

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. H. STEVEN DEBERRY, IV, CIRCUIT COURT JUDGE

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CASE NUMBER 2025 - 001773

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THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, JOHN J. MCCANN  
AND STEPHEN G. RILEY.....APPELLANTS,

vs.

BEAUFORT COUNTY, SOUTH CAROLINA.....RESPONDENT.

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INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. THE LAW ENFORCEMENT SERVICE CHARGE IMPOSED ON REAL PROPERTY OWNERS IN THE TOWN OF HILTON HEAD ISLAND IS NOT A VALID USER FEE OR SERVICE CHARGE UNDER S. C. CODE ANN. § 6-1-300(6)(Supp. 2025).

A. THE INTERPRETATION OF THE TEXT OF S. C. CODE ANN. § 6-1-300(6)(SUPP. 2025) IN THE AUGUST 7, 2025, ORDER IS CONTRARY TO THE PLAIN TEXT OF THE STATUTE.

B. THE LAW ENFORCEMENT SERVICE CHARGE IS NOT VALID AS A SERVICE CHARGE OR USER FEE, BECAUSE THE LAW ENFORCEMENT SERVICE CHARGE HAS NO EFFECT ON THE VALUE OF THE REAL PROPERTY OF THE FEE PAYERS.

C. THE LAW ENFORCEMENT SERVICE CHARGE IS NOT VALID AS A SERVICE CHARGE OR USER FEE BECAUSE THE BEAUFORT COUNTY SHERIFF'S OFFICE DOES NOT DELIVER ANY ENHANCED LEVEL OF SERVICE OVER ANY LIKE AREA IN MUNICIPAL LIMITS OF THE TOWN.

D. THE LAW ENFORCEMENT SERVICE CHARGE DOES NOT COLLECT THE COST OF ANY CLAIMED ENHANCED LEVEL OF SERVICE. RATHER THE LAW ENFORCEMENT SERVICE CHARGE COLLECTS 100% OF THE COST OF THE DELIVERY OF LAW ENFORCEMENT SERVICES BY THE BCSO IN THE MUNICIPAL LIMITS OF THE TOWN.

E. SEPARATE AND APART FROM THE PAYMENT OF THE LESC, REAL PROPERTY OWNERS IN THE MUNICIPAL LIMITS OF THE TOWN CONTRIBUTE MORE TO THE BUDGET OF THE BCSO THAN THE COST OF THE DELIVERY OF SERVICES BY THE BCSO IN THE MUNICIPAL LIMITS OF THE TOWN.

2. THE CLASSIFICATION CREATED IN BEAUFORT COUNTY ORDINANCE 2020-29 IS ARBITRARY AND DOES NOT TREAT THE PLAINTIFFS AS OTHERS WHO ARE SIMILARLY SITUATED.

## STATEMENT OF THE CASE

This case was commenced by The Town of Hilton Head Island, South Carolina, by the filing of a Summons and Complaint on September 17, 2020. Beaufort County, South Carolina (herein, “Beaufort County”) filed its Answer to the Complaint on October 15, 2025. The Town, John J. McCann and Stephen G. Riley filed their Amended Complaint on October 25, 2025 (herein, “the Town, McCann and Riley”). Beaufort County filed its Answer to the Amended Complaint on November 3, 2020.<sup>1</sup> The Town, McCann and Riley’s Complaint was thereafter amended by consent of the parties on April 26, 2022. Beaufort County filed its Answer to the Amended Complaint on May 1, 2022.

By a Consent Order filed on September 19, 2023, the Town, McCann and Riley were allowed to amend their Complaint. The Town, McCann and Riley filed their Amended Complaint on September 21, 2023, and Beaufort County filed its Answer to the Amended Complaint on September 27, 2023. The September 19, 2023, Amended Complaint (herein the “Amended Complaint”) and the September 27, 2023, Answer to the Amended Complaint (herein, the “Answer”) are the operative pleadings in this case.<sup>2</sup>

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<sup>1</sup> By Order filed October 29, 2020, this case was consolidated with Beaufort County Case 2020-CP-07-1850. The cases were de-consolidated by Order filed on September 25, 2023. The consolidation and de-consolidation Orders are not material to any issue on appeal.

<sup>2</sup> The pleadings prior to the Amended Complaint and the Answer are not material to any issue on appeal.

The Town, McCann, Riley and Beaufort County entered into a Stipulation of Facts, which was filed on March 7, 2025. In this Brief, the facts are described and discussed with reference to the Stipulation of Facts.

