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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

Case No. 2019-CP-26-01732

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

v.

Horry County, ... Appellant.

PETITION FOR WRIT OF SUPERSEDEAS

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Horry County, pursuant to Rules 240(a) and 241(c), SCACR, petitions this Court for a writ of supersedeas to stay the injunction entered by the circuit court while this appeal is pending.

INTRODUCTION

The County comes to this Court under exigent circumstances. The stakes here are high. The circuit court has enjoined the County from collecting its Hospitality Fee within the municipalities in the County—a fee that it has collected for more than twenty-two years. Last year alone, the County collected more than $28 million from the Hospitality Fee within its municipalities.

An injunction is always a "drastic" remedy. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Still, a court may, under the right circumstances, issue an injunction. What a court may not do is issue an injunction (1) that lacks adequate security, as required by Rule 65(c), and (2) that completely upends the *status quo ante* that has existed between the parties for more than two decades. Yet that is what happened here.

To make matters worse, in lieu of requiring the City to provide adequate security under Rule 65(c), the circuit court imposed the burden of paying for any damage caused by the injunction on the people of the City. The injunction is unsecured in excess of $15 million. That leaves the County facing an irreparable (and unnecessary) harm. When the County complained that the security was inadequate with this type of exposure, the circuit court held that the lack of security was not an issue because the City could always tax its people to pay those damages, should the injunction be

reversed on appeal, thereby unfairly (and unnecessarily) putting that burden on the people of the City.

The effects of the injunction are also repugnant to justice. The injunction completely destroys the *status quo ante* that has existed between the parties for more than twenty-two years and imposes a new, judicially created *status quo*. As this Court is well aware, the "only" purpose for issuing an injunction is to preserve and protect the *status quo ante*. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). Moreover, the injunction is repugnant to justice because it interprets the law as requiring the County to obtain the City's consent to continue collecting the Hospitality Fee. Such a conclusion is contrary to law, and it completely disregards S.C. Code § 6-1-330(A), which specifically authorizes the County to collect the Hospitality Fee until the County "repeal[s]" it.

The County therefore respectfully requests an immediate writ staying the injunction while the County's appeal is pending.

FACTUAL BACKGROUND

The County adopted the Hospitality Fee.

In March 1996, voters in Horry County rejected a referendum to adopt a local option sales tax to finance a proposed comprehensive road plan. (App. 50). Shortly after this vote, Governor David Beasley directed the chairman of the Department of Transportation to form a committee to propose a plan for the County's short-term and long-term transportation needs. (App. 50). That committee issued its report, known as the RIDE Report, in September 1996. (App. 46–89).

To implement the recommendations in the RIDE Report, the County adopted a uniform service charge, known as the Hospitality Fee, on October 15, 1996. (App. 91–95). The Hospitality Fee imposed a 1.5 percent fee on lodging, admissions to places of amusement, and prepared food and beverage throughout the County, in both incorporated and unincorporated areas beginning on January 1, 1997.[1] (App. 91–92).

In addition to adopting the Hospitality Fee, Ordinance 105-96 provided that the funds from this 1.5 percent fee would "be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County." (App. 93). This ordinance also stated that the Hospitality Fee would expire after twenty years, on January 1, 2017. (App. 94).

Around the time the County was considering Ordinance 105-96, multiple municipalities—including the City—adopted resolutions supporting the Hospitality Fee. These ordinances "urge[d]" the County to adopt the Hospitality Fee. (App. 101–04, 106–09).

The municipalities were not the only entities that adopted ordinances urging the County to adopt the Hospitality Fee. Other governmental entities adopted similar resolutions. Both the Horry County Board of Education and the South Carolina Department of Transportation also expressed support for the County's plan to implement the RIDE Report. (App. 100, 105).

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[1] Later amendments increased the fee in the unincorporated areas of the County and added a countywide 2.5 percent fee on rental cars. (App. 719–20).

The County amended Ordinance 105-96.

Over the next two decades, the County amended Ordinance 105-96 on multiple occasions, three of which are relevant here.

As initially enacted, Ordinance 105-96 contained a sunset provision, providing that the Hospitality Fee would expire on January 1, 2017. (App. 94). All three relevant amendments to Ordinance 105-96 extended the sunset provision beyond January 1, 2017. *First*, in April 2004, the County enacted Ordinance 11-04, which "extended [the Hospitality Fee] for an additional period not to exceed five (5) years," until January 1, 2022. (App. 710). *Second*, in 2016, the County enacted Ordinance 93-16, which reaffirmed the five-year extension of the Hospitality Fee from Ordinance 11-04. (App. 174). *Third*, in 2017, the County removed the sunset provision from the Hospitality Fee altogether. (App. 183).

The City never voiced an objection to any of the three amendments extending the sunset provision when they were adopted. The City said nothing when the County extended the sunset provision for the first time in 2004. The City said nothing when the County reaffirmed that extension in 2016. And the City said nothing when the County eliminated the sunset provision completely in 2017. Ultimately, on March 20, 2019, with the filing of this lawsuit, the City alleged the County did not have the authority to extend the sunset provision without its consent, even though the County had done so on three occasions, years earlier.[2]

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[2] The lawsuit was filed only about one month after the County paid off the State Infrastructure Bank loans referenced in the 2004 amendment. (*See* App. 709–10). The County used the Hospitality Fee revenue from 2017 through early 2019 to pay

Not long after the last of the three amendments to the Hospitality Fee, the County adopted two resolutions declaring its intention for how part of the 1.5 percent piece of the Hospitality Fee would be used: construction of I-73. The County pledged up to $18 million annually (and then even more money, depending on the growth of that revenue) to building this new interstate. (App. 490, 492). Other revenue from the Hospitality Fee would be used as permitted by S.C. Code §§ 6-1-530 and 6-1-730.

The City adopted local accommodations and hospitality taxes.

In March 2019, shortly before filing this lawsuit, the City adopted two new taxes. The City adopted a 3 percent local accommodations tax, the maximum amount a county and a municipality may cumulatively collect under § 6-1-540. (App. 494–96). The City also adopted a 2 percent hospitality tax, again the maximum a county and a municipality may cumulatively collect under § 6-1-740. (App. 498–500).

Less than two weeks later, the City sued the County, claiming the County could not extend the sunset provision of the Hospitality Fee without its consent. (App. 27–228). As the backbone for its position, the City alleged its consent (as well as the consent of other municipalities in the County) was necessary for the County to collect the Hospitality Fee. The City takes this position, even though it cites to no legal proposition using the word "consent" in this context or that otherwise indicates that consent was necessary. The City claims it provided its consent to the County's enactment of the Hospitality Fee when the City adopted its resolution "urg[ing]" the

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these loans (until the loans were defeased on February 15, 2019)—money that the City now asserts the County should not have been collecting, despite the fact that the City claims it consented to the road projects paid for by those loans.

County to adopt the Hospitality Fee. The City argues that its consent to the Hospitality Fee expired with the initial sunset of the Hospitality Fee on January 1, 2017 (even though an additional twenty-five-and-a-half months were necessary to pay off the State Infrastructure Bank loans used to finance the very road projects that the City claims it actually consented to being performed through the use of the Hospitality Fee).

The circuit court enjoined the County's Hospitality Fee.

After it filed its proposed class complaint, the City moved for a preliminary injunction, (App. 325–27), as did the County, (App. 516–18). The parties filed multiple briefs and dozens of exhibits. (App. 328–515, 519–756, 776–855, 916–1014). At the circuit court's direction, they also each submitted a confidential memorandum to the court ahead of the hearing on the preliminary injunction motions.

The circuit court heard the motions on June 14, 2019. Later that day, the court informed the parties via email that it would grant the City's motion and deny the County's. The circuit court entered its order on June 21. (App. 1–17). The County moved to reconsider four days later. (App. 1022–33).

