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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
IN THE COURT OF COMMON PLEAS
HON. H. STEVEN DEBERRY, IV, CIRCUIT COURT JUDGE

CASE NUMBER 2025 - 001773

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

vs.

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

REPLY BRIEF OF APPELLANTS

COLTRANE & WILKINS, LLC
Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
curtis@coltraneandwilkins.com

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REPLY ARGUMENT NUMBER 1

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (herein, collectively, the “Town”) submit their Brief in Reply to the Brief of the Respondent.

In Beaufort County’s Counter Statement of Facts, and in its arguments, it argues there is a meaningful difference between what Beaufort County describes as “Primary” law enforcement services and “Secondary” law enforcement services that are delivered by the Beaufort County Sheriff’s Office (herein, the “BCSO”). This argument is based on two affidavits submitted by the Hon. P. J. Tanner, Sheriff of Beaufort County (herein, “Sheriff Tanner”).¹ First, Sheriff Tanner’s affidavits contradict one another. Second, and more importantly, Sheriff Tanner’s affidavits do not address the relevant question of whether the BCSO provides an enhanced level of service within the municipal limits of the Town. The only evidence in the record on this point is the deposition testimony of Sheriff Tanner, where he states that when the Town is compared to any like area in Beaufort County, the level of service is the same, and that the BCSO does not provide police services in the municipal limits of the Town.² The text in Sheriff Tanner’s second affidavit is contradicted by the text of Beaufort County Ordinance 2020-29 (herein, “Ordinance 2020-29”) and the Tischler/Bise study on which Ordinance 2020-29 is based, both of which state that the LESC will collect the “total cost” of the delivery of services by the BCSO in the municipal

¹ March 12, 2025, Beaufort County Motion for Summary Judgment, Exhibits 1 and 5. R. pp. 112 - 116; pp. 147 - 176.

² Stipulation of Facts Exhibit 5, R. p. 518, l. 10 to p. 519, l. 4; Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25; Stipulation of Facts Exhibit 5, Exhibits 1 and 2. R. pp. 551 - 557.

limits of the Town.³

Beaufort County, South Carolina's (herein, "Beaufort County") argument "B-1" deflects from the undisputed facts that govern the outcome of this case, and attempts to create issues and facts that the record does not support.⁴

Beaufort County's Law Enforcement Service Charge (herein, the "LESC") does not meet the requirements for a uniform service charge set out in S. C. Code Ann. § 6-1-300(6)(Supp. 2025).

In Beaufort County's argument "B-1-a" it argues the text of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), requires only that the payer of the fee "receive some benefit." Under Beaufort County's interpretation, the payer of the fee need only receive an incidental benefit while those who pay the fee receive nearly all the benefit. Beaufort County's interpretation leads to an absurd result which the Courts are bound to avoid.⁵ The General Assembly's amendment to S. C. Code Ann. § 6-1-300(6)(Supp. 2025), addresses this Court's ruling in *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), where this Court held that the fact that the payers of the road maintenance fee received the majority of the benefit and others received much less benefit violated the existing text of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), which required a unique benefit to the payer of the fee. The General Assembly's intention could not have been to allow local governments to

³ Stipulation of Facts, Exhibit 1, paragraph 1(g), R. p. 238; Stipulation of Facts, Exhibit 2, R. pp. 249 - 251; Stipulation of Facts Exhibit 3, Exhibit 11, R. p. 387.

⁴ Brief of Beaufort County, pp. 12 - 19.

⁵ *Lancaster County Bar Association v. S.C. Commission on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

shift the general costs of government to user fees under the guise that payer of the fee is receiving “some” benefit.

In its argument “B-1-a” Beaufort County ignores the undisputed testimony of the Sheriff of Beaufort County that no enhanced or additional level of service is delivered in the municipal limits of the Town over any like area.⁶

Beaufort County argues that the benefit to the fee payers is that the Town saves money because the fee payers avoid the cost that other municipalities assume by having a municipal police force is beside the point. The question is not what other municipalities spend to support a municipal police force. The question is whether there is some enhanced or additional level service delivered beyond that required by statute by the BCSO in the municipal limits of the Town that justifies the imposition of a user fee. Again, the undisputed testimony of the Sheriff of Beaufort County that no enhanced or additional level of service is delivered in the municipal limits of the Town over any like area.⁷

Beaufort County’s arguments to the effect that the BCSO provides “police services” in the municipal limits of the Town are without support in the record. Although the record does show that the Town and Beaufort County did make a series agreements regarding the delivery of polices services in the Town, the only evidence is that when the last of these expired, this arrangement was not renewed.⁸ The undisputed testimony of the Sheriff

⁶ Stipulation of Facts Exhibit 5, R. p. 518, l. 10 to p. 519, l. 4. This is another iteration of Beaufort County’s “some” benefit argument. Beaufort County’s argument is that the fee payer’s receipt of mandated county wide service is, standing alone, “some” benefit that justifies the imposition of a user fee.

