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S.C. SUPREME COURT

IN THE SUPREME COURT
OF SOUTH CAROLINA

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

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

Mare Baracco,Petitioner,

v.

County of Beaufort,..... Respondent.

REPLY TO RESPONDENT’S RETURN

June 2, 2024

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Occasionally, English leaves inadequate avenue of expression for common human experience, and must borrow or create language to fill the gap, loanwords. “Chutzpah” is one of those useful stand-ins for inadequate English expressions, a word usually defined as describing the defendant charged with murdering his parents asking for mercy on the ground of being an orphan. In its May 23rd return, Beaufort County demonstrates so much chutzpah.

Even though the Respondent asserts there is nothing novel about this case, a tacit concession that government misconduct is so routine as to not present a novel issue. In essence, the Respondent concedes the main two points raised by Petitioner in her request for discretionary review:

- 1) Government officials routinely ignore their responsibilities under the *Freedom of Information Act*; therefore, the Respondent asserts there is nothing important enough or novel for the Court to address (“The Petition fails to demonstrate the special and important circumstances that must be present in this case to justify this Court’s review”) because government officials so frequently violate sunshine laws,¹ and
- 2) The *Freedom of Information Act* is not intended to punish government officials.

The County’s defense may be summarized as the “ballot box” vs. “courthouse” argument—the Petitioner’s remedy is in electoral campaigning and not in the judicial system, thus reducing

¹ Beaufort County is South Carolina’s Capitol of Irony, for as Petitioner composes this Reply, the *News & Courier* is publishing stories, such as the one on page 4 of its May 30, 2024 edition, describing Beaufort County’s latest *F.O.I.A.* violations when the County refused to release the identity of the three finalists for the position of County Administrator and by taking a vote to extend a contract in an unlawful executive session. As Kurt Vonnegut says: “So it goes.”

the courts of this state to so much furniture. The County is correct: there is nothing “novel” about some government officials’ capacity for dishonesty, whether it is Clerks of Court stealing money; Sheriffs committing crimes, or legislators behaving in astonishingly illegal and unethical fashion. The County is right: we—judges, lawyers, accountants, mechanics, painters, carpenters, *etc.*—are less and less shocked by government misconduct, which is no longer “novel.” Even the United States Supreme Court has addressed the lawlessness of a district court judge, concluding while the misbehaving judge was immune from suit, the litigants bribing him were not.² However, it is both a logical and a legal fallacy to use the frequency of illegal conduct as justification for disobedience of legal obligations, something every person on the planet learns at about age 8 when parents promote independent thinking by asking children: “If everyone is jumping off a cliff, are you going to follow?” In the same way a lie does not become true by repetition, this Court sometimes expresses the principle with a judicial equivalent: “The Rule is more honored in the breach than in the observance.” *Suber v. Allen*, 13 S.C. 317 (1880) The Supreme Court lifted the line from *Hamlet*, Act I, Sc. 4, line 16, where Hamlet delivers a passionate condemnation of abuses of power, setting up the reveal of Hamlet’s father’s murder through political corruption.

Petitioner concedes that local governments’ breach of the *F.O.I.A.* is depressingly common and depressingly predictable because, as many thinkers observed, the pursuit of political power corrupts as this Court’s body of law proves *passim*. However, the County’s pessimistic tautology does nothing to assist this Court in deciding whether to grant or withhold discretionary review because the County’s argument is equivalent to a plea to stop reviewing *F.O.I.A.* cases because they occur so frequently as to cease being “novel.” (This point was the purpose of the citation to Shakespeare’s *King Henry IV* on page 17 of her Petition—why should ink on a page undo a man?)

² In *Dennis v. Sparks*, 449 U.S. 24 (1980), the U. S. Supreme Court held that a district court judge was not susceptible to being sued under 42 § 1983 for taking a bribe, but the private parties who bribed him were.

The County is also correct that the *Freedom of Information Act* is not a criminal statute, although it provides for minimal fine in a few specific circumstances. (§ 30-4-40(F), S.C. Code, ann.) However, the Petition for certiorari now pending presents a case in which not only did the Court of Appeals disregard controlling precedent, but also it ignored the several novel questions presented by these facts. The County's argument against review ignores the context of the decision under review and ignores how it conflicts with the well-established precedent on the *Freedom of Information Act*. The County should not escape review of the most fundamental tenant of local government on the argument that the rule is observed more often in the breach.

