcel (TMS# 301-00-00-797.)

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[8] See F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999); Cummins v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) (no deed can convey an interest which the grantor does not have in the land described in the deed); Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942) (no deed can operate so as to convey a greater estate or interest than grantor has); Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).

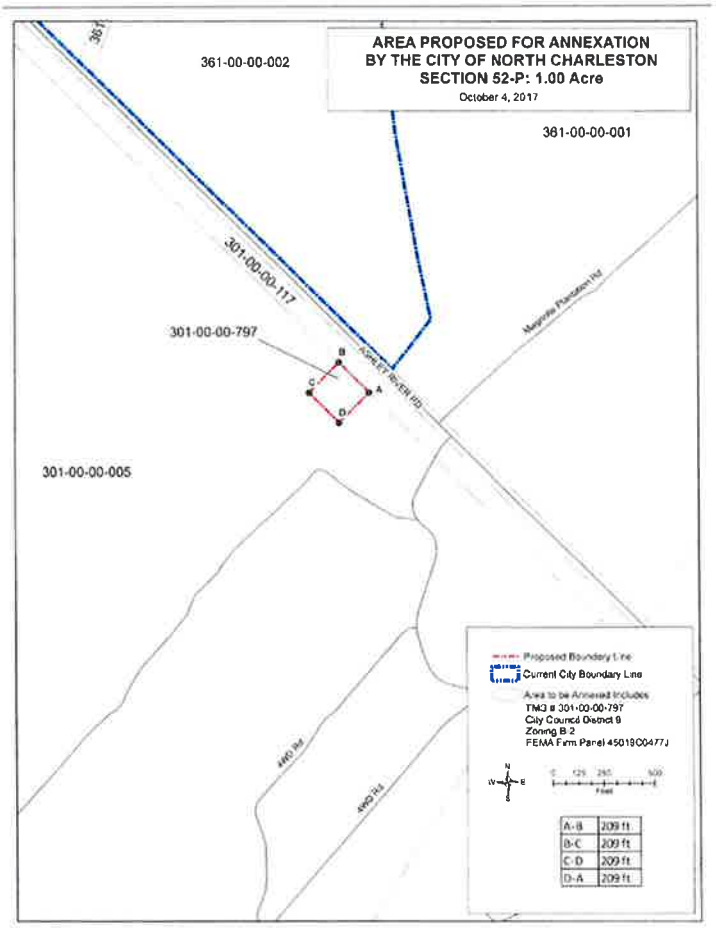
[9] As explained in Williston on Contracts, "A quit claim deed only conveys a grantor's interest and implies nothing more. Indeed, a buyer's acceptance of a quit claim deed generally implies that the seller is only conveying whatever title the seller may have – which may be to a greater or lesser extent than the seller believes, or none at all." *Willison on Contracts*, Section 70:171, 4th Edition.

b. North Charleston Did Not Annex Any Property Owned by the Trust

Judge Griffith correctly determined that North Charleston did not annex any portion of the Trust's Shoestring. This result was clear as a matter of law for several reasons.

First, as discussed above, the Whitfield deed conveying The Acre tract to North Charleston was legally incapable of conveying property owned by the Trust. That is important to determining what was annexed (the ultimate issue here) because North Charleston's annexation package described the land annexed as being co-extensive with the land North Charleston acquired. The annexation ordinance expressly stated that the area being annexed was TMS 301-00-00-797. That is the parcel number for North Charleston's acre and is totally distinct from Shoestring parcel No. 301-00-00-017 owned by the Trust. Additionally, the Ordinance specifically noted that North Charleston was annexing "approximately" 1.0 acres, thus specifically allowing for the fact that it may not be a "perfect" acre. North Charleston even went so far as to state that the property being annexed "belongs entirely to the City of North Charleston", thus further disavowing in the ordinance any claim that it was annexing any property owned by others.

Second, the boundary description within the Annexation Ordinance / Petition shows that even if the 4" error claimed by the Trust did exist, it would not have shifted the annexation boundary over onto land owned by the Trust.



The accompanying legal description (ROA p. 294) was as follows:

Beginning at Point A, on the easternmost corner of parcel designated TMS #301-00-00-797 which is also adjacent to the present city limits line; thence, in a generally northwesterly direction a distance of 209 feet along the northeasternmost property line of parcel designated TMS #301-00-00-797 to Point B which point is on the northernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southwesterly direction a distance of 209 feet along the northwesternmost property line of parcel designated TMS #301-00-00-797 to Point C which point is on the westernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southeasterly direction a distance of 209 feet along the southwesternmost property line of parcel designated TMS #301-00-00-797 to Point D which point is on the southernmost corner of parcel designated TMS #301-00-00-797, thence, in a generally northeasterly direction a distance of 209 feet along the southeasternmost property line of parcel designated TMS #301-00-00-797 to Point A, the point of beginning with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

Line "A" – "B" is shown as the property line that the one-acre parcel shares in common with the Trust's 100' Shoestring. Nowhere did North Charleston Council express a desire to cross over the Shoestring parcel's property line to annex any portion of the Trust's land. To the contrary, North Charleston annexation package specifically said it was annexing property wholly owned by the City. Since the point of beginning for all measurements is the property line shared in common with the Trust's 100' strip (not Ashley River Road) and the direction of measurement is away from the shared boundary of the 100' strip, any error in the location of Point A on the plat would have the result of reducing either the acreage owned and annexed by the City or the acreage retained by the grantor (Whitfield). There is no way to argue that North Charleston annexed land owned by the Trust. Neither of the Trust's two arguments change this.

In an effort to avoid the unavoidable, the Trust argues that Judge Griffith only considered half the issue, and the wrong half at that. The Trust seems to argue that Judge Griffith erred because he thought it was legally impossible for North Charleston to intend to annex more than it owned. Reading the entirety of Pages 6-8 of the Order reveals that Judge Griffith made no such error. ROA pp. 6-8. Judge Griffith concluded that North Charleston's annexation action only intended to annex the property North Charleston owned. Id. While the Trust disagrees with that conclusion, it is not predicated on the "legal impossibility" error that the Trust claims.

The Trust goes on to argue that the intent of North Charleston Council did not matter in terms of applying North Charleston's annexation ordinance. The Trust is simply wrong. See State v. Kinard, 427 S.C. 367, 371, 831 S.E.2d 138, 140 (SC App. 2019)("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used....")(internal citations omitted.) Here the legislative intent was expressly written – to annex Parcel 797 (City parcel), with no mention of annexing Parcel 117

(Trust), to annex property "entirely" owned by the City (thus disavowing any claim to annex property of the Trust), and a map showing the annexation to share a common boundary with the Trust parcel rather than crossing over the Trust's boundary. See ROA pp. 293-295.

The Trust cannot sweep all this under the rug claiming it to be "extrinsic evidence." It is impossible to imagine evidence that is more internal to the dispute. The Trust sued to invalidate the North Charleston Annexation Ordinance. That ordinance, the subject of the case, is the very source! See ROA pp. 293-295.

III. The Forsberg Affidavit Does Not Change the Analysis Above Because the Four Inch Sliver is Legally Immaterial

The Trust's much ballyhooed 4" boundary line discrepancy simply wasn't material and thus the Forsberg affidavit is inconsequential. The problem for the Trust wasn't that Judge Griffith didn't give it the benefit of doubt about a possible 4" line error or that he decided the 4" error was too small to matter, it was that that the claimed 4" error had no bearing on the outcome of this case. Judge Griffith recognized that, by law, the claimed 4" error could only reduce North Charleston's acquisition from Whitfield down from 1.0 to .9999 of an acre, but in no event result in North Charleston acquiring any portion of the Trust's shoestring acreage. ROA at 6. Judge Griffith also reviewed the annexation documents and determined that North Charleston's annexation was exclusively for acreage North Charleston owned. ROA at 7. At that point, the presence or absence of 4" error became immaterial. This fundamentally invalidates the Trust's argument that Judge Griffith decided the case based on the rationale that the claimed 4" line error was too small to be legally recognized.[10]

[10] While North Charleston may believe that a discrepancy of .001 of an acre is too slender a reed on which to support Trust standing in this case, the Trust cannot solely base Judge Griffith's

IV. Vicary Does Not Provide for Special Public Interest Standing Here.

The South Carolina Supreme Court has traditionally applied narrow standing rules in regard to challenges of 100% annexation. (1) Owners of annexed property and (2) the South Carolina Attorney General are those principally empowered to challenge.[11] Vicary v. Town of Awendaw, 425 SC 350, 822 SE2d 600 (SC 2018). Under this scheme the Attorney General is the one positioned to advocate for general welfare and policy concerns on behalf of the State and general public. See St. Andrews Public Service District v. Charleston, 349 S.C. 602, 604-605, 564 S.E.2d 647, 648 (SC 2002). Of course, Vicary also recently recognized the possibility of Public Interest standing under exceedingly narrow conditions. Vicary, 425 SC at 359, 822 S.E.2d at 604. The Trust now attempts to shoehorn itself into this new Public Interest standing category.