In the Amended Complaint, the Town, McCann and Riley challenge Beaufort County’s adoption of its Ordinance 2020-29, which imposed a “Law Enforcement Service Charge and Uniform User Fee” (herein, the “LESC”) on owners of real property in the municipal limits of the Town.<sup>3</sup> The LESG is designed to defray the cost of service delivered in the municipal limits of the Town by the Beaufort County Sheriff’s Office (herein, the “BCSO”).<sup>4</sup> The Town, McCann and Riley are property owners in the municipal limits of the Town, and each pays the LESG.<sup>5</sup> In the Amended Complaint, the Town, McCann and Riley allege the following causes of action:

1. The LESG is not a valid service charge or user fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2025), but rather is an illegal tax, because (I) the payer of the LESG does not receive any benefit different from any other member of the general public, (ii) the funds collected by the LESG will not result in any increased level of service in the Town over that delivered by the BCSO in any like area; (iii) the LESG imposes a service charge for a service that was already being delivered in the Town, and which is a mandated county wide service.<sup>6</sup>

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<sup>3</sup> Amended Complaint, R.\_\_\_\_.

<sup>4</sup> Stipulation of Facts, paragraph 10, Exhibit 1 to Stipulation of Facts, R.\_\_\_\_.

<sup>5</sup> Amended Complaint, paragraphs 1, 2, 3, 5 and 6, R.\_\_\_\_. Stipulation of Facts, paragraphs 1, 3, 4, 5 and 13, R.\_\_\_\_.

<sup>6</sup> Amended Complaint, paragraphs 31 - 37, R.\_\_\_\_.

2. Ordinance 2020-29 violates U. S. Const. Amend XIV and S. C. Const. art I, § 3 because: (I) it treats real property owners in the municipal limits of the Town in a manner different from any like area in Beaufort County; (ii) it creates a classification that is unreasonable, arbitrary and not based on a difference; (iii) Beaufort County does not apply the classification evenly; and (iv) all similarly situated persons are not treated alike under Ordinance 2020-29.<sup>7</sup>

3. Because Ordinance 2020-29 imposes an illegal tax and violates the United States and South Carolina Constitutions, the Town, McCann and Riley are entitled to an injunction prohibiting Beaufort County from enforcing Ordinance 2020-29 and collecting the LESC.<sup>8</sup>

4. Because Ordinance 2020-29 imposes an illegal tax, taxpayers who have paid the illegal tax are entitled to a refund and pre-judgment interest at the statutory rate.<sup>9</sup>

5. For attorney's fees under S. C. Code Ann. § 15-77-300 (Supp. 2025).<sup>10</sup>

Beaufort County alleged the following defenses in its Answer.

1. Denial of the material allegations of the Amended Complaint.<sup>11</sup>

2. Failure to allege facts sufficient to state a cause of action.<sup>12</sup>

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<sup>7</sup> Amended Complaint, paragraphs 38 - 44, R.\_\_\_\_.

<sup>8</sup> Amended Complaint, paragraphs 45 - 50, R.\_\_\_\_.

<sup>9</sup> Amended Complaint, paragraphs 51 - 54, R.\_\_\_\_.

<sup>10</sup> Amended Complaint, paragraphs 55 - 57, R \_\_\_\_.

<sup>11</sup> Answer, paragraphs 1 - 57, R.\_\_\_\_.

<sup>12</sup> Answer, paragraph 59, R.\_\_\_\_.

3. Lack of standing of the Town, McCann and Riley to bring this action.<sup>13</sup>
4. The Town is not a real party in interest that may bring this action.<sup>14</sup>
5. The claims of the Town, McCann and Riley are barred by the doctrines of waiver, laches and estoppel.<sup>15</sup>
6. The claims of the Town, McCann and Riley are not justiciable.<sup>15</sup>
7. The claims of the Town, McCann and Riley are barred by the South Carolina Tort Claims Act.<sup>16</sup>

The Town, McCann, Riley and Beaufort County entered into a Stipulation of Facts and Exhibits thereto that was filed on March 7, 2025.<sup>17</sup> The Town filed its Motion for Summary Judgment on March 10, 2025.<sup>15</sup> Beaufort County filed its Motion for Summary Judgment on March 12, 2025.<sup>15</sup>

The Motions for Summary Judgment were heard by the Hon. H. Steven DeBerry, IV, on June 10, 2025 via Webex. Judge DeBerry filed his Order granting Beaufort County’s Motion for Summary Judgment and denying the Town, McCann and Riley’s

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<sup>13</sup> Answer, paragraph 60, R.\_\_\_\_.