2. THE COUNTY'S DEMAND FOR OVER \$12,000.00 IN COSTS TO REVIEW RECORDS IS AN OBVIOUS FREEDOM OF INFORMATION ACT VIOLATION.

The County's second argument is easily resolved. The County argues that since Petitioner backed the County off its demand for \$12,079.00 for a "review" of the requested documents, that there is nothing for the Court to review. In essence, the County argues that while it raised its fist to strike the Petitioner, it ultimately did not, so there is no violation. It would be malleable judicial bedrock to deny review to an unlawful act that failed to succeed. In response to such objections to judicial review, this Court established long ago that it will address violations that are capable of repetition but evading review:

See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996); *Citizen Awareness Regarding Educ. v. Calhoun county Publ'g, Inc.*, 406 S.E.2d 65 (W. Va. Ct. App. 1991) (holding an appellate court could consider newspaper's appeal from trial court's injunction compelling newspaper to publish political action advertisement even though case was moot because issue was capable of repetition yet evaded review). Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. See generally *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (the court recognized that questions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest). Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. See 5 Am. Jur. 2d *Appellate Review* 649 (1995). *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 592 (2001)

The County cannot rely on the fact that it ultimately failed to violate the law as a shield to avoid review of its misconduct because the County's demand to collect unlawful fees as a pre-condition was a clear, material violation of § 30-4-30(B), S. C. Code, ann., which the Court of Appeals erroneously overlooked.

2(A) THE CASE CLEARLY PRESENTS A JUSTICIABLE CONTROVERSY.

The County's argument here is identical to its initial argument 2, and fails for the same reason set forth above. In argument 2(A), however, the County hedges its bets by arguing that there *might* have been a justiciable controversy, but the Petitioner abandoned it "by voluntarily amending FOIA Request No. 2 and reducing the scope of FOIA Request No. 3 and FOIA Request No. 4. . ." (Return at page 8) The County can be excused for forgetting the tortured procedural path of this case. The Respondent need look no further than page 3 of its own Return to recall and explicate the correct procedure of the case. As Respondent correctly points out on page 3, Judge Buckner conducted a hearing on June 3, 2020, and "ordered the Petitioner to identify which documents she was requesting under FOIA, which documents remained in dispute, and to provide a list of the same within 15 fifteen days to the County." Leaving aside the logical absurdity of demanding a party identify specifically documents being withheld, the Petitioner did her best to conform to Judge Buckner's command, but it is not a logical criticism to assert a party failed to perform an impossible task. The Record illuminates the absurdity of both the lower court's order and the Respondent's legal argument because at a glance, this Court can see the documents the County produced are **entirely blacked out!** (Appendix pages 374-381; 499-560) The County even blacked out the identity of correspondents until the Special Referee ordered the County to reveal them (making Petitioner a prevailing party on this issue). Criticizing a party for failing to describe matters withheld from her is quintessentially absurd. The Petitioner was able to draw an

inference as to what is blacked out because the County produced some of the same blacked out e-mails in unrelated litigation. See Appendix at pages 408-412: “A meeting of the three of us with Gary and Tom [County Attorney/Administrator] to set a strategy for bringing Josh back. These disclosed e-mails demonstrate in embarrassing, excruciating detail how members of the County Council knowingly violate the central tenet of the *Freedom of Information Act* by using their private e-mail to predetermine the outcome of upcoming meetings, including the votes, out of view of public scrutiny.³ In short, the County seeks to profit from its own wrongdoing.

2(B) THE PARTIES COMPREHEND THE DISTINCTION BETWEEN “REDACTION” AND “REVIEW,” AND THE COUNTY SEEKS TO PERSUADE THIS COURT TO WITHHOLD DISCRETIONARY REVIEW BY CONFLATING THE TWO CONCEPTS.

