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THE STATE OF SOUTH CAROLINA  
SOUTH CAROLINA COURT OF APPEALS

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DEC 06 2016

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS

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SC Court of Appeals

MARVIN H. DUKES, III, MASTER-IN-EQUITY,  
BEAUFORT COUNTY  
TRIAL COURT CASE NO.: 2013CP0700918

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APPELLATE CASE NO.: 2014-000636

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MARE BARACCO,

Appellant,

vs.

BEAUFORT COUNTY,

Respondent

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PETITION FOR REHEARING

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Mare Baracco, *Pro Se*  
1006 Madrid Avenue  
Port Royal, South Carolina 29935  
(843) 592-1062

December 6, 2016

Mare Baracco, the Appellant herein, moves this Honorable Court, pursuant to the South Carolina Rules of Civil Procedure, in reference to the Order of the Court dated November 23, 2016, for a Rehearing on **Subject Matter Jurisdiction** [emphasis added] as follows:

The Appellant contends this is a threshold issue that must be determined in every case, to properly establish whether the Court has jurisdiction over the dispute. **Subject Matter Jurisdiction** is the power of a court to hear and determine a case. *Hamilton v. Fulgam*, 385 S.C. 632, 637, 686 S.E. 2d 683 685 (2009). Accordingly, “subject matter jurisdiction cannot be waived or conferred by consent” of the litigants. Further, subject matter jurisdiction can be challenged at any time throughout the proceedings. Without subject matter jurisdiction, anything that a court does is void, *ab initio*. *Coon v Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (“a judgment of a court without subject-matter jurisdiction is void”).

Magistrate Courts are courts of limited jurisdiction (SC Code Sections 22-3-540; 22-3-10; and 22-3-20) without administrative review powers or jurisdiction in civil cases (exceptions not applicable here) where the State is a Party. The fact the Beaufort County Sheriff’s Office filed their action against the Appellant and designated themselves as *The State of South Carolina* determined this case from the onset as *The State* being the moving Party in criminal cases.<sup>1</sup> This case was docketed in the Beaufort County Magistrate’s Court as a criminal case and captioned

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<sup>1</sup> However, this was also flawed as it could not have been a criminal matter as initially heard by the Beaufort Magistrate Court, as neither a Uniform Traffic Ticket nor a Warrant were ever served by Beaufort County Sheriff’s Office (BCSO) upon the Appellant. The Appellant was acquitted in the Port Royal Municipal Court as to the Criminal Ordinance Violation as to the charge of “animal at large.” This BCSO’s “Notice” was issued (without subject matter jurisdiction) pursuant to the Port Royal Municipal Court case. Given the Appellant was acquitted in a criminal hearing by the Town of Port Royal, she could not be tried again as a criminal defendant by Beaufort County in *The State of South Carolina vs. Mare Baracco*, as it would constitute **Double Jeopardy**.

*The State of South Carolina vs. Mare Baracco* (2012-CV-07-10401536). At the same time, the Town of Port Royal (the Municipality where Appellant resides), also docketed the same matter *Town of Port Royal vs. Mare Baracco*, as a criminal case. At the initial hearing of this case, *The State of South Carolina* proceeded first as the prosecuting entity in this criminal case and failed to prove its case as it was remanded for a new trial. At the **March 12, 2013 Retrial**, Respondent was aware the Appellant had been acquitted by the Port Royal Municipal Court. Therefore, on the actual date of the retrial of this case, this same matter was changed for the first time from a Criminal Matter to a **Civil Action Appeal**, (ROA Page 60), the court transcript:

THE COURT: “Mare Baracco. And this is civil case number 2012-CV-07-10401536, and for the State we have Mr. Josh Gruber . . .” (ROA page 61, page 4, lines 10-12).

THE COURT: . . . “All right. Is there anything else we need to address before we proceed?”