<sup>14</sup> Answer, paragraph 62, R.\_\_\_\_.

<sup>15</sup> Answer, paragraphs 63 and 64, R.\_\_\_\_.

<sup>15</sup> Answer, paragraph 64, R.\_\_\_\_.

<sup>16</sup> Answer, paragraph 65, R.\_\_\_\_.

<sup>17</sup> Stipulation of Facts, R.\_\_\_\_.

<sup>15</sup> Town, McCann and Riley Motion for Summary Judgment, R.\_\_\_\_.

<sup>15</sup> Beaufort County Motion for Summary Judgment, R.\_\_\_\_.

Motion for Summary Judgment on August 7, 2025.<sup>16</sup> The Town, McCann and Riley filed their Motion to Alter or Amend on August 15, 2025.<sup>17</sup> Judge DeBerry filed his Order denying the Motion to Alter or Amend on August 29, 2025.<sup>18</sup> The Town, McCann and Riley filed their Notice of Appeal on September 4, 2025.

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<sup>16</sup> August 7, 2025, Order of Hon. H. Steven DeBerry, IV, R.\_\_\_\_.

<sup>17</sup> Town, McCann and Riley Motion to Alter or Amend, R.\_\_\_\_.

<sup>18</sup> August 29, 2025, Order of Hon. H. Steven DeBerry denying Motion to Alter or Amend. R.\_\_\_\_.

## STATEMENT OF MATERIAL FACTS

The following facts are included in the Stipulation of Facts filed by the Town, McCann, Riley and Beaufort County:

1. The Town and Beaufort County are each political subdivisions of the State of South Carolina.
2. The municipal boundaries of the Town are in Beaufort County.
3. The Town, McCann and Riley all own real property in the municipal limits of the Town.
4. On August 24, 2020, Beaufort County adopted its Ordinance 2020-29, which established the LESC and imposed a requirement to pay the LESC on all owners of parcels of real property in the municipal limits of the Town, including parcels that are exempt from the payment of *ad valorem* property taxes.<sup>19</sup>
5. The Town, McCann and Riley have all paid the LESC.<sup>20</sup>
6. The Town does not have a municipal police department, and the Town is the only municipality in Beaufort County that does not have a municipal police department.<sup>19</sup>
7. The Town does have an emergency medical services (EMS) department, and the Town is the only municipality in Beaufort County with an EMS department. EMS Services are provided by Beaufort County to all other municipalities.<sup>20</sup>

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<sup>19</sup> Stipulation of Facts, paragraph 10, R.\_\_\_\_.

<sup>20</sup> Stipulation of Facts, paragraph 13, R.\_\_\_\_.

<sup>19</sup> Stipulation of Facts, paragraphs 6 and 7, R.\_\_\_\_.

<sup>20</sup> Stipulation of Facts, paragraphs 8 and 9, R.\_\_\_\_.

8. Beaufort County has not adopted an ordinance imposing a fee for the delivery of emergency medical services on the municipalities in Beaufort County that receive this service from Beaufort County.

9. The budget for the Beaufort County Sheriff's Office is a part of the Beaufort County General Fund Budget.<sup>21</sup>

10. For the years for which data is available following the adoption of Beaufort County Ordinance 2020-29, real property taxpayers in the Town contributed between 37 and 40% of the Beaufort County General Fund Budget through the payment of *ad valorem* property taxes.<sup>22</sup>

11. For the same period, the cost of delivery of services of the BCSO in the municipal limits of the Town was between 17% and 23% of the BCSO' budget.<sup>23</sup>

12. The payment of the LESC is in addition to the amounts paid by real property owners in the municipal limits of the Town.<sup>24</sup>

13. The Sheriff of Beaufort County testified that no enhanced level of service is delivered by the BCSO in the municipal limits of the Town, and the level of service delivered in the municipal limits of the Town is the same as in any like area in Beaufort County.<sup>25</sup>

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<sup>21</sup> Stipulation of Facts, paragraph 8, R.\_\_\_\_.

<sup>22</sup> Stipulation of Facts, paragraphs 8 and 9, R.\_\_\_\_.

<sup>23</sup> Stipulation of Facts, paragraph 9, R.\_\_\_\_.

<sup>24</sup> Stipulation of Facts, paragraph 9, R.\_\_\_\_.