The Petitioner has never challenged the County’s right to charge for “redaction” of documents in accordance with the General Assembly’s requirements set out in § 30-4-30(B), S. C. Code, ann. When the County demanded the Petitioner pay \$12,092.00 as a precondition to fulfilling her requests, it was not charging her for “redaction.” It was: (1) knowingly demanding unlawful charges to intimidate her to discontinue her request, and (2) knowingly charging her prohibited attorney’s fees at \$72.00 an hour for “review.” The Court need only look at the County’s disingenuous and deflecting e-mails to Petitioner from Monica Spells and Bill Lisbon in the Appendix at pages 389-406 and 625-627 (quoted in full on page 4 of the Petition for Cert.) to see both obviously unlawful charges and Respondent’s obvious misdirection. Here is a sample exchange from the County, speaking through “FOIA Specialist,” Whitney Snyder, on March 18,

³ It is a notoriously open secret local governments routinely circumvent the requirement that government business be conducted in the open through a timeless version of every 10-year old’s parental manipulation: “It’s o.k. with Tommy’s Mom if it’s o.k. with you.” The entire purpose of § 30-4-70(c) is to put a lid on this misbehavior. As pages 408-412 of the Appendix demonstrates [Ex. 9, 10, 11], Councilmembers flout the requirement for openness. These July 18, 2018, e-mails from the Chair of County Council to three other members and the County Administrator/County Attorney maps out the entire upcoming meetings. They actually believe if there is not a quorum of Councilmembers conspiring on the e-mail, they can conduct County business outside of public view!

2019, informing Petitioner what the County demanded to provide Petitioner with e-mail correspondence on a flash drive:

The **estimated total** for this request is \$12,079.00.

167 hours estimated for I.T. to search and compile emails @ \$72.00/hour=\$12,024.00

3 hours estimated for Records Management to compile and redact emails at \$16.00/hour=\$48.00.

1 flash drive = \$7.00

(Appendix page 394)

When asked about these charges, Ms. Snyder directed the Petitioner to the **legal department**: “I just forwarded your correspondence to our Legal Department . . . for follow up. My office was not involved in the redactions.” (Appendix at pages 43, 626) The Respondent intentionally conflates the distinction between “redaction” and “review.” Redaction is a purely administrative function that requires little expertise or skill. Redaction involves simply compiling documents often using redaction software blacking out text that meets one of the very limited statutory exemptions to disclosure. “Review,” on the other hand, requires subject matter expertise, in this case, a law degree or at least familiarity with the legal exceptions to disclosure of public records in order to determine what portions of a document are confidential and should be redacted, for example, a driver’s license or a social security number. As 30-4-30(B) makes abundantly clear, the County, as a public body, is not permitted to charge records requestors for a review of documents in order to determine whether they contain confidential information and are subject to disclosure. Here, as the Record demonstrates, there appears to be very little substantive review by anyone with legal expertise because the County simply blacked out **everything**, including the identity of correspondents. Yet the reviewing court condones this obstructionist and unlawful behavior and excuses the County from its responsibilities to conduct itself transparently, as the law requires. In short, the Court of Appeals absolves the County of its obligation to follow the legislative intent of the *Freedom of Information Act*, the purpose of which is to ensure the public

has access to documents at a reasonable rate. However, Beaufort County openly disobeys the *F.O.I.A.*, and continues to advance new programs to ignore its requirements under the *Act*. See, for example, footnote 3 on page 14 of the Petition for Certiorari where Beaufort County has launched its latest insurmountable obstacle to disclosure—refusing to turn over any document that “might demonstrate illegal conduct.” Now that takes somechutzpah!

The Respondent’s entire argument is premised on a willful, strategic misinterpretation of “redaction.” This intentional blindness is nowhere sharper than in Respondent’s assertion on page 11 of its Return: “The Petitioner continues to offer no alternative individual who would have the skill and training to perform such a request.” This straw man argument illuminates the County’s fraud. First, the Petitioner **never** suggested the County cannot “review” documents to determine which ones are exempt from disclosure, but (1) the County cannot saddle Ms. Baracco with the attorney’s fees of \$72.00 an hour to complete such a task, and (2) the County never responded to Petitioner’s request for an explanation until after it filed suit and until after the Court required it to furnish a privilege log, which contains only broad, meaningless statements. The County’s defense to these illegal charges is: “We demanded illegal fees, but since she did not pay them, we are off the hook.” Only after Petitioner demonstrated the fees being assessed were illegal, the County went to its next retaliation by blacking out the entire documents including the correspondents’ identities! Even if the County were standing before this Court in oral argument, it will continue to conflate “redact” and “review” because to admit the distinction destroys its entire argument. Thus, the County’s suggestion that there is some conflict between “redact” and “review” baked into the *Freedom in Information Act* is the same willful misrepresentation that undergirds its entire legal position.

3. ATTORNEY-CLIENT PRIVILEGE DOES NOT ATTACH TO EVERY E-MAIL IN WHICH THE ATTORNEY IS COPIED. THE PRIVILEGE DOES NOT ATTACH WHEN

THIRD PERSONS ARE INCLUDED IN THE CONVERSATION OR WHEN THE CONVERSATION CONTEMPLATES ILLEGAL CONDUCT.

