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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

OPINION NO.: 2024-UP-018
CASE NO.: 2019-CP-07-00818
APPELLATE TRACKING NO.: 2021-00321

Mare Baracco,……Appellant/Respondent,

v.

County of Beaufort,…….. Respondent/Appellant.

PETITION FOR REHEARING *EN BANC*

January 24, 2024

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Attorneys for Appellant

As authorized by *South Carolina Appellate Court Rules*, Rule 219, the Appellant/Respondent respectfully moves for rehearing by the entire Court of Appeals. This motion is made on the grounds that for the reasons set forth in the Petition for Rehearing filed simultaneously with this motion, the panel decision issued January 10, 2024, represents a question of exceptional importance because even though Opinion No. 2024-UP-018 is an unpublished, *per curiam* decision, it will be distributed to every county and municipal attorney in the State as authority to thwart the effort of citizens to obtain public information about the conduct of governmental issues. Moreover, the panel decision is inconsistent with the well-developed body of *Freedom of Information Act* jurisprudence and inconsistent with the General Assembly's declaration that "violations of this chapter must be considered to be an irreparable injury for which no adequate remedy of law exists." S. C. Code, ann. § 30-4-100. See also § 30-4-15, S. C. Code, ann. for the stated purpose of the *Freedom of Information Act*.

For the reasons set forth in the Petition for Rehearing filed simultaneously herewith, Appellant/Respondent moves for a rehearing before the entire Court of Appeals.

Respectfully submitted,

January 24, 2024

/s/ Thomas R. Goldstein
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As allowed by the *South Carolina Appellate Court Rules*, Rules 221 and 219 (petition for *en banc* hearing filed separately and simultaneously), appellant petitions for rehearing on the following points misapprehended and overlooked by the Court in Opinion 2024-UP-018. Appellant also simultaneously files a motion for hearing *en banc* as allowed by Rule 219 because the Opinion under review is (1) in conflict with this Court's and the Supreme Court's prior *Freedom of Information Act* caselaw and (2) because the Court announces a sweeping narrowing of both the purpose and the reach of the *Freedom of Information Act* as follows: "The County's public use of private email accounts is neither a violation of FOIA nor does it eliminate the attorney-client privilege." (Opinion at ¶ 2). Moreover, as discussed below, this case misapplies the "irreparable harm" standard—the General Assembly declared that "violations of this chapter must be considered to be an irreparable injury for which no adequate remedy of law exists." S. C.

Code, ann. § 30-4-100)—and overlooks the requirement that a discretionary standard is never unbridled and always reviewable.

1.

THE COURT OF APPEALS MISAPPLIES THE GENERAL ASSEMBLY'S DECLARATION THAT *FREEDOM OF INFORMATION ACT* VIOLATIONS ARE ALWAYS "JUSTICIABLE CONTROVERSIES" BECAUSE THE GENERAL ASSEMBLY DECLARED SUCH VIOLATIONS TO "BE CONSIDERED TO BE AN IRREPARABLE INJURY FOR WHICH NO ADEQUATE REMEDY AT LAW EXISTS." S. C. CODE, ANN. § 30-4-100

The Court of Appeals applies an erroneous standard of review to the facts presented by this case. While the Opinion under review cites correct and controlling precedent, it fails to apply it by mistakenly concluding the appellant fails to present a "justiciable controversy." There is nothing remotely "contingent, hypothetical, or abstract" about the County demanding appellant pay outrageously inflated and unlawful fees as a precondition to fulfilling her request. There is not a case in South Carolina jurisprudence that requires a citizen to submit to an unlawful act as a prerequisite to filing suit, and even if there were, the General Assembly bestows standing on every citizen to maintain an action for *F.O.I.A.* violations. Appellant was not required to pay unlawful fees to maintain her action, and the Court's erroneous reliance on such a principle not only overrules the General Assembly's declaration of standing conferred by § 30-4-100, but also violates the Supreme Court's precedent in *Sloan v. Friends of the Hunley (Hunley II*), 393 S.C. 152, 711 S.E.2d 895 (2011) Against this fundamental underpinning of standing and "irreparable injury," the Court misplaces reliance on *Wallace v. City of York*, 276 S.C. 693, 281 S.E.2d 488 (1981) (also discussed below on page 8) a case wholly inapposite. (When York City Council voted to discontinue an appeal, individual councilmembers could not maintain the action in the City's name.) Thus, appellant is not required to pay unlawful fees to maintain an action under the *Freedom of Information Act*, and the Court should grant rehearing and revise the Opinion under review to address this error.

