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SC Court of Appeals

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. 2018-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 REPLY TO THE RETURNS TO ITS PETITION FOR A WRIT OF CERTIORARI

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In further support of its petition for a writ of certiorari, Charleston[1] makes the following points in reply to Respondents' returns.[2]

ARGUMENT

1. First, a few points regarding Respondents' Statement of Facts:

One, with respect to the "Timing" section of Respondents' Statement of Facts, while footnote 7 therein acknowledges that, on December 19, 2017, Charleston received a petition to annex Parcel 006 under the 75% Annexation Method authorized by S.C. Code Ann. § 5-3-150(1), it does not tell the whole story.[3] Respondents omit the fact that, at that same meeting, Charleston not only voted to consider the petition to annex a number of parcels of land, including Parcel 006, but also advertised to the public its intent to hold a public hearing on the petition, as required by § 5-3-150(1)(6). (R. p. 111 ¶¶ 15–16.) While Respondents may not believe such is "official 'action,'" these acts by Charleston are in lockstep with the requirements of § 5-3-150(1) and thus constitute "the legal proceedings first instituted," which are accorded priority under the prior pending proceedings rule. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("The 'prior pending proceedings rule' provides that where two municipalities attempt to annex the same area at

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[1] Shorthand references already defined in the petition are continued in this reply (e.g., "Charleston" is Petitioner, the City of Charleston; "North Charleston" is Respondent the City of North Charleston; "Millbrook" is Respondent Millbrook Plantation, LLC; the "Subject Opinion" is the Court of Appeals' opinion in this matter).

[2] Following the service/filing of North Charleston's return on June 26, 2023, Millbrook served/filed its return on June 29, 203, joining in North Charleston's return "as if repeated verbatim." Accordingly, while this reply covers both Respondents' returns, where the "return" is referenced (or the "Return" is cited) herein, the reference/citation corresponds to North Charleston's return.

[3] As explained in Charleston's petition, the "Millbrook Parcel" refers to the real property owned by Millbrook, including what is now designated by Charleston County as TMS No. 361-00-00-006 ("Parcel 006") and TMS No. 361-00-00-006-1 ("Parcel 006-1"). Charleston emphasizes that Parcel 006-1 was created sometime *after* North Charleston first attempted to annex the Millbrook Parcel. (R. pp. 44–45 ¶ 4, pp. 109–11 ¶ 4, pp. 190–192.) Indeed, as they must, Respondents concede this point: "*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." (Return p. 3 n.9 (emphasis added).)

approximately the same time, the legal proceedings first instituted, if valid, have priority.").

Two, Respondents state that North Charleston completed its annexation of Parcel 006 before Charleston completed its annexation of Parcel 006. (Return p. 2.) As an initial matter, Charleston asserts that North Charleston attempted to annex the entire Millbrook Parcel, not just Parcel 006. Moreover, Respondents' Statement of Facts omits the fact that Charleston had taken the first public procedural steps to annex Parcel 006 before North Charleston ever started its efforts to annex the Millbrook Parcel—or any portion thereof. On December 19, 2017, Charleston acted first. (R. p. 111 ¶¶ 15–16.) North Charleston did not take any action until December 21, 2017, when first reading was given to the 2017 Ordinance, under which North Charleston began an invalid attempt to annex the Millbrook Parcel. (R. p. 112 ¶ 19.)

Three, Respondents' Statement of Facts pertaining to the "Annexation Description" confirms what Charleston has contended from the beginning: The 2017 Ordinance described the land annexed as being bounded by the right-of-way of Ashley River Road,[4] and that being the case, the 2017 Ordinance improperly and illegally included the property now designated as Parcel 006-1, which had been in Charleston since 2005. (R. p. 112 ¶19.) Moreover, and contrary Respondents' contention, not only did the legal description of the area to be annexed by North Charleston include land in Charleston, but the map of the annexation did as well. (R. pp. 303–06.)

