

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Orangeburg County Assessor,

Petitioner,

v.

Rekha Bali Haribabu and Thiyagarajhan  
Vasudevan,

Respondents.

Docket No. 24-ALJ-17-0435-CC

**ORDER**

**APPEARANCES:** For Petitioner: Malane Pike, Esquire  
For Respondents: John D. Elliott, Esquire

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing filed by the Orangeburg County Assessor (Petitioner or Assessor). Petitioner disputes the decision issued by the Orangeburg County Board of Assessment Appeals granting Rekha Bali Haribabu and Thiyagarajhan Vasudevan (Respondents or Haribabu or Vasudevan) the 4% legal residence property tax classification.<sup>1</sup>

After proper notice, the Court held a hearing on the merits on May 22, 2025, at the ALC in Columbia, South Carolina. The Court convened for a hearing where Petitioner, Respondents, and counsel for both parties were in attendance. Both Petitioner and Respondents testified at the hearing. After careful consideration of the evidence presented and the applicable law, the Court finds that the Respondents' application for the legal residence property tax classification should be denied.

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<sup>1</sup> This matter was the subject of a prior appeal to the ALC in July 2024 by Ms. Haribabu and Mr. Vasudevan on the basis of an adverse decision of the Orangeburg County Board of Assessment Appeals. Thereafter, both parties requested that the matter be remanded to the Orangeburg County Assessor for the purpose of obtaining additional information. An Order of Remand was issued by this Court on August 23, 2024. Such additional information did not resolve the case, and the Orangeburg County Board of Assessment Appeals heard the matter a second time on the basis of the additional information. The Board granted the legal residence classification and the Assessor timely appealed that decision to this Court, which is now the subject of this matter.

## FINDINGS OF FACT

Having carefully considered the testimony, exhibits, and arguments presented at the hearing, and considering the credibility and accuracy of the evidence, the Court makes the following Findings of Fact by a preponderance of the evidence:

Mr. Vasudevan and Ms. Haribabu are both citizens of India and have been married for twenty-eight years, since 1997. They have one son Charan Rajhan Thiyagarajhan (*Thiyagarajhan*), born in 1998. Ms. Haribabu purchased a residence located at 105 Lata Palm Court in Orangeburg, South Carolina (Tax Map # 0151-12-04-072.000) on January 31, 2022. The residence is solely in her name, as is the mortgage on the property. On December 6, 2023, Ms. Haribabu and Mr. Vasudevan filed a legal residence application. That application was denied by the Assessor on the grounds that the domiciliary intent of Mr. Vasudevan had not been provided.

Ms. Haribabu is in the United States legally under an H-1B nonimmigrant visa, which allows United States employers to hire foreign workers in specialty occupations. She is currently employed as a teacher in the Orangeburg County School District. Ms. Haribabu came to the United States in 2009 on a J-1 nonimmigrant visa. Under the terms of that visa, she was allowed to teach for three years in the United States but was then required to return to her home country for two years before being allowed to return to the United States. Upon her return, she taught school in Connecticut from 2009 to 2012. She was then required to return to India from 2012 to 2014. She returned to the United States in 2014 and taught in the Richland County School District One.

Ms. Haribabu was employed by the Orangeburg County School District in August of 2018. The Orangeburg County School District assisted her in obtaining her H-1B visa in 2019, which served to extend her stay in the United States. From 2014 to present, her only travel back to India occurred in December 2019 to February 2020, to obtain her master's degree. In January 2021, the Orangeburg County School District filed a Form I-140, Immigrant Petition for Alien Worker (Form I-140), on Ms. Haribabu's behalf, which was thereafter approved by the United States Citizenship and Immigration Services (USCIS).<sup>2</sup> Ms. Haribabu is currently waiting for her priority date to become current such that she can apply for a Green Card.

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<sup>2</sup> This form is used to petition for an alien worker to become a lawful permanent resident United States. *See I-140, Immigrant Petitioner for Alien Workers*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/i-140> (last visited August 7, 2025).

