THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

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SC Court of Appeals

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-851
Appeal No. 2019-000728

National Trust for Historic Preservation
In the United States and The City of Charleston, Respondents/Appellants

v.

City of North Charleston, Appellant / Respondent.

**Appellant/Respondent's Combined[15] Final Brief (City of North Charleston)
(STANDING)**

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[15] The National Trust and City of Charleston each submitted similar briefs principally focused on issues surrounding standing. To further judicial economy, rather than filing two identical Response Briefs addressed to each, the City of North Charleston proposes to file this single "Combined Brief of Respondent."

INDEX

Table of Cases

Questions Presented On Appeal 1

Statement of the Case 1

Facts 1

Standard of Review 3

I. Neither the Trust nor Charleston Meet the Traditional Test for Standing Set Forth in Vicary v. Town of Awendaw 4

a. North Charleston Did Not Acquire Any Property Owned by the Trust 6

b. North Charleston Did Not Annex Any Property Owned by the Trust 7

II. Summary Judgment Was Appropriate Given That There Were No Disputed Questions of Material Fact 9

III. Judge Griffith Correctly Concluded that Vicary Does Not Provide for Special Public Interest Standing Here 11

Conclusion 13

TABLE OF CASES

CASES

Lanier Constr. Co. v. Bailey & Yobs, Inc., 384 SC 275, 681 SE2d 909 (SC App. 2009)....3, 11

Cummins v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) 6

F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999) 6

Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942) 6

Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940). 6

St. Andrews Pub. Service Distr. v. Charleston, 349 S.C. 602, 564 S.E.2d 647(SC 2002) 11

State v. Kinard, 427 S.C. 367, 371, 831 S.E.2d 138, 140 (SC App. 2019) 7

Vicary v. Town of Awendaw, 425 SC 350, 822 SE2d 600 (SC 2018) 4, 11, 12

STATUTES

S.C. Code Ann. 5-3-100 .... 2, 7, 13

OTHER AUTHORITIES

S.C.R.Civ.P 56(c) 11

Willison on Contracts, Section 70:171, 4th Edition 6

QUESTIONS ON APPEAL

I. Neither the Trust nor Charleston Meet the Traditional Test for Standing Set Forth in Vicary v. Town of Awendaw.

a. North Charleston Did Not Acquire Any Property Owned by the Trust

b. North Charleston Did Not Annex Any Property Owned by the Trust

II. Summary Judgment Was Appropriate Given That There Were No Disputed Questions of Material Fact.

III. Judge Griffith Correctly Concluded that Vicary Does Not Provide for Special Public Interest Standing Here.

Statement of the Case

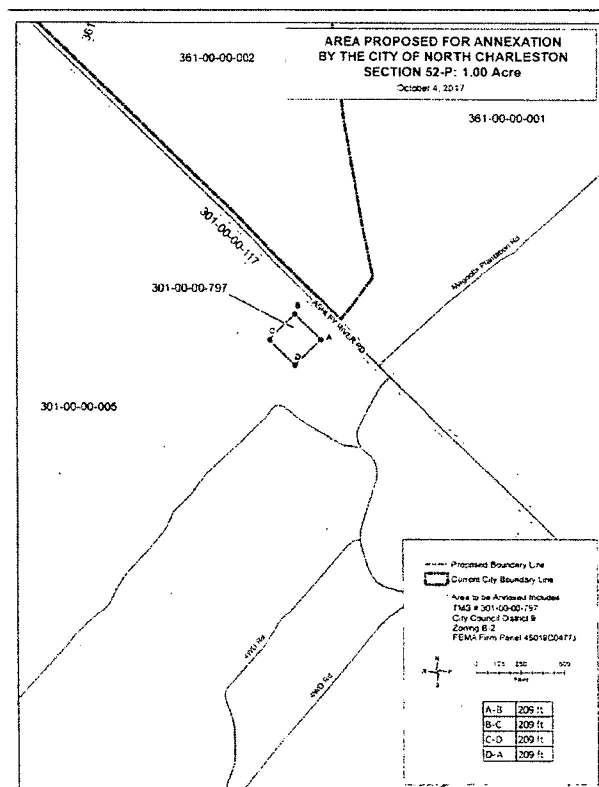
North Charleston does not object to the procedural history dates set forth in the National Trust's Statement of the Case and incorporates those dates by reference herein.

Facts

North Charleston, in late 2017, engaged in annexation activity west of the Ashley River. This began when North Charleston annexed the 113 acre Runneymede Plantation parcel (TMS 361-00-00-002) (hereinafter, "Runneymede"). ROA p. 3, Order, pg. 3, Para 7. No annexation challenge was filed. Id.

North Charleston later obtained title from Whitfield to a one-acre parcel (TMS# 301-00-00-797) (hereinafter, "the Acre") that lies about one hundred (100') feet to the Southwest of Runneymede. ROA p. 4, Order, pg. 4. Runneymede and the one-acre parcel do not share a common

boundary. As shown on the map below[1], they are separated by Ashley River Road and a slender 100' wide x 11,000' long shoestring parcel designated TMS 301-00-00-017 (hereinafter, the "Shoestring.")[2] ROA pp. 3-4, Order, pg. 3-4. North Charleston later annexed The Acre it owns. ROA p. 4, Order, pg. 4, Para. 12. This annexation was accomplished by way of S.C. Code Ann. 5-3-100 which authorizes only the annexation of land entirely owned by the annexing municipality.



Charleston and Trust filed annexation objections and lawsuits regarding The Acre.

The Trust most directly claims standing based on its argument that North Charleston annexed part of the Trust's Shoestring. Charleston's claim to standing is similar, but includes the

[1] This map may be found on page 3 of Judge Griffith's Order. ROA p. 3.

[2] All references to 100' are approximate.

wrinkle that its interest stems from prior annexation, not ownership, of the Shoestring. Thus, the annexation boundary between the Acre and the Shoestring was a key focus of the court below. The Trust and Charleston claimed a four-inch (4") boundary error creating a 1/1000th of an acre discrepancy sufficient to confer standing and invalidate everything. Judge Griffith was not persuaded. He determined that North Charleston had not annexed any acreage it did not own.

Standard of Review

North Charleston has no material objection to the cases cited by the National Trust with regard to the Standard of Review and incorporate those by reference.[3] In addition, North Charleston offers Lanier Construction Co. v. Bailey & Yobs, Inc., 384 SC 275, 281, 681 SE2d 909, 913 (SC App. 2009) for the proposition that the existence of a factual dispute about immaterial matters does not invalidate the use of summary judgment.

[3] North Charleston does not incorporate the argument included as the last paragraph of the National Trust's Standard of Review section.

Argument[4]

