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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM MARION COUNTY  
William H. Seals, Jr., Circuit Court Judge  
Case No. 2019-CP-33-0675

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Appellate Case No. 2023-001466

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John Trenton Pendarvis and Lawton Drew, ..... Respondents,

v.

South Carolina Law Enforcement Division and South Carolina Department of  
Agriculture ..... Defendants,

Of which, South Carolina State Law Enforcement Division, is ..... Petitioner.

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**REPLY TO RETURN TO PETITION FOR CERTIORARI**

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Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner South Carolina State Law Enforcement Division (“SLED”) submits this Reply to the arguments raised by Respondents John Trenton Pendarvis and Lawton Drew (collectively, “Respondents”) in their Return to SLED’s Petition for Certiorari. As discussed in SLED’s Petition to the Court, the circuit court’s issuance of a preliminary injunction was error based on the facts of this case and the governing law concerning the grant of extraordinary relief. Therefore, this Court should grant certiorari to review the Court of Appeals’ decision to affirm the circuit court’s order.

### ARGUMENT

#### **I. Respondents failed to make a prima facie showing that they were entitled to injunctive relief.**

Respondents argue the circuit court correctly issued a preliminary injunction. However, Respondents, who shouldered the burden of proof at the circuit court, did not satisfy the requisite elements needed to obtain a preliminary injunction. *See Hazel v. Blitz U.S.A., Inc.*, 425 S.C. 361, 367, 822 S.E.2d 338, 341 (Ct. App. 2018) (providing the party seeking an injunction has the burden of demonstrating facts and circumstances warranting injunctive relief). Respondents acknowledge that “[t]o obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” (Return at 7). However, Respondents did not meet their burden.

#### **A. There was no prima facie showing that Respondents would suffer irreparable harm for which there is no adequate remedy at law in the absence of injunctive relief.**

In response to SLED’s argument that the circuit court’s issuance of the preliminary injunction improperly disrupted the status quo, Respondents shift focus and highlight the fact that injunctive relief is geared toward “prevent[ing] irreparable harm to the party requesting it.” (Return at 8). Respondents argue the “crop had great value and a loss of the crop would cause

enormous financial loss to the Respondents.” (Return at 2); (*see also* R. at 3). Respondents contend that once the destruction of the crop has occurred, “there can be no adequate remedy at law.” Respondents extract the following from the circuit court’s order in which the circuit court agreed with Respondents’ argument:

The court is aware that [Defendant] SLED has already confiscated and destroyed some of [Plaintiff] Pendarvis’ crop located in another county. Certainly, both [Defendants] will take the position that the participation agreement prohibits the [Plaintiffs] from being entitled to compensation for crops lawfully confiscated and destroyed. See Section VIII(a) of the agreement. Thus, if the crop is confiscated and destroyed, the Plaintiffs will face significant legal hurdles in seeking remedy.

(Return at 8) (citing R. at 7-8). The fact that Respondents *may* “face significant legal hurdles in seeking remedy”—based upon a meritorious defense of Petitioner—is of no moment. However, it is clear—based on Respondents’ arguments alone—that Respondents would not suffer irreparable harm for which there is no adequate remedy at law. Once the crop is destroyed, should Respondents credibly contend that it was done unlawfully, then they would have (arguably) a cause of action against SLED and/or the South Carolina Department of Agriculture (“SCDA”) for negligence or breach of the South Carolina Hemp Farming Participation Agreement (“Participation Agreement”).

In *Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, the Supreme Court reversed the lower court’s issuance of a preliminary injunction, holding an adequate remedy at law existed. 361 S.C. 117, 603 S.E.2d 905 (2004). The Supreme Court explained the injunction was inappropriate because the plaintiff golf course failed to establish that it lacked an adequate remedy at law to collect money damages in breach of contract and negligence suits against the defendant developer. *Id.*

Here, like the plaintiffs in *Scratch Golf*, Respondents cannot demonstrate irreparable harm for which there is no adequate remedy at all. A civil action for money damages, whether it be pursuant to contract or tort, could be brought against any alleged at-fault party that acted “unlawfully.” Because money damages constitute an adequate remedy at law, Respondents have not made a prima facie showing of irreparable harm.