2.

THE COURT OF APPEALS MISAPPLIES THE CLEAR REQUIRMENTS OF THE *FREEDOM OF INFORMATION ACT* AND THE *RECORDS RETENTION ACT* THAT REQUIRES THE COUNTY TO MAINTAIN PUBLIC RECORDS AND DISCLOSE DOCUMENTS RELATED TO THE ACQUISITION OF REAL ESTATE ONCE THE TRANSACTION IS COMPLETE.

In the first paragraph (following a summary of the procedural history of the case), this Court holds: "The County's public use of private email accounts is neither a violation of FOIA nor does it eliminate the attorney-client privilege." (Opinion under Review ¶ 2) This over-generalization is a novel reinterpretation, eviscerating the *Freedom of Information Act*, and if the Court is going restrict the purpose, scope, and reach of the *Act* (and overturn significant precedent), it should do so in a unanimous voice so that government officials and practitioners across the State are aware of this Court's substantially narrowing the reach of the *Act*. (It matters not the least that the Opinion under review is a *per curiam*, unpublished Opinion because every County and Municipal Attorney will rely on the Opinion to impede citizens' attempts to investigate government conduct by the simple expedients of demanding unlawful charges to see if the requestor backs down and/or claiming everything is attorney-client privileged.[1]) There are few citizens who are willing to challenge government misconduct, and this Court should not chip away at the only limited remedy available. The Court's erroneous conclusion that government officials can conduct public business privately (especially in the acquisition of real estate) is not supported by identification of supporting citation. Moreover, the Court's novel interpretation runs counter to both the announced purpose of the *Act* in § 30-4-15 and the specific requirement of the *Act* prohibiting government officials from using electronic communication to evade transparency in §

[1] While not a part of this record, it is appropriate in a Petition for Rehearing requesting the Court to take another look at an Opinion, to give the Court another demonstration of how government officials acting in bad faith impede a citizen's request for information. In another *F.O.I.A.* request, Beaufort County refused to turn over the material because **it might demonstrate illegal conduct**. The County refuses to release the information until "the appropriate law enforcement agencies have notified the County that the records are not relevant to their investigations or the aforementioned exemptions cease to apply." In other words, never.

30-4-70(c), and counter to the County's obligation to preserve public records under § 30-1-20, S. C. Code, ann., *et. seq*. The *Freedom of Information Act* prohibits government officials from conducting government business privately and they certainly cannot solicit the County Attorney for legal advice as private citizens communicating on private email.

3.

THE COURT OVERLOOKS AND MISAPPLIES THE DISCRETIONARY STANDARD GOVERNING THE AWARD OF ATTORNEY'S FEES TO PREVAILING PARTIES.

Section 2 of the Opinion under review holds that an award of attorney's fees is discretionary with the trial court, a correct statement of law. However, the Opinion under review misapplies the "discretionary" standard elevating it to unbridled and unreviewable. For example, even though the appellant prevailed on backing the County down from charging her exorbitant fees, forced the County to turn over real estate documents, and required the County to disclose the identities of the correspondents in the private e-mail communications, the Opinion fails to apply any discussion or analysis as to who is the prevailing party in this case, even though the Supreme Court makes clear in *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), a prevailing party does not necessarily have to prevail on each and every point. More importantly, the Court overlooks the indisputable fact that—even if the Court declines to amend its Opinion—the appellant prevailed on the several important issues:

- Compelling the County to disclose documents related to its acquisition of two parcels of real estate;
- Requiring the County to disclose information related to communications with third persons who cannot be covered by an attorney/client privilege;
- Requiring the County to disclose the identity of participants in discussion of County business;

