THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2019-002006

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

v.

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

Of which, South Carolina Law Enforcement Division, is ..…. Appellant.

RETURN IN OPPOSITION TO MOTION FOR COSTS

Pursuant to Rule 222(d) of the South Carolina Appellate Court Rules, Appellant South Carolina Law Enforcement Division ("SLED"), hereby submits this Return in Opposition to Respondents John Trenton Pendarvis and Lawton Drew's Motion for Costs ("Motion"). For the following reasons, Respondents' Motion should be denied.

This case involves the cultivation of hemp in South Carolina pursuant to the South Carolina Hemp Farming Act ("the Act"). The Act is a relatively new piece of legislation in South Carolina that has not been fully vetted by a South Carolina court. In short, the South Carolina Department of Agriculture had determined that Respondents had willfully violated the Act, thereby triggering

SLED's responsibility to take enforcement action. Respondents disagreed and requested the circuit court to issue a preliminary injunction to prohibit SLED from destroying the hemp crop in question. The circuit court ordered that Respondents finish cultivating the hemp crop, sell the hemp crop, and keep the proceeds in escrow during the pendency of the litigation. Because of the important and novel issues in the case, SLED filed a Notice of Appeal with respect to the preliminary injunction issued by the circuit court.

SLED was concerned that the circuit court's order (1) disrupted the status quo by approving the cultivation and sale of hemp in which SLED had concerns that the hemp had high enough levels of THC to qualify as marijuana; (2) used its equitable powers to enjoin a legitimate and valid law enforcement action; (3) refused to enforce the plain terms of the South Carolina Hemp Farming Program Participation Agreement; and (4) granted preliminary injunctive relief based on facts not supported in the Complaint.

This appeal presented important questions which warranted our appellate courts' consideration. Although the Court of Appeals ultimately affirmed the circuit court's decision, and although the Supreme Court denied certiorari, SLED would maintain that the novelty and importance of the issues to be reviewed would go against the reward of attorney's fees to Respondents in this case. If the Court disagrees and determines that costs are warranted under the facts of this case, the Court should respectfully reduce the award of costs from the maximum permitted amount pursuant to Rule 222(b), SCACR.

Finally, at bottom, Respondents' Motion should be denied with respect to the "Other" filing fee of $50.00. A party entitled to costs may recover the following:

> (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5)

> the cost of printing the party's final brief(s) under Rule 210. . . . The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

Rule 222(b), SCACR. SLED is unsure as to what "Other" filing fee Respondents have requested. However, Rule 222(b), specifically permits the recovery of the filing fee paid under Rule 203(d). Rule 203(d) concerns the filing of the Notice of Appeal. Here, Respondents did not file a Notice of Appeal, and this is not the "most extraordinary of circumstances" that supports such an award.

Based on the foregoing, SLED respectfully requests Respondents' Motion be denied or reduced in light of the unique facts presented in this case.

Respectfully submitted,

SMITH | ROBINSON

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