Although the Form I-140 specifically requires that the applicant provides the names of the spouse and children and whether or not they will apply for adjustment of status along with the applicant. Mr. Vasudevan's name was not included on Ms. Haribabu's Form I-140. Mr. Thiyagarajhan was included but indicated that he would not be requesting an adjustment of status. Ms. Haribabu testified the Form I-140 was prepared by the attorney for her employer and she could not explain why Vasudevan's name was not included. In further testimony, *she admitted that she* reviewed the Form I-140 prior to it being filed. Mr. Thiyagarajhan came to the United States from 2018 to 2022 on an F-1 student visa. He attended Midlands Technical College during that time but returned to India in 2022. He was thereafter denied readmission to the United States on an F-1 visa. He returned to the United States in March of 2025 and is completing his degree at South Carolina State University. Since he was over the age of 18 at all times during this appeal, his intent is not a determining factor in this matter.

Ms. Haribabu currently owns no real property in India but may inherit a portion of her ancestral home. The couple has automobile insurance through the Government Employees Insurance Company, or GEICO, on three vehicles registered in South Carolina. Ms. Haribabu's domiciliary intent is not in question in this case.

Mr. Vasudevan is in the United States legally under an H-4 nonimmigrant spousal visa, which allows spouses of H-1B visa holders to come to the United States and remain in the United States for the period of time that the H-1B visa is valid. He has held this visa since 2019, and he came to the United States for the first time in April of that year. Mr. Vasudevan's H-4 visa expires August 8, 2026. Mr. Vasudevan holds a bachelor's degree in mathematics. He previously owned a printing business in India that closed around 2018. Mr. Vasudevan obtained an Employment Authorization Document (EAD) in 2022. He worked in various motels as a front desk clerk in the United States during 2022 and 2023 and again in April and May of 2025. Mr. Vasudevan's EAD expires August 8, 2026.

Mr. Vasudevan's testimony and his previous passport show that he never came to the United States during the period 2009 through 2012 and 2014 through 2018 – all periods in which Mrs. Haribabu was in the United States alone. Mr. Vasudevan's current passport and I-94 travel history were introduced into evidence at the hearing. For the 2023 and 2024 tax years under appeal, these documents show that Mr. Vasudevan was in the United States 234 days, namely from January 1, 2023 through August 22, 2023. Mr. Vasudenvan left the United States on August 23, 2023 and

did not return until March 27, 2025. He was therefore outside of the United States for 582 consecutive days.

Mr. Vasudevan's mother, father, and sister reside in India. Mr. Vasudevan resides with his parents when he is in India. His mother has had two knee surgeries during the period that he was in India and is now doing well. Mr. Vasudevan testified that he remained in India to take care of his parents, but in later testimony admitted that his sister lives close to his *parents, approximately* three kilometers (1.86 miles) away. Mr. Vasudevan testified that since his adult son is now in the United States along with his wife, he intends to remain here with his family.

Mr. Vasudevan currently owns no real property in India. Mr. Vasudevan holds a South Carolina driver's license, is a named insured on an automobile insurance policy, and filed joint income tax returns with his wife for 2022 and 2023. Even though Mr. Vasudevan was not listed on Mrs. Haribabu's Form I-140, he can obtain a Green Card with the consent of Mrs. Haribabu when Mrs. Haribabu's priority date becomes current.

The Assessor requires all taxpayers to file an application for the legal residence property tax classification for properties that they purport to own and occupy as their legal residence. On that application, the taxpayer must certify that he/she is domiciled at that residence, that no member of his/her household claims to be a resident of a jurisdiction other than South Carolina for any purpose, and that the taxpayer nor any member of his/her household claims the legal residence classification on another residence.

Nonimmigrants must show proof of their intent to make South Carolina their new domicile. The Assessor testified she first looks to the Form I-797 to determine whether an individual can apply for legal residence. The form is a decision document that can extend approval in the United States for a nonimmigrant. The Assessor indicated that the Form I-797 is sufficient on its own when an individual is single. If an individual is married, the Assessor requires more information, typically the Form I-140. The Form I-140 Form is requested so the Assessor can look to see if the spouse is included on the form as requesting an adjustment of status.

The Assessor relies upon a prior ALC decision and will extend its analysis to grant the legal residence classification in situations where an approved Form I-140 includes the name of the nonimmigrant spouse as requesting an adjustment of status, assuming that all other requirements of the legal residence statute are met. *See Begum v. Florence Cnty. Assessor*, Docket No. 18-ALJ-17-0198-CC (S.C. Admin. Law Ct. Oct. 2, 2019). The Assessor indicates the inclusion of the

spouses' name shows the intent for both parties to jointly make South Carolina their new domicile. The Assessor testified that if no spouse is listed, then there is no indication that the spouse has the intent to get a Green Card. Thus, the legal residence tax exemption is not approved, unless a separate showing is made that the spouse is seeking permanent residency.