⁷ Stipulation of Facts Exhibit 5, Exhibits 1 and 2. R. pp. 551 - 557.

⁸ Stipulation of Facts paragraph 16 and misnumbered paragraph 6. R. p. 234.

Tanner is that the BCSO does not police services in the municipal limits of the Town.⁹

Beaufort County's argument "B-1-b" is founded on a statement that is without support in the record, and which is refuted by the only evidence in the Record. Beaufort County argues: "There is no evidence disputing that the County used the revenue generated by the Service Charge exclusively to provide primary law enforcement services as the Town's exclusive police department."¹⁰ As was shown above, the BCSO does not provide police services in the municipal limits of the Town.¹¹

The only evidence in the record is that the LESC was calculated to collect one hundred percent of the cost of the delivery of services by the BCSO in the municipal limits of the Town, and not the cost of any claimed enhanced level of service or police services.¹²

The only evidence in the record is:

1. Ordinance 2020-29 includes this finding of fact: "The estimated most recent annual

⁹ Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25. Beaufort County's arguments that the Town "asks the BCSO to serve as its exclusive police department" and that the Town "has presented no authority supporting that the BCSO must serve as Hilton Head's exclusive police agency at the expense of taxpayers outside of Hilton Head" are undone by the testimony of Sheriff Tanner.

¹⁰ Brief of Beaufort County, p. 17.

¹¹ Throughout its Brief, Beaufort County jumbles the terms "police" services and "law enforcement" services. The two are different things. Beaufort County's argument that the BCSO serves as the Town's police department is without support in the Record. The testimony of Sheriff Tanner was that the BCSO does not provide police services in the municipal limits of the Town. Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25.

¹² Stipulation of Facts, Exhibit 1 and Exhibit 2. R. pp. 238 - 262. The Tischler/Bise study on which Ordinance 2020-29 is founded states that the calculation of the LESC is based on the total cost of the delivery of services by the BCSO in the municipal limits of the Town.

cost to provide services within The Town of Hilton Head Island is \$4,383,257.”¹³

2. Julie Herlands testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.¹⁴ Exhibit 11 to Julie Herlands’ deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.¹⁵ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.¹⁶

3. Sheriff Tanner testified that the BCSO does not deliver any police services or enhanced level of law enforcement service in the municipal limits of the Town.¹⁷

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 law enforcement 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

¹³ Stipulation of Facts Exhibit 1, Page 1, subparagraph “g,” R. p. 238, and Stipulation Number 9, R. p. 235.

¹⁴ Stipulation Number 14, R. p. 234. Stipulation Exhibit 3, which is the deposition of Julie Herlands. R. pp. 268 - 326.

¹⁵ Exhibit 11 to Stipulation Exhibit 3, R. p. 387.

¹⁶ Stipulation Exhibit 1, page 1, subparagraph (g), R. p. 238. 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.

¹⁷ Stipulation of Facts Exhibit 5, R. p. 518, l. 10 to p. 519, l. 4; Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25; Stipulation of Facts Exhibit 5, Exhibits 1 and 2. R. pp. 551 - 557.

service that the BCSO must provide under S. C. Code Ann. § 13-23-70 (Supp. 2025).¹⁸

Beaufort County's argument "B-1-c" again includes the unsupported statement that the LESC is imposed on "properties that benefit from the police services provided by the Sheriff's Office." As shown above, the only evidence in the record is the BCSO does not provide police services in the municipal limits of the Town.

Beaufort County is correct that the uniformity requirement of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), was not an issue before Judge DeBerry. However, in order to establish valid user fee, the fee must meet all of the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), and the failure of Ordinance 2020-29 to meet all the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), as shown herein invalidates Ordinance 2020-29 as a user fee and shows that it is an illegal tax. This has been argued by the Town throughout this case.¹⁹

¹⁸ The Tischler/Bise report is unequivocal the amount being collected is the total cost of the BCSO's delivery of law enforcement service in the municipal limits of the Town. There is nothing in the legislative record for Ordinance 2020-29 that defines any claimed differential in the level of law enforcement services delivered by the BCSO in the municipal limits of the Town. Stipulation of Facts, Exhibit 1, R. pp. 238 - 241, and Exhibit 2, R. 249 - 251.