- Compelling the County to cease charging requestors with unlawful fees for legal review of documents sought under the *Freedom of Information Act*.
- Prevailing on the right to obtain the email correspondence from Councilmembers Alice Howard and Stewart "Stu" Rodman (which have never been turned over—the County's Privilege Log only lists Paul Sommerville, who was Chairman, as exempt). See R.O.A. Vol. 1, pages 89-96. Interestingly, the Privilege Log claims that every communication to every County employee is covered by "attorney-client" privilege! See for example, entry no. 133, page 95: "Email from CountyAttorney to County employees and retained agent." Even a casual inspection of the County's Privilege Log reveals that ordinary County business is universally cloaked in "attorney-client privilege."

"An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. *Id.*, 675 S.E.2d at 445 (quoting *Layman*, 376 S.C. at 444, 658 S.E.2d at 325)." *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895 (2011). Here, the facts are stronger than *Sloan* because, for example, here the County resisted disclosing even the identities of correspondents until the Special Referee compelled it. Thus appellant achieved more than Sloan: "Here, Sloan's complaint prompted Friends to do what a series of FOIA letter requests could not accomplish—produce the requested documents. Accordingly, Sloan prevailed and is entitled to an award of attorney's fees." In *Sloan*, the Friends of the Hunley produced the requested documents one month after Sloan filed his suit. They then asserted there was no "justiciable controversy" because they turned over the documents Sloan requested. According to the Friends, this meant Sloan could not be a "prevailing party" because they complied early and without a court order. The Supreme Court disagreed. Here, Beaufort County pushed appellant much harder, first demanding she pay exorbitant and unlawful fees in direct violation of the *Act* and the County's own published fee schedule, then by blacking

out entirely the documents she sought, including even the identities of the participants in the communications, and also refusing to turn over documents related to the acquisition of real estate, which the County is obligated to provide and which the Court ordered. In short, the County took a highly aggressive—and illegal—program against appellant far worse than the 30-day stonewalling that the Supreme Court analyzed in *Sloan*. In affirming the Special Referee's "discretion" to not award fees after appellant prevailed on several important issues is a decision at variance with both the facts and the law, the definition of an abuse of discretion. In affirming the decision to withhold fees or costs from the appellant, this Court overlooks the factors applied to the discretionary standard and thus reaches an erroneous conclusion.

Thus there is no "evidentiary support" for either the County's decisions to withhold the identities of participants in communications or the suppression of information related to the acquisition of real estate, or in attempting to force the appellant to pay unlawful fees, and appellant prevailed on all of these legal issues both at both trial and on appeal. The Court's overlooking these facts and the governing law means the Court refused to apply the discretionary standard to the success appellant achieved. Even without modifying the Opinion under review, the appellant is at least a partial prevailing party, and thus this Court errs in citing the abuse of discretion standard without applying it to the facts of the case.

Finally, as mentioned above, the Opinion under review inserts a parenthetical comment that appellate courts only analyze cases presenting a "justiciable controversy" without explaining why the present case presents only "moot" or "academic" issues. The Court cites *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) for this proposition. That case involved the City of York adopting a resolution to withdraw an appeal. When individual members of the York City Council attempted to step in the shoes of the City and continue the litigation, the Court found that individual Councilmembers had no authority to maintain the litigation in the place of

the municipality and declared the case moot. Inasmuch as the *Freedom of Information Act* bestows statutory standing on the appellant to maintain this action (§ 30-4-100, S. C. Code, ann.) and declares all "violations of this chapter must be considered to be an irreparable injury for which no adequate remedy of law exists." S. C. Code, ann. § 30-4-100, it is indisputable that appellant presents a "justiciable controversy" to the Court that is not moot.

4.
THE FREEDOM OF INFORMATION ACT SPECIFICIALLY PROHIBITS CHARGING REQUESTORS FOR FEES TO "REVIEW" DOCUMENTS TO DETERMINE IF PRIVILIGE PREVENTING DISCLOSURE APPLIES.