Since Mr. Vasudevan was not listed on Mrs. Haribabu's Form I-140, the Assessor required additional evidence of Mr. Vasudevan's domiciliary intent. The Assessor did not find the income tax returns, insurance declaration pages, and driver's license, all reflecting Mr. Vasudevan's name to be sufficient evidence of domiciliary intent.

### **CONCLUSIONS OF LAW**

Based upon the foregoing findings of fact, the Court concludes the following as a matter of law:

The Court has jurisdiction pursuant to sections 1-23-600 and 12-60-2540(A) of the South Carolina Code (Supp. 2024 & 2014) ("Within thirty days after the date of the board's written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the board by requesting a contested case hearing before the Administrative Law Court in accordance with the rules of the Administrative Law Court."). The proceeding before this Court is a *de novo* contested case hearing to determine whether the Respondent qualifies for the 4% residential assessment ratio based upon the evidence presented at the hearing. "When a tax assessment case reaches the AL in this posture, [i.e. upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing." *See Smith v. Newberry County Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ;see also *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

In a contested case before the ALC, the party contesting the decision has the burden of proof. *Id.* at 534, 489 S.E. 2d at 677. Here, the Assessor requested the contested case hearing, and as such, bears the burden of proving the accuracy of its decision.

### **Section 12-43-220(c)**

Section 12-43-220(c) of the South Carolina Code discusses legal residence property tax classification and affords a special assessment ratio of 4% on owner occupied legal residences as

opposed to the 6% assessment ratio on most other real property. *See* S.C. Code Ann. §12-43-220(c) (2014 & Supp. 2024). In addition, subsection 12-37-220(B)(47)(a) of the South Carolina Code provides a property tax exemption from all school operating millage for owner-occupied residential property qualifying for the special assessment ratio in section 12-43-220(c). *See* S.C. Code Ann. §12-37-220(B)(47)(a) (2014).

As a property tax exemption statute, subsection 12-43-220(c) must be *strictly construed*. *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *see also Mead v. Beaufort County Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016); *see also Hibernian Soc. v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (1984). This means that the statutory language will not be strained or liberally construed in favor of the taxpayer. *Hibernian Soc. v. Thomas*, 282 S.C. 465, 470 319 S.E.2d 339, 342 (1984). Language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (*citing John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276 S. C. 314, 278 S.E.2d 340 (1981)); *see also Berkeley County School District v. S.C. Department of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009).

In order for a taxpayer to qualify for the special assessment ratio, the taxpayer must own and occupy the residence as his legal residence and be domiciled at that address for some period during the applicable tax year. S.C. Code Ann. §12-43-220(c)(2)(i) (Supp. 2024); *see also Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016) (owner occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year to be entitled to the special assessment ratio.). In addition, the taxpayer must make the following certification:

Under penalty of perjury, I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I, nor a member of my household claim the special assessment ratio allowed by this section on another residence.

S.C. Code Ann. § 12-43-220(c)(2)(ii) (2014).

By requiring that every applicant for legal residence certify that “neither I, nor any member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose”, South Carolina law makes clear that the applicant as well as all members of the applicant’s household have the burden of proving their legal residency independently. *Id.*

“Member of my household,” as referred to in the above certification, includes the spouse of the owner/occupant. *See* S.C. Code Ann. §12-43-220(c)(2)(iii)(A)(Supp. 2024)(“ the owner-occupant’s spouse, except when that spouse has filed a complaint for separate support and maintenance with the appropriate family court, lives separate and apart in a different residence, and no longer cohabitates as husband and wife with the owner-occupant.”). In addition to the certification, the South Carolina Code places the burden of proof on the applicant to establish his eligibility for the 4% assessment ratio by providing proof required by the Assessor including but not limited to:

- (A) a copy of the owner-occupants most recently filed South Carolina individual income tax return;
- (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile;
- (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the owner or the owner’s agent has made a property certificate as required pursuant to this subitem and the owner is otherwise eligible, the owner is deemed to have met the burden of proof and is allowed the four percent assessment ratio allowed by this item ...

*See* S.C. Code Ann. §12-43-220(c)(2)(iv)(2014 & Supp. 2024).

### **Legal Residence**

South Carolina Regulations define the term "legal residence" as “the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” *See* S.C. Code Ann. Regs. 117-1800.1(2) (2012). “Legal residence” is the equivalent of “domicile” for purposes of taxation. *See Phillips v. South Carolina Tax Com’n*, 195 S.C. 472, 12 S.E. 2d 13 (1940).