¹⁹ See arguments in Appellants' Brief, and above in this Reply Argument Number 1. See also September 19, 2023, Amended Complaint, R. pp. 36 - 46; March 10, 2025, Motion for Summary Judgment, R. pp. 84 - 97 and August 15, 2025, Motion to Alter or Amend, R. pp. 27 - 35.

REPLY ARGUMENT NUMBER 2

The arguments appearing in Beaufort County's Argument 2-a, are redundant to the arguments made in its Argument 1. In response to Beaufort County's argument that the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2025) are met so long as the payer of a user fee receives at least "some benefit," see the arguments presented in Reply Argument 1 above.

In response to Beaufort County's arguments that "primary" law enforcement services are somehow different from the BCSO's obligation to provide law enforcement services as mandated by S. C. Code Ann. § 13-23-70 (Supp. 2025), see the arguments presented in Reply Argument 1 above.

In response to Beaufort County's assertion that the BCSO serves as the Town's municipal police force, see the arguments presented in Reply Argument 1 above.

With respect to Beaufort County's argument that the Town has not argued that the LESC goes into the County's General Fund, Beaufort County stipulated that the budget for the BCSO is part of Beaufort County's General Fund Budget.²⁰

In its argument 2-b, Beaufort County argues that an increase in property values need not be shown in an instance where a user fee is charged to real property tax payers. Under any reading of S. C. Code Ann. § 6-1-300(6)(Supp. 2025), the payer of a user fee is still required to receive a benefit. As stated above, the Beaufort County's "some benefit" argument leads to the absurd result that the payer of a user fee need receive only an incidental benefit while non-payers receive the bulk of the benefits. As has been shown

²⁰ Stipulation of Facts, paragraphs 8 and 9. R. p.235.

above, the LESC does not confer any benefit on the payers of the fee over and above the required county wide service that the BCSO is required to deliver. Sheriff Tanner testified that the level of service delivered in the municipal limits of the Town is the same as in any like area, and the BCSO does not provide police services in the municipal limits of the Town.²¹ The text of Ordinance 2020-29 and the Tischler/Bise study on which Ordinance 2020-29 is based, show that the LESC collects the total cost of the delivery of law enforcement services by the BCSO in the Town.²² This evidence reveals that there is no benefit in terms of a delivery of any enhanced level of service to a payer of the LESC. The only thing left to show a benefit would be an increase in property values, and Ordinance 2020-29 does not address this, and therefore any claim related to an increase in property values fails.

Beaufort County's Arguments 2-c and 2-d are redundant to arguments made by it in its Argument 1.

Beaufort County argues that there is no requirement for any enhanced level of service to justify the LESC. What the County is arguing is that any cost of any service provided by Beaufort County can be shifted to a user fee under the theory that the payer of the fee is receiving "some" benefit. Beaufort County's argument that the LESC only pays for "primary" law enforcement services, which it erroneously equates to police services is

²¹ Stipulation of Facts Exhibit 5, R. p. 518, l. 10 to p. 519, l. 4; Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25; Stipulation of Facts Exhibit 5, Exhibits 1 and 2. R. pp. 551 - 557.

²² Stipulation of Facts, Exhibit 1, paragraph 1(g), R. p. 238; Stipulation of Facts, Exhibit 2, R. pp. 249 - 251; Stipulation of Facts Exhibit 3, Exhibit 11, R. p. 387.

with out support in the Record and is refuted by the testimony of Sheriff Tanner.²³ Ordinance 2020-29 and the Tischler/Bise study on which Ordinance 2020-29 is based make no distinction between “primary” and “secondary” law enforcement services. Rather, both show that the LESC is designed to collect the total cost of the law enforcement services delivered by the BCSO in the municipal limits of the Town.²⁴

Beaufort County’s argument in this case is that property owners in the Town receive a benefit in the form of the BCSO delivering police services that the property owners do not pay for. In its argument 2-e, Beaufort County argues that the amount that property taxpayers contribute to the Beaufort County and BCSO budget is not a relevant factor. The only evidence in the Record is this: The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.²⁵ For Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37% and 40% of the Beaufort County and BCSO’s General Fund Budget.

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

²³ Stipulation of Facts Exhibit 5, R. p. 518, l. 10 to p. 519, l. 4; Stipulation of Facts Exhibit 5, R. p. 524, l. 11-25; Stipulation of Facts Exhibit 5, Exhibits 1 and 2. R. pp. 551 - 557.

²⁴ Stipulation of Facts, Exhibit 1, paragraph 1(g), R. p. 238; Stipulation of Facts, Exhibit 2, R. 249 - 251; Stipulation of Facts Exhibit 3, Exhibit 11, R. p. 387.

