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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

The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-001773

The Town of Hilton Head Island, South Carolina, John J. McCann, and Stephen G. Riley ..... Appellants,

v.

Beaufort County, South Carolina.....Respondent.

FINAL BRIEF OF RESPONDENT

M. Dawes Cooke, Jr., Esq. (S.C. #1376)
John W. Fletcher, Esq. (S.C. #69550)
BARNWELL WHALEY PATTERSON & HELMS, LLC
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Respondent Beaufort County, South Carolina

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COUNTERSTATEMENT OF ISSUES ON APPEAL

Did the trial judge correctly grant summary judgment in favor of Respondent Beaufort County upholding its Ordinance imposing a Service Charge on property tax payers in the Town of Hilton Head Island as a proper service or user fee under S.C. Code § 6-1-300(6) where:

(a) The evidence showed beyond a genuine issue of material fact that the payers received a benefit from law enforcement services that the Service Charge funded;

(b) The evidence showed beyond a genuine issue of material fact that the Service Charge was, by the language of the Ordinance, to be placed in a separate fund and only used for providing law enforcement in the Town;

(c) The evidence showed beyond a genuine issue of material fact that the amount of Service Charge was specifically determined to ensure that it would not produce revenues in excess of the cost of the law enforcement services provided in the Town; and

(d) The evidence showed beyond a genuine issue of material fact that the Service Charge is imposed uniformly on similarly situated property owners?

SUGGESTED ANSWER: *Yes.*

Did the trial judge properly reject Appellants' arguments (enumerated in their Statement of Issues on Appeal as questions 1(A)-(E))?

SUGGESTED ANSWER: *Yes.*

Do the Ordinance and the Service Charge comply with the Equal Protection provisions of the United States Constitution where: (a) the County did not create a suspect classification; and (b) the evidence showed beyond a genuine issue of material fact that the Service Charge served a rational purpose of compensating the County for service provided to the Town that allowed the Town not to raise and maintain a police department?

SUGGESTED ANSWER: *Yes.*

Did the trial court correctly enter summary judgment against the Town, where the evidence showed that the Town did not have standing to pursue its claims against the County.

SUGGESTED ANSWER: *Yes.*

COUNTERSTATEMENT OF THE CASE

A. Factual Background

Unlike the other municipalities in Beaufort County, Hilton Head does not have a police department. Since its incorporation, Hilton Head ("Town")has contracted for the Beaufort County Sheriff's Office ("BCSO") to be its police department and has compensated Beaufort County ("the County") for the cost of providing those services. The Town has saved its taxpayers millions of dollars by using BCSO rather than setting up and maintaining its own police department. After several decades the Town decided that, while it wanted to continue to use BCSO as its exclusive police department, it would stop paying for that service. In response, in 2020, the County enacted a law enforcement service charge to reimburse it for the cost of providing the Town's police department.

The Town wants its residents to receive the benefit of a police department without paying for one. Instead, the Town asks ***all*** County taxpayers—including residents of municipalities who also pay for their own police departments—to underwrite its use of BCSO as its police department. The County's law enforcement service charge seeks to have the most direct beneficiaries of primary[1] police services provided in the Town pay for them. The Town saves millions of dollars annually compared to other County municipalities by having BCSO serve as its police force. Even with the service charge, the police services that BCSO provides the Town are more cost efficient than a stand-alone police department would be.

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[1] "'Primary'" law enforcement services are those such as primary patrol and responding to calls for service. In every municipality except for [Hilton Head], nearly all primary law enforcement services are provided by municipal police departments." (*See* R. p. 563 ¶ 10). "Secondary" law enforcement services, by contrast, "are those such as service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force, helicopter service, marine services, etc. Secondary law enforcement services are provided equally on an as-needed basis throughout all of Beaufort County, South Carolina (in both municipalities and unincorporated areas)." (*See* R. p. 562 ¶ 8).

B. The Contract for Primary Law Enforcement Services

The Plaintiffs in this matter are the Town, John J. McCann, and Stephen G. Riley (collectively "Plaintiffs"). Messrs. McCann and Rile are taxpayers and property owners in the Town. This lawsuit involves an August 24, 2020, Beaufort County Ordinance, which created a uniform law enforcement service charge (the "Service Charge") on real property in the Town for primary police services. (*See* R. pp. 238-41).

Because of its large population (including a massive seasonal tourist population influx), Hilton Head's law enforcement demands far exceed those of other parts of the County. (*See* R. p. 148 ¶ 8; R. pp. 171-76). Despite this, Hilton Head "does not have a municipal police department and has never had a municipal police department." (*See* R. p. 233 ¶ 6). The parties have stipulated that:

> All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

(*See* R. p. 233 ¶ 7). The Town has never explained why—unlike other County municipalities—it elected not to create and maintain its own police department, but it is reasonably inferable that the reason is that it is much less expensive not to do so. To provide competent primary police services to its taxpayers, the Town has historically contracted with the County over the years for BCSO to act as its police department. (*See* R. p. 117; R. p. 118 ¶ 6). In fact, the Town's 1983 ordinance required that it enter into such agreements: "In recognition of the expertise and quality of the county sheriff's department and *in order to provide the necessary police protection* to protect the health, safety, welfare and property of [Hilton Head] and its citizens, the town *shall enter* into an intergovernmental service contract with the county sheriff's department, pursuant to article 13, section VIII of the South Carolina Constitution."[2] *See* Town of Hilton Head Island

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[2] Article VIII, Section 13 of the South Carolina Constitution states: "Any county, incorporated municipality, or other political subdivision may agree with the State or with any

Code of Ordinances § 7-1-10 (emphasis added). Town ordinance further authorizes council to appropriate "town funds for the acquisition of additional services from the sheriff's department." *See* Town of Hilton Head Island Code of Ordinances § 7-1-20. In fact, the Town has paid the County for BCSO to serve as its police department since its incorporation in 1983. (*See* R. p. 118 ¶ 6; R. p. 147 ¶ 5).

In January 2015, Town and the County entered into an Agreement for Police Services ("2015 Agreement"), under which the BCSO would provide Town with a "high level of professional police service." (*See* R. p. 122). The 2015 Agreement expired on January 31, 2018, but the parties continued on a monthly basis. Under the 2015 Agreement, BCSO agreed to provide primary police services to Hilton Head, and BCSO has provided services to the Town over and above what it provides other County municipalities. (*See* R. p. 119 ¶ 8). On October 7, 2019, Hilton Head's then-Mayor (Plaintiff McCann) wrote to the Chairman of County Council:

> Town of Hilton Head Island has long made voluntary annual payments to the County for the services rendered by the BCSO, it was with the misplaced understanding that we were compensating the County and therefore the BCSO for services above and beyond the base level of services made available to all citizens of Beaufort County. Sheriff Tanner made clear, earlier this year, that this is in fact not an accurate reflection of his providing of such services. He affirmatively stated that he will provide the same level of law enforcement services here on the Island that he does to all other parts of the County and that he will shift his personnel and equipment as necessary to address issues and concerns as they arise regardless of geographic location. Therefore, we have learned there are only minimal direct services provided to the town, in the form of enforcement of municipal codes, which the Town remains committed to funding.

(*See* R. p. 141). Mayor McCann stated that, starting in 2021, Hilton Head would only pay the County $300,000 per year. (*See* R. p. 142). The County responded by enacting the service charge ordinance that is the subject of this litigation.