[4] (Return pp. 3–4 ("[T]he legal description [in the 2017 Ordinance] . . . described Parcel 006's boundary as Ashley River Road rather than stopping 100' short as would have been consistent with the Parcel 006-1 boundary that was shown on later corrected County records."); *see also* Br. of Respondent North Charleston p. 2 ("[T]he legal description [in the 2017 Ordinance] mistakenly described Parcel 006's boundary as Ashley River Road which would conflict with Parcel 006-1.").)

2. Rather than making their intended point (that the grant of a writ of certiorari is not warranted under Rule 242(b), SCACR), Respondents concede that this case is an appropriate candidate for this Court's review because it includes a novel issue of law.

Argument I in the return is not an argument against the merits of Charleston's petition, but rather a plea for the Court to ignore them. To be sure, as Rule 242(b) makes expressly clear, "A writ of certiorari is not a matter of right, but of sound judicial discretion . . . ." Undoubtedly, the Court is empowered to deny this or any other petition for a writ of certiorari for no reason at all, regardless of the merits. In practice, however, it does not appear that the Court is inclined to turn a blind eye to error for no better reason than because it can. The fact that the Court regularly issues unpublished memorandum opinions, which, of course, have no precedential value, and indeed the very existence of Rule 220(b)(1), SCACR (restricting unpublished memorandum opinions to circumstances where a published opinion would have no precedential value), shows that, as the ultimate custodian of our state's judicial system, the Court's interests are not confined solely to the development of our law-giving jurisprudence but in fact encompass a broader concern for the quality of justice that system produces.

That said, in any event, as Respondents themselves necessarily admit when they argue, not that the prior pending proceedings rule is not a novel issue of law, but simply that it would be better if the Court waited for another case in which to address it,[5] this case is one where "there are special and important reasons" for granting a writ of certiorari because it does indeed include a novel question of law. *See* Rule 242(b)(1). Moreover, the very nature of this case, involving, as it obviously does, the competing claims of political subdivisions, necessarily impacts the public interest, which can only bolster its candidacy for review by this Court. *Cf.* Rule 245(a), SCACR ("The Supreme Court will not entertain matters in its original jurisdiction when the matter can be

[5] (*See* Return pp. 4–6.)

determined in a lower court in the first instance, without material prejudice to the rights of the parties. If the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition.").

3. Respondents erroneously conflate this Court's declination to reach the issue of the adoption of the prior pending proceedings rule with a refusal to adopt the rule.

Respondents mischaracterize the circuit court's ruling on the status of the prior pending proceedings rule as being in line with precedent of this Court. (*See* Return p. 7.) It is not.

The circuit court held: "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. 10–11 (emphasis added).) In *Irmo*, this Court explained: "*We decline to reach the issue* of whether the 'prior pending proceedings' rule should be adopted by this Court." 316 S.C. at 196, 447 S.E.2d at 857 (emphasis added). Obviously, declining to adopt (i.e., affirmatively rejecting) a rule of law is not the same thing as declining to reach it (i.e., simply not addressing at all).

The circuit court's treatment of the prior pending proceedings rule was based on a fundamentally false understanding of this Court's treatment of the rule, which understanding lead it to fail to address whether and to what extent the rule should be adopted and instead simply to conclude: "Without this [the adoption of the prior pending proceedings rule], North Charleston properly annexed TMS 361-00-00-006 on December 28, 2017 with the 2017 Ordinance." (R. p. 11.) Charleston requested a substantive ruling on the issue via a motion to reconsider, which the circuit court denied without taking the opportunity to clarify its ruling. (R. p. 37, pp. 192–193.)

This error of law warrants reversal. In the interest of judicial economy, Charleston urges the adoption of the rule and its application to the facts of this case, or, alternatively, a remand of the issue

to the circuit court, with instructions as to the application of the rule. At the very least, the matter should be remanded for the circuit court to substantively consider the rule and its application.

4. In this appeal, unlike in *Irmo*, there is no allegation that Charleston failed to commence a *valid* annexation prior to North Charleston.

Here, Millbrook moved to dismiss *Millbrook I* and *Millbrook III* under Rule 12(b)(6), SCRCP, claiming that Charleston did not have standing to challenge North Charleston's annexation based on the allegations in the complaints. (R. pp. 144–47.) The circuit court could consider only the allegations in Charleston's complaints and the ordinances incorporated therein. (R. p. 2.)