²⁵ See Stipulation Number 8, R. p. 235.

limits of the Town account for approximately 17% of the BCSO's budget.²⁶

Beaufort County's argument that property taxpayers in the municipal limits of the Town are receiving some benefit that justifies the LESC is undone by the fact that those same property taxpayers already contribute nearly double the cost of the BCSO's delivery of law enforcement service in the municipal limits of the Town. Under that circumstance, Beaufort County has failed to show that property taxpayers in the municipal limits of the Town receive even "some" benefit from the LESC.

In its Argument 2-C, Beaufort County argues that the Town failed to preserve its equal protection argument.²⁷ The law is clear that an issue is not preserved if it is not raised or ruled upon by the Trial Court.²⁸ The Record reveals that the issue has been raised at every stage of this litigation and that it was ruled on by Judge DeBerry. The argument is raised in the Town's September 19, 2023, Amended Complaint, the Stipulation of Facts agreed to by Beaufort County includes facts upon which the argument is based, the Town; the Town's March 5, 2025, Motion for Summary Judgment; in the Town's Motion to Alter or Amend, and in the Appellant's Brief of the Town.²⁸ Beaufort County's complaint is not that the issue was not raised and ruled on, but rather that the argument was not made in

²⁶ These numbers appear in Stipulation Number 9, R. p. 235.

²⁷ This is the same argument that Beaufort County made in its September 24, 2025, "Motion to Dismiss or Transfer" which was denied by the Supreme Court's Order dated November 19, 2025.

²⁸ *Lucas v. Rawl Family Ltd. P'ship*, 359, S. C. 505, 510-11, 598 S. E. 2d 712,715 (2004).

²⁸ September 19, 2023, Amended Complaint, paragraphs 38-44, R. pp. 42 - 43; March 5, 2025, Motion for Summary Judgment, p. 12, R. p. 95; August 15, 2025, Motion to Alter or Amend, R. pp. 28 - 29.

manner that Beaufort County thinks to be appropriate. The fact that the argument can be stated in simple terms, based on stipulated facts, does not make the argument cursory or unimportant in the litigation. More importantly, the issue has been raised at every opportunity, and was ruled on by Judge DeBerry.

In its Argument 2-C-2, Beaufort County attempts to distinguish the rationale for the LESC from other, similar circumstances in Beaufort County where Beaufort County has not imposed a user fee for the delivery of a county service. Beaufort County argues that the LESC is justified for the reason that the Town does not have a municipal police department and the BCSO provides the services that a municipal police department would provide.²⁹ But, Beaufort County does not treat other county services in the same manner.

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.³⁰ The only 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.³¹ “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

²⁹ The Town disputes this assertion, see arguments presented above.

³⁰ Stipulation of Facts, paragraphs 8 and 9. R. p. 233.

³¹ Stipulation of Facts, paragraph 11. R. pp. 233 - 234.

rational basis.³²

Similarly situated persons are not similarly treated. Property owners in the Town are charged for the delivery of a county wide service, solely for the reason that the Town does not provide the service. But, property owners in other municipalities are not charged for the delivery of a county wide service, even though other municipalities do not provide the service.

The classification does not have a rational basis. Delivery of law enforcement 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 law enforcement 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 by the BCSO.³³

Beaufort County's Argument 2-D is that the Town does not have standing to contest the validity of the LESC. Beaufort County does not contest the standing of John J. McCann and Stephen G. Riley. In order to have standing to prosecute an action, a plaintiff must have a personal stake or interest in the subject matter of the lawsuit.³⁴ Beaufort County has stipulated the Town is charged and pays the LESC.³⁵ It is hard to imagine a better example of a person with "personal stake or interest in the subject matter of the lawsuit."

³² *City of Beaufort v. Holcombe*, 369 S.C. 643, 648, 632 S.E.2d 894, 897 (Ct. App. 2006).

³³ Town's Argument 1, *supra*.

³⁴ *Brock v. Bennett*, 313 S.C. 513, 517, 443 S.E.2d 409, 411 (Ct. App. 1994).

³⁵ See Stipulation of Facts paragraph 13, R p. 234; See also Stipulation of Facts Exhibit 1, Section 2, R. p. 239.

CONCLUSION

For the reasons set out above, and in the Brief of Appellants, 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 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:

COLTRANE & WILKINS, LLC

By: 

Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
curtis@coltraneandwilkins.com
Attorneys for the Town of Hilton Head
Island, John J. McCann and
Stephen G. Riley

Hilton Head Island, South Carolina

This 19th Day of January, 2026.