While the motion to reconsider was pending, the City moved to hold the County in contempt. The City claimed the County was violating the injunction by continuing to collect the Hospitality Fee in municipalities other than the City. (App. 1034–83).[3]

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[3] Other motions remain pending, but none of those is essential to deciding the legal issues on this appeal. These motions include the County's motion for leave to amend its counterclaims, (App. 856–89), the City's motion to dismiss the counterclaims, (App. 757–75), the County's motion for judgment on the pleadings

The circuit court denied both the motion to reconsider and the motion to hold the County in contempt on July 10, 2019, after holding a hearing earlier that day. In denying both motions, the circuit court clarified that the injunction applied to Atlantic Beach, Aynor, Conway, Loris, North Myrtle Beach, and Surfside Beach.[4] (App. 18–19). The order is not set to take effect in those municipalities until August 10, 2019. (App. 18–19).

The County appealed the injunction order pursuant to S.C. Code § 14-3-330(4) on July 11, 2019. (App. 1230–51). The day after filing its notice of appeal, the County moved the circuit court to stay its injunction, pursuant to Rule 241(d)(1), SCACR. (App. 1252–67). The circuit court denied that motion, although it did order the City to escrow "the new tax revenues collected" pursuant to its new ordinances. (App. 20–23). The County is in the process of filing an amended notice of appeal that adds the circuit court's order denying the County's motion for supersedeas to those orders currently on appeal.

The County also asked the circuit court to stay the entire case, given that this Court's decision might effectively resolve the litigation. (App. 1268–70). The circuit court granted that motion. (App. 24–26).

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regarding the class action allegations, (App. 1091–94), and the County Treasurer's motion to intervene, (App. 1095–139).

[4] In its motion to reconsider, the County invoked Rule 65(d), which requires that an injunction "describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Rule 65(d), SCRCP. The circuit court said it was "being extremely lenient" in not holding the County, noting that the complaint and the transcript of the hearing referred to other municipalities. (App. 18). This defense of the June 21 order proves that the order violated Rule 65(d).

LEGAL STANDARD

An order granting an injunction is not automatically stayed by noticing an appeal. Rule 241(b)(8), SCACR; *see also* Rule 62(a), SCRCP. Nevertheless, a "party may move for an order imposing a supersedeas" to stay an injunction pending an appeal. Rule 241(c), SCACR. Unless "extraordinary circumstances make it impracticable," this relief should be sought first from the court that entered the injunction. Rule 241(d)(1), SCACR. After that, a party may seek a writ of supersedeas from the appellate court. Rule 241(d)(2), SCACR.

To supersede an injunction pending an appeal, the party seeking to stay the injunction must clearly show that allowing the injunction to remain in effect would cause "an irreparable injury *or* the miscarriage of justice." *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912) (emphasis added).

ARGUMENT

I. The County faces an irreparable injury and a miscarriage of justice from the lack of sufficient security.

Sometimes, a circuit court's decision to grant a preliminary injunction gets reversed. *See, e.g.*, *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007); *Scratch Golf Co.*, 361 S.C. 117, 603 S.E.2d 905. Given the substantive and procedural flaws with the injunction here, this is likely going to be one of those times.

A. Rule 65(c) requires security for an injunction, and the City is not exempt from that requirement.

To protect a party who was wrongly enjoined, Rule 65(c) requires security from the party who obtains the injunction. That rule provides:

> no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Rule 65(c), SCRCP. In other words, a party who obtains an injunction must give sufficient security that the enjoined party may be made whole, if the injunction was wrongly entered.

The circuit court has enjoined the County from collecting more than $28 million annually by preventing it from collecting the Hospitality Fee. (App. 808, 1276). The circuit court has made clear that it "believes that a bond as required by Rule 65 is not necessary and/or required for these parties."[5] (App. 19). Only finally in denying the County's motion for supersedeas did the circuit court impose any security at all, requiring the City to escrow "the new tax revenues collected" pursuant to the City's new local accommodations and hospitality taxes. (App. 21). It did so despite holding fast to its view that Rule 65(c) does not require any security from the City, and it did so without giving any explanation for why it was bothering to require a security at all, if Rule 65(c) supposedly does not require it. (App. 21–22).