I. Neither the Trust nor Charleston Meet the Traditional Test for Standing in Vicary v. Town of Awendaw.

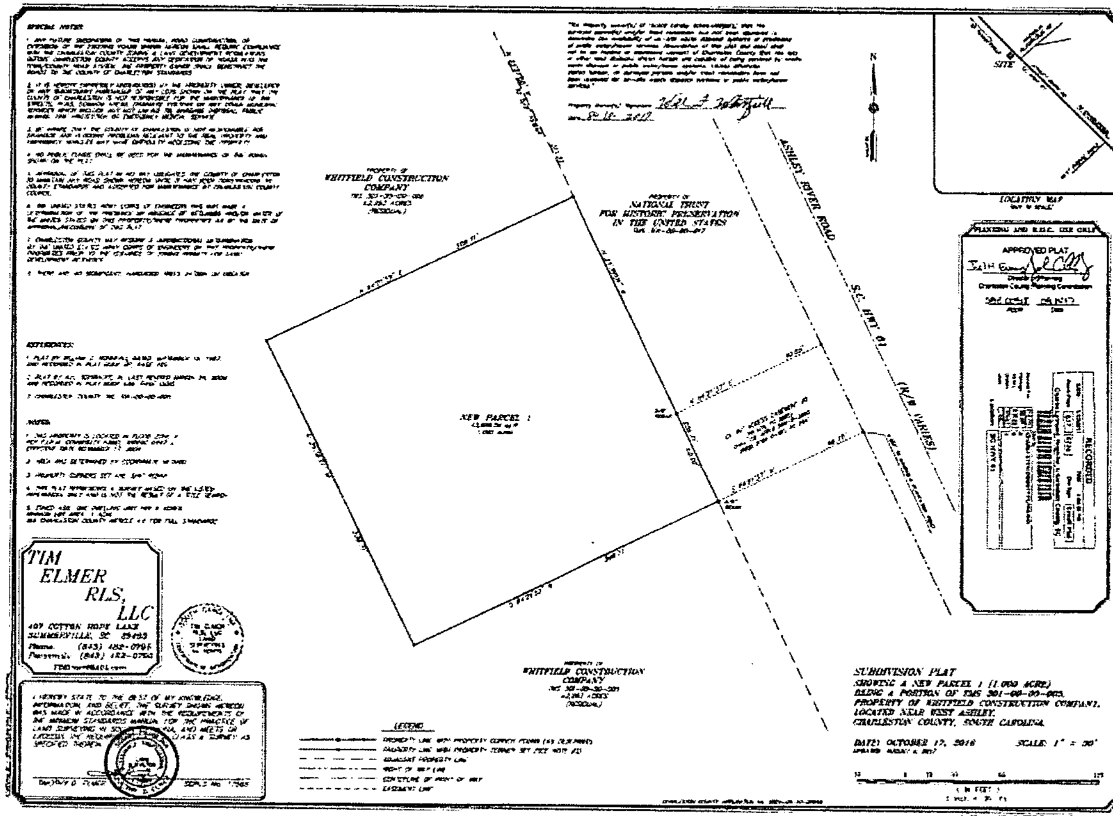
Standing is required in order to pursue an annexation challenge. Vicary v. Town of Awendaw, 425 SC 350, 822 SE2d 600 (SC 2018). The two principal groups with standing to challenge a 100% annexation are: (1) property owners of annexed land and (2) the Attorney General of South Carolina. Id. The Trust and Charleston fall into neither category and the Attorney General did not file a challenge.[5]

To gain standing, the Trust argues that one property line on The Acre's boundary was off by approximately four inches (4"), thus causing North Charleston to take ownership and annex 1/1000th of an acre of the Trust's Shoestring that had already been previously by the City of Charleston.[6] See Complaint, Para. 28-30 and 38(b). The plat reproduced below illustrates the argument. See ROA p. 269.

[4] The City of North Charleston analyzes the issues present in this appeal in a far less complicated fashion than Charleston or the Trust. Rather than respond point by point North Charleston offers a competing analytical framework. To the extent that North Charleston's response may not directly mention some particular case or assertion by the Trust or Charleston such a failure to mention is not intended to indicate acquiescence or agreement.

[5] Charleston and the Trust both argue their desire to obtain general Public Interest standing. That issue will be separately addressed by North Charleston in Part III of this Brief. Additionally, Charleston argues in Part I of its Brief that South Carolina law should allow for a special third category of challenger – a municipality who's previously annexed territory is subject to later attempted annexation by another city. While such municipal standing might be a question one day in need of an answer that question is not before the Court in this current case. North Charleston did not annex Charleston territory.

[6] It is ironic that Charleston and the Trust are arguing fiercely to get a ruling that North Charleston took land of theirs that they do NOT want taken. If their real concern was avoiding having North



This plat shows the eastern boundary line, shared in common with the Trust, as being 99.7' away from Ashley River Road. The original deed by which the Trust obtained title to the Shoestring described the Trust parcel as extending in 100' from Ashley River Road.