<sup>25</sup> Stipulation of Facts, paragraph 7 on page 3; Exhibit 5 to Stipulation of Facts, p. 9, l. 23 to p. 12, l. 4, R.\_\_\_\_; Exhibit 5 to Stipulation of Facts, Exhibits 1 and 2, R.\_\_\_\_; Stipulation of Facts, Exhibit 5, l. 11 - 25.

14. The methodology for the LESC is contained in a “Law Enforcement Service Charge Study” prepared by the firm TischlerBise.<sup>26</sup>

15. The methodology utilized in the “Law Enforcement Service Charge Study” shows that the LESC is not designed to collect the cost of delivery of an enhanced level of service by the BCSO in the municipal limits of the Town, but rather is designed to collect one hundred percent of the cost of delivery of service by the BCSO.<sup>27</sup>

16. The methodology utilized in the “Law Enforcement Service Charge Study” did not include any consideration of the effect of the LESC on real property values in the municipal limits of the Town.<sup>27</sup>

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<sup>26</sup> Stipulation of Facts, paragraph 14, R.\_\_\_\_; Exhibit 2 to Stipulation of Facts, R. \_\_\_\_.

<sup>27</sup> Exhibit 3 to Stipulation of Facts, Exhibit 14, pages 2 - 9, R.\_\_\_\_; Exhibit 3 to Stipulation of Facts, Exhibit 18, pages 3 - 7, R.\_\_\_\_; Exhibit 3 to Stipulation of Facts, p. 21, l. 5 - 13, R. \_\_\_\_; p. 39, l. 12 to p. 40, l. 3, R.\_\_\_\_; p. 48, l. 7 to p. 49, l. 5, R.\_\_\_\_; p. 49, l. 13 - 22, R.\_\_\_\_; Exhibit 3 to Stipulation of Facts, Exhibit 11, R.\_\_\_\_; Exhibit 1 to Stipulation of Facts, R.\_\_\_\_; Exhibit 2 to Stipulation of Facts, R.\_\_\_\_.

<sup>27</sup> Exhibit 3 to Stipulation of Facts, p. 24, l. 20, to p. 25, l. 20, R.\_\_\_\_; Exhibit 3 to Stipulation of Facts, Exhibit 11, R.\_\_\_\_; Exhibit 2 to Stipulation of Facts, R.\_\_\_\_; Exhibit 3 to Stipulation of Facts, Exhibit 18, R.\_\_\_\_.

## SCOPE OF REVIEW

In this case, the Town, McCann, Riley and Beaufort County entered into a Stipulation of Facts. When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts.<sup>28</sup> In such cases, the appellate court is not required to defer to the trial court's legal conclusions.<sup>29</sup> The South Carolina Supreme Court has a two-step analysis to determine the validity of a local ordinance.<sup>30</sup> First, the court must determine if the local government has the power to enact the ordinance.<sup>28</sup> Where a court finds no such power exists, the ordinance is invalid and the inquiry ends.<sup>29</sup> Where a court finds the power does exist, it must then determine whether the ordinance is inconsistent with the constitution or general law of South Carolina.<sup>30</sup>

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<sup>28</sup> *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

<sup>29</sup> *J. K. Constr., Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162, 519 S.E.2d 561 (1999);

<sup>30</sup> *S. C. State Ports Authority v. Jasper County*, 368 S.C. 388, 394-95, 629 S.E.2d 624, 627 (2006).

<sup>28</sup> *Id.*, at 368 S. C. 395, 629 S.E.2d 627.

<sup>29</sup> *Id.*, at 368 S. C. 395, 629 S.E.2d 627.

<sup>30</sup> *Id.*, at 368 S. C. 395, 629 S.E.2d 627.

## ARGUMENT NUMBER 1

THE LESC IS NOT A VALID USER FEE OR SERVICE CHARGE UNDER S. C. CODE ANN. § 6-1-300(6)(Supp. 2025).

The Town, McCann and Riley challenge the LESC imposed on real property owners in the Town by Beaufort County Ordinance 2020-29. The LESC is described in Ordinance 2020-29 and by Beaufort County as a service or user fee.

S. C. Code Ann. § 6-1-300(6)(Supp. 2025) authorizes service or user fees as follows:

(6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:

- (a) be used to the benefit of the payers, even if the general public also benefits;
- (b) only be used for the specific improvement contemplated;
- (c) not exceed the cost of the improvement; and
- (d) be uniformly imposed on all payers.

