THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Court Judge

Civil Action No. 2017-CP-23-03372
Appellate Case No. 2017-001747

Greenville Bistro, LLC, a South Carolina Limited Liability Company, d/b/a Buck's Racks & Ribs, and Frontage Road Associates, Inc., a South Carolina Corporation, ... Respondents,

v.

Greenville County, a Political Subdivision of the State of South Carolina, and Will Lewis, in his Official Capacity as Sheriff of Greenