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LICENSED IN SOUTH CAROLINA, NORTH CAROLINA, AND GEORGIA

July 27, 2017

Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Carolina Convenience Stores Inc. et al. v. City of Spartanburg
Case Number 2012-212473

Dear Clerk Shearouse:

Enclosed is the original and six copies of the Petitioner's Response To Respondent's Motion To Dismiss in this matter. By copy of this letter, we are serving counsel for the Petitioners with copy of the same.

Yours very truly,

HODGE & LANGLEY LAW FIRM, P.C.



T. Ryan Langley

TRL/rc

Enclosure

cc: David Morrison

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

E.C. Burnett, III and Roger Couch, Circuit Court Judges

APPELLATE CASE NO. 2012-212473
OPINION NO. 4970

Carolina Convenience Stores,
Inc., Harry Lancaster Jr., as
Power of Attorney for Harry
Lancaster Sr., and Willard Oil
Company, Inc,

Petitioners,

v.

City of Spartanburg, SC

Respondent.

RESPONSE TO MOTION TO DISMISS

Charles J. Hodge
T. Ryan Langley
P.O. Box 2765
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(864) 585-3873
Attorneys for the Petitioners

Spartanburg, South Carolina
July 27, 2017

In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. Sloan v. Greenville County, 356 S.C. 531, 553 (Ct. App. 2003).

This court may take jurisdiction of a case, "despite mootness, if the issue raised is capable of repetition, but evading review." *Id.*; see also Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001); Byrd v. Irmo High School, 321 S.C. 426, 431-32, 468 S.E.2d 861, 864 (1996) (clarifying that South Carolina recognizes an exception to the mootness doctrine allowing the court to retain jurisdiction when an issue is capable of repetition, yet evading review); South Carolina Dep't of Mental Health v. State, 301 S.C. 75, 76, 390 S.E.2d 185, 185 (1990) (Although the issue presented was moot, "appeal was allowed because it raises a question that is capable of repetition, but which usually becomes moot before it can be reviewed"); Evans v. South Carolina Dep't of Soc. Servs., 303 S.C. 108, 110, 399 S.E.2d 156, 157 (1990) (addressing a moot question because the controversy presents a "recurring dilemma" which needed clarification for future guidance); 1 Am. Jur. 2d Actions § 50 (2003) (noting the general rule that "courts will not decide moot questions is subject to an exception where the question, though moot, is . . . likely to recur and evade judicial resolution in the future").

The party seeking review need only show the issue raised is capable of repetition and is not required to prove there is a "reasonable expectation" the issue will arise again. Byrd, 321 S.C. at 431-32, 463 S.E.2d at 864 (finding South Carolina has adopted the "lenient" approach to evading review analysis).

Petitioner's position is that the the present case presents an issue that is likely to recur but evade review. There is great importance to the constitutional claims in the case under the Fifth amendment. More specifically the question is likely to recur as to the constitutional permissibility (or impermissibility as it may be) of law enforcement's deprivation of private property of a wholly-innocent landowner.

This matter has been pending for over a decade. If the Court were to accept Respondent's position and find the issue moot, the next litigant on the issue may well spend another decade unnecessarily and inefficiently applying the scarce resources of this appellate body. That can be avoided simply by the Court issuing a ruling in this matter.

For these reasons, Petitioner respectfully submits that there is a justiciable controversy in the present case because the issues raised are capable of repetition, but evading review.

Signature to follow on next page

HODGE & LANGLEY LAW FIRM, P.C.

By:  _____

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Attorneys for the Petitioners

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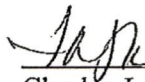
City of Spartanburg, SC

Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of the Hodge & Langley Law Firm, P.C. attorneys for the Petitioners, does hereby certify that service of the **PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS** in the above captioned action as made upon all counsel of record by mailing these documents the 27th day of July, 2017, addressed as follows:

David L. Morrison, Esquire
7453 Irmo Drive, Suite B
Columbia, SC 29212



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