C. Statistical Data Regarding Law Enforcement Services Provided in Municipalities

It is undisputed that Hilton Head consumes far more BCSO resources than other

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other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof."

municipalities. BCSO dispatch receives calls for assistance from throughout the County and directs those calls to the appropriate responding agency (to municipal police departments where applicable). (*See* R. p. 148 ¶¶ 9-12). In 2019[3], BCSO provided the primary response for ***all*** 97,336 calls for service in Hilton Head. (*See* R. p. 148 ¶ 12). These are calls that would "normally be handled by a municipal police department, if one existed." (*See id.*). BCSO responds to far fewer primary service calls in other municipalities:

MUNICIPALITY	**RESPONSES BY TOWN POLICE DEPARTMENT**	**RESPONSES BY BCSO**
Beaufort (98,558 total calls for service)	86,623 (88% of total calls for service)	11,935 (12% of total calls for service)
Bluffton (70,688 total calls for service)	64,778 (92% of total calls for service)	5,890 (8% of total calls for service)
Port Royal (37,083 total calls for service)	33,699 (91% of total calls for service)	3,384 (9% of total calls for service)
Hilton Head Island (97,366 total calls for service)	0 (0% of total calls for service)	97,366 (***100%*** of total calls for service)

(*See* R. pp. 148-49 ¶¶ 9-15; R. p. 171). Based on these statistics, if Hilton Head had a police department, BCSO would have only responded to about 10% of its primary service calls, rather than all 97,366.

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[3] For purposes of the Motions for Summary Judgment below, the County focused on 2019 statistics and 2020 budgets, since 2019 was the year prior to the adoption of the 2020 LESC.

D. Costs to Provide Law Enforcement Services

BCSO provides "secondary" and "primary" law enforcement services. (*See* R. p. 113 ¶ 7). "Secondary" law enforcement services include service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force, helicopter services, marine services, *etc.* (*See* R. p. 113 ¶ 8). BCSO provides secondary services equally on an as-needed basis everywhere in Beaufort County. (*See id.*). BCSO's 2020 budgeted costs for providing such "secondary" services was $29,663,512.00. (*See* R. p. 113 ¶ 9).

"Primary" law enforcement services are those that a municipal police department would normally handle, such as patrol and responding to citizen calls. (*See* R. p. 114 ¶ 10). In every municipality except Hilton Head, police departments provide nearly all primary law enforcement services, with BCSO responding to only a small minority of calls and patrols. (*See* R. p. 114 ¶¶ 10-11). Because Hilton Head does not have a police department, BCSO provides 100% of its "primary" law enforcement services. (*See* R. p. 114 ¶ 12). It does not do so for any other municipality. Hilton Head consumes far more resources than other municipalities, where BCSO mainly provides secondary services. (*See* R. p. 114 ¶ 13).

Under Hilton Head's agreement with the County, BCSO has more than 40 employees who provide Hilton Head's ***primary*** law enforcement services. (*See* R. p. 114 ¶ 14). At the time of the Service Charge, the annual cost and value of ***primary*** services that BCSO provided Hilton Head was at least $4,383,257.00: (a) $3,704,257 (operating expenditures for those employees); (b) $504,000 (fringe benefits); (c) $100,000 (Victim Advocate Officer); (d) $75,000 (bar patrol overtime). (*See* R. p. 114 ¶ 15). The actual cost of providing *both* primary and secondary law enforcement services in Hilton Head was substantially greater. (*See* R. p. 116 ¶ 18). If BCSO did not provide its primary services, Hilton Head would have been forced to spend *much* more operating its own police department than if it paid BCSO to provide the services. In fact, the parties have stipulated that as to the costs incurred by other municipalities annually for the operation of their police departments:

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				
	Population	27,716	13,607	14,220
	P.D. Budget	$7,270,955.00	$4,688,073.00	$2,349,405.00
2021				
	Population	32,191	12,960	14,753
	P.D. Budget	$7,102,892.00	$4,504,976.00	$2,496,796.00
2022				
	Population	34,493	13,656	15,585
	P.D. Budget	$7,727,168.00	$4,783,813.00	$2,705,235.00
2023				
	Population	35,243	13,850	16,287
	P.D. Budget	$8,552,719.00	$5,320,754.00	$2,862,950.00
2024				
	Population	40,000	13,935	16,881
	P.D. Budget	$10,272,435.00	$6,054,894.00	$3,183,400.00

(*See* R. pp. 235-36. ¶ 10).[4]

E. <u>The Service Charge Ordinance</u>

Although Hilton Head communicated that it would no longer honor its decades-old agreement with the County, BCSO continued to provide the professional primary services to Hilton Head. (*See* R. p. 119 ¶ 8). To equitably underwrite the costs of those services, the County considered a uniform service charge on properties in Hilton Head. (*See* R. p. 120 ¶ 15;

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[4] Sheriff Tanner testified without contradiction, "I would – I would – without doing the numbers, but knowing after – I've been in office now for – I'm in my 25th year. The Town of Hilton Head saves millions and has over the past 40 years…. I would, knowing what I know about law enforcement and knowing what I know about recruiting and retention, it would—it would be a very difficult task for them to start their own police force, and it would be extremely expensive." (*See* R. pp. 527-29). This is confirmed by the actual costs of municipal police departments in the County. For example, the Town of Bluffton—with a population of 23,000—spent $6.4 million in 2019 with 64,778 calls for service (and $6.7 million in 2018). (*See* R. pp. 171, 177-79). In 2019, the Town of Beaufort spent approximately $4 million for 86,623 calls for service, with a population of just over 13,000. (*See* R. pp. 171, 219-21). On the other hand, under the LESC, the Town and its taxpayers received primary law enforcement services for $4.38 million with a population of 39,639 (150,000 during tourist season, with 2.6 million annual visitors).

R. p. 181 ¶ 8). The County retained the fiscal, economic, and planning consulting firm TischlerBise — which has prepared over 900 impact fees and 800 fiscal impact analyses nationwide — to study BCSO's provision of police services to Hilton Head. (*See* R. p. 120 ¶ 16; R, p. 181 ¶¶ 9-10).

TischlerBise prepared a "Law Enforcement User Fee Study Approach and Findings" setting forth its approach, methodology, narrative, and findings. (*See* R. pp. 184-203). TischlerBise developed a methodology to fairly apply a Service Charge to property owners in the Town:

- Documenting the total cost of BCSO primary law enforcement services provided to the Town;
- Allocation of that cost to residential and nonresidential land uses, reflecting the demand for law enforcement services from different users;
- Developing a service charge schedule by type of land use.

(*See id.*). TischlerBise was informed that the annual cost of BCSO's primary law enforcement services to the Town was $4,383,257. (*See* R. p. 181 ¶ 13). TischlerBise proposed a fair amount for the Service Charge, based on the value of property in Hilton Head, to generate sufficient revenue to offset the County's cost of providing primary law enforcement services. (*See* R. p. 120 ¶ 17; R. pp. 181-82 ¶¶ 14-15). TischlerBise noted that those law enforcement services were being provided by BCSO in lieu of the Town "providing its own police force *and is above the base level of law enforcement service* provided to incorporated places in the County." (*See* R. p. 188).

On August 24, 2020, County Council passed Ordinance 2020/29 ("Ordinance") (Stip. Ex. 1), creating the Service Charge on real property in Hilton Head. It enacted the Ordinance in accordance with governing laws and in compliance with legal requirements and complied with TischlerBise's independent recommendations. (*See* R. pp. 120-21 ¶¶ 19-21). The Service Charge is "charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff's Office ***over and beyond the level of services provided***

in the incorporated municipalities which provide their own law enforcement services." (*See* R. p. 238 § 1(h) (emphasis added)). The Service Charge is payable and collected in the same manner as real property taxes. (*See* R. p. 240 § 5).

F. Procedural History

Plaintiffs filed multiple Motions for Summary Judgment below. On December 1, 2020, Plaintiff Hilton Head—then the only Plaintiff—filed its first Notice of Motion and Motion for Summary Judgment ("First Motion"). Hilton Head filed a Memorandum in Support of its first summary judgment motion, arguing that the Service Charge is not a "service or user fee" because: (a) it recoups one hundred percent of the cost of the delivery of services by the BCSO in Hilton Head, rather than the cost of any special benefit; (b) Hilton Head taxpayers do not receive special benefit because they contribute an amount to the budget of the BSCO that exceeds the cost of delivery of all services by the BCSO. (*See* R. pp. 576-77). The County filed an Opposition to the First Motion, supported by affidavits and other evidence, detailing the value of "primary" police department services that BCSO provided Hilton Head. The evidence demonstrated that Hilton Head received a special benefit from BCSO and that the Service Charge was a reasonable method to compensate the County for providing primary police services. Hilton Head withdrew its First Motion.