Aside from the Court of Appeals' failure to apply the legally correct analysis of redaction/review, the Court of Appeals committed reversible error in deciding that any e-mail sent to the County Attorney automatically shielded it in attorney-client privilege. First, this Court disallowed that legal position in the Berkeley County School District case⁴ where this Court made clear that including the County Attorney on every communication did not cloak them in attorney-client privilege, which would allow each and every government e-mail be protected. The Court of Appeals also erroneously overlooked the principle that attorney-client privilege is a narrow one and cannot be deployed as a universal get-out-of-disclosure card. (The County's rationales for withholding disclosure are creative—recall its latest stratagem discussed above—nondisclosure until an unknown entity demonstrates that the documents are not evidence of “illegal conduct.” (Quoted above on page 9)

In short, the County turns the General Assembly's § 30-4-15 requirement for transparency on its head, and the Court of Appeals gave the issues short shrift, adopting the judicial equivalent of a shrug to the County's behavior. Petitioner is not naïve; she is aware that the odds favor the Respondent because the Courts lack the resources to address the volume of local governments' transgressions. As weak as the *Freedom of Information Act* is on remedies, the General Assembly declared that violations are irreparable harms for which no adequate legal remedy exists, and places the enforcement of the *Act* on the resolve of ordinary citizens to hold local governments accountable. The Court of Appeals erred in not holding the Respondent to its responsibilities.

3(A) CONDUCTING GOVERNMENT BUSINESS THROUGH PRIVATE E-MAILS IS A NOVEL EXTENSION OF ALLEGED EXEMPTIONS AND SUCH COMMUNICATIONS CANNOT POSSIBLY BE COVERED BY ALLEGED ATTORNEY-CLIENT PRIVILEGE

⁴ *Evening Post Publ'g. Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745 (2011)

BECAUSE THE COUNTY ATTORNEY REPRESENTS THE COUNTY, NOT INDIVIDUAL CORRESPONDENTS COMMUNICATING ON PRIVATE DEVICES.

The issue of government officials conducting business through private communications is a topic frequently in the news, but it is a subject on which there is little developed case law. Obviously, the General Assembly directed government officials not to use a “chance meeting, social meeting, or electronic communication” to “circumvent” the “**spirit** of requirements of this chapter.” § 30-4-70(c), S. C. Code, ann. (emphasis added) The County’s warped interpretation of this statute is a perversion of the General Assembly’s mandate, essentially taking the position that anything not specifically forbidden is allowed, overlooking the General Assembly’s selection of the word, **spirit**. The use of private e-mail to conduct government businesses and/or solicit legal advice is a novel issue in South Carolina, and the Court of Appeals also gave this subject cursory treatment, simply declaring without elaboration that it is proper: “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).

The General Assembly addresses this topic by setting out the requirements for closing open meetings to receive legal advice in executive session. A motion to close a meeting for executive session to receive legal advice must be accompanied by a statement as to the specific nature of the topic being discussed in executive session. *Donohue v. City of North Augusta*, 412 S.C. 526, 773 S.E.2d 140 (2015) Here, as the Record makes clear, the County simply blacked out every letter, every syllable, every word, and every sentence, even blacking out the participants in the e-mail chain until the Special Referee compelled them to reveal the correspondents, and while the Petitioner is disadvantaged by remaining outside any *in camera* review, her common sense refutes any claim that every syllable of every private e-mail falls within the narrow exception of attorney-client privilege. More importantly, as argued to the Court of Appeals, the County Attorney

represents the County, not the individual Councilmembers in their individual capacities, and the County Attorney only acts on behalf of the County. When individual members of Council engage in putative attorney-client conversations through their private e-mail, they not only violate the statute regarding the method for getting legal advice, but also are acting completely *ultra vires* acts and thus illegal as a matter of law.

Regardless of one's view of this evidentiary record, the undisputable fact is that this issue is an issue of first impression in South Carolina, and the Court of Appeals erred in dismissing the question in such a summary fashion.