A. THE INTERPRETATION OF THE TEXT OF S. C. CODE ANN. § 6-1-300(6)(SUPP. 2025) IN THE AUGUST 7, 2025, ORDER IS CONTRARY TO THE PLAIN TEXT OF THE STATUTE.

In the August 7, 2025, Order, Judge DeBerry interpreted S. C. Code Ann. § 6-1-300(6)(Supp. 2025), so as to “. . . simply requires that those who pay the LESC receive some benefit.”<sup>31</sup> The result of Judge DeBerry’s interpretation is this: the payer of service charge or user fee need only receive the same benefit as any other member of the general public who does not pay the fee. This interpretation is wrong for the following reasons.

The plain text of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), still requires a benefit to the payer of the fee, and not just “some benefit” such as that received by any person

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<sup>31</sup> August 7, 2025, Order, p. 9, l. 1, R.\_\_\_\_.

who doesn't pay the fee. If the fee payer receives only "some benefit," then the fee is a tax, which is defined as "an enforced contribution to provide for the support of government, , whereas a fee is a charge for a particular benefit to the payer."<sup>32</sup> Taken to its logical conclusion, the interpretation can result in the fee payer receiving only an incidental benefit, while non-payers receive a direct and material benefit. This is the prototype of an absurd result that must be avoided when interpreting a statute.<sup>33</sup>

**B. THE LESC IS NOT VALID AS A SERVICE CHARGE OR USER FEE, BECAUSE THE LESC HAS NO EFFECT ON THE VALUE OF THE REAL PROPERTY OF THE FEE PAYERS.**

In the Supreme Court's decision in *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), the Supreme Court stated that when a fee is charged to property owners, the benefit that must be realized by the fee payer is increased property values.<sup>34</sup> The only evidence in the record for this case is that the effect of the LESC on property values in the municipal limits of the Town was not a consideration. Ordinance 2020-29 does not include any findings to the effect that payers of the LESC will see the benefit of increased property values.<sup>35</sup> Ms. Julie

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<sup>32</sup> *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 39–40, 522 S.E.2d 804, 806 (1999).

<sup>33</sup> In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature. *Lancaster County Bar Association v. S.C. Commission on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). The General Assembly closed the door on new taxes by local governments without statutory authorization by its adoption of S. C. Code Ann. § 6-1-10 (Supp. 2025). It could not have intended to throw that door wide open by the amendment to S. C. Code Ann. § 6-1-300(6)(Supp. 2025).

<sup>34</sup> See also: *C.R. Campbell Construction Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997).

<sup>35</sup> Stipulation Exhibit 1. R.\_\_\_\_.

Herlands of the TischerBise firm that prepared the study on which Ordinance 2020-29 is based, testified that the effect of the LESC on property values in the Town was not part of the discussion with the County, and that the County did not provide any evidence that the LESC would enhance property values in the Town.<sup>36</sup>

Because there is no evidence that the LESC enhances property values in the municipal limits of the Town, it is not a valid user fee, it is an illegal tax. *Burns, supra.*

**C. THE LESC IS NOT VALID AS A SERVICE CHARGE OR USER FEE BECAUSE THE BCSO DOES NOT DELIVER ANY ENHANCED LEVEL OF SERVICE OVER ANY LIKE AREA IN MUNICIPAL LIMITS OF THE TOWN.**

The only evidence in the record is that no benefit justifying the LESC is delivered to the Town by the BCSO, because the BCSO does not deliver an enhanced level of service over any like area in the municipal limits of the Town. The evidence is this: On

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<sup>36</sup> The testimony of Ms. Herlands was:

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, R.\_\_\_\_

May 8, 2019, the Hon. P. J. Tanner, Sheriff of Beaufort County, corresponded with the County Administrator and advised that he did not deliver an enhanced level of service in the municipal limits of the Town. In the May 8, 2019, correspondence, Sheriff Tanner wrote:

The 42 personnel routinely deployed on HHI are supported by additional assets of my office. in the April 5, 2019, email from John Weaver, these personnel was referred to as “ENHANCED” law enforcement presence on HHI. However, to the contrary **the basic coverage on HHI is those 42 personnel.** (emphasis in the original).<sup>37</sup>

Sheriff Tanner testified that the statement in the May 8, 2019, correspondence was accurate when he wrote it, and nothing had changed as of the date of his deposition:

Q. Sheriff Tanner, are the statements in your correspondence of May 8, 2019, now marked as Exhibit 2, to Ms. Jacobs, were they accurate at the time you made them?