On September 7, 2021, Plaintiffs filed another Motion for Summary Judgment ("Second Motion"), focusing on *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E. 2d 31 (2021).[5] On January 26, 2022, the Honorable H. Steven Deberry, IV denied Plaintiffs' Second Motion.

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[5] *Burns* did not support Plaintiffs' motion for summary judgment then. In any event, it is no longer applicable. *Burns* considered a prior version of Section 6-1-300(6), which required that a uniform service charge relate to a benefit that "benefits the payer in some manner different from the members of the general public not paying the fee." *See* 1997 Act No. 138 § 7, repealed by 2022 Act No. 236 (S.233) § 2.A (eff. June 22, 2022). *Burns* stated that "when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown[v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992),] but *certainly must* meet the requirements the General Assembly set forth in subsection 6-1-300(6)." *See Burns*, 433 S.C. at 587, 861 S.E.2d at 32. In 2022, the General Assembly abrogated *Burns* and codified the *Brown* elements for a uniform service charge.

(*See* R. p. 25). Finally, on May 1, 2023, Plaintiffs filed a Notice of Motion and Motion for Summary Judgment ("Third Motion"), which repeated the arguments Hilton Head made in its First Motion as to why the Ordinance is not a uniform service charge. (*See* R. p. 570). On October 2, 2023, the Honorable Carmen T. Mullen denied Plaintiffs' Third Motion.

The parties agreed that the case should be resolved on cross-motions for summary judgment. Consequently, on March 10, 2025, Plaintiffs filed their Notice of Motion and Motion for Summary Judgment. (*See generally* R. pp. 84-97). On March 12, 2025, the County filed its Cross Motion for Summary Judgment. (*See generally* R. pp. 98-221). The Circuit Court conducted oral arguments on these Motions on June 10, 2025.

On August 7, 2025, Circuit Judge H. Steven DeBerry, IV entered an Order Granting Defendant Beaufort County's Cross Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment ("Summary Judgment Order"), which is the subject of this appeal. (*See generally* R. pp. 1-13). In its Order, the trial judge concluded that the Service Charge was a service or user fee, not a tax. Therefore, it was properly imposed via the Ordinance and was a valid fee imposed on property owners.

On August 15, 2025, Plaintiffs filed a Notice of Motion and [Motion] to Alter or Amend (Rule 59, SCRCP). (*See generally* R. pp. 27-35). On August 29, 2025, Circuit Judge DeBerry entered an Order denying that Motion, in which he "determined that its original ruling of August 7, 2025, is fully supported by the law and the evidence and is hereby ratified and reconfirmed." (*See generally* R. p. 14-15). This appeal followed.

For the reasons that follow, the Court should affirm the Summary Judgment Order and the entry of summary judgment in favor of the County (and the denial of Plaintiffs' Motion for Summary Judgment).

ARGUMENT

A. Standard of Review

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court." *Jackson v. Swordfish Invs., LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005) (*citing George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001)). "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* at 611, 620 S.E.2d at 55-56 (*citing Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991)).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* (*citing Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995)). "'The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.'" *Harbit v. City of Charleston*, 382 S.C. 383, 390, 675 S.E.2d 776, 779 (Ct. App. 2009) (*quoting George*, 345 S.C. at 452, 548 S.E.2d at 874)). "[S]ummary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusion to be drawn therefrom." *Jackson*, 365 S.C. at 608, 611-12, 620 S.E.2d at 56 (*citing MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980)).

Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. *See Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009) (*citing* S.C.R. Civ. P. 56(c)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (*quoting Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005)). Stated otherwise, "when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

"When cross motions for summary judgment are filed, the issue is decided as a matter of law." *Neumayer v. Phila. Indem. Ins. Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (*citing Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

B. The Trial Judge Correctly Held That the Service Charge Is Not a "Tax," But Is a "Service or User Fee" or "Uniform Service Charge" Under S.C. Code § 6-1-300(6).

For the reasons set forth below, the trial court correctly determined that the Service Charge created by the Ordinance is a service or user charge under S.C Code. 6-1-300(6), rather than a "tax." As a result, the County had the authority to enact the Ordinance and properly imposed the Service Charge.

1. The Service Charge Satisfied the Elements of S.C. Code § 6-1-300(6) As a Matter of Law.

The Home Rule Act vests legislative power in county governments. *See* § 4-9-120 ("[C]ouncil shall take legislative action by ordinance"); *North Charleston Land Corporation v. City of North Charleston*, 281 S.C. 470, 474, 316 S.E.2d 137, 139 (1984) ("An ordinance is a legislative enactment and is presumed to be constitutional"). "The courts should not and will not interfere in the administration of the internal domestic affairs of the counties and cities, unless there is a manifest disregard or abuse of power or discretion." *See State ex rel. Edwards v. Osborne,* 193 S.C. 158, 7 S.E.2d 526, 533 (1940); *accord Dunes West Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 300, 737 S.E.2d 601, 611 (2013) ("It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances or regulations."); *City of Charleston v. Roberson*, 275 S.C. 285, 288, 269 S.E.2d 772, 774 (1980) ("We hold the county court erred in . . . substituting its own judgment as to the wisdom of the ordinance for that of appellant's governing body."); *Griggs v. Hodge*, 229 S.C. 245, 251, 92 S.E.2d 654, 657 (1956) ("[T]he courts will not attempt to interfere with the exercise of discretionary powers by a public board or subordinate governmental agency"). The power of a court to analyze a local ordinance must be "'exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations.'" *See McMaster v. Columbia*

Bd. of Zoning Appeals, 395 S.C. 499, 504-05, 719 S.E.2d 660, 663 (2011) (citation omitted).

Plaintiffs assert that the Service Charge is improper because the County may not impose a new tax unless authorized by the General Assembly to do so. *See* S.C. Code § 6-1-310 ("A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly."). They contend that the Service Charge is only valid if it is a "uniform service charge" or "service or user fee," not a "tax." *See* S.C. Code § 4-9-30(5)(a); *accord* S.C. Code § 6-1-330(A) ("A local governing body . . . is authorized to charge and collect a service or user fee."). "Generally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer." *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 39-40, 522 S.E.2d 804, 806 (1999).

The General Assembly has defined "service or user fee" and "uniform service charge" as follows:

> "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.

S.C. Code § 6-1-300(6); *accord C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997) (*citing Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992)). For the reasons that follow, the trial court correctly granted the County's Cross Motion for summary judgment—and denied Plaintiffs' Motion for Summary Judgment--because the Service Charge is a valid "service or user fee" (or "uniform service charge") under Section 6-1-300(6).

a. The Service Charge Benefits All Payers.

The first statutory requirement for a service or user fee is that the "revenue generated from the [Service Charge] must . . . be used to the benefit of the payers, even if the general public also benefits." S.C. Code § 6-1-300(6). The statute does not require that the benefits to those taxpayers be unique or different from the benefits to other taxpayers. It does not require that the services paid by the Service Charge accrue *only* to the payers. It simply requires that those who pay the Service Charge receive some benefit. Plaintiffs present no evidence refuting that the Service Charge *does* benefit property owners in the Town. It is undisputed that the BCSO provides significantly more primary law enforcement services to Hilton Head compared to other municipalities. For example, BCSO responds to ***all*** calls for assistance in the Town—nearly 100,000 calls in 2019. This allows the Town to avoid the expense of maintaining its own police department at taxpayer expense, which would be significantly greater than the Service Charge. As a result, property owners in the Town receive the benefit of professional primary law enforcement services to protect their properties. To receive this benefit, they do not have to pay the same price that residents of other municipalities in the County pay. This is a self-evident benefit to the payers of the Service Charge.