3(B) THE COUNTY ATTORNEY DOES NOT REPRESENT INDIVIDUAL COUNCIL MEMBERS, AND THE ATTORNEY-CLIENT PRIVILEGE IS A NARROW EXCEPTION THAT CANNOT ATTACH WHEN INDIVIDUAL COUNCIL MEMBERS USE THEIR PRIVATE E-MAIL TO CIRCUMVENT DISCLOSURE REQUIRMENTS OF THE FREEDOM OF INFORMATION ACT.

For the reasons set forth in the preceding section, the County repackages the same arguments analyzed above. And as the same analysis above demonstrates, Councilmembers resorting to private e-mail communications to avoid transparency is precisely the kind of *ultra vires* act the entire statutory scheme is designed to prevent. The County asserts (on page 17) that Petitioner has failed to prove that *ultra vires*, private communications were made for “such a *specific purpose*.” First, the documents are entirely blacked out, so Petitioner is unaware of the contents. The “specific purpose” violation is the County's claim that Councilmembers can use their private correspondence to solicit legal advice from a County Attorney. As set forth above, the County Attorney represents the County, not individual members, and as also set forth above, the *Freedom of Information Act* lays out the specific minimal notice requirements for seeking legal advice, which the County treats as precatory, not mandatory. This is legal error.

The next paragraph of Respondent’s argument attempts to draw an inference from the alleged similarities between the duties of private vs. government lawyers. In the same way that ethical obligations for Solicitors⁵ differ from defense counsel, so too are government lawyers obligated to adhere to a higher standard of conduct. No Court permits a County Attorney to participate in intrigue against other Councilmembers because it is indisputable that he or she represents the entity, not the individual members of Council. See Rule 407 *Appellate Court Rules*, 1.13(a): “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” The *F.O.I.A.*’s requirement that Council identify the specific purpose for invoking executive session is to alert the public of the precise issue being discussed out of its view, and before a Council can move into executive session, it must announce the specific purpose of the session. See § 30-4-70(b), S. C. Code, ann. When this section is read in connection with the prohibition in subsection (c) against using electronic media to circumvent the transparency to thwart the legislative findings in § 30-4-15, it is beyond astonishing that Beaufort County argues to this Court that private e-mails from a subset of Council members discussing County business can be an authorized invocation of attorney-client privilege.

The final two sub-arguments in County’s Return involve further discussion of the putative right of individual Councilmembers to seek private legal advice, *etc.* from the County Attorney and otherwise conduct government business privately along with an assertion that violations of the *Public Records Act* do not create a private cause of action. As to the first, this issue has been digested *ad nauseum* in the briefs to the Court of Appeals and in the Petition for Certiorari so that further repetition of the arguments merely burdens the Court with principles thoroughly discussed. As for the *Public Records Act*, the County advances another straw man argument as the Petitioner

⁵ *Appellate Court Rules* 407, Rule 3.8 “Special Responsibilities of a Prosecutor.”

never asserted that a violation of the *Act* gives rise to a cause of action. As to causes of action, the General Assembly could not be more clear than §§ 30-4-15 & 100, S. C. Code, ann. The Petitioner's reliance on the *Public Records Act* merely provides additional support for her position that conducting government business through private communications is improper.

3(C) THE RULES OF STATUTORY CONSTRUCTION MAKE CLEAR THAT REAL ESTATE DOCUMENTS ARE PUBLIC DOCUMENTS ONCE THE TRANSACTION IS COMPLETE.

There is only one conclusion to be drawn from the County's argument that real estate acquisition documents can remain secret after the transaction closes, and that one conclusion is this: Beaufort County must intensely dislike Petitioner to spend taxpayer money in advancing a demonstrably frivolous legal position. The wellspring of statutory construction is a case every lawyer has memorized: *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. V. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

In contrast to this simple, cogent explanation of the County's duties in applying the law, the County elevates a subordinate clause, "except as otherwise provided in this section," as a trump card and an invitation to debate the obvious. (Return at page 20) Respondent never explains how "as otherwise provided in this section" applies to the facts of this case. Other than the dispute over attorney-client privilege, the Respondent leaves Petitioner and the Court to grope in the dark as to the what/when/where/how/ or why the putative exception appears in this case. The County never

says, which is reminiscent of the County's infinitely creative means of thwarting disclosure such as the one identified in footnote number 3 on page 14 of the Petition for Certiorari. The County takes Petitioner to task because she does not "offer any method by which our state's established rules of statutory interpretation would allow for such a reading of FOIA's exemptions." Such intransigence is like boxing a glacier, an exercise that brings us to Wittgenstein's silence.⁶ As the ancient English proverb goes: "you can lead a horse to water, but you cannot make it drink," and Petitioner has nothing to offer Respondent in reply other than pointing, again, to §§ 30-4-15 and 40, S. C. Code, ann. and asking the County to apply those words in their plain and ordinary meaning. If there is some particular exemption (other than attorney-client privilege) to the rule for disclosure, the County never identifies it other than to suggest the acquisition of the parcels was not kosher, and under the County's application of the *Freedom of Information Act*, the putative, invisible exemption swallows the rule. The Court of Appeals erred by accepting the County's rationale without any analysis.