The third section of the Opinion under review is a study in contrast. The Opinion recites the correct legal standard: "Fees may not be charged for examination and review to determine if the documents are subject to disclosure." (Opinion at ¶ 4, citing § 30-4-30(B)) The same paragraph holds that: "Here, Keaveny was best suited for the identification of privileged information in his correspondence with county council members." Whether Mr. Keaveny was "best suited" to "review" documents is not an issue in the case even though from July to October 2018, he was acting in a dual capacity as County Administrator and County Attorney. The violations were: demanding appellant pay for the "review," "redacting" every single word in every document, including the participants in the communications, and claiming attorney-client privilege on the acquisition of real estate, and allowing council members to conduct County business through private discussions. These are the violations that are independent of the "attorney-client privilege."

The Court of Appeals misapplies the attorney-client privilege, which the Supreme Court summarized in *Ross v. Medical University of South Carolina,* 317 S.C. 377, 453 S.E.2d 880 (1994), which holds:

Attorney-client privilege protects **a client** and any other person from disclosing confidential communications made to counsel relative to a legal matter. See generally *McCormick on Evidence* § 87 (E. Cleary, 3rd Ed.1984). However, this privilege is not absolute:

Not every communication within the attorney and client relationship is privileged. The public policy protecting confidential communications must be balanced against the public interest in the proper administration of justice. This is exemplified by the widely recognized rule that the privilege does not extend to communications in furtherance of criminal tortious or fraudulent conduct. *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 220 (1981) (internal citations omitted).

The determination of whether the privilege applies is within the sound discretion of the trial judge and his decision will not be reversed absent an abuse of that discretion. *State v. Love*, 275 S.C. 55, 271 S.E.2d 110 (1980) (emphasis added)

The Court of Appeals' analysis overlooks that Mr. Keaveny served as County Administrator from July – October 2018, (which makes him the attorney and the client!) and also ignores the redundancy that asking a lawyer to make an attorney/client determination about his or her own correspondence is a little like asking a student to assign herself a grade. The attorney-client privilege belongs to the client, not the lawyer. *Ross v. Medical University of South Carolina, ibid*, which casts some doubt on whether Mr. Keaveney is or is not "best suited." Not only is the County prohibited from charging for this review, but also the Court overlooks the several ways the County waived privilege if it existed. Moreover, as pointed out by the Supreme Court in *Ross* (and discussed extensively in appellant's briefs to this Court), attorney-client privilege cannot be asserted "in furtherance of criminal, tortious, or fraudulent conduct," and Beaufort County independently determined that the County improperly acquired 1 Bostick Circle but could not take corrective action because the person responsible previously left employment with the County. See R.O.A. Vol. 1, page 340 [Exhibit 14]: "First, the unauthorized purchase by the former Interim County Administrator. . . . There is no available disciplinary action available against the former Interim County Administrator because he is no longer employed by the County." Thus this Court's unprecedented contraction of the *Freedom of Information Act*—especially in light of the mandatory

disclosures required by § 30-4-40(a) (discussed more fully below on page 12) encourages just this sort of mischief.

Thus, the Court overlooks both the fact that appellant successfully persuaded the County to stop demanding illegal payments for "review" of material subject to the *Freedom of Information Act*, and also completely overlooks the Record on Appeal. The Record on Appeal reveals that the County did not "redact" correspondence; it simply blocked it out entirely, **including the identity of correspondents,** which the Special Referee determined to be illegal, making appellant a prevailing party under *Sloan, ibid*. Even though the Court identifies the correct legal standard, it adopts the County's error in conflating "review" with "redaction." "Redaction" is the physical act of blacking out **privileged** information, which the County erroneously believed—until appellant demonstrated otherwise—included even the identity of the correspondents. In her April 12, 2022 brief (page 28), appellant identified 13 correspondents from a sample of e-mails whose inclusion in correspondence demonstrates why the County cannot claim attorney-client privilege for various reasons. See R.O.A. Vol. 3, pages 628-630 [County Bate Stamped production 221, 220, and 255]. Moreover the County admitted that its acquisition of 1 Bostick Circle was improper, so attorney-client privilege cannot possibly protect those communications.