It is important to recognize just how narrow the Vicary court's new Public Interest Standing category is. After reciting the normal types of "public interest" arguments that have conferred standing in non-annexation contexts, the Vicary court specifically mentioned that our courts have previously refused to extend similar standing in annexation matters. Id. And when it did create Public Interest Standing for annexation challenges in Vicary, the court did **not** simply say that going forward it would now recognize all traditional public interest arguments as sufficient.

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ruling on such logic. Judge Griffith's ruling was based on a finding that North Charleston had not annexed Trust land, not that North Charleston annexed a 4" strip of Trust land but it was too small to too matter! See ROA. pp. 6-8.

[11] The most recent Vicary opinion also recognized standing to challenge in a special circumstance of a municipality having engaged in deceitful conduct in order to accomplish the challenged annexation. There is no allegation that North Charleston engaged in such deceit here and accordingly that provision of Vicary is not at issue in this case.

Instead, the Vicary court noted that "the unique facts present here" showing governmental deceit. This was well summarized in the opinion's concluding paragraph:

> "We recognize this Court's jurisprudence has historically carved a narrow avenue to challenge annexations carried out under the 100% annexation method. However, *when an annexing body arguably engages in underhanded conduct*, it becomes subject to a lawsuit...." Id. at 360, 605 (emphasis added).

So Vicary, while creating the possibility of Public Interest Standing for 100% annexation challenges, did so under the most narrow of circumstances. It did not open a wide door for all forms of Public Interest assertions such as the Trust offers here.

Assertions by the Trust that it is a public steward for good purposes does not elevate it to the narrow realm of Vicary Public Interest standing. The National Trust's status as an entity dedicated to historic preservation does not make it specially situated to challenge this annexation.[12] As a special interest entity with a limited viewpoint, it is certainly not better situated than the South Carolina Attorney General to assess the best interests of *all* citizens of South Carolina and undertake any challenge that may be appropriate.

At its heart, the challenge here is that North Charleston didn't properly comply with annexation statutes. While the Trust offers varying concerns surrounding this in an attempt to justify Public Interest Standing here, none are compelling. *First*, despite the Trust's fears, this is hardly part of an impending tidal wave of cases sufficient to justify granting extraordinary standing. We have no runaway train of leapfrog annexations of increasing distance. *Second*, concerns about misapplication of a statute or improper municipal boundary changes are interests

[12] While the consequence may touch on historic interests on which the Trust focuses, the Trust has no particular expertise in the actual issues of this legal dispute.

in the heartland of the State (represented by the Attorney General), not the Trust. *Third*, the Attorney General has standing to freely challenge each and every such annexation he desires. Should the issue ever crop up again the Attorney General can address it the moment he sees fit. There is no need to grant *extraordinary* standing here to the Trust. There is no risk of S.C. Code 5-3-100 perpetually escaping review. *Fourth*, this case involves the application of an obscure statute. It is hard to see the need for extraordinary standing to be granted here to avoid a future flood of problems under S.C. Code 5-3-100. North Charleston has been unable to find a prior reported opinion during the entire life of the statute![13]

Conclusion

Judge Griffith correctly determined that the Trust lacks standing to be heard with this annexation challenge. The annexation package employed by North Charleston was clear that it annexed only property owned by North Charleston, necessarily excluding any acreage owned by the Trust. Accordingly, the Trust cannot qualify for standing in the traditional Vicary categories. The Trust is also unable to articulate grounds sufficient to bring them within the extremely narrow universe of Vicary Public Interest standing for annexation challenges.

[13] It is worth a moment to separately discuss the parties' "need for future guidance" claim for Public Interest standing. Judge Griffith had no trouble issuing "guidance" on the merits even while declining to confer standing here. Judge Griffith's opinion has been widely publicized and is the subject of this appeal. It will no doubt be instructive to North Charleston and every other city in South Carolina going forward.

This 29th day of June, 2023

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