In contrast, *Irmo* involved an appeal from an order granting summary judgment to the City of Columbia. 316 S.C. at 194, 447 S.E.2d at 856. In *Irmo*, this Court specifically declined to address the issue of the prior pending proceedings rule because, on the facts before it, the Town of Irmo had failed to demonstrate it had commenced "*valid* legal proceedings" prior to the adoption of Columbia's annexation ordinances. *Id.* at 196, 447 S.E.2d at 857 (emphasis original). In fact, the Court emphasized that "Irmo . . . *failed to present any evidence* refuting the irregularities found in its petitions or its lack of contiguity to the, Columbiana property." *Id.* (emphasis added).

There are no allegations in Charleston's complaints that Charleston's annexation ordinance was defective or invalid. The matter before the circuit court being a motion to dismiss based on the allegations of the complaints, it was, of course, mandatory for the complaints to be read in the 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.").

Construing the complaints in this manner compels a finding that Charleston received a petition to annex Parcel 006 under the 75% Annexation Method, that the City Council of Charleston

voted to consider the petition, and that the City Council of Charleston voted to set a public hearing on the petition, all on December 19, 2017. (R. p. 111 ¶¶ 15–16.) These are all valid acts as required by the statute governing annexations under the 75% Annexation Method. Unlike the Town of Irmo, Charleston established that it took the first valid, public procedural step toward annexing Parcel 006, in compliance with § 5-3-150(1), before North Charleston. The circuit court failed to recognize this circumstance, and the nuance of *Irmo*, resulting in its misconstruction and misapplication of *Irmo*, and the Court of Appeals erred in affirming it.

5. Respondents ignore Charleston's assertion that the prior pending proceedings rule applies when, as in the present case, a municipality takes the first public procedural step toward annexing property.

Respondents largely ignore Charleston's argument that the prior pending proceedings rule applies when the first public procedural step toward annexation occurs, instead focusing on whether the "receipt" or "acceptance" of an annexation petition by a local governing body has any legal effect.

As explained in its petition, Charleston has consistently advocated that it took the first public procedural step toward annexing Parcel 006, triggering the protection of the prior pending proceedings rule. Respondents do not address this argument or attempt to distinguish Charleston's citations to treatises and case law supporting the adoption of the prior pending proceedings rule in this manner. *See Turner v. S.C. Dep't of Health & Envt'l Control*, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008) (explaining that appellate court may treat failure to respond as concession that appellant's position is correct). And as further explained below, the allegations in Charleston's complaints, properly viewed in a light most favorable to Charleston, establish that Charleston took the first public procedural steps toward annexing Parcel 006.

6. Charleston was first in line.

Before North Charleston ever made a move to annex the Millbrook Parcel, or any portion thereof, the City Council of Charleston voted to consider a petition to annex Parcel 006 under the 75% Annexation Method and voted to hold the statutorily required public hearing. Per § 5-3-150(1), these are the first procedural steps required before annexing property under the 75% Annexation Method. *Sherman v. Reavis*, 273 S.C. 542, 546, 257 S.E.2d 735, 737 (1979), strongly supports Charleston's position on this point, confirming that an ordinance may be considered "pending" even before a city council gives it first reading or holds a public hearing thereon. Pursuant to *Sherman*, "[a]n 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." *Id.* (emphasis added).

Sherman addressed the procedures for adopting and amending zoning regulations then in effect under state law, which required notice, a public hearing, and the adoption of an ordinance. *Id.* at 543–44, 257 S.E.2d at 736. Charleston annexed Parcel 006 under § 5-3-150(1), which also requires notice, a public hearing, and the adoption of an ordinance.