The Trust's attempt to claim "property owner" standing is legally insufficient because, regardless of the claimed 4" error, North Charleston did not, and does not, claim to own or have

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Charleston controlling their land then the trial court's ruling, and North Charleston's agreement, would thrill them. Instead we have a bizarre situation where the Trust and Charleston are claiming that North Charleston took something never taken so as to let them argue that North Charleston isn't allowed to take it! This did not escape Judge Griffith. See ROA p.8. Order at p. 8 ("It appears disingenuous to the Court that the National Trust is not pursuing a claim to correct the error and clear the 'cloud' but is arguing that the 'cloud' gives it, and thus Charleston, the legal standing to challenge the annexation....")

annexed any portion of the Trusts' Shoestring. Since Charleston's standing claim is essentially derivative[7], a lack of Trust standing also amounts to a lack of standing for Charleston.

a. North Charleston Did Not Acquire Any Property Owned by the Trust

As a matter of law, no error in the legal description or plat for The Acre could have resulted in North Charleston obtaining ownership of land belonging to the Trust. A grantor simply cannot bestow upon a grantee more than what the grantor owns to begin with.[8] Thus, no matter what Whitfield's deed to North Charleston might say, the Acre deed cannot give North Charleston title to any of the Trust's land. That is even more apparent here given that North Charleston received a Quit Claim, rather than Warranty, deed to the property.[9] Even if the Trust is correct that its boundary is 100' from Ashley River Road rather than 99.7', the result would not be that North Charleston owns any of the Trust's Shoestring parcel. As a matter of law, the Trust would retain its full undiminished acreage. Any error could only reduce the amount of land obtained by North Charleston from a perfect 1.0 acre to .999 of an acre. Accordingly, there is no way the Trust can show it owns any portion of North Charleston's Acre parcel (TMS# 301-00-00-797.)

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[7] Annexation of the Shoestring land would mean that Charleston territory was annexed.

[8] See F.C. Enterprises, Inc. v. Dibble, 335, SC 260, 266 (SC App. 1999); Cummins v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) (no deed can convey an interest which the grantor does not have in the land described in the deed); Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942) (no deed can operate so as to convey a greater estate or interest than grantor has); Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).

[9] As explained in Williston on Contracts, "A quit claim deed only conveys a grantor's interest and implies nothing more. Indeed, a buyer's acceptance of a quit claim deed generally implies that the seller is only conveying whatever title the seller may have – which may be to a greater or lesser extent than the seller believes, or none at all." *Willison on Contracts*, Section 70:171, 4th Edition.

b. North Charleston Did Not Annex Any Property Owned by the Trust[10]

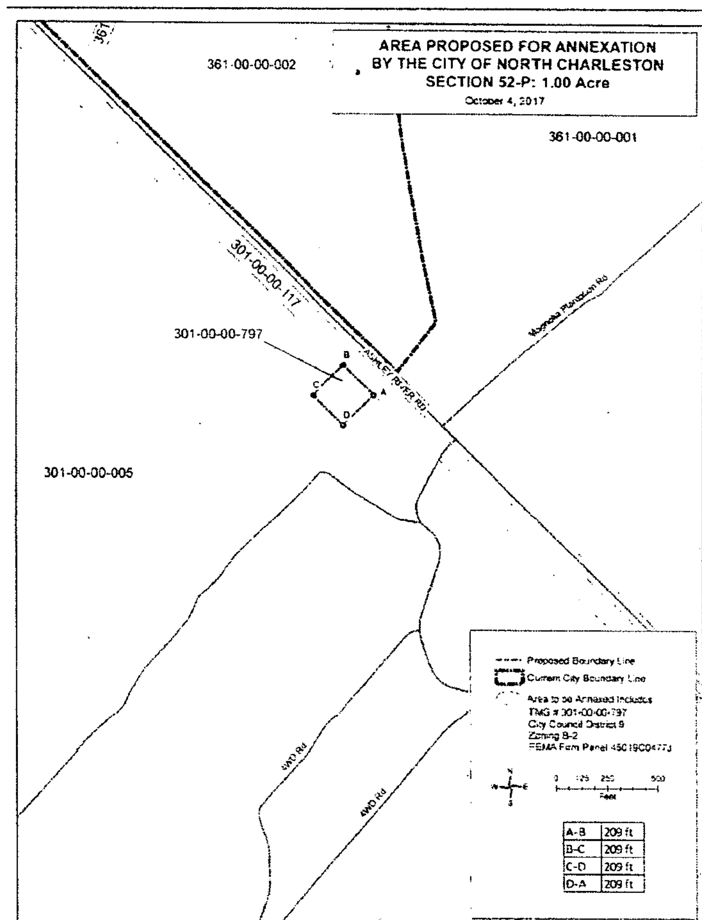
Judge Griffith correctly determined that North Charleston did not annex any portion of the Trust's Shoestring. This result was clear as a matter of law for several reasons.