The circuit court ignored the plain language of Rule 65(c) in determining that the City is not required to provide any security for the injunction, and the court's belated attempt to impose some security is insufficient. Rule 65(c) mandates security

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[5] The City is the only party whose motion for an injunction was granted, so it is unclear why the circuit court referred to "parties" in the plural. The other municipalities are not parties here, so the circuit court could not require security from them.

for an injunction, and to issue an injunction without sufficient security is to disregard the plain language of that rule. *See Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) ("If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.").

The City is not exempt from the security requirement of Rule 65(c). Rule 65(c) exempts only the State, State officers, and State agencies from that requirement. The City has never—and for good reason—described itself as a State officer, who is a natural person, *see* S.C. Const. art. VI, or as a State agency, which is an "executive or regulatory body" of the State, *see S.C. Pub. Interest Found. v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017).

Thus, the only way the City could be exempt from the security requirement of Rule 65(c) would be if it fell within the first exemption and was "the State." But the City is (obviously) not the State of South Carolina. As the City observed at the hearing on the motion to reconsider, (App. 315), the City, as a political subdivision, may not exist "independent" of the State. *Hibernian Soc. v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984). While dependent entities, political subdivisions are still distinct entities from the State. Put differently, they are not the State by another name. And they are not automatically entitled to the same legal protections as the State. *See, e.g., Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280–81 (1977) (explaining that cities cannot claim a state's sovereign immunity under the Eleventh Amendment).

Had the drafters of Rule 65(c) wanted to exclude political subdivisions from the security requirement, they could have easily done so by adding "political subdivisions" to the list of the State, its agencies, and its officers. That is exactly what other states have done. *See, e.g.*, Fla. R. Civ. P. 1.610(b); La. Stat. Ann. § 13:4581; Mass. R. Civ. P. 65(c); Pa.R.C.P. No. 1531(b). But the drafters of South Carolina's rule did not do that, and the rule must be applied as written. *See Maxwell*, 356 S.C. at 620, 591 S.E.2d at 27.

The circuit court's failure to adhere to the plain language of Rule 65(c) and to require sufficient security for the injunction leaves the County facing irreparable harm and a miscarriage of justice. With the injunction in place, the County will stop collecting tens of millions of dollars in revenue within the municipalities on an annual basis. Just in fiscal year 2018, the Hospitality Fee revenue within the municipalities was over $28 million. (App. 808, 1276).

B. The security the circuit court finally required is insufficient.

Requiring the County to escrow "the new tax revenues collected" pursuant to the City's new ordinances is not enough. That might provide some security for an injunction that applies only to the City. But it is far from sufficient security here.

The County's Hospitality Fee included a 1.5 percent fee on accommodations, prepared food and beverage, and admissions and a 2.5 percent fee on rental cars. The City's new taxes do not increase its existing fees[6] up to the level of the County's

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6 The City is still collecting the hospitality fee it adopted in 1996. (*See* App. 502–05).

Hospitality Fee for anything except accommodations. Put differently, a person in Myrtle Beach is now collectively charged .5 percent less on prepared food and beverage, 1.5 percent less on admissions, and 2.5 percent less on rental cars. All told, the City will collect more than $5 million less under its new taxes than the County collected as part of the Hospitality Fee. (App. 1277). Therefore, simply escrowing the new revenue is not sufficient to make the County whole, if the injunction is reversed.

Moreover, this escrow requirement does *nothing* to provide any security for the injunction as it applies in the other municipalities in the County. This part of the injunction will prevent the County from collecting over $10 million in annual revenue—a substantial amount of money. (App. 1277). If the appellate court reverses the injunction, the County will be entitled to recover the revenue that it was prohibited from collecting while the injunction was in place. No one knows what North Myrtle Beach and Surfside Beach (the only other municipalities that have adopted local accommodations and hospitality taxes like the City has (App. 507–10, 512–15)) may have done with the revenue they had collected by that time. And no one will have collected any of the Hospitality Fee revenue within Atlantic Beach, Aynor, Conway, or Loris (which have not adopted and thus will not be collecting new taxes) while the injunction was in place.