Plaintiffs focus on the statutory definition of the Sheriff's authority and responsibilities to argue that BCSO is only giving the Town the service it is obligated to provide under statute. The County recognizes that the "Sheriff [i]s the chief law enforcement officer of the county." *See* S.C. Att. Gen. Op., 2002 WL 31958840, at *2 (Dec. 20, 2002). However, this does not mean that the Sheriff acts in lieu of a municipal police department or serves as the exclusive law enforcement entity for a municipality. In fact, the only statutory duty of the BCSO is that "deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or to make an arrest." *See* S.C. Code § 23-13-70. This does not impose an obligation on a sheriff to act as a municipal police department.

As set forth in Sheriff Tanner's May 8, 2019 letter to the Beaufort County Administrator,

BCSO is required to fulfill this statutory duty in both towns with police departments and unincorporated areas. (*See* R. p. 555 ("An agreement with the town or the creation of a special tax district for police protection or the Town of Hilton Head having its own Police Department does not relieve the county Sheriff of his duty to patrol and to provide Law Enforcement service to its citizens.")). BCSO has always fulfilled this county-wide duty. However, no municipality other than the Town asks the BCSO to serve as its exclusive police department or seeks to have other taxpayers underwrite its consumption of BCSO resources.

Sheriffs are not the only persons that provide law enforcement services in the County under statute. The law recognizes that municipal police officers perform law enforcement services: a "municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties." *See* S.C. Code § 5-7-110. Such "[p]olice officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality." *See id.* The General Assembly has defined the duties and powers of a constable as follows:

> [A]ll of the rights and powers prescribed by law for magistrates' constables and deputy sheriffs and powers usually exercised by marshals and policemen of towns and cities. He shall act as a conservator of the peace, take into custody and carry before the nearest magistrate any person who commits any misdemeanor or felony in his presence or any felony if he reasonably believes upon prompt information or complaint the person has committed the felony and carry him before a court of competent jurisdiction, and execute any criminal process from magistrates' courts relating to offenses committed upon any of the lands and premises within his jurisdiction

See S.C. Code § 23-7-50. In other words, Hilton Head is statutorily authorized to operate its own police department.

Plaintiffs have 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. In fact, the Office of the Attorney General "has advised it appears that while a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably

would include a municipality within that county, a sheriff, as a county official, ***is not generally considered to be obligated to provide specific services within a municipality***. *See* S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (emphasis added) (*See* R. pp. 204-09). Recognizing that Hilton Head's taxpayers should bear the responsibility for paying for municipal police services, the Office of the Attorney General has confirmed that a sheriff may contract with a municipality to provide primary police services:

> [I]t appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, ***is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could offer contract law enforcement services to a municipality***.

See S.C. Att. Gen. Op. 92-67 (Nov. 6, 1992) (*See* R. pp. 210-13) (emphasis added); *accord* S.C. Att. Gen. Op., 2018 WL 1557222, at *1 (Mar. 16, 2018) (*See* R. pp. 214-17) (permitting "sheriffs department to contract with a municipality to provide law enforcement services"); S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (*See* R. pp. 204-09) (sheriff "could offer contract law enforcement services to a municipality.").

That is precisely what the Town has traditionally done with the County. Under a series of agreements, BCSO performed all the services a Town police department would provide (if one existed), and the Town paid for those services. As the TischlerBise report observed, "[t]hese law enforcement services are provided to [Hilton Head] in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County." (*See* R. p. 188). Plaintiffs do not dispute that BCSO has, in fact, performed all of the primary law enforcement services that a municipal police department would normally perform. There is no dispute that the Service Charge has provided a benefit to Hilton Head taxpayers and that the first statutory requirement is satisfied.

b. The Service Charge Is Used Only for Law Enforcement in Hilton Head and Does Not Exceed the Cost of the Improvement.

The language of the Ordinance itself limits the use of the Service Charge to providing primary law enforcement services in the Town:

> All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriffs Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriffs Office in the unincorporated County.

(*See* R. p. 239). As a result, the Service Charge has specifically been enacted to ensure that it only produces revenue for the specific use of providing primary police department services in the Town.

It is further undisputed that the County determined the amount of the Service Charge to achieve that result and produce no more revenue than what was required to pay for those services. The County retained the respected consulting firm TischlerBise to calculate the amount of the Service Charge so it would fairly and equitably generate only revenue sufficient to compensate the County for the anticipated costs of *primary* law enforcement services for Hilton Head. Great care was taken under the circumstances to calculate an accurate and fair allocation of the costs of those specific services. There is no evidence disputing that the County used revenue generated by the Service Charge exclusively to provide primary law enforcement services as the Town's exclusive police department. There is no evidence that the Service Charge has been utilized to generate a windfall to the County or to offset other unrelated expenses.

The parties have stipulated that the available complete data for the years during which the Service Charge was collected shows that the amount of fees collected correlates very closely with the amounts actually expended for providing primary law enforcement services to Hilton Head:

FY 2020/2021 Sheriff HHI Services Fee Expenditures $ 4,255,542.00

Service Charge Collected $ 4,647,365.00

FY 2021/2022 Sheriff HHI Services Fee Expenditures $ 5,095,848.00

Service Charge Collected $ 4,828,652.00

FY 2022/2023 Sheriff HHI Services Fee Expenditures $ 5,127,555.00

Service Charge Collected $ 5,081,214.75

(*See* R. p. 235 ¶ 9). While there have been some minor deviations due to the uncertainties of amounts that will ultimately be collected and spent, revenues have very closely tracked actual expense. For the three years above, the total amount expended to provide primary law enforcement service to Hilton Head was $14,478,945, while the amount of Service Charge collected was $14,557,231. The amount collected was less than 1% higher than expenditures, an immaterial difference that was the product of having to estimate the Service Charge and the impact of intervening changes concerning the value of assessed properties and other issues.

There is no evidence that the County used amounts collected for the Service Charge for any purpose other than providing primary law enforcement services in the Town.

For the foregoing reasons, the County submits that this element of the statute is satisfied.

c. The Service Charge Is Uniformly Imposed on All Payers.

Finally, it is indisputable that the Service Charge is imposed on a uniform basis among similarly situated property owners. The County retained TischlerBise specifically to assure that the Service Charge would be imposed uniformly on similar property owners (residential or commercial) based upon anticipated consumption of law enforcement services by each group of property owners. The Ordinance provides a procedure by which a fee payer may appeal the assessment of the User Fee on a parcel of property. Plaintiffs have not argued, or presented any evidence, that the Service Charge is not uniformly imposed on properties that benefit from the police services provided by the Sheriff's Office.

For the foregoing reasons, the trial court correctly concluded that the Ordinance and the Service Charge satisfy all of the requirements under Section 6-1-300(6) for a service or user fee

and, as a result, the Service Charge is a valid exercise of the County's powers.

2. Plaintiffs' Arguments Are Without Merit.

In their Brief of Appellants, Plaintiffs make several arguments in support of their contention that the Service Charge is a tax, rather than a service fee under section 6-1-300(6): (a) the evidence does not support that the Service Charge provided a particular benefit to its payers; (b) the evidence does not support that the Service Charge increased property values in the Town; (c) the evidence does not support that BCSO delivered enhanced services in the Town; (d) the Service Charge collects 100% of all BCSO services in the Town; and (e) taxpayers in the Town contribute more to the budget of BCSO than the cost of services delivered in the Town. For the reasons that follow, Plaintiffs' arguments all miss the mark.

a. The Trial Judge's Conclusion that Section 6-1-300(6) Only Requires Some Benefit to the Payer Is Consistent With the Statutory Language and Intent.