MR. GRUBER: No, Your Honor. I’d just put on the record, as we discussed in chambers, I believe this matter arises as more of an appeal of a determination by the officer, and as such, the appellant would bear the burden of proving this matter and would, therefore, go first.” (ROA page 61, page 4, lines 18 – 25).

Therefore, the Appellant contends she was never afforded an *actual retrial* of the initial proceedings in this case as ordered by the Court, as Respondent was aware it would have constituted **Double Jeopardy**. Respondent has never had subject matter jurisdiction over the Appellant based on several reasons, including, but not limited to, it has never formally conformed any of its documents nor served proper documentation as required by a Court (i.e. Summons and Complaint, Warrant, Uniform Traffic Ticket, Uniform Ordinance Violation) prior to any of these trials; thereby affording Appellant proper notice to prepare her case(s).

In fact, the Respondent filed a Motion with this Honorable Court to have “Beaufort County” substituted as the proper party in this matter when it was questioned by this Honorable Court as to this case being a criminal case or civil matter, thus supporting the Appellant’s

assertions. Further, it was the Beaufort County Sheriff's Office (BCSO), the self-determined State Agency, whose "Notice" the Appellant contested, not Beaufort County, never Beaufort County. The "Notice" was pursuant to a Beaufort County Ordinance, which the Town of Port Royal had not adopted.

The Appellant raised the issue of lack of subject matter jurisdiction repeatedly in the Motion 60 Hearing (ROA Index 6- Transcript dated February 21, 2014; Page 14; lines 22-25; Page 16; lines 19-24; Page 20; lines 19-24; Page 27; lines 13-20; Page 31, lines 3-22; Page 35; lines 24-25; Page 36; lines 1-25; Page 37; lines 1-14.) Appellant repeatedly raised the issue of lack of jurisdiction throughout her Appeal to this Honorable Court. Appellant again raises lack of subject matter jurisdiction in this case.

WHEREFORE, The Appellant prays this Court grants this Motion, finds in favor of the Appellant, and reverses/dismisses this case with prejudice, and orders such other relief as is just and proper.

Respectfully submitted, this the 6th day of December 2016.



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Mare Baracco, Pro Se  
1006 Madrid Avenue  
Port Royal South Carolina 29935  
(843) 592-1062

**Authorities ii**

AUTHORITIES

SC Code Sections 22-3-540; 22-3-10; and 22-3-20

*Hamilton v. Fulgam*, 385 S.C. 632, 637, 686 S.E. 2d 683 685 (2009)

*Coon v Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005)

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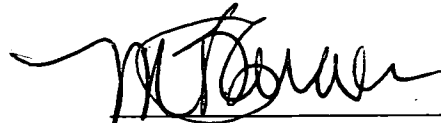
RESPONDENT

**PROOF OF SERVICE**

I certify I have served the Petition for Rehearing by depositing copies in the United States Mail, postage prepaid, December 6, 2016, addressed as follows:

Mary Bass Lohr  
Post Office Box 40  
Beaufort, South Carolina 29901-0040

Allison Coppage /Joshua Gruber  
Post Office Box 1228  
Beaufort SC 29901  
Attorneys for Respondent.



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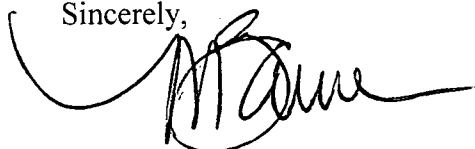
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Mare Baracco v. Beaufort County, Case No. 2013-CP-07-00918  
Appellate Case No.: 2014-000636

Dear Ms. Kitchings:

Enclosed for filing is an original and six copies of my "Petition for Rehearing". I've enclosed Proof of Service of the same upon the Respondent and included a check in the amount of \$25.00 for the filing fee.

Sincerely,



Mare Baracco, *Pro Se*  
1006 Madrid Avenue  
Port Royal, South Carolina 29935

Other Counsel of Record:

Mary Bass Lohr  
Allison Coppage  
Joshua Gruber