A. At the time on May 8<sup>th</sup>, 2019 they were.

Q. Has anything changed from and after May 8, 2019, that would change the responses in your correspondence that is now marked as Exhibit 2?

A. Having the ability to remember 2019 is – is one thing that we can do, but also, unless I were to read through this document, I could only fairly respond to any changes. And that’s kind of a broad question, whatever changes may be considered not in comparison to 2019, but I don’t recall that there would be any changes. I mean, I could go through it line by line, paragraph by paragraph, to see if there’s any changes no in 2023 in comparison to that, but I don’t believe there is.<sup>38</sup>

Beaufort County successfully argued to Judge DeBerry that other municipalities in Beaufort County fund municipal police departments, and that because the Town does

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<sup>37</sup> Stipulation Exhibit 5, Exhibit 2. R.\_\_\_\_\_.

<sup>38</sup> Stipulation Exhibit 5, p. 11, l. 10 to p. 12, l. 4. R.\_\_\_\_\_.

not fund a municipal police department, real property owners receive a benefit because they are not taxed to fund a municipal police department.<sup>39</sup> Sheriff Tanner testified that this is not a like to like comparison. Sheriff Tanner testified that the like to like comparison is the Town and the unincorporated areas of Beaufort County, which also do not have a police department.<sup>40</sup> On questioning by Beaufort County’s lawyer on this point, Sheriff Tanner testified:

Q. Okay. And so do you – does the Sheriff’s Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We’re not a municipal police department and the Town of Hilton Head doesn’t have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.<sup>41</sup>

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<sup>39</sup> This argument is backwards. The fact that other municipalities have a municipal police department says nothing about whether the real property owners in the municipal limits of the Town receive a benefit from their payment of the LESC. The question is not what other municipalities do, rather it is what Beaufort County and the BCSO do. The only evidence is that the BCSO does not deliver an enhanced level of service over any like area in the municipal limits of the Town.

<sup>40</sup> There is no statutory requirement for the Town to have a police department. There is, however, a requirement for the BCSO to patrol the entire County, which includes the municipal limits of the Town. S. C. Code Ann. § 23-13-70 (Supp, 2025). The findings in the August 7, 2025, Order to the effect that the BCSO serves as the “primary police department for the Town.” August 7, 2025 Order, p. 9, R.\_\_\_\_. This finding is contrary to the Sheriff’s testimony, which is the only evidence in the record on this point.

<sup>41</sup> See Stipulation Exhibit 5, p. 17, l. 11-25. Beaufort County will argue that “Agreements for Police Services” previously entered into by the Town are significant. See Stipulation Exhibit 4. These agreements were for police services and not law enforcement services. The Sheriff’s testimony is clear that police services and law enforcement services are different. The Agreements for Police Services are not relevant to this case.

Because the BCSO does not deliver any enhanced level of service in the Town over any like area, there is no basis for the LESC. It is not a valid user fee; it is an illegal tax.

*Burns, supra.*

D. THE LESC DOES NOT COLLECT THE COST OF ANY CLAIMED ENHANCED LEVEL OF SERVICE. RATHER IT COLLECTS 100% OF THE COST OF THE DELIVERY OF LAW ENFORCEMENT SERVICES BY THE BCSO IN THE MUNICIPAL LIMITS OF THE TOWN.

The only evidence in the record is that the LESC is calculated to collect one hundred percent of the cost of the delivery of service by the BCSO in the municipal limits of the Town, and not the cost of any claimed enhanced level of service.<sup>42</sup> The only evidence in the record is:

1. Ordinance 2020-29 includes this finding of fact: “The estimated most recent annual cost to provide services within The Town of Hilton Head Island is \$4,383,257.”<sup>43</sup>
2. Julie Herlands testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.<sup>44</sup> Exhibit 11 to Julie Herland’s deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be

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<sup>42</sup> For all intents and purposes, the LESC has collected one hundred percent of the cost of the delivery of law enforcement services in the Town since it was adopted. See Stipulation Number 9, R.\_\_\_\_. The findings in the August 7, 2025, Order that tie the LESC to a concept of “primary law enforcement services” are unsupported by the legislative record for the adoption of Ordinance 2020-29. The materials on which the ordinance is based describe the total cost of delivery of services, and Ordinance 2020-29 sets the LESC to collect that amount. Stipulation of Facts, Exhibit 1 and Exhibit 2. R.\_\_\_\_.