The South Carolina Supreme Court has defined the term “domicile” as “the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” *See Gasque v. Gasque*, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965). The question of domicile “is largely one of intent to be determined under the facts and circumstances of each case.” *Id.* 246 S.C. at 427, 143 S.E. 2d at 812. Domicile does

not change “in the absence of clear proof of an intent to abandon the old domicile and acquire a new one.” *Id.*; see also *Ferguson v. Employers Mutual Casualty Company*, 254 S.C. 235, 174 S.E. 2d 768 (1970).

The S.C. Supreme Court further explained domicile in the case of *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E. 2d 521, 528 (1975) as follows:

It is generally recognized, as we did in *Gasque*, that intent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment.

The case *Habibunnisa Begum v. Florence County Assessor*, Docket No. 18-ALJ-17-0198-CC, 2019 WL 5208156 (S.C. Admin Ct. October 2, 2019) addresses the sufficiency of evidence necessary to establish domicile for personas holding a nonimmigrant visa. In that case, Begum, a citizen of India, was legally present in the United States on an H-1B visa and was employed as a teacher. Begum had an approved Form I-140 and was awaiting her Green Card. See *Begum v. Florence Cnty. Assessor*, Docket No. 18-ALJ-17-0198-CC at \*2 (S.C. Admin. Law Ct. Oct. 2, 2019), *aff'd*, Op. No. 2022-UP-069, 2022 WL 470961 (Ct. App. 2022). Begum testified that she intended to make the subject residence her permanent residence and presented the following evidence of domiciliary intent: she held a South Carolina driver’s license; she paid South Carolina income taxes, as well as real and personal property taxes; and she held a social security card indicating that she was a temporary worker in the United States. *Id.* at \*1-2. The Court found that Begum’s H-1B visa no longer had a definite end date in that her approved Form I-140 would allow her to remain in the United States indefinitely until such time as she could obtain her Green Card. This coupled with the other factors previously discussed presented sufficient evidence that she had taken discrete steps to abandon her old domicile and acquire a new one at the subject property per *Gasque*, and as such, was qualified to receive the legal residence classification.<sup>3</sup>

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<sup>3</sup> Although the facts in the *Begum* case indicate that Begum was married and residing with her spouse, the issue of the spouse’s domiciliary intent was not addressed by the court.

### **Domiciliary Intent of Mr. Vasudevan**

The issue before this Court is whether the facts and circumstances of this case support Mr. Vasudevan's expressed intent to be domiciled in South Carolina. The Court finds that the facts and circumstances do not support Mr. Vasudevan's domiciliary intent for the 2023 and 2024 tax years.<sup>4</sup> The Court declines to venture into such uncertainty regarding the possibility of future legal residence applications and focuses its determination on whether Mr. Vasudevan possessed the requisite intent to be domiciled at the residence during the 2023 and 2024 tax years.

The Assessor principally relied on two factors in determining that Mr. Vasudevan had not established domiciliary intent. The first was that Mr. Vasudevan was not included on Ms. Haribabu's Form I-140 as a spouse requesting to change his status. Ms. Haribabu and Mr. Vasudevan were married at the time the application was completed, thus she had the opportunity to include her spouse, but did not.<sup>5</sup> The inclusion of both spouses on the I-140 petition is a compelling indication that the couple has jointly made the decision to establish domiciliary intent. Ms. Haribabu testified the Form I-10 was prepared by her employer's attorney and she could not explain why her husband's name was not on it.<sup>6</sup> However, she further testified that she reviewed the document prior to it being filed. Ultimately, her review did not result in her husband's name being added to the Form I-140.

The circumstances surrounding the omission of Mr. Vasudevan from the Form I-140 raises questions of Mr. Vasudevan's domiciliary intent that were not sufficiently answered by the testimony of the Respondents. Respondent argues the Court asked the Assessor about what, in addition to the Form I-140 filed on behalf of Ms. Haribabu, would be needed to prove Mr. Vasudevan had the requisite intent to establish domicile. Counsel candidly informed the Court that in order to include him on the Form I-140, the District would need to amend it to include him, and the amendment would revert the petition to the beginning of the waiting period for her priority date to be eligible for her green card, her (and her husband's) eligibility for permanent resident status in the United States. This would be an unnecessary amendment serving no purpose other

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<sup>4</sup> Mrs. Haribabu's domiciliary intent is not in question in this case.