First, as discussed above, the Whitfield deed conveying The Acre tract to North Charleston was legally incapable of conveying property owned by the Trust. That is important to determining what was annexed (the ultimate issue here) because North Charleston's annexation package described the land annexed as being co-extensive with the land North Charleston acquired. The annexation ordinance expressly stated that the area being annexed was TMS 301-00-00-797. That is the parcel number for North Charleston's acre and is totally distinct from Shoestring parcel No. 301-00-00-017 owned by the Trust. Additionally, the Ordinance specifically noted that North Charleston was annexing "approximately" 1.0 acres, thus specifically allowing for the fact that it

[10] The Trust, in Part II of its Brief, seems to discuss a non-existent error. Perhaps the Trust read too much into the portion of the Order saying "that North Charleston, the party seeking annexation of the Acre, **could not** annex property that was not owned by North Charleston." Brief of National Trust, pg. 14. (emphasis added.) The Trust seems to say that Judge Griffith erred because he thought it was legally impossible for North Charleston to try to annex more than it owned. Reading the entirety of Pages 6-8 of the Order reveals that Judge Griffith made no such error. Judge Griffith concluded that North Charleston's annexation action only intended to annex the property North Charleston owned. While the Trust and Charleston disagree with that conclusion, it is not predicated on the "legal impossibility" error that the Trust may be arguing in Part II of its Brief. The Trust further muddies the water by mistakenly claiming that annexation statutes "have no provisions that the areas proposed to be annexed can only be property owned by the petitioners for annexation." S.C. Code 5-3-100 employed here tells us the rule is exactly the opposite with its title "Alternate method *when entire area owned by annexing municipality* or county." (emphasis added.) Finally, to the extent that Part II of the Trust's Brief may be read to instead argue that the intent of North Charleston Council did not matter in terms of applying North Charleston's annexation ordinance, the Trust is simply wrong. See State v. Kinard, 427 S.C. 367, 371, 831 S.E.2d 138, 140 (SC App. 2019)("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used....")(internal citations omitted.)

may not be a "perfect" acre. North Charleston even went so far as to state that the property being annexed "belongs entirely to the City of North Charleston", thus further disavowing in the ordinance any claim that it was annexing any property owned by others.

Second, the boundary description within the Annexation Ordinance / Petition shows that even if the 4" error claimed by the Trust did exist, it would not have shifted the annexation boundary over onto land owned by the Trust.



The accompanying legal description (ROA p. 294) was as follows:

Beginning at Point A, on the easternmost corner of parcel designated TMS #301-00-00-797 which is also adjacent to the present city limits line; thence, in a generally northwesterly direction a distance of 209 feet along the northeasternmost property line of parcel designated TMS #301-00-00-797 to Point B which point is on the northernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southwesterly direction a distance of 209 feet along the northwesternmost property line of parcel designated TMS #301-00-00-797 to Point C which point is on the westernmost corner of parcel designated TMS #301-00-00-797; thence, in a generally southeasterly direction a distance of 209 feet along the southwesternmost property line of parcel designated TMS #301-00-00-797 to Point D which point is on the southernmost corner of parcel designated TMS #301-00-00-797, thence, in a generally northeasterly direction a distance of 209 feet along the southeasternmost property line of parcel designated TMS #301-00-00-797 to Point A, the point of beginning with all distances being more or less.

The area proposed for annexation includes the parcel designated TMS #301-00-00-797 which shall be zoned AG, Agricultural District.