Rather than requiring a bond from the City when the injunction was entered or requiring more money to be escrowed, the circuit court thought escrowing only the new revenue was sufficient because the City has other ways to "raise revenue": establishing new taxes, raising millage rates, or issuing bonds. (App. 21). The circuit

court cites no proposition of law, either in the text of Rule 65(c) itself or opinions from our appellate courts, recognizing the potential prospective ability of a public entity to raise revenue through taxes as an exemption to the security requirements of Rule 65(c). The circuit court's creation of this exemption is novel, and it radically departs from the plain language of Rule 65(c) and the case law on that rule.

The circuit court's order not only violates the adequate-security requirements of Rule 65(c), but it also unjustly passes the burden of paying for any wrongfully issued injunction on the people of the City (who are also the people of the County and the State). The burden passed onto the people of the City by the circuit court is a heavy one. The circuit court has put on the shoulders of the City's residents the responsibility to pay damages for the injunction on a countywide basis—an exposure of more than $15 million annually. This Court should save the people of the City from the unlawful burden imposed upon them by the circuit court and stay the injunction while the County's appeal is pending. Otherwise, if the injunction is reversed on appeal, the people of the City will stand to lose significantly and unfairly.

By ignoring the plain language of Rule 65(c), the injunction results in a miscarriage of justice, leaving the County with no certain means of being made whole and leaving the people of the City to foot the bill, should an appellate court reverse the injunction. This Court can significantly mitigate this miscarriage of justice by staying the injunction while the appeal is pending.

II. The injunction should be stayed to preserve the *status quo ante* while the Court resolves the novel questions raised in this case.

Failing to follow established law is the ultimate miscarriage of justice. Unfortunately, that is what has happened here, as the injunction upends the *status quo ante* while this litigation is pending.

Our appellate courts have long instructed that a "preliminary injunction should issue *only* if necessary to preserve the status quo ante." *Poynter Invs., Inc.*, 387 S.C. at 586, 694 S.E.2d at 17 (emphasis added); *see also Allegro, Inc. v. Scully*, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012); *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012); *Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964).

The injunction here does not preserve the *status quo ante*, but does just the opposite: The injunction upsets it. Here, the injunction requires the County to stop collecting a fee that it has been collecting for over twenty-two years. In other words, the injunction changes the *status quo ante* by putting a new fee-collection regime in place, as the City began collecting its taxes on July 1, 2019 and the County had to stop collecting the Hospitality Fee. This injunction is thus just like others that have been reversed for "do[ing] the opposite" of preserving the *status quo ante*. *Consol. Tires, Inc. v. Hamlett*, No. 2011-UP-308, 2011 WL 11734681, at *1 (S.C. Ct. App. June 17, 2011).[7]

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[7] This opinion is admittedly unpublished, so it has no precedential value. *See* Rule 268(d), SCACR. Nevertheless, it demonstrates how courts have approached injunctions that do not preserve the *status quo ante*.

The City has argued that the "true" *status quo ante* is the "last uncontested status" between the litigants. (App. 1145–46). Even if that position were the law,[8] the result is still the same: The *status quo ante* should permit the County to continue collecting the Hospitality Fee while this appeal is resolved. That is because the last moment when the City and the County agreed on the status of the Hospitality Fee was December 31, 2016—the day before the Hospitality Fee was originally set to expire. On that date, both the City and the County agreed that the County could collect the Hospitality Fee.

Ever since the next day (January 1, 2017),[9] the City and County have disagreed about whether the County could collect the Hospitality Fee. Indeed, that disagreement is the very reason this litigation exists.

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[8] It is not. *See Cty. Council of Charleston*, 244 S.C. at 483–84, 137 S.E.2d at 578 (explaining that the "sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is *at the time of the Order*" (emphasis added)).