<sup>43</sup> Stipulation Exhibit 1, Page 1, subparagraph “g,” R.\_\_\_\_, and Stipulation Number 9, R.\_\_\_\_. Although Ordinance 2020-29 sets the amount to be collected, Beaufort County has collected more than that each year, even though Ordinance 2020-29 has never been amended to authorize a higher collection amount. Stipulation Number 12. R.\_\_\_\_.

<sup>44</sup> Stipulation Number 14, R. \_\_\_\_ . Stipulation Exhibit 12, which is the deposition of Julie Herlands. R.\_\_\_\_.

\$4,383,257.00.<sup>45</sup> Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.<sup>46</sup> On page 4 Exhibit 11, the total cost for delivery of the BCSO's services in the municipal limits of the Town is stated to be 4,383,257.00.<sup>47</sup> The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.<sup>48</sup>

3. Sheriff Tanner testified that the BCSO does not deliver any enhanced level of service in the municipal limits of the Town.<sup>48</sup>

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<sup>45</sup> Exhibit 11 to Stipulation Exhibit 5, R.\_\_\_\_.

<sup>46</sup> Exhibit 14 to Stipulation Exhibit 5, R.\_\_\_\_; Exhibit 1 to Stipulation. R.\_\_\_\_. The findings in the August 7, 2025, Order regarding "primary" and "secondary" law enforcement services miss the point and are contrary to the evidence, which is that the figure used in Ordinance 2020-29, represents the total cost of the BCSO's delivery of service in the municipal limits of the Town.

<sup>47</sup> Stipulation Exhibit 2, page 4, R.\_\_\_\_. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services by the BCSO in the municipal limits of the Town.

(I) Figure 2, page 4, reflecting the "Total HHI Cost" at \$4,383,257, R.\_\_\_\_.

(ii) The text following Figure 2 reads, in relevant part: "The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes." R.\_\_\_\_.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town. R.\_\_\_\_.

<sup>48</sup> Stipulation Exhibit 1, page 1, subparagraph (g), R.\_\_\_\_. The findings in the August 7, 2025, Order regarding "primary" and "secondary" law enforcement services miss the point and are contrary to the evidence, which is that the figure used in Ordinance 2020-29, represents the total cost of the BCSO's delivery of service in the municipal limits of the Town.

<sup>48</sup> Stipulation Exhibit 5, p. 17, l. 11-25. R.\_\_\_\_.

Neither the text of Ordinance 2020-29, the testimony of the Sheriff nor the testimony of Julie Herlands identify or quantify any enhanced level of service delivered by the BCSO in the municipal limits of the Town to justify the LESC. Rather, the text of Ordinance 2020-29 and the testimony of Julie Herlands show that the LESC is calculated to collect one hundred percent of the cost of a mandated county wide service that the BCSO must provide under S. C. Code Ann. § 13-23-70 (Supp. 2025).<sup>49</sup>

**E. SEPARATE AND APART FROM THE PAYMENT OF THE LESC, REAL PROPERTY OWNERS IN THE MUNICIPAL LIMITS OF THE TOWN CONTRIBUTE MORE TO THE BUDGET OF THE BCSO THAN THE COST OF THE DELIVERY OF SERVICES BY THE BCSO IN THE MUNICIPAL LIMITS OF THE TOWN.**

The only evidence in the record is that real property owners in the Town contributed between 37% and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023.<sup>50</sup> In Fiscal Year 2021/2021, the real property owners in the Town contributed 38% of Beaufort County's General Fund Budget.<sup>51</sup> In Fiscal Year 2021/2022, real property owners in the Town contributed 37% of Beaufort County's

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<sup>49</sup> Beaufort County will argue that Ordinance 2020-29 includes a findings to the effect that the LESC is to collect the cost differential between the delivery of the BCSO's service in the Town, and other municipalities that have a police department. Ordinance 2020-29 also includes findings describing the TischlerBise methodology and report. The TischlerBise report is unequivocal the amount being collected is the total cost of the BCSO's delivery of service in the municipal limits of the Town, and there is nothing in the legislative record that defines the claimed differential. Stipulation of Facts, Exhibit 1 and Exhibit 2. R.\_\_\_\_.

See Stipulation Number 9.

<sup>51</sup> The real property owners who pay the LESC include all property tax payers and owners who are exempt from the payment of real property taxes, who are also charged the LESC. See Stipulation Number 10, R.\_\_\_\_ and Stipulation Exhibit 1, R.\_\_\_\_.