4. THE COURT OF APPEALS FAILED TO FIND THE PETITIONER IS A PREVAILING PARTY AND ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS.

Obviously, the Petitioner is already a prevailing party for the reasons set forth on page 20 of her Petition for Certiorari. The Respondent attempts to distinguish the holding of *Sloan v. Friends of the Hunley*⁷ arguing, because it forgot the procedure of the case, that Petitioner voluntarily amended her requests, essentially restarting the process and taking herself out of the *Hunley* holding. As the Appendix at page 5 shows, Judge Buckner, *sua sponte*, ordered the Petitioner to "notify the Special Referee within 15 days of the date of this Order which documents

⁶ "That of which we cannot speak, we must pass over in silence." *Tractatus Logico-Philosophicus* In reaching this conclusion, Wittgenstein was addressing the deliberate obfuscation through language such as displayed here.

⁷ 393 S.C. 152, 711 S.E.2d 895 (2011)

the plaintiff is requesting and which requests are in dispute and prove a copy of this to opposing counsel.” The transcript of this appearance is found in the Appendix at pages 202-215. As is clear from the appearance before the Special Referee, the testimony, the entirely blacked out exhibits, the briefing, and the arguments of counsel, Judge Buckner’s directive to Petitioner was equivalent to demanding she draw a square circle. Judge Buckner’s Order is just one of the interlocutory misfires that brings us to this point. Obviously, Judge Buckner’s directive was not appealable, so the Petitioner marched on the best she could hobbled by interlocutory Orders impossible to fulfill. The Special Referee is the only judicial officer who gave this case any close consideration to date, and even there, Petitioner was hamstrung by having her case assigned *sua sponte* to a lawyer being involuntarily drafted to enter an Order against the local government in the jurisdiction where she practices law! As set forth in the Petition for Certiorari, the Petitioner prevailed on several important matters identified on page 20 of her Petition for Certiorari, including the issue on real estate documents, on the County’s spurious claim that a real estate agent was a County employee, and most importantly in forcing the County to reveal who were the correspondents in the putative attorney-client emails. Under *Sloan*, she was entitled to at least some fees and costs on that success alone, but again, a lawyer involuntarily drafted into service against the local government where she practices is not in an ideal position to exercise independence on such matters.

CONCLUSION

The County writes on page 23 of its Return: “The County recognizes the crucial role that both accountability and transparency play in local government.” They may recognize it, but this record surely demonstrates they do not honor it. Respondent has advanced spurious legal positions, fought the Petitioner every step of the way, and deployed shifting explanations as to why the documents she seeks are not reviewable. The first time the County provided a privilege log

for allegedly privileged documents was only after Petitioner filed suit. Prior to that, Respondent continuously ignored her requests for explanation as the Record quoted above demonstrates. The County knows the appellate courts of this State are grossly overworked, and because it litigates with house money and faces no possibility of personal accountability, it plays the odds that the issues raised here are insufficiently important to warrant a discretionary review. Recent history illuminates this strategy. Like the velociraptors in *Jurassic Park*, the County constantly probes the legal fences. Petitioner does not suggest that the County's misbehavior in this case is the deathblow of democracy, but if local governments are allowed to chip away at the laws promoting transparency in its conduct, then, like the cinematic velociraptors testing the fences for weakness, the *F.O.I.A.* guardrails will collapse, freeing unconstrained violations. Beaufort County is not a velociraptor, but this Record demonstrates a keen willingness to flout the law, and the Court of Appeals gave this case perfunctory review and failed to apply the plain meaning of the *F.O.I.A.* For any or all of these reasons, this Court should grant a writ of certiorari to review Opinion No. 2024-UP-018 because it adopts several novel interpretations in direct conflict with both the statutory language of the *F.O.I.A.* and the Court's controlling precedent construing the *Freedom of Information Act*.

Respectfully submitted,

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