Plaintiffs first argue that, for the Service Charge to be a fee and not an impermissible tax, the evidence must show that there was a particular benefit to those paying the Service Charge. Specifically, Plaintiffs contend that "[t]he plain text of S. C. Code Ann.§ 6-1-300(6) . . . requires a benefit to the payer of the fee, and not just 'some benefit' such as that received by any person who doesn't pay the fee." (*See* Br. of Appellants, at 11-12). However, Plaintiffs' argument is not consistent with the language of the statute.

The General Assembly has defined a service or user fee as "a charge required to be paid in return for a particular government service or program." *See* S.C. Code § 6-1-300(6). However, the statute does not require that revenue from the fee be used to provide some special, unique benefit to the payers. To the contrary, the statute only requires that the revenue "be used to the benefit of the payers, *even if the general public also benefits*" *See* S.C. Code § 6-1-300(6)(a) (emphasis added). Nothing in the statute requires more. Plaintiffs cannot seriously contend that property owners in the Town do not benefit from BCSO providing primary law enforcement services. Even if others in the Town also benefit—including visitors, tourists, and

renters—the payers of the Service Charge obtain a definite benefit from the provision of police services. This is particularly true here where the amounts paid for BCSO serving as the police force are much lower than those paid by taxpayers in other municipalities in the County. Just the costs to set up a Town police department would likely run in the tens of millions of dollars and massive administrative burdens.

In support of their argument, Plaintiffs recite this Court's statement that "[g]enerally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer." *See BellSouth Telcoms., Inc. v. City of Orangeburg*, 337 S.C. 35, 39-40, 522 S.E.2d 804, 806 (1999). They seem to suggest that this means that a "fee" can only be a "fee" if it produces some unique benefit. As discussed above, this is directly contrary to the language of Section 6-1-300(6)(a). Moreover, Plaintiffs do not account for this Court's opinion in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), which states in relevant part:

> A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge. ***A charge does not become a tax merely because the general public obtains a benefit***. *See Robinson v. Richland County Council*, *supra; Casey v. Richland County Council,* 282 S.C. 387, 320 S.E.2d 443 (1984). Appellants argue that the ordinance is invalid because of the disparity between the people who benefit and the people who pay. . . . The Horry County ordinance provides that the fees are to go into the general fund but that they are to be specifically used for the maintenance and improvement of county roads. Therefore, because the money collected is specifically allocated for road maintenance, we hold that the fee is service charge.

See Brown, 308 S.C. at 185, 417 S.E.2d at 568 (emphasis added).

In *BellSouth*, this Court actually favorably cited *Brown* in its response the argument that a challenged fee was really a tax because the revenue generated was paid to the municipal "general fund" instead of a segregated account:

> Generally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer. *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992). Where a municipality seeks to justify a charge as a fee because the revenue generated by the charge is

> used for the payer's benefit, we will consider the fact that the revenue is placed in a municipality's general fund in deciding whether or not the payer specially benefits from imposition of the charge.
>
> This factor is irrelevant, however, where the benefit to the payer derives not from the municipality's use of the revenue but is a benefit given directly and solely to the payor in exchange for the fee. In exchange for the fees imposed in this case, BellSouth is granted the special privilege of using public streets to place its equipment in order to serve City's residents and generate private profit. The fact that the fees are placed in City's general fund is irrelevant.

See BellSouth, 337 S.C. at 39-40, 522 S.E.2d at 806. Notably, unlike the plaintiff in *BellSouth*, Plaintiffs do not make any argument that the revenue from the Service Charge is a "tax" because it goes into the County's general fund. In any event, the evidence does not support this argument, as the Ordinance explicitly states:

> All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriffs (sic) Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriffs (sic) Office in the unincorporated County.

(*See* R. p. 239 § 3).

It is indisputable that payers of the Service Charge do so for a very specific and particular benefit. They all, by definition, own property in the Town. The Service Charge is used to pay extra expenses to provide services that the BCSO does not provide to other municipalities in the County. Paying property owners receive the specific benefit of having the BCSO act as the "Hilton Head Police Department"—at, frankly, a very modest price. The fact that others also benefit from these services does not make the Service Charge a "tax."

For the foregoing reasons, the trial judge correctly held that the Ordinance and Service Charge constituted a service or user fee under Section 6-1-300(6).

b. Contrary to the Town's Arguments, the Service Charge Is Not a Tax, Even if It Does Not Increase Property Values.

Plaintiffs next argue that *Burns v. Greenville County Council,* 433 S. C. 583, 861 S.E.2d 31 (2021), requires "that when a fee is charged to property owners, the benefit that must be realized by the fee payer is increased property values." (*See* Br. of Appellants, at 12). Again, Plaintiffs' argument must fail.

The *Burns* Court did not, by any stretch, impose a requirement that all service or use fees imposed on property owners under Section 6-1-300(6) *must* increase property values. In *Burns*, rather, the county *chose* to argue that a fee uniquely[6] benefitted owners by increasing their property values. "Greenville County argues Ordinance 4907 satisfies subsection 6-1-300(6) because the improved telecommunications system will 'enhance[] real property values.'" *See Burns*, 433 S.C. at 588, 861 S.E.2d at 33. The Court rejected that argument, finding that Greenville County had not presented evidence to support its argument that the ordinance increased property values of payers—giving them a "different" manner of benefit from the fee. *See id.*, 433 S.C. at 589, 861 S.E.2d at 34 ("We hold that simply declaring a fee will enhance property value does not make the property owner paying the fee the beneficiary of some unique benefit, as required by subsection 6-1-300(6).").

Plaintiffs also cite *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997), in support of their argument that an increase in property values is a *sine qua non* of a service fee. However, in *C.R. Campbell*—which was decided before the effective date of Section 6-1-300(6)—the Court did not impose such a requirement. Again, in that case, the City *chose* to base its service fee argument on the effect on the payers' property values. *See C.R.*

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[6] The *Burns* Court construed a version of Section 6-1-300(6) that is very different from its current incarnation. At the time *Burns* was decided, the statute defined a service fee a "a charge required to be paid in return for a particular government service or program made available to the payer ***that benefits the payer in some manner different from the members of the general public not paying the fee***." *See Burns*, 433 S.C. at 587, 861 S.E.2d at 33 (emphasis added). On the other hand, the current version of Section 6-1-300(6), a service fee need only "be used to the benefit of the payers, even if the general public also benefits." The requirement that payers and the general public benefit from the fee in a "different" manner has been removed from the statute.

Campbell Constr. Co. v. City of Charleston, 325 S.C. at 237, 481 S.E.2d at 438 ("In this case, it is undisputed the transfer fee is used only for parks and recreational facilities, the payers benefit because their real property values are enhanced").

While the County does not dispute that an increase in property values is *one way* to prove a benefit to the payers, it is not the exclusive route. In this case, the Service Charge provides a very concrete benefit to property owners in the Town. It provides a substitute for a Town police department. If not for the Service Charge, the Town would have to raise city taxes to pay the high costs of creating and maintaining a full police department. The payers of the Service Fee receive high quality primary law enforcement services funded by the Service Charge. Those services protect their properties and the people on them. There is little doubt that these services increase property values in the Town, though this is not a prerequisite of a valid service charge.

For the foregoing reasons, Plaintiffs' argument that the County must prove that the Service Charge increases property values is without merit. The trial judge correctly granted summary judgment to the County and denied Plaintiffs' motion for summary judgment.

c. <u>It Is Undisputed That the County Provides Primary Law Enforcement Services in the Town That It Does Not Provide in Other Incorporated Municipalities.</u>

Plaintiffs next argue that the Service Charge is actually a tax "because the BCSO does not deliver an enhanced level of service over any like area in the municipal limits of the Town." (*See* Br. of Appellants, at 13). A review of the record discloses that the Service Charge benefits payers as required by the statute.

Initially, there is no requirement that the BCSO provide "enhanced" services for the Service Charge to pass muster. Plaintiffs do not cite any authority imposing a requirement of "enhanced" services for a service or user fee. As set forth above, the statute only requires that there be a benefit to the payer, even if others also benefit from the payment.