General Fund Budget. In Fiscal Year 2022/2023, real property owners in the Town contributed 40% of Beaufort County's General Fund Budget.<sup>52</sup>

The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.<sup>53</sup> Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37% and 40% of the BCSO's General Fund Budget.

The only evidence in the record is that for fiscal year 2020, services delivered by the BCSO in the municipal limits Town account for approximately 22% for the BCSO's budget and in fiscal year 2023, services delivered in the municipal limits of the Town account for approximately 17% of the BCSO's budget.

Real property owners in the Town have paid double or nearly double the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect. The stipulated facts regarding the Beaufort County and BCSO budgets reveal that there is no benefit conferred on the real property owners in the Town by the LESC, because the real property owners in the Town already contribute more to the budget of the BCSO than the total cost of delivery of services by the BCSO in the municipal limits of the Town. Not only do the real property owners in the Town not receive an enhanced level of service over that

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<sup>52</sup> These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9, R.\_\_\_\_.

<sup>53</sup> See Stipulation Number 8, R.\_\_\_\_.

which they already pay, but the real property taxpayers in the Town are donors to the rest of Beaufort County with respect to the payment of the BCSO's budget.<sup>54</sup>

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<sup>54</sup> See Stipulation Number 9. R.\_\_\_\_. Nothing in Ordinance 2020-29 addresses this disparity, and nothing the in TischlerBise study on which the ordinance is based addresses this disparity.

ARGUMENT NUMBER 2

THE CLASSIFICATION CREATED IN ORDINANCE 2020-29 IS ARBITRARY AND DOES NOT TREAT THE PLAINTIFFS AS OTHERS WHO ARE SIMILARLY SITUATED.

The August 7, 2025 Order includes findings that the Town does not have a municipal police department, that other municipalities in Beaufort County do, and that such justifies the imposition of the LESC.<sup>55</sup> Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

The August 7, 2025, Order did not address the equal protection argument advanced by the Town, McCann and Riley.<sup>56</sup> The issue was raised again in the August 15, 2025, Motion to Alter or Amend.<sup>57</sup> Judge DeBerry denied the Motion to Alter or Amend by his Order filed on August 29, 2025. The August 29, 2025, Order does not include any findings or conclusions related to the equal protection argument.<sup>58</sup>

The only evidence in the record is that the Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and those services are delivered by Beaufort County in every other municipality in Beaufort County.<sup>59</sup> The only

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<sup>55</sup> August 7, 2025, Order, R.\_\_\_\_.

<sup>56</sup> August 7, 2025, Order. R.\_\_\_\_.

<sup>57</sup> August 15, 2025, Motion to Alter or Amend. R.\_\_\_\_.

<sup>58</sup> August 29, 2025, Order. R.\_\_\_\_.

<sup>59</sup> Stipulation of Facts, paragraphs 8 and 9. R.\_\_\_\_.

evidence is also that Beaufort County has not imposed a user fee or service charge on real property owners in other municipalities to cover the cost of the delivery of EMS services.<sup>60</sup> “To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis.<sup>61</sup>

Here, similarly situated persons are not similarly treated. Property owners in the Town are charged for the delivery of a Beaufort County service, solely for the reason that the Town does not provide the service. However, property owners in other municipalities are not charged for the delivery of a Beaufort County service, even though other municipalities do not provide the service.

Here, the classification does not have a rational basis. Delivery of services by the BCSO is a state mandated county wide service under S. C. Code Ann. § 13-23-70 (Supp. 2025); property owners in the Town do not receive any enhanced level of service over that mandated by the State, and property owners in the Town already pay an amount that exceeds the cost of the delivery of service.<sup>62</sup>

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<sup>60</sup> Stipulation of Facts, paragraph 11. R.\_\_\_\_.

<sup>61</sup> *City of Beaufort v. Holcombe*, 369 S.C. 643, 648, 632 S.E.2d 894, 897 (Ct. App. 2006).

<sup>62</sup> Argument One, *supra*.

## CONCLUSION

For the reasons set out above, the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley urge this Court to reverse the August 7, 2025, and August 29, 2025, Orders of the Hon. J. Steven DeBerry, IV, and enter judgment in their favor, finding the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 to be invalid as a service or user fee under and an illegal tax under S. C. Code Ann. § 6-1-300(6)(Supp. 2025), and remanding this case to the Court of Common Pleas for consideration of the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley's claim for attorney's fees under S. C. Code Ann. § 15-77-300 (Supp. 2025).

Respectfully Submitted:

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This 2<sup>nd</sup> Day of October, 2025