**B. There was no prima facie showing that Respondents would likely succeed on the merits of the litigation.**

Neither Respondent Pendarvis nor Respondent Drew had at the time, or have now, a Hemp Grower License to grow hemp in Marion County. It is clear that the illegal crop in question was planted and cultivated in Marion County. This fact remains uncontradicted and causes Respondent’s case to plainly fail on the merits. In their Return, Respondents go through great effort to divert attention away from the plain language of the Participation Agreement in hope of finding shelter with the factual disagreement as to the THC-content of the hemp in question.<sup>1</sup> While the THC-content is an issue for this particular crop, that fact has absolutely no bearing on the fact Respondents were clearly planting and growing hemp, in clear violation of the Participation Agreement, in a County for which they did not, nor ever had, a Hemp Grower License.

Section VIII of the Participation Agreement provides three, specific incidents that will result in destruction of hemp without compensation:

**I. Permitted Grower acknowledges and consents to the forfeiture or destruction, without compensation, of hemp material:**

- i. Found to have a measured delta-9 THC content of more than 0.3 percent on a dry weight basis;

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<sup>1</sup> SLED does not waive any argument as to the illegality of the hemp in question based on its THC-content as discussed in depth in its Petition for Certiorari. It was erroneous for the circuit court to allow Respondents to complete the cultivation as well as harvest and sell the illegal hemp crop.

- ii. Bearing off-label pesticide residues (or believed by SCDA to have had pesticides applied off-label), regardless of the source or the cause of contamination; and
- iii. Growing in **an area** that is **not licensed by SCDA**.

(R. at 52) (emphasis added).

Furthermore, the South Carolina Hemp Farming Act makes it unlawful for a person to “cultivate, handle, or process hemp” in South Carolina without a hemp license issued by SCDA. S.C. Code Ann. § 46-55-20(A)(1). Following its investigation, SCDA determined Respondents were in willful violation of Section VIII(a)(iii) of the Participation Agreement and informed Respondents of this violation. (R. 47). The record does not indicate that Respondents reached out to SCDA to alert it of any mistake or disagreement with this finding prior to this litigation.

Respondents make the argument that Respondent Pendarvis submitted an amendment application to add the Marion County property to his license. (Return at 13) (“In particular, it is undisputed that Respondent Pendarvis sought to amend the location, listed on his license, and that [SCDA] specifically allows for such amendments to take place.”) *However*, this request was *not approved* by SCDA, and it was submitted *after* the property in Marion County had been planted. (R. 47, 64). Section II(a)(iii) of the Participation Agreement mandates “Permit Holder shall Submit a Permit Amendment Application *and obtain written approval from a representative of SCDA before implementing any change to the license sites* stated on the Permitted Grower’s Application.” (R. 50) (emphasis added).<sup>2</sup> This is not a case in which confusion, or a mere mis-transcription of the GPS coordinates led to the presentation and approval of an incorrect location to be licensed.

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<sup>2</sup> Furthermore, Section II(a)(ii) requires the Permitted Grower to “apply for registration of all growing, handling, and storage location, including GPS coordinates, and receive SCDA approval for those locations prior to having living (non-cut) Hemp on those premises.” (R. at 50).

Instead, this was a willful planting on a property not owned by Respondent Pendarvis (license holder) and in a completely different county<sup>3</sup> never approved by SCDA.<sup>4</sup>

To be sure, at no point—whether at the circuit court, the Court of Appeals, or this Court—have Respondents had an adequate response to the fact that the Hemp Grower License issued to Respondent Pendarvis and the GPS coordinates approved by SCDA were not for any property located in Marion County. The Court of Appeals did not address this glaring location issue, making the hemp in question contraband *per se*. See, e.g., *Cooper v. City of Greenwood*, 904 F.2d 302, 305 (5th Cir. 1990) (“Courts will not entertain a claim contesting the confiscation of contraband *per se* because one cannot have a property right in that which is not subject to legal possession.”).