Line "A" – "B" is described as the property line that the one-acre parcel shares in common with the Trust's 100' Shoestring. Nowhere did North Charleston Council express a desire to cross over the Shoestring parcel's property line to annex any portion of the Trust's land. To the contrary, North Charleston annexation package specifically said it was annexing property wholly owned by the City. Since the point of beginning for all measurements is the property line shared in common with the Trust's 100' strip (not Ashley River Road) and the direction of measurement is away from the shared boundary of the 100' strip, any error in the location of Point A on the plat would have the result of reducing either the acreage owned and annexed by the City or the acreage retained by the grantor (Whitfield). There is no way to argue that North Charleston annexed land owned by the Trust.

II. Summary Judgment Was Appropriate Given That There Were No Disputed Questions of Material Fact

Judge Griffith's ruling was appropriate based on the same general summary judgment concepts espoused by Charleston and the Trust. Both parties seek reversal based on the idea that Judge Griffith purportedly ignored a surveyor's affidavit and other information they claim created a factual dispute entitling them to a trial. Nothing could be further from the truth. The problem

with the surveyor's affidavit and other evidence and arguments of the Trust and Charleston here wasn't that the Court didn't consider it or give it enough weight. The problem was that it didn't go to an issue material to the outcome of this action.

This isn't a case where conflicting testimony might exist about the color of a stoplight at the moment of a wreck. Everything needed to decide this case exists in the record. The North Charleston annexation ordinance says what it says. The surveys show what they show. The annexation maps show what they show. Titles to various properties say what they say. And the affidavits say what they say. The question before Judge Griffith wasn't "what happened." All that was perfectly documented. The question for Judge Griffith was "what is the legal significance of these various facts?" If one title or survey says "X", a later one says "Y", and an annexation ordinance package says "Z", what outcome does the law dictate? That is uniquely a legal question appropriate for summary judgment.[11]

As for the much ballyhooed 4" boundary line discrepancy, it simply wasn't material. The problem for Charleston and the Trust wasn't that Judge Griffith didn't believe them or give them a chance to prove *a meaningful* 4" error, it was that he saw the 4" error had no bearing on the outcome of this case. Judge Griffith recognized that, by law, the claimed 4" error could only reduce North Charleston's acquisition from Whitfield down from 1.0 to .9999 of an acre, but in no event result in North Charleston acquiring any portion of the Trust's shoestring acreage. ROA at 6. Judge Griffith also reviewed the annexation documents and determined that North Charleston's annexation was exclusively for acreage North Charleston owned. ROA at 7. At that point, the

[11] While claiming error existed because of disputed facts that should have prevented Summary Judgment, Charleston turns around and elsewhere (Charleston Brief at p. 16) argues that what we face in this case is an issue of "statutory construction" where the Court must divine the intent of a plainly legible ordinance's words. That sounds like a classic use for Summary Judgment!

presence or absence of 4" error became immaterial. A factual dispute regarding an *immaterial* fact does not invalidate the use of Summary Judgment. See S.C.R.Civ.P 56(c); Lanier Construction, 384 SC 275, 281, 681 SE2d 909, 913 ("[W]e believe the trial court properly granted the Cupps' summary judgment motion. The disputed fact of whether Mike Cupp informed Yobs that he would mark the septic tank location is not a *material* fact when determining the Cupps' liability.") Accordingly, Charleston and the Trust offering proof about this or other immaterial facts does not undercut the appropriateness of Summary Judgment.

III. Judge Griffith Correctly Concluded that Vicary Does Not Provide for Special Public Interest Standing Here.

The South Carolina Supreme Court has applied narrow standing rules in regard to challenges of 100% annexation. (1) Owners of annexed property and (2) the South Carolina Attorney General are those principally empowered to challenge.[12] Vicary v. Town of Awendaw, 425 SC 350, 822 SE2d 600 (SC 2018). Under this scheme the Attorney General is the one positioned to advocate for general welfare and policy concerns on behalf of the State and general public. See St. Andrews Public Service District v. Charleston, 349 S.C. 602, 604-605, 564 S.E.2d 647, 648 (SC 2002). Of course, the Vicary Court also recently recognized the possibility of Public Interest standing under exceedingly narrow conditions. Vicary, 425 SC at 359, 822 S.E.2d at 604. Charleston and the Trust now attempt to shoehorn themselves into this new Public Interest standing category.