[9] This assumes, of course, that the City actually always believed that the County could not extend the Hospitality Fee. Given that the City did not bring this lawsuit until March 2019, the City does not appear to have developed its current theory on the County extending the Hospitality Fee until well after January 1, 2017.

On the subject of this two-year delay, the City's delay in bringing this lawsuit makes clear that any harm that it may suffer is not irreparable, meaning that the City cannot establish that necessary element for a preliminary injunction. *See Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908.

The lack of irreparable harm is also evident from the circuit court's July 10 order. There, the circuit court clarified that the injunction applied to all the municipalities in the County but held that the injunction would not take effect countywide until August 10, 2019. (App. 18–19). If any harm here was irreparable, the circuit court surely would not have let that "harm" continue for another month before the injunction took effect.

The issue in this case requires particularly careful consideration. As the City acknowledged, (App. 791), no appellate court has addressed the central question raised in this lawsuit: whether a municipality's consent is required for the County to extend the Hospitality Fee. Rather than have the City and County (and now the other municipalities) move forward with brand new fee-collection plans that might be in effect for only a limited time while this case is on appeal, the more sensible approach is to stay the injunction while this Court considers the appeal. Then, if the City wins, the injunction can go into effect. On the other hand, if the County prevails, no one will have wasted (any more) time, energy, or money on stopping and starting to collect any fees or taxes.

All of this can be achieved without harm to the City. *Cf.* Rule 241(d)(3), SCACR (providing that the grant of a supersedeas may be conditioned on a bond or other undertaking that the court "may deem appropriate"). During the pendency of the appeal, the County can put the 1.5 percent piece of the Hospitality Fee collected within the municipalities in a segregated account. If the City prevails in this litigation, then that money may be transferred to those municipalities that have enacted ordinances to collect local accommodations and hospitality taxes, which will put them in the same position as if they had been collecting new taxes since the injunction was originally set to take effect.

III. The injunction should be stayed because the law plainly does not require the City's consent for County to extend the Hospitality Fee.

Not staying the injunction yields yet another miscarriage of justice: It allows the circuit court's flawed legal analysis on the central question of this case to remain.[10]

The City cites to an array of provisions to the State Constitution and Titles 4 and 5 of the South Carolina Code of Laws in support of its argument that its consent is necessary for the County to collect the Hospitality Fee. (*See, e.g.*, App. 267, 271, 335–37). The circuit court accepted the City's arguments seemingly at face value, without examining those provisions to see what they actually require or prohibit.

Even a cursory look reveals that the circuit court's conclusion finds no support in the State Constitution or Titles 4 and 5 of the South Carolina Code of Laws, or even in the Home Rule doctrine that the City invoked (which is about the relationship between the State and local governments, *see Cty. of Florence v. W. Florence Fire Dist.*, 422 S.C. 316, 321, 811 S.E.2d 770, 773 (2018)). One has to do nothing more than look at the circuit court's order granting the preliminary injunction (which was initially drafted by the City). That order quotes generic language about counties having to follow the law and then provides a string cite to various provisions. But nowhere in that order does the circuit court cite a single legal authority that expressly requires a municipality's consent for the County to adopt or extend the Hospitality Fee. And

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[10] The County will address the problems in the circuit court's analysis of this issue in more depth in its merits brief, but it highlights those shortcomings here.

nowhere in that order does the circuit court identify which specific provision the County violated or explain how the County did so. (*See* App. 6–7).

In an attempt to bolster its position, the circuit court pointed to Ordinance 105-96, which adopted the Hospitality Fee, and the City's 1996 resolution urging the County to do so as evidence that the City's consent was required for the Hospitality Fee to be adopted. Neither document, however, supports that conclusion.

First, as for Ordinance 105-96, it never even uses the word "consent." Its twenty-year sunset provision was a separate part of the ordinance from the provision that actually adopted the Hospitality Fee. Similarly, the requirement that the County adopt a road plan "in concert" with the municipalities does not mean that the municipalities had to consent to the source of the revenue for that plan. (*See* App. 91–95).