Furthermore, the Court of Appeals did not address the plain language of the Participation Agreement in which Respondent Pendarvis specifically consented to the destruction of the crop if it was determined it was growing in a location for which a SCDA license had not been issued. Again, this is not a simple case of planting in the wrong field, or corner of the wrong field, near a given location. This was a case where the license was for Dorchester County, and the subject crop was planted and growing in Marion County, which is 2 to 3 counties away from Dorchester. Therefore, Respondents failed to show a likelihood of success on the merits of this litigation. See

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<sup>3</sup> SLED would point out that the location was not mere feet into a connecting county, but instead it was two to three counties away from the county in which Respondent Pendarvis had secured a license. Dorchester County is separated from Marion County by Florence, Williamsburg, Berkeley, Georgetown, and/or parts of Charleston County.

<sup>4</sup> Respondents appear to argue that because South Carolina is a “notice pleading state,” the mere allegation that they “filed an application to grow hemp at the Marion County site with the SCDA” is enough to carry the day in obtaining injunctive relief. It is not; this argument is a nonstarter. See *Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005) (noting injunctive relief is a “drastic remedy”); *Cty. of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902, 904 (Ct. App. 2002) (“A plaintiff’s entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for injunction while also showing an injunction must be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation.”).

*Curtis v. State*, 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001) (“A trial court may consider a case’s merit to the extent necessary to determine whether a temporary injunction should issue.”).

**II. Respondents failed to respond to SLED’s argument that it was error for an injunction to issue for the purpose of enjoining legitimate and valid law enforcement action.**

The South Carolina Hemp Farming Act makes clear that it is unlawful for “a person to cultivate, handle, or process hemp in this State without a hemp license issued by the [SCDA] pursuant to the state plan.” S.C. Code Ann. § 46-55-20(A)(1). “If the commissioner determines that a licensee has violated state law with a culpable mental state greater than negligence, then the commissioner shall immediately report the hemp producer to the Attorney General and the Chief of [SLED]” and the application of any possible corrective action plan does not apply. *Id.* at § 46-55-40(B). The Hemp Farming Act charges SLED with enforcement under these circumstances. *See id.*; S.C. Atty. Gen. Op., 2019 WL 3855186 (Aug. 8, 2019) (providing that “possession and handling of unprocessed or raw hemp material without a license is contraband per se and subject to seizure”).

As discussed above and in SLED’s Petition for Certiorari, Respondents were in violation of the Hemp Farming Act and the Participation Agreement. And, “[o]rdinarily a court of equity has no jurisdiction to restrain criminal proceedings.” *Cain v. Daly*, 74 S.C. 480, 55 S.E. 110, 112 (1906). Because SLED was moving forward with a legitimate criminal proceeding, it was error for the circuit court to issue the injunction barring SLED from doing the same. Respondents have failed to show that the underlying laws governing this situation are “clearly void.”

**III. Respondents failed to address other meritorious arguments raised by SLED in its Petition.**

Notably, there are several other important issues raised in SLED’s Petition which Respondents have failed to address. *First*, Respondents have no response to Section VIII of the

Participation Agreement in which Respondent Pendarvis expressly consented to the forfeiture and destruction of any hemp crop “[g]rowing in an area that is not licensed by SCDA.” (R. 52). *Second*, Respondent Drew has no property rights in the hemp crop in question because he was never a licensed grower under the Hemp Farming Act. A preliminary injunction cannot issue in his favor.

### **CONCLUSION**

Based on the foregoing reply arguments and the arguments set forth in its Petition for Certiorari, SLED respectfully requests this Court grant certiorari to review the Court of Appeals’ decision affirming the circuit court’s issuance of a preliminary injunction.

Respectfully submitted,

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