[12] The most recent Vicary opinion also recognized standing to challenge in a special circumstance of a municipality having engaged in deceitful conduct in order to accomplish the challenged annexation. There is no allegation that North Charleston engaged in such deceit here and accordingly that provision of Vicary is not at issue in this case.

It is important to recognize just how narrow the Vicary court's new Public Interest Standing category is. After reciting the normal types of "public interest" arguments that have conferred standing in non-annexation contexts, the Vicary court specifically mentioned that our courts have previously refused to extend similar standing in annexation matters. Id. And when it did create Public Interest Standing for annexation challenges in Vicary, the court did **not** simply say that going forward it would now recognize all traditional public interest arguments as sufficient. Instead, the Vicary court noted that "the unique facts present here" showing governmental deceit. This was well summarized in the opinion's concluding paragraph:

> "We recognize this Court's jurisprudence has historically carved a narrow avenue to challenge annexations carried out under the 100% annexation method. However, *when an annexing body arguably engages in underhanded conduct*, it becomes subject to a lawsuit…." Id. at 360, 605 (emphasis added).

So Vicary, while creating the possibility of Public Interest Standing for 100% annexation challenges, did so under the most narrow of circumstances. It did not open a wide door for all forms of Public Interest assertions such as the Trust and Charleston offer here.

Assertions by Charleston and the Trust that they are public stewards for good purposes does not elevate them to the narrow realm of Vicary Public Interest standing. The National Trust's status as an entity dedicated to historic preservation does not make it specially situated to challenge this annexation.[13] Charleston's status as a sister city does not make it specially suited to bring this challenge or advance statewide policy considerations. They are certainly not better situated than the South Carolina Attorney General to undertake a challenge.

At its heart, the challenge here is that North Charleston didn't properly comply with annexation statutes. While Charleston and the Trust offer varying concerns surrounding this in an

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[13] While the consequence may touch on historic interests on which the Trust focuses, the Trust has no particular expertise in the actual issues of this legal dispute.

attempt to justify Public Interest Standing here, none are compelling. *First*, despite the Trust and Charleston's fears, this is hardly part of an impending tidal wave of cases sufficient to justify granting extraordinary standing. We have no runaway train of leapfrog annexations of increasing distance. *Second*, concerns about misapplication of a statute or improper municipal boundary changes are interests in the heartland of the State (represented by the Attorney General), not Charleston or the Trust. *Third*, the Attorney General has standing to freely challenge each and every such annexation he desires. Should the issue ever crop up again the Attorney General can address it the moment he sees fit. There is no need to grant *extraordinary* standing here to the Trust and Charleston. There is no risk of S.C. Code 5-3-100 perpetually escaping review. *Fourth*, this case involves the application of an obscure statute. It is hard to see the need for extraordinary standing to be granted here to avoid a future flood of problems under S.C. Code 5-3-100. North Charleston has been unable to find a prior reported opinion during the entire life of the statute![14]

Conclusion

Judge Griffith correctly employed summary judgment and correctly determined that the Trust and Charleston lack standing to be heard with this annexation challenge. The annexation package employed by North Charleston was clear that it annexed only property owned by North Charleston, necessarily excluding any acreage owned by the Trust. Accordingly, The Trust and Charleston cannot qualify for standing in the traditional Vicary categories. The Trust and

[14] It is worth a moment to separately discuss the parties' "need for future guidance" claim for Public Interest standing. Judge Griffith had no trouble issuing "guidance" on the merits even while declining to confer standing here. Judge Griffith's opinion has been widely publicized and is the subject of this appeal. It will no doubt be instructive to North Charleston and every other city in South Carolina going forward.

Charleston are also unable to articulate grounds sufficient to bring them within the extremely narrow universe of Vicary Public Interest standing for annexation challenges.

Respectfully submitted:

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This 7th day of February, 2020

THE STATE OF SOUTH CAROLINA

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APPEAL FROM CHARLESTON COUNTY

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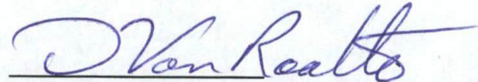
Certificate of Counsel (Briefing)

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 7, 2020.



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