It appears that Plaintiffs argument is that the Service Charge was improper because it was used to pay for the same services that BCSO provided to other municipalities. However, as

discussed above, the record is clear that the Service Charge ***only*** funded "primary" law enforcement services delivered in the Town. This would be comprised of only the services that BCSO provided so that the Town did not have to incur the expense and burden of creating and maintaining its own police department. BCSO did not provide such primary law enforcement services to other municipalities, including Beaufort, Bluffton, or Port Royal. It is beyond cavil that the Town was receiving "enhanced" services that those other Towns did not. In fact, it received services including responses to ***all*** 97,000 calls for assistance in the Town; no other municipality received such a benefit. To the contrary, most of the calls for assistance in Beaufort and other municipalities would be answered by the municipal police departments (at the cost of the municipality).

On the other hand, it is undisputed that the truly "countywide" services—*i.e.*, "secondary" law enforcement services such as service of process, bomb squad, etc.—are paid for out of the general fund. The Service Charge is ***not*** used to pay for those services, which are provided throughout the county on an as-needed basis.

In support of their arguments, Plaintiffs rely on snippets the testimony of Sheriff P.J. Tanner taken out of context. They also erroneously compare the highly populated and urbanized Town with rural unincorporated areas of the County. Most importantly, Plaintiffs ignore undisputed testimony by Sheriff Tanner to the effect that the Service Charge indisputably saves the Town millions of dollars by removing the burden of funding a police department from the Town:

> Q· · Okay.· Sheriff, do you happen to have an opinion based on what you observed and what you know about law enforcement as to whether the Town of Hilton Head saves money by using the Sheriff's Department for its basic police services rather than having its own police department? . . .
>
> A· · I would -- I would -- without doing the numbers, but knowing after -- I've been in office now for -- I'm in my 25th year.· The Town of Hilton Head saves millions and has over the past 40 years. . . .
>
> [K]nowing what I know about law enforcement and knowingwhat I know about recruiting and·retention, it would -- it would be a·very difficult task

> for them to start their own police force, and it would be extremely expensive. . . .
>
> So if they were going to create their own police force, they would probably -- it would probably, in fairness, on a startup, they would need 100-plus, and that would be administrative and enforcement. But there is so much more to creating a police department than just personnel costs. . . .
>
> Q. But in your opinion, is it beneficial to the City of Hilton Head to use the Sheriff's Department to provide its primary police services? . . .
>
> [A] It's -- it's beneficial to the citizens of Hilton Head in so many different ways. And quite frankly, it's very beneficial to the government structure of Hilton Head and the decision process and of the day-to-day requirements and responsibilities and decisions made by law enforcement.

(*See* R. pp. 527:6-531:13).

For the foregoing reasons, Plaintiffs' argument that the trial judge erred in granting summary judgment because the evidence did not show the provision of "enhanced" service to the Town is misplaced.

d. <u>It Is Undisputed That the Service Charge Pays for Additional Resources That the Town Consumes Because It Has No Police Department.</u>

The Town next contends "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[7] level of service." (*See* Br. of Appellants, at 16). This is not true.

As discussed above, the BCSO provides various types of services within the County, which can be divided into "primary" and "secondary" law enforcement services. (*See* R. p. 113 ¶ 7). "Secondary" services are those such as service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force,

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[7] As set forth in the preceding section, there is no requirement that BCSO provide "enhanced" services. Plaintiffs have not cited any law or contract requiring "enhanced" services, whatever that might mean. As set forth herein, the Service Charge is intended to compensate the County for the cost of providing primary law enforcement services in the Town. The Town is the only municipality in the County that relies on BCSO to handle its primary law enforcement.

helicopter services, marine services, etc. (*See* R. p. 113 ¶ 8). Secondary law enforcement services are provided equally on an as-needed basis throughout all of the County (in municipalities and unincorporated areas). (*See id.*). The Service Charge "does not encompass the cost of providing secondary law enforcement services in the Town." (*See* R. p. 116 ¶ 19). Those countywide services are paid for through the BCSO general budget and taxes paid throughout the County.

On the other hand, "primary" law enforcement services are those such as primary patrol and responding to calls for service. (*See* R. p. 114 ¶ 10). In every municipality *except for the Town,* nearly all primary law enforcement services are provided by municipal police departments. (*See id.*). In municipalities with police departments, BCSO responds to only a small fraction of calls for service, with municipal police departments doing the vast majority of patrols. (*See* R. p. 114 ¶ 11). Because the Town is the only municipality in the County without a police department, the BCSO must provide 100% of the Town's "primary" law enforcement services. (*See* R. p. 114 ¶ 12). BCSO devotes far more resources to primary law enforcement services in the Town than other municipalities. (*See* R. p. 114 ¶ 13). Under the Town's agreement with the County, the BCSO employs 42 personnel to provide primary law enforcement services in the Town. (*See* R. p. 114 ¶ 14). The $4,383,257 used to calculate the Service Charge relates ***only*** to ***primary*** law enforcement services in the Town. (*See* R. p. 114 ¶ 17). In reality, the cost of providing both primary *and* secondary law enforcement services in the Town is far greater than that amount. (*See* R. p. 114 ¶ 18).

Contrary to Plaintiffs' argument, taxpayers in the Town did not already pay for 100% of BCSO services provided in the Town before the Service Charge. It is undisputed that the county-wide taxes for the BCSO did ***not*** compensate the County for the additional primary law enforcement services it provides in lieu of a Town police department. In other words, portion of County taxes paid for the BCSO general budget only cover the costs of "secondary" law enforcement and the costs of services provided to rural, unincorporated areas of the County. The

Service Charge is ***only*** used to offset the substantial additional costs imposed on the County to provide "primary" services in the Town.

If the Court adopts the Town's argument, taxpayers in other parts of the County will have to pay to subsidize the costs of the Town's police services. This is fundamentally unfair. Instead placing the costs of primary law enforcement services on those who directly benefit from the increased resources devoted to the Town, those costs will be shouldered by: (a) taxpayers in rural unincorporated areas who consume relatively few resources and (b) taxpayers in other municipalities who already pay additional taxes to pay for their police departments. In any event, Plaintiffs' suggestion that taxpayers in the Town are somehow placed at a disadvantage is simply belied by the facts.

For the foregoing reasons, the Court should affirm the trial judge's grant to summary judgment in favor of the County.

e. The Town's Share of County Taxes Does Not Refute That the Service Charge is Proper.

The Town finally argues that it being forced to bear an undue share of the burden of County taxes for BCSO. The Town goes as far as to posit that "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." (*See* Br. of Appellants, at 20). Aside from being irrelevant to whether the Service Charge is a user or service fee under Section 6-1-300(6), this argument is simply not accurate.

The tax burdens on the Town are not the product of any malicious decision by the County. To the contrary, for County services, taxes are levied by uniform millage. If the Town pays a higher percentage of County taxes, this is a product of its property owners' advantaged positions as the owners of high-value properties. Of course, a substantial part of the reason that Town properties are so valuable is the primary law enforcement service that BCSO provides. In any event, Plaintiffs' argument that property owners in the Town somehow carry an unfair burden is misplaced.

Again, it bears repeating that the Town consumes far more BCSO resources than other municipalities. As set forth below, BCSO handles few calls for service in Beaufort, Bluffton, and Port Royal, which handling ***all*** calls in the Town:

Total Calls for Service by Municipality in Beaufort County	
Beaufort Police Department	86,623
Bluffton Police Department	64,778
Port Royal Police Department	33,699
Beaufort County Sheriff's Office for Town of Hilton Head	97,336

Beaufort County Sheriff's Office Assisting Other Agencies Calls for Service	
City of Beaufort	11,935
Town of Bluffton	5,890
Town of Port Royal	3,384
Marine Corps Air Station	116
Outside Beaufort County	888
Total:	**22,213**

(*See* R. p. 171). If the Town is paying more toward the operation of BCSO, it is only because it uses those resources far more than other municipalities.