<sup>5</sup> The failure to list a spouse or children on Form I-140 petition will not preclude those individuals from filing a derivative application for a Green Card when the applicant's priority date becomes current.

<sup>6</sup> Notably, the attorney was not present at the hearing and did not appear as a witness to corroborate any of this testimony.

than to provide documentary evidence of Mr. Vasudevan's domicile.<sup>7</sup> However, the absence of a spouse on the Form I-140 for good cause shown is not detrimental to a determination of domiciliary intent if other evidence of domiciliary intent can be shown. Therefore, the absence of a spouse on the Form I-140 without good cause is, at best, a strong indicator that domiciliary intent does not exist.

The second factor relied on by the Assessor was Mr. Vasudevan's extended absence from the United States. Mr. Vasudevan's I-94 shows that he left the United States on August 23, 2023, and did not return until March 27, 2025, a period of 582 consecutive days. Thus, he was only in the United States for a part of tax year 2023 and none of tax year 2024. Mr. Vasudevan testified that he was in India taking care of his aged parents, more specifically his mother who had knee surgery, for this extended period. However, in further testimony, Mr. Vasudevan admitted that he had a sister living less than two miles from his parents. When asked if he would be returning to India to care for his parents, he no longer expressed concern about his aging parents but responded that he was in the United States to stay since his son and wife were here. Mr. Vasudevan's testimony did not address his domiciliary intent for tax years 2023 and 2024, but instead only addressed his current intent to now remain in the United States since his son and wife are here.

The only mitigating evidence presented by the Respondents was Mr. Vasudevan's employment during 2022 and 2023. Mr. Vasudevan testified that he worked as a motel desk clerk in several motels, moving from one motel to another to obtain a higher hourly wage. There was no evidence presented as to how many months Mr. Vasudevan worked in either of those years. Upon his return in 2025, Mr. Vasudevan readily obtained employment as a desk clerk in two different motels.

Respondent argues that commonly filed tax returns, driver's licenses, and auto insurance with coverage on both the husband and the wife, establish they are members of the same household. The Court disagrees. The totality of the above circumstances strongly suggests that Mr. Vasudevan did not have the requisite domiciliary intent for the years in question. To establish domicile or legal residence both residence or physical presence and intent must occur. *See also* 28 C.J.S. Domicile § 12, Westlaw Precision (database updated May 2025) (“[U]nion of act and intent, or

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<sup>7</sup> Ms. Haribabu's I-140 application filed by the Orangeburg School District has been approved, but she is waiting for her priority date established by the Immigration and Nationality Act for her to be eligible for permanent resident status. This is discussed at length in the Administrative Law Court decision in *Begum v. Florence County Assessor*. As well, the ability of Ms. Haribabu to extend her stay in the U.S., and concomitantly her husband, is discussed there at length.

actual location in, or removal to, a particular place with intent to remain has been required for residence or legal residence.”). *Id.*

The previously discussed case law regarding domicile establishes that intent is the most important element in determining “domicile” and expressed intent alone is insufficient without consistent conduct evidencing such intent. Further, a person may not have more than one domicile at a time or be a citizen of more than one state at a time. A change of domicile requires “clear proof of an intent to abandon the old domicile and acquire a new one.” *See Ravenel v. Dekle*, 265 S.C. at 379, 218 S.E.2d at 528 (1975); *see also Gasque v. Gasque*, 246 S.C. at 427, 143 S.E. 2d at 812 (1965). This is the basis for the “discrete action” which the *Begum* case refers to as being necessary to establish domicile. The above actions on the part of Mr. Vasudevan do not evidence an intent to abandon his old domicile and acquire a new one in Orangeburg County. This decision does not preclude the Respondents from applying for the legal residence special classification in a future year if domiciliary intent can be evidenced.

**ORDER**

**IT IS THEREFORE ORDERED** that the Respondents are not eligible for the 4% legal residence property tax classification for tax year 2023 and 2024. As such, the Orangeburg County Board of Assessment Appeals granting of their application is **REVERSED**.

**AND IT IS SO ORDERED.**



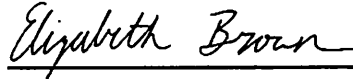
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The Honorable Crystal M. Rookard  
South Carolina Administrative Law Judge

August 7, 2025  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Elizabeth Brown, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Elizabeth Brown  
Judicial Law Clerk

August 7, 2025  
Columbia, South Carolina