In accordance with *Sherman*, Charleston alleges that, on December 19, 2017, the City Council of Charleston (1) resolved to consider the petition for annexation of Parcel 006 and other properties listed therein and (2) advertised to the public its intention to hold a public hearing on the annexation. (R. p. 111 ¶¶ 15–16.) These first public procedural steps by Charleston on the annexation petition are consistent with those that triggered the application of the pending ordinance doctrine in *Sherman*, and consistent with those that triggered the application of the prior pending proceedings rule in the treatises and case law cited in Charleston's petition. (*See* Petition pp. 7–11.)

Respondents' assertion that the only "official action" Charleston could have taken on an

annexation petition is an up or down vote is incorrect. On December 19, 2017, City Council could have ignored the petition or taken no action with respect to it. It did not. Instead, City Council chose to accept and consider the petition, in addition to ordering the public hearing required by law. City Council's action, taken by public vote or resolution,[6] complied with the mandates of § 5-3-150(1) and preceded North Charleston's first efforts to annex the Millbrook Parcel. Moreover, after taking these initial steps, Charleston proceeded to enact an ordinance annexing Parcel 006 and other parcels.

The prior pending proceedings rule is designed to avoid the very circumstances giving rise to this dispute, by recognizing the exclusive jurisdiction of the municipality taking the initial procedural steps to annex a property to complete its annexation and preventing the "race to the finish line" approach to annexation apparently urged by Respondents.

7. The new evidence cited by Respondents is of no moment.

Respondents' references to a page from Charleston's website explaining the general process for annexations and to § 2-24 of the City Code, governing Charleston's general procedure for adopting ordinances, are of no moment. (*See* Return pp. 9–10.) As an initial matter, this is evidence is out of bounds procedurally, because it was not presented to the circuit court. Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal."). Moreover, and in any event, neither the webpage nor § 2-24 abrogates the statutory requirements for notice and a public hearing applicable to Charleston's annexation under § 5-3-150(1), and *Sherman* belies Respondents' notion that Charleston cannot be considered to have taken "official action" until it votes an ordinance up or down. *Sherman* clarifies that, under certain circumstances, a matter need not receive even a first reading to be considered "pending."

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[6] *See Glasscock Co. v. Sumter Cty.*, 361 S.C. 483, 489, 604 S.E.2d 718, 721 (Ct. App. 2004) ("It is clear here that the adoption of the resolution was simply a first step in the process of County Council's formal, public consideration of the contract amendments.").

8. As a matter of law, North Charleston's first attempt to annex the Millbrook Parcel included land previously annexed by Charleston in 2005.

Respondents concede that the 2017 Ordinance describes the boundary of the area to be annexed as the right-of-way for Ashley River Road: "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." (Return p. 13.) Likewise, by its own admission, North Charleston recognized the error and attempted to cure it by way of a corrective ordinance. (*See* Return p. 14 ("Charleston cannot reasonably fault North Charleston for the corrective ordinance.").) In light of these admissions, the issues are (1) whether the flaw in 2017 Ordinance was curable, and (2), even if it was, whether Charleston nonetheless is entitled to the protection of the prior pending proceedings rule.

Respondents are charged with notice of Charleston's 2005 ordinance annexing what is now designated as Parcel 006-1, described as being immediately contiguous to and on the northern side of Ashley River Road. (R. p. 111 ¶ 114); *see Labruce v. N. Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) ("[C]ognizance of city ordinances is presumed."). The fact that Respondents overlooked the ordinance or that appropriate inquiry was not otherwise made does not serve as a basis for defeating the lawful annexation of Parcel 006 by Charleston, commenced in advance of any act by North Charleston to annex any part of the Millbrook Parcel.

Charleston does not fault North Charleston for enacting a corrective ordinance. But Charleston's position is that 2017 Ordinance was fatally flawed and beyond cure by way of a corrective ordinance. *See 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). And, in any event, the corrective

ordinance was for naught because of the prior pending proceedings rule.[7]

9. Respondents' after-the-fact interpretation/explanation of the intent behind its first attempt to annex the Millbrook Parcel is unavailing.

