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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Judge Benjamin H. Culbertson, Circuit Court Judge

Case No. 2010-CP-22-00765

Horry Telephone Cooperative, Inc.,Appellant,

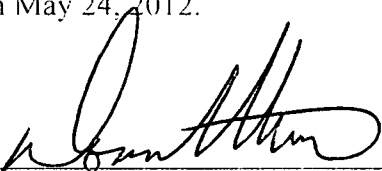
v.

City of Georgetown, and South Carolina Secretary of State,Respondents.

NOTICE OF APPEAL

HTC, appeals the Order of the Honorable Benjamin H. Culbertson filed March 28, 2012 dismissing HTC's case. Appellant submitted its timely Motion to Alter or Amend pursuant to Rule 52(b) and 59(e), South Carolina Rules of Civil Procedure, on April 11, 2012. The Court denied Appellant's Motion to Alter or Amend on May 24, 2012.

June 5, 2012

By: 
Dominic A. Starr, Esquire
Alan G. Jones, Esquire
McANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 1349
Myrtle Beach, South Carolina 29578
(843) 848-6000

Attorneys for Appellant

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SC COURT of Appeals

Other Counsel of Record:

Douglas Charles Baxter, Esquire
Richardson, Plowden & Robinson, P.A.
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Attorneys for City of Georgetown

Andrew F. Lindemann, Esquire
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P.O. Box 8568
Columbia, South Carolina 29202-8568
tele: 803-806-8222
Attorneys for South Carolina Secretary of State

THE STATE OF SOUTH CAROLINA
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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Judge Benjamin H. Culbertson, Circuit Court Judge

Case No. 2010-CP-22-00765

Horry Telephone Cooperative, Inc.,Appellant,

v.

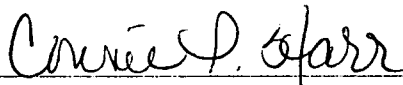
City of Georgetown, and South Carolina Secretary of State,Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal Counsel for City of Georgetown and South Carolina Secretary of State, by depositing a copy of it in the United States Mail, postage prepaid, on the 5th day of June, 2012 addressed to their attorney of record,

Douglas Charles Baxter, Esquire
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Connie P. Starr
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SC COURT OF APPEALS

June 5, 2012

64474



ATTORNEYS AT LAW

Reply To
DOMINIC A. STARR
Direct Dial: (843) 848-6001
dominic.starr@mgclaw.com
MYRTLE BEACH

June 5, 2012

Honorable Jeanette Barber
Clerk, Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: HTC v. City of Georgetown and South Carolina Secretary of State
Civil Action No. 2010-CP-22-00765
Our File No.: 20679.09001

Dear Ms. Barber:

Enclosed for filing is a Notice of Appeal in the above-referenced matter. Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on Respondents;
2. Copy of the Order Denying Plaintiff's Request for Relief filed March 28, 2012;
3. Copy of Order Denying Motion to Alter or Amend filed May 24, 2012;
4. Copy of our correspondence to the Georgetown County Clerk of Court notifying of the appeal; and
5. Check in the amount of \$100.00.

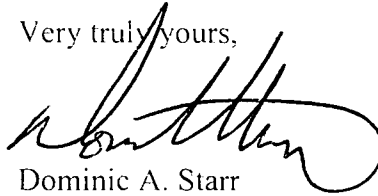
Please file the original documents and return the clocked-in copy in the self-addressed stamped envelope enclosed. By copy of this letter, I am serving counsel of record with the above-referenced Proof of Service and Notice of Appeal.

The trial transcripts were ordered May 25, 2012, however, we have not received them as of this date. It is our understanding that our Initial Brief will be due 30 days from the date of receipt of the transcript.

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SC Court of Appeals

With kind regards, I remain

Very truly yours,



Dominic A. Starr

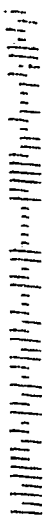
DAS/mks
Enclosures

cc: The Honorable Alma Y. White, Georgetown County Clerk of Court
Andrew F. Lindemann, Esquire, Davidson & Lindemann, PA
Douglas Charles Baxter, Esquire, Richardson, Plowden & Robinson, P.A.