Plaintiffs' suggestion that the Town is being treated unfairly is inaccurate. As it stands, property owners in the Town have been paying a share of BCSO ***secondary*** services through County taxes based upon their property values. Property owners in Beaufort, Bluffton, and Port Royal do the same. However, in addition to that, taxpayers in those other municipalities are paying significant amounts for police departments; for example, in 2020:

		BLUFFTON	**BEAUFORT**	**PORT ROYAL**
	Population	27,716	13,607	14,220
	P.D. Budget	$7,270,955.00	$4,688,073.00	$2,349,405.00

On the other hand, through the Service Charge, the Town—with a fluctuating tourist population and associated issues that other municipalities do not face—has for decades been obtaining high-quality primary law enforcement serviced from BCSO.

Simply put, Plaintiffs argument that taxpayers in the Town are somehow carrying an overstated tax burden is without merit. The trial judge correctly concluded that the Service Charge is a service or user fee under Section 6-1-300(6). The Court should affirm the trial court's grant of summary judgment to the County.

C. The Service Charge Ordinance Does Not Violate the Equal Protection Clause and Is Constitutional.

The Town finally argues that the Ordinance and the Service Charge are void because they violate the equal protection clause of the United States Constitution. Specifically, the Town contends that:

> 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. 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.

(*See* Br. of Appellant, at 21-22). For the reasons that follow, the Court should not accept this argument and should affirm the trial court's rulings.

1. Plaintiffs Have Not Preserved This Issue for Appellate Review.

For the following reasons, Plaintiffs' Equal Protection argument must fail because they have not preserved it for review.

In the trial court, Plaintiffs made little effort to set forth a meritorious claim that the Ordinance and Service Charge are unconstitutional. For example, the only allegations in Plaintiffs' 11-page Amended Complaint that the Ordinance is unconstitutional are:

> 40. The classification created by Ordinance 2020-29 is arbitrary, and does not treat the Plaintiffs in the same manner as others who are similarly situated.
>
> 41. Further evidence that the classification created by Ordinance 2020-29 is this: the only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

> 42. Beaufort County Ordinance 2020-29 does not apply and is not applied equally to persons similarly situated.
>
> 43. Beaufort County 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 as a result, all persons similarly circumstanced are not treated alike.
>
> 44. Beaufort County 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 as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

(*See* R. pp. 42-43 ¶¶ 40-44).

Plaintiffs' March 10, 2025 Notice of Motion and Motion for Summary Judgment generally argues in the last substantive page that the Ordinance is unconstitutional ***without citation to any case law***, without specifically identifying the suspect classification, and without identifying the level of scrutiny applicable:

> Beaufort County has argued and will argue that the Town does not have a municipal police department, that other municipalities in Beaufort County do and that such justifies the LESC [Service Charge] imposed by Ordinance 2020-29. Beaufort County has and will argue that the "benefit" that the Plaintiffs receive is that they would pay more if the Town had a municipal police department.32
>
> The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and those services are delivered in every other municipality in Beaufort County by Beaufort County. Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.
>
> Beaufort County 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 as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

(*See generally* R. p. 95). Plaintiffs' June 9, 2025 Reply to the County's Cross Motion for Summary Judgment contains no argument that the Ordinance is unconstitutional. (*See generally* R. pp. 222-31).

The Order granting the County's Motion for Summary Judgment (and denying Plaintiffs' Motion) exclusively addressed Plaintiffs' argument that the Ordinance and Service Charge violated S.C. Code § 6-1-300(6). (*See generally* R. pp. 1-13). On August 15, 2025, Plaintiffs filed a 9-page Notice of Motion to Alter or Amend (Rule 59, SCRCP). (*See generally* R. pp. 27-35). In their Motion to Alter or Amend, Plaintiffs again argued constitutionality without citing any precedent:

> The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and EMS services are delivered in every other municipality in Beaufort County by Beaufort County. Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.
>
> Beaufort County Ordinance 2020-29 creates a classification based on the claim that property taxpayers in the Town receive a benefit because they do not fund a municipal police department, but real property taxpayers in the other municipalities receive a benefit because they do not fund municipal EMS departments. Beaufort County treats them differently because they are not charged a user fee for EMS services.
>
> Because Beaufort County 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 situated are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV and S.C. Const. art. I, § 3.
>
> The Order does not include findings of fact or conclusions on the Town's equal protection claim, and the Town urges the Court to alter or amend the Order to find in the Town's favor based on denial of equal protection that Ordinance 2020-29 imposed on real property tax payers in the Town.

(*See* R. pp. 28-29).

Throughout the proceedings below, Plaintiffs' Equal Protection arguments were consistently made in a conclusory matter with no citation to substantive legal authority (other than mere passing citations to the United States and state constitutions). Plaintiffs never argued in detail why the Ordinance and Service Charge violated the constitution. Plaintiffs never delineated the level of scrutiny that should apply or why that standard applied. Plaintiffs never referred the trial judge to a single case explaining or supporting their contention that the

Ordinance and Service Charge were unconstitutional. Plaintiffs only made general arguments, with no analysis or elaboration. While Plaintiffs' appellate briefing is marginally better, it still makes a constitutional argument in two pages and with a single case cite (simply spelling out the basic standard).

"It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court." *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510-11, 598 S.E.2d 712, 715 (2004); *accord Tucker v. Doe*, 413 S.C. 389, 409, 776 S.E.2d 121, 132 (Ct. App. 2015) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") (citation omitted); *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). "An issue not presented to the trial court is not preserved for appellate review." *See State v. Dickey*, 380 S.C. 384, 403, 669 S.E.2d 917, 927 (Ct. App. 2008) (*citing State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996)).

"'An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.'" *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015) (*quoting Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011)); *accord First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting where party fails to cite authority or argument is conclusory statement, party is deemed to have abandoned issue); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (noting when Plaintiffs fail to cite case law for positions and make conclusory arguments, they abandon those issues on appeal).

For the reasons set forth above, Plaintiffs have not preserved the Equal Protection argument for review by this Court. They have never developed that argument with any specificity and have cited little legal support. Therefore, the Court should determine that Plaintiffs have waived any Equal Protection Argument.

2. The Service Charge Did Not Violate the Equal Protection Rights of Property Owners in the Town.

"Equal protection requires 'all persons to be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed.'" *See Moore v. Moore*, 376 S.C. 467, 481, 657 S.E.2d 743, 751 (2008) (*quoting GTE Sprint Commc'ns Corp. v. Pub. Serv. Comm'n of S.C.*, 288 S.C. 174, 181, 341 S.E.2d 126, 129 (1986)). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). "The equal protection clause prevents only irrational and unjustified classifications, not all classifications." *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 241, 882 S.E.2d 770, 798 (2023) (*quoting State v. Wright*, 349 S.C. 310, 312, 563 S.E.2d 311, 312 (2002)).

Plaintiffs cannot show that the classification in this case—owners of property in the Town—is suspect and subject to a heightened level of scrutiny:

> An inherently suspect classification is one whose members have faced a long history of discrimination, *see Palmore v. Sidoti*, 466 U.S. 429, 432, 104 S. Ct. 1879, 80 L. Ed. 2d 421 (1984); whose members are a discrete and insular minority who would otherwise be unheard by the political process, *see United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4, 58 S. Ct. 778, 82 L. Ed. 1234 (1938); or which is drawn according to an immutable trait acquired at birth, *see Frontiero v. Richardson*, 411 U.S. 677, 686, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973). We agree with the circuit court that because college students have not faced a long history of discrimination, are not an insular minority, and have not been classified according to an immutable trait acquired at birth, a classification based upon an individual's status as a college student is not inherently suspect. Thus, we conclude the circuit court correctly applied a rational basis analysis in rejecting the Lallas' equal protection claim.