The interpretation of an ordinance is a matter of law. *See Gorman v. S.C. Reinsurance Facility*, 333 S.C. 696, 699, 511 S.E.2d 98, 100 (Ct. App. 1999) ("[T]he issue of interpretation of the statute is a question of law for the court."); *Charleston Cty. Parks & Rec. Comm'n v. Somers*, 319 S.C. 65, 67,459 S.E.2d 841, 843 (1995) ("The determination of legislative intent is a matter of law."). Longstanding case law establishes that equitable principles may not be utilized to alter the expressed intent of a legislative body. *See Beaty v. Richardson*, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899) ("It has, therefore, been distinctly stated (quoting from Wilberforce on Stat. Law) from early times down to the present day, that judges are not to mould the language of statutes in order to meet an alleged convenience or an alleged equity . . . .").

It is also well established that an ordinance may not be interpreted in the after-the-fact manner advocated by Respondents:

> Ordinances, like statutes, are to be construed as they were intended at the time of their enactment. Thus, the language used in an ordinance is to be construed in accordance with its meaning at the time the ordinance was enacted rather than in accordance with a meaning that might afterwards be given it. Expediency, born of changing circumstances and conditions, will not alter the meaning of plain and ordinary language used in an ordinance.

6 McQuillin *Municipal Corporations* § 20.51 (3d ed. 2007).

And even if equity were a consideration, Charleston should prevail. It is undisputed that

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[7] Before the corrective ordinance was given first reading, Charleston had taken the steps of conducting a public hearing on its petition and giving first reading to an ordinance to annex the lands described therein, including Parcel 006. (R. p. 17, p. 111 ¶ 17.) Although ignored by Respondents, these additional actions support application of the prior pending proceedings rule because they occurred prior to North Charleston taking any valid legal action to annex the same property.

Respondents only began the process of annexing the Millbrook Parcel after the City Council of Charleston, in public session, announced its receipt of a petition to annex the remainder of the property, resolved to consider the annexation, and advertised its intent to hold a public hearing thereon. (R. pp. 111–112 ¶¶ 15–16, 19–20.)

While claiming extraneous circumstances beyond its control excuse the errors in its first attempt to annex the Millbrook Parcel, Respondents attempt to analogize Charleston's purported "delay" in adopting its annexation ordinance—a "delay" caused only by Charleston's compliance with the statutory notice and hearing requirements applicable to the annexation—as "closing the barn door after the horse has already escaped." (*See* Return p. 2.) But even if the analogy is apropos, which it is not, equity would not countenance Respondents keeping the horse.

This is not a situation in which Charleston "manufacture[d]" standing, as Respondents also assert. (Return p. 14.) Respondents made their own beds. This litigation was not triggered by Charleston's actions in placing the public, including Respondents, on notice of Charleston's intent to consider the annexation of Parcel 006 on December 19, 2017. It was triggered by the subsequent actions of Respondents in attempting to "fast-track" an ordinance annexing the Millbrook Parcel in an attempt to beat Charleston to the finish line.

North Charleston's attempt to annex property lying within Charleston's municipal limits may be mistaken, but this does not justify a reinterpretation of an otherwise unambiguous ordinance, especially when, as here, such mistake occurred during North Charleston's "last ditch" effort to deprive Charleston of its jurisdictional priority to annex Parcel 006.

10. Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests and statutory rights.

Argument IV in the return is mostly derivative of Respondents' incorrect assertion that North

Charleston never annexed territory within the municipal limits of Charleston. (*See* Return p. 15 n.18.) Charleston's argument on this issue is already amply covered in its petition, but Charleston writes to emphasize that, under settled law, one municipality has statutory standing to challenge the annexation of property within its corporate limits by another. This important principle, which seems axiomatic, was overlooked by the Court of Appeals, the circuit court, and Respondents.

Precedent of this state recognizes two categories of parties who may contest an annexation, to wit: those with statutory standing and those without. As to the former category, under the 75% Annexation Method, statutory standing is accorded to the municipality or any of its residents and any person residing or owing property in the area annexed. Under the 100% Annexation Method, statutory standing is accorded to those who allege an infringement of their own proprietary interests or statutory rights:

> 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.*

St. Andrew's Pub. Serv. Dist. v. City Council, 349 S.C. 602, 604-05, 564 S.E.2d 647, 648 (2002) (emphasis added).