Second, as for the City's 1996 resolution, it merely "urge[d]" the County to adopt the Hospitality Fee. It did not actually "consent" to the Hospitality Fee. (*See* App. 97–98). Moreover, other municipalities did not adopt their resolutions "urg[ing]" the County to adopt the Hospitality Fee until after the County had done so (without Ordinance 105-96 containing any language about the Hospitality Fee not taking effect unless those other municipalities passed such resolutions). (*See* App. 101–04, 106–08). That means the Hospitality Fee would have taken effect even if all of the municipalities in the County had not adopted resolutions "urg[ing]" the County to adopt the Hospitality Fee, so this municipal consent could not have been necessary.

The circuit court's attempt to justify its conclusion that municipal consent was necessary to extend the Hospitality Fee is no more persuasive. Section 6-1-330(A) of the South Carolina Code of Laws specifically allows the County to impose the Hospitality Fee. That section states, "A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body . . . ." S.C. Code § 6-1-330(A). Here, the County adopted the Hospitality Fee on October 15, 1996. Therefore, pursuant to the plain directive from the General Assembly, the Hospitality Fee remains in effect "*until repealed* by the enacting local governing body." *Id.* (emphasis added). The County has not repealed the Hospitality Fee. Accordingly, it remains in effect.

To try to get around this black-letter law, the circuit court reasoned that by extending the Hospitality Fee, the County adopted a "new" fee that was not covered by § 6-1-330(A) and thus was subject to the requirements of Act 138 of 1997 (which established the current framework for local accommodations and hospitality taxes). Extending a sunset provision, however, does not create a "new" law; it merely extends an existing one. The circuit court cites to no legal authority to support its conclusion that changing the sunset provision adopted a new fee. In fact, legal authority goes the other way, not treating a change to a sunset provision as a change to the substantive law. *See, e.g., Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 538–39 (2013) (reviewing the history of extensions of the Voting Rights Act); Letter to Mark R. Elam, 1994 WL 378027, at *1 (S.C.A.G. June 29, 1994) (General Assembly's removal of the sunset provisions for the Boards of Dentistry and Opticianry).

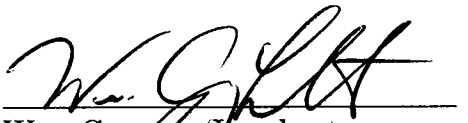
The circuit court's analysis on this critical question of whether the City's consent was required for the County to extend the Hospitality Fee is fatally flawed. It misreads State law and misinterprets the evidence in the record. Because it falls so short, the injunction is a miscarriage of justice and should not remain in place while the appeal is pending.

CONCLUSION

The Court should grant the writ and stay the injunction while the appeal is pending.

Pursuant to Rule 241(d)(6)(A), SCACR, the County respectfully requests that the Court issue an immediate order staying the injunction without waiting for a response from the City. As set forth above, the County is suffering immediate and irreparable harm every day the injunction remains in place. Rule 241(d)(6)(B), SCACR, is not implicated here because the City has received notice of this petition.

Respectfully submitted:



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

Case No. 2019-CP-26-01732

City of Myrtle Beach, For Itself and a Class of
Similarly Situated Plaintiffs, ...Respondents,

v.

Horry County, ...Appellant.

COUNTY'S VERIFICATION FOR PETITION FOR WRIT OF SUPERSEDEAS

Arrigo Carotti, the County Attorney for Horry County, pursuant to Rule 241(d)(3), SCACR, who upon being duly sworn, does depose and state that he has reviewed Horry County's Petition for Writ of Supersedeas and that the matters set forth therein are true to the best of his knowledge. He specifically submits the verification in support of the factual assertions in the petition.

Arrigo Carotti,
County Attorney for Horry County

Sworn to and subscribed before me

this 18th day of July, 2019.

Notary Public for 8/16/23 (Seal)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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v.

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CERTIFICATE OF SERVICE

I certify that this PETITION FOR WRIT OF SUPERSEDEAS and APPENDIX TO COUNTY'S PETITION FOR WRIT OF SUPERSEDEAS was served on counsel for the Respondent via hand delivery on July 19, 2019:

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