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JUN 06 2012

SG Court of Appeals



20679 09001 DAS/MKS
MKS
 McAngus Goudelock & Courie
 LLC

ATTORNEYS AT LAW

FOUNDERS CENTRE • 2411 N. OAK STREET • SUITE 401 • P.O. BOX 1349 • MYRTLE BEACH, S.C. 29577-3173

The Honorable Jeanette F. Barber
 Clerk of Court
 South Carolina Court of Appeals
 Post Office Box 11629
 Columbia, South Carolina 29211

FLORENCE, SC (RDU) 295
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Horry Telephone Cooperative, Inc.,)
)
 Plaintiff,)
)
 v.)
)
 City of Georgetown and the)
 South Carolina Secretary of State,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 C/A No.: 2010-CP-22-765

ALMA Y. WHITE
 CLERK OF COURT

2012 MAR 28 PM 4:28

FILED
 GEORGETOWN COUNTY, S.C.

**ORDER DENYING PLAINTIFF'S
 REQUEST FOR RELIEF**

This matter is before the Court upon the Complaint of the Plaintiff requesting that the Court enter a judgment declaring the City's actions in denying its application for a franchise is in violation of the South Carolina Competitive Cable Services Act (§58-12-5, et. seq., of the South Carolina Code of Laws, as amended). This case was called to trial on February 1, 2012, and by agreement of the parties, the case was tried non jury. Prior to commencement of trial, the attorney for the South Carolina Secretary of State informed the Court that it had entered into a stipulation with the Plaintiff whereby it agreed to be bound by the ruling of the Court. Additionally, the attorney for Plaintiff informed the Court that it was not seeking any type of monetary relief and it was only seeking a determination by the Court as to the issuance of a cable television franchise in the City of Georgetown. The Defendants objected to allowing the testimony of any City Council members as to why they voted in a particular manner based upon Legislative Immunity.

Findings and Facts

On or about October 1, 2007, the Plaintiff filed an application for a State issued certificate of franchise authority wherein it requested that it be allowed to provide cable

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SC Court of Appeals

television services within the City of Georgetown. Pursuant to §58-12-310, the Secretary of State forwarded a Notice of Application to the City of Georgetown, and the City was required to respond to the request within sixty-five (65) days.

On November 29, 2007, the first reading on an ordinance granting consent to Horry Telephone Cooperative, Inc. for a franchise for cable service and setting franchise fee was passed by City Council. On December 13, 2007, the ordinance came before the City for a second reading, and a motion to deny the second reading of the ordinance passed by a vote of 5-2. Council then instructed the City Administrator to notify the Secretary of State that it did not consent to the request for the franchise.

On December 19, 2008 (the notice is erroneously dated December 19, 2009), the City Administrator for the City of Georgetown forwarded a notice to the Secretary of State indicating that the City did not consent to Horry Telephone Cooperative, Inc.'s application. The notice stated that the City believed that the presence of two facility based cable companies (Time Warner Cable and ^{Coastal (MHC)} ~~Southern Cable Communications~~) along with three satellite TV operators were sufficient and also that the City was concerned over the over burdening of already crowded utility poles.

Thereafter, the Plaintiff petitioned the City to reconsider its decision to not grant consent to the application and Council agreed that it would take another look at the request. On May 13, 2008, the first reading of an ordinance granting consent to Horry Telephone Cooperative, Inc. for franchise was passed by City Council. The matter was considered at subsequent Council meetings during which information was provided by Plaintiff and by ^{Coastal (MHC)} ~~Southern Cable Communications~~, who opposed Horry Telephone Cooperative, Inc.'s request. Among other things, ^{Southern Coastal (MHC)} ~~South Cable Communications~~ presented information that the City's population would not

support a third facility based cable company and that the citizens of Georgetown were being well served by the existing companies. At the City Council meeting on August 21, 2008, the motion to approve the second reading on the ordinance granting consent to Horry Telephone Cooperative, Inc's request for a franchise failed by a vote of 4-2.

On or about December 14, 2009, the Plaintiff submitted a second application with the Secretary of State. On February 11, 2010, at a special meeting of City Council, the motion to approve the ordinance granting consent to Horry Telephone Cooperative, Inc's request for franchise failed by a vote of 3-3. Thereafter, the City notified the Secretary of State of its inability to grant consent. By letter dated February 16, 2010, the Secretary of State notified the Plaintiff that its application was denied.

Over objection of the Defendant on the basis of Legislative Immunity, the Court allowed the Plaintiff to call Rudolph Bradley, Peggy Wayne, Jeanette Ard, and Clarence Smalls as witnesses; these Council members voted against giving consent for the application. When questioned about why they voted as they did, all four testified that they believed that the citizens of Georgetown were being adequately served by the existing cable companies, and they also expressed concern that Plaintiff would not have a facility/office within the City. The four also gave varying additional reasons for their decisions including past experience with the Plaintiff, Plaintiff's failure to provide information, concerns as to whether the Plaintiff would serve the entire City, and too much competition.