It is only when a party cannot allege an infringement of its own proprietary interests or statutory rights that standing to challenge a 100% annexation is limited to the Attorney General or, under special circumstances, parties who assert standing under the "public importance" exception. *See St. Andrews*, 349 S.C. at 604–05, 564 S.E.2d at 648; *Vicary v. Town of Awendaw*, 425 S.C. 350, 358–59, 822 S.E.2d 600, 604 (2018) ("We hold today a party that can demonstrate the annexing body engaged in nefarious conduct in purportedly complying with section 5-3-150 has standing to challenge the annexation.").[8]

"The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing." *Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); *see also County of Lexington v. Columbia*, 303 S.C. 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.").

South Carolina precedent repeatedly recognizes that a municipality may protect its proprietary interests and statutory rights over property within its corporate limits by challenging another municipality's attempt to annex such property. *See Forest Acres v. Forest Lake*, 226 S.C. 349, 359, 85 S.E.2d 192, 196 (1954) (Town of Forest Acres had standing to challenge purported detachment of property without its consent); *Forest Acres v. Seigler*, 224 S.C. 166, 176, 77 S.E.2d 900, 904 (1953) (permitting challenge to annexation of property within municipality's corporate limits, looking to case law emphasizing that detachment statutes afford "substantial right recognized in plaintiff, as a corporate entity, over its corporate territory"); *Tovey v. Charleston*, 237 S.C. 475,

[8] *Vicary* emphasizes that there are very limited circumstances under which the courts will recognize standing to challenge an annexation under the "public importance" exception. However, *Vicary* does not conclude that the *sole* circumstance for applying such exception is when a party alleges "nefarious" or "deceitful" conduct.

479–80, 117 S.E.2d 872, 874 (1961) ("We have held that under our statutes governing extension and reduction of corporate limits, a portion of one municipality may not be annexed to another without submitting the question of said detachment to the voters of the municipality whose area is to be reduced.").

Here, Charleston alleges the 2017 Ordinance violates its own proprietary interests and statutory rights because the ordinance includes land already in Charleston, meeting the "statutory standing" test for challenges to 100% annexations. Charleston's standing is further buttressed by the prior pending proceedings rule. Respondents' conclusory assertion that the 2017 Ordinance did not include any land in Charleston is belied by North Charleston's own admissions. (*See* Return p.3 n.9; *see also* (Return pp. 3–4 ("[T]he legal description [in the 2017 Ordinance] . . . described Parcel 006's boundary as Ashley River Road rather than stopping 100' short as would have been consistent with the Parcel 006-1 boundary that was shown on later corrected County records."); Br. of Respondent North Charleston p. 2 ("[T]he legal description [in the 2017 Ordinance] mistakenly described Parcel 006's boundary as Ashley River Road which would conflict with Parcel 006-1.").).) Even if inadvertent, the fact that the 2017 Ordinance, on its face, includes land in Charleston imbues Charleston with standing to at the very least have this issue, including whether it is curable and the effect of the prior pending proceedings rule, vetted. At this stage of the proceedings, the record does not support dismissal, the circuit court erred in concluding to the contrary, and the Court of Appeals erred in affirming it.

CONCLUSION

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

Respectfully submitted,

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I, Russell G. Hines, of Clement Rivers, LLP, attorneys for the City of Charleston, hereby certify that the **CITY OF CHARLESTON'S REPLY TO THE RETURNS TO ITS PETITION FOR A WRIT OF CERTIORARI** was served on July 7, 2023, on all parties to this matter via emailing (see attached) a copy of the same to the following:

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July 7, 2023

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Subject:	City of Charleston v. City of North Charleston (Sup. Ct. 23-000778 // Ct. App. 19-000903) -- Charleston"s Reply to Returns to Cert Petition
Date:	Friday, July 7, 2023 4:28:19 PM
Attachments:	image001.png Charleston v. N. Chas. -- Reply to Returns to Cert Petition.pdf

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Attached for service please find **City of Charleston's Reply to the Returns to its Petition for a Writ of Certiorari** in the above-referenced matter.

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