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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SEP 28 2015

SC Court of Appeals

Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2014-000194

Evalena Catoe, individually and as
Personal Representative of the Estate
of Richard L. Catoe, Jr., deceased,

Appellant,

v.

The City of Columbia and Leon Lott,
in his official capacity as Sheriff of
Richland County,

Defendants,

Of whom Leon Lott in his official capacity
As Sheriff of Richland county is the

Respondent.

MOTION TO ARGUE AGAINST PRECEDENT

Pursuant to Rule 217, SCACR, Counsel for Appellant respectfully requests permission to present argument against precedent. This case is scheduled for oral argument before this Court on October 15, 2015.

In this case, the trial judge granted summary judgement for the Sheriff, upon concluding that Section 15-78-60(6) of the South Carolina Tort Claims Act provides absolute sovereign immunity for the "method of providing police protection" and that the conduct that forms the basis for the Appellant's negligence action against Sheriff Lott falls within that immunity provision. In

reaching his decision, Judge Griffith relied substantially on this Court's decision in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006), as controlling precedent.

Counsel for Appellant respectfully requests permission to argue that the case of *Huggins v. Metts* was wrongly decided to the extent the exception to the waiver of immunity set out in the Tort Claims Act's exception §15-78-60(6), maintaining immunity for a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection,"¹ was interpreted by the *Huggins* court to maintain immunity both for losses resulting from the decisions of policy-makers as to the "method" of providing police protection to the overall community and also for losses resulting from the actions of those engaged in providing police protection.

Appellant has asserted on brief that there is a split of authority as to the meaning of the phrase, "the method of providing police protection," with jurisdictions finding that Subsection 6 maintains immunity only for the formulation of policy as to the provision of police protection while other jurisdictions' version of Subsection 6 is interpreted to maintain immunity both for the formulation of policy for the method of providing police protection and also for the negligent acts of officers acting pursuant to such policy. Appellant has argued on brief that, to the extent the Court of Appeals in *Huggins* found that the actions of officers constituted "the method of providing police protection" for which immunity is maintained in Section 15-78-60, Subsection 6, without making any distinction between the formulation of policy for the provision of police protection as opposed to the implementation of that policy - - thereby apparently holding that the government is immune from suit for a loss related to the orderly formulation of policy for the provision of police protection and also immune from suit related to the negligent implementation of policy by police officers engaged in police activity- - the *Huggins* Court misconstrued and

unjustifiably expanded the legislature's use of the word "method" in S.C. Code Ann. §15-78-60, Subsection 6, to refer only very basically to a way of doing something, as opposed to the word "method's" more properly referring to the orderly formulation of policy. *i.e.*, the determination of the overall *method* of providing police protection to the community.

As Appellant has acknowledged on brief, it is difficult to absolutely determine from the decision itself whether the *Huggins* Court found that the claim was barred because the Department was immune under Subsection 6 because the claim related to policy decisions establishing the method of providing police protection or whether, consistent with Respondent's interpretation, the *Huggins* Court found that the claim was barred simply because the loss was related the actions of officers engaged in police activity which the Court equated with the "method of providing police protection" referenced in §15-78-60, Subsection 6. However, to the extent that the decision in *Huggins* establishes precedential authority for the proposition that the State, through §15-78-60, Subsection 6, maintains immunity both for losses resulting from an agency's method of providing police protection to the community and for the actions of individual officers implementing agency policy, Counsel for Appellant respectfully seeks leave of the Court to argue against that precedent.

Respectfully submitted,



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September 25, 2015
Columbia, South Carolina

COUNSEL FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-000194

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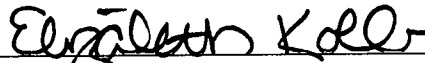
Of whom Leon Lott in his official capacity
as Sheriff of Richland County is the

Respondent.

PROOF OF SERVICE

I, the undersigned, an employee of the MULLIS LAW FIRM do hereby certify that I have served Appellant's Motion to Argue Against Precedent this 25th day of September, 2015, by mailing one copy of same, by regular U.S. mail, with proper postage affixed, addressed to the following:

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SC Court of Appeals

September 25, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, SC 29201

RE: Evalena Catoe, individually and as personal representative of the estate of Richard L. Catoe, Jr., Appellate Case No. 2014-000194

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Appellant's Motion to Argue Against Precedent in the above-matter. Also enclosed is my firm's \$25.00 check for the filing fee as well as a Proof of Service.

Please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Pamela R. Mullis

Pamela R. Mullis

PRM/etk
Enclosures

cc: Robert D. Garfield, Esquire
Andrew F. Lindemann, Esquire

First Class Mail
First Class Mail

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