Findings of Law

A suit for declaratory judgment is not a legal or equitable, rather is determined by the nature of the underlying issue. *Sloan v. Greenville County*, 590 S.E.2d 338 (Ct. App. 2003). In the present case, the Court is required to interpret the provisions of the South Carolina

Competitive Cable Services Act (§15-12-10, et. seq., of the South Carolina Code of Laws as amended).

§58-12-310 provides the procedure by which a person or entity seeking to provide cable services must seek a franchise. §58-12-310(D) provides in part that if an applicant takes the position that the denial of an application for a franchise is “actionable” it may seek any appropriate relief under State or Federal Court. Clear and unambiguous words in a statute should be given their plain and ordinary meaning. *Brown v. County of Berkeley*, 622 S.E.2d 533 (2005). Its clear that §58-12-310 does not create a cause of action against the City, and the Court must look to appropriate State and Federal law as to whether the denial is in fact actionable.

In viewing the discretionary decision of a Legislative Body, the Courts in South Carolina have been loath to substitute their judgment for that of elective representatives. *McSherry v. Spartanburg County Council*, 641 S.E.2d 431 (2007). Such a decision by a Legislative body should not be upset unless they are arbitrary, unreasonable, an obvious use of discretion, or an excess lawfully delegated power. *Id.* A reviewing court cannot substitute its own judgment for that of the governmental body. See *Barr v. Board of Trustees of Clarendon County School District*, 462 S.E.2d 316 (Ct. App. 1996).

A governmental body’s decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of Judgment, is made at pleasure, without adequate determine principles, or is governed by no fixed rules or standards. *Pressley v. Lancaster County*, 542 S.E.2d 366 (Ct. App. 2001). The party challenging a governmental body’s decision bears the burden of proving the decision is arbitrary. *Id.*

In the present case, the Plaintiff is requesting that the Court analyze and critique each of the individual council members’ reasoning and motivation for their votes. However, judicial

inquiry into legislative motivation is to be avoided, as such inquiries endanger the separation of powers doctrine, representing a substantial judicial intrusion of the workings of other branches of government. *Pressley v. Lancaster County*, 542 S.E.2d 366 (Ct. App. 2001). The mere fact that Court may disagree with Council's decision is not sufficient to invalidate the ordinance. See *McSherry v. Spartanburg County Council*, 641 S.E.2d 431 at 434. In the present case, the Plaintiff failed to present sufficient evidence that the City's actions in refusing to grant consent was arbitrary, unreasonable, an obvious abuse of discretion or in excess of their lawful delegated power; accordingly, the Plaintiff's request for relief should be denied. It is therefore,

ORDERED that Judgment be entered in favor of the Defendant City of Georgetown and the Plaintiff's Complaint is hereby dismissed with prejudice.

Dated: March 16, 2012
Georgetown, SC

Benjamin H. Culbertson
The Honorable Benjamin H. Culbertson
15th Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-22-765

Horry Telephone Cooperative, Inc.
 PLAINTIFF(S)

City of Georgetown, et al.
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : Plaintiff or Defendant
 Self-Represented Litigant

FILED
 GEORGETOWN COUNTY, S.C.
 2012 MAR 28 PM 4:28
 ALEXY WHITE
 CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
 Benjamin H. Culbertson, Circuit Court Judge

2148
 Judge Code

March 16, 2012
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of March, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of March, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Dominic A. Starr

Douglas C. Baxter

Andrew F. Lindemann

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Wendy Chubb, Reporter
CLERK OF COURT

Court Reporter: Grace Hurley

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2200765

Horry Telephone Cooperative Inc	Georgetown City of	Secretary of State South Carolina
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: <i>clerk of court</i>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
-------------------------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration; subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
Motion to Alter or Amend Judgment by Attorney Starr Denied

FILED
2012 MAR 24 PM 3:23
ALISA Y. WHITE
CLERK OF COURT

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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Morgan H. Culbertson

Circuit Court Judge

2148

Judge Code

5/24/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on **May 24, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **May 24, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Dominic Allen Starr PO Box 1349 Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

Douglas Charles Baxter PO Box 3646 Myrtle Beach, SC 29578

Andrew F. Lindemann PO Box 8568 Columbia, SC 292028568

ATTORNEY(S) FOR THE DEFENDANT(S)

Alma Y. White

Alma Y. White - Clerk of Court

Court Reporter *Grace Hurley*