See Spur at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 87, 781 S.E.2d 115, 123 (Ct. App. 2015); *accord HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 634 n.3, 699 S.E.2d 699, 704 (Ct. App. 2010) ("The rational basis standard, not strict scrutiny, is applied in an action involving water and wastewater services . . . ."); *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 148, 568 S.E.2d 338, 351 (2002) ("Mental illness is not a suspect classification.");

Robinson v. Richland Cty. Council, 293 S.C. 27, 32, 358 S.E.2d 392, 396 (1987) ("Wealth is not a suspect classification requiring strict scrutiny.").

"Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004). Plaintiffs have conceded that the "rational basis" standard applies. (*See* Br. of Appellants, at 22 ("Here, the classification does not have a rational basis.")). "Under the rational basis test, a classification is presumed reasonable and will remain valid unless and until the party challenging it proves beyond a reasonable doubt that there 'is no admissible hypothesis upon which it can be justified.'" *McLeod v. Starnes*, 396 S.C. 647, 656, 723 S.E.2d 198, 203 (2012) (*quoting Carolina Amusement Co. v. Martin*, 236 S.C. 558, 576, 115 S.E.2d 273, 282 (1960)). "A legislatively created classification will not be set aside as violative of the equal protection clause unless it is plainly arbitrary and there is no reasonable hypothesis to support the classification." *Brown v. County of Horry*, 308 S.C. 180, 186, 417 S.E.2d 565, 569 (1992).

As set forth above, the County had an imminently reasonable basis for enacting the Ordinance and the Service Charge. It is undisputed that the BCSO has, since the Town's incorporation, acted as the de factor Hilton Head Police Department. For decades, the Town had agreed amicably to pay the County for the BCSO's provision of those services. In an effort to be as fair as possible, the County retained a well-respected consulting firm, TischlerBise, to help it determine the proper amount of the Service Charge. It cannot be disputed that the County had, at the very least, a reasonable hypothesis to support treating owners of property in the Town differently from other property owners in the County. Plaintiffs have not carried their heavy burden of showing beyond a reasonable doubt that there is no admissible hypothesis upon which the classification associated with the Service Charge can be justified.

This Court's precedent further supports that the Service Charge does not violate Equal Protection. This Court has previously upheld a classification seeking to make those benefiting from a service pay for that service:

> Skyscraper argues Ordinance 135 violates its equal protection rights. Specifically, Skyscraper contends there is no rational basis for billing multi-tenant property owners the user fees for their tenants while charging other businesses only one charge. . . . The purpose of Ordinance 135 is to charge those persons who generate solid waste for the collection and disposal of the waste. Since multi-tenant property owners benefit from the collection and disposal of waste from their property, requiring multi-tenant property owners to pay the solid waste disposal fees of their tenants is reasonably related to the purpose of the ordinance.

Skyscraper Corp. v. Cty. of Newberry, 323 S.C. 412, 416, 475 S.E.2d 764, 766 (1996). This Court has further held that preparing to pay for future projects is a reasonable basis for an otherwise discriminatory fee:

> We hold that the new account fee does not violate the Equal Protection Clause. First, the classification (requiring new customers to pay a new account fee) is reasonably related to the legislative purpose to be achieved (pay for future capital improvement projects). Authority wishes to ensure it has adequate funds for such projects, and the fees are set aside in a special account for that purpose.
>
> Second, members of the class (new customers) are treated alike in that all must pay a fee based on their anticipated water usage under a schedule approved by Authority's board. We do not agree with JKC that the class is comprised of all residents of the district.
>
> Third, the classification rests on a rational basis. It is rational for Authority to prepare to pay for future capital improvement projects. Imposing a new account fee, while perhaps not the only way to raise such funds, is a reasonable and legitimate method of accruing the funds.

See J.K. Constr., Inc. v. Western Carolina Reg'l Sewer Auth., 336 S.C. 162, 173, 519 S.E.2d 561, 567 (1999).

Plaintiffs point out in their Brief of Appellants that "[t]he 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." (*See* Br. of Appellants, at 21). However, Plaintiffs do not explain how the Town's choice to perform its own EMS services has any bearing on the County's provision of law enforcement services. Irrespective of whether the Town has an EMS department, it is still expecting that the County will act as its police department without paying

for that benefit. The fact that the Town chose to fund and operate its own EMS is irrelevant to Plaintiffs' claim of an equal protection violation.

For the foregoing reasons, Plaintiffs have not shown that the Service Charge violates the Constitution of South Carolina or the United States. The Court should affirm the trial judge's grant of summary judgment to the County.

D. The Town Does Not Have Standing to Bring This Action.

In addition to the foregoing, the Court should affirm as to the Town, because the Town lacks standing to bring suit. "As a general rule, to have standing, one must generally have a personal stake in the subject matter of the lawsuit, *i.e.*, one must be a real party in interest." *Evins v. Richland Cnty. Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000). Plaintiff Town alleges that it "has an interest in the health and well-being, both physical and economic, of its residents and taxpayers, and has outstanding agreements with both Beaufort County and the BCSO that are affected by the actions of Beaufort County, South Carolina, alleged herein." (*See* R. p. 37 ¶ 8). The Town has not shown that it sustained any harm itself or that it is otherwise a "real party in interest."[8]

Because it is a political subdivision, the Town does not have standing to bring this action as *parens patriae* for the benefit of its property owners:

> We also find no merit to Capital View's argument that it has standing under the doctrine of *parens patriae* to challenge the validity of the fire service agreement on behalf of the taxpayers and residents in its district.
>
> The doctrine of *parens patriae* applies only to sovereigns asserting at least quasi-sovereign interests apart from the interests of particular private citizens. *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 102 S. Ct. 3260, 73 L.Ed.2d 995 (1982). *Political subdivisions, such as cities and counties, however, lack the element of sovereignty that is a prerequisite to maintaining a suit under the doctrine of parens patriae. See Board of County Commissioners v. Denver Board of Water Commissioners*, 718 P.2d 235 (Colo.1986) (counties lack the element of sovereignty that is a prerequisite for *parens patriae* standing); *United States v. City of Pittsburg, California*, 661 F.2d 783 (9th Cir.1981) (only the states and the

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[8] If nothing else, the Service Charge benefits the Town by relieving it of the burden of paying for police services from BCSO under a direct agreement with the County.

> federal government may sue as *parens patriae*); *cf. Board of Supervisors of Fairfax County, Virginia v. United States*, 408 F. Supp. 556, 566 (E.D.Va.1976) ("Fairfax County, however, is not a sovereign, but rather a political subdivision whose powers are derivative of the sovereign State of Virginia.").
>
> Capital View is a political subdivision of the state. As such, it lacks the element of sovereignty that is a prerequisite to *parens patriae* standing.

Capital View Fire Dist. v. County of Richland, 297 S.C. 359, 362–63, 377 S.E.2d 122, 124 (Ct. App. 1989) (emphasis added); *accord County of Lexington v. City of Columbia*, 303 S.C. 300, 301, 400 S.E.2d 146, 147 (1991) (agreeing that political subdivision "lacks the sovereignty to maintain a suit under the doctrine of *parens patriae*.").

As a result of the foregoing, the Town does not have standing to bring these claims against the County.

CONCLUSION

For the foregoing reasons, the Court should affirm the trial judge's grant of summary judgment in favor of the County and his denial of Plaintiffs' motion for summary judgment.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: _____
M. Dawes Cooke, Jr. (S.C. #1376)
John W. Fletcher (S.C. #69550)
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Respondent Beaufort County, South Carolina

January 28, 2026

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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

The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-001773

The Town of Hilton Head Island, South Carolina, John J. McCann, and Stephen G. Riley ..... Appellants,

v.

Beaufort County, South Carolina.....Respondent.

RULE 211(b) CERTIFICATE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____
M. Dawes Cooke, Jr. (S.C. #1376)
John W. Fletcher (S.C. #69550)
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Respondent Beaufort County, South Carolina

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