5.

THE APPELLANT'S SUCCESS IN FORCING THE COUNTY TO PROVIDE DOCUMENTS RELATED TO REAL ESTATE ACQUISITION DEMONSTRATES HOW SHE IS A PREVAILING PARTY AND HOW THE COURT OVERLOOKS THE IRREPARABLE HARM FLOWING FROM EVERY VIOLATION.

As discussed above in Section 1, the General Assembly's declares that "violations of this chapter must be considered to be an irreparable injury for which no adequate remedy of law exists." S. C. Code, ann. § 30-4-100. The General Assembly emphasized the County's duty to be transparent by enacting § 30-4-70, prohibiting members of governmental bodies from using electronic communication to avoid both the spirit and the letter of the *Freedom of Information Act*.

Opinion No. 2024-UP-018 simply ignores this point by carving out a universal exception that swallows the rule by declaring that government officials are free to conduct business in private: "The County's public use of private email accounts is neither a violation of FOIA nor does it eliminate the attorney-client privilege." (Opinion under review at ¶ 2.) This conclusion is both erroneous and a study in contradiction, holding on one hand that "the Special Referee did not err in failing to require the County to turn over the real estate documents," emphasizing that real estate documents related to the County's acquisition of real property are always open to the public, once again making the appellant a prevailing party. Yet, on the other hand, the Court overlooks that the County refused to produce them, and forced the appellant to file suit to gain access to documents the County wrongly claimed are covered by attorney-client privilege. While the Court of Appeals correctly concludes that "the determination of whether documents or portions thereof are exempt from FOIA must be made on a case by case basis," (citing *Evening Post Publ'g Co. v. City of North Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005)), the Court completely overlooks that the documents related to the acquisition of real estate are always open to the public once the transaction is complete. See the *Freedom of Information Act* § 30-4-40(a)(5)(b), S. C. Code Ann.: "a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies **only** to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase." (emphasis added) The Opinion under review acknowledges this statutory requirement exists, but then concludes the documents related to real estate are protected by attorney-client privilege. In other words, the Opinion under review simply rewrites the General Assembly's statute. In finding a wholesale application of attorney-client privilege as something akin to the double-secret probation of *Animal House*, the Court never applies the attorney-client privilege to the facts of the case, especially to the County's tenacious (but erroneous) defense of its assertion that a third-party

vendor is covered by attorney-client privilege. Since the South Carolina Supreme Court requires that real estate transactions be handled by lawyers, *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773, (2003), the Court completely overlooks first, that a lawyer will handle every real estate transaction, and second, the application of the statutory requirement of § 30-4-40(a)(5)(b), S. C. Code Ann. This specific statute requires that the government's acquisition of real estate must be transparent. In short, this Court has created an exemption out of whole cloth that swallows up the rule requiring disclosure. The statute requiring disclosure is specific and the Court is required to apply the statute as it is written, not abrogate it by judicial sleight of hand. Even if there were some putative conflict between the general exemptions to disclosure provided by the *Freedom of Information Act*—and there are not any that apply to a closed real estate transaction—the general exemptions of § 30-4-40 must yield to the specific requirement of § 30-4-40(a)(5)(b): "The general rule of statutory construction is that a specific statute prevails over a more general one. *Mims v. Alston*, 312 S.C. 311, 440 S.E.2d 357 (1994). . ." *Atlas Food Systems and Services, Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 462 S.E.2d 858, 319 S.C. 556 (S.C. 1995) (Court decided specific six-year statute of limitations of U.C.C. controlled over Title 15 general statute of limitations.)

Thus, Opinion No. 2024-UP-018 overlooks the application of controlling South Carolina statutes to the facts of this case. Furthermore, this Court has placed two provisions of the *Freedom of Information Act* in conflict with one another where there is no conflict, which is at variance with the entire body of *South Carolina Freedom of Information Act* jurisprudence.

CONCLUSION

It is possible—at least imaginable—that the judiciary is disadvantaged in evaluating governmental misconduct cases because in their position as guardians of the law, courts do not experience the myriad indignities visited upon ordinary citizens. It is impossible to pick up any

daily newspaper and fail to find a story of government misconduct at some level. An elite appellate lawyer recently told the District of Columbia Court of Appeals that the highest government official can order the murder of a political opponent and remain immune from prosecution unless he or she is first impeached in the House of Representatives and found guilty by the United States Senate. (That argument is long fall from the traditional definition of a lawyer who works as "an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients." *Hickman v. Taylor,* 329 U.S. 495, 67 S.Ct. 385 (1947).) The malfeasance of government officials acting in bad faith is an ancient phenomenon, which is why every first-year law student in every law school in America learns the necessity of independent judicial review: "In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of the court." *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803)

As *Marbury* made clear, only an independent judiciary stands between law and unbridled government conduct. Courts cannot see all and know all, and as a result, only the eyes and ears of ordinary citizens paying attention—and the Courts which provide them a forum—keep life from becoming "solitary, poor, nasty, brutish and short." Thomas Hobbes, *Leviathan* The *Freedom of Information Act* does what Title 42 § 1983 U.S.C.A. does—provides the vehicle to allow citizens to keep a check government action, without which there would be no counterweight to government mischief, which is never in short supply:

> § 30-4-15 Findings and purpose
> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Even with the *Freedom of Information Act*, there are few citizens who care enough—or if they do care—have the fortitude to bear the risk and the costs in challenging unlawful government action through the only tool available to them, the *Freedom of Information Act*. At oral argument before the Court on November 9, 2023, the Court asked why the appellant wanted the information. Even though the question is irrelevant, the answer should be obvious. Simply put, the appellant wants to know what governmental business these elected officials were so eager to cloak in their private email accounts, why so many of these personal emails included the county attorney, and why documents pertaining to an unauthorized property purchase were blacked out. Given that the workings of Beaufort County government are being investigated, and with a newly constituted County Council approving forensic audits dating to the years these emails occurred, this lawsuit was not only timely but also prescient.

The Opinion under review gives short shrift the essential nature and essential importance of the *Freedom of Information Act*, and not to put too fine a point on it, the Court rewards local government's bad behavior. For the reasons set forth above, the petitioner respectfully submits that the Opinion 2024-UP-018 402 is controlled by errors of law and overlooks undisputed matters of fact and law for which appellant should be granted a rehearing to address the issues overlooked by Opinion No. 2024-UP-018.

Because the Court's Opinion represents a significant contraction and reinterpretation of the *Freedom of Information Act*, the petitioner requests that the entire Court of Appeals reviews the panel Opinion and grant the petitioner a rehearing *en banc* to address the important issues raised in this case.

Respectfully submitted,

January 24, 2024

/s/ Thomas R. Goldstein____

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PROOF OF SERVICE

I certify that I have served the Appellant/Respondent's Petition for Rehearing and Motion for Rehearing *En Banc* on the Respondent, Beaufort County by depositing a copy of each in the United States mail, postage prepaid on January 24, 2024, addressed to its attorney of record, E. Richardson LaBruce, Finger, Melnick & Brooks, P.A., P. O. Box 24005, Hilton Head Island, South Carolina 29925-4005 and also by providing a copy by electronic means.

January 24, 2024

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January 24, 2024

Hon. Jenny A. Kitchings
Clerk of Court
S. C. Court of Appeals
Post Office Box 11629
Columbia, S C. 29211

RE: Baracco v. Beaufort County—Appellate Tracking Number 2021-000321
Opinion No.: 2024-UP-018; Case No.: 2019 CP 07 00818

Dear Ms. Kitchings,

I enclose the Appellant/Respondent's Petition for Rehearing and Motion for Rehearing *En Banc*, along with a Certificate of Service and our firm's checks in the amount of $50.00 for each pleading. Please let me know if you require anything further to perfect this filing. With kind regards, I am

Very truly yours,

TRG/

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: Checks #'s 20584 & 20585

cc:
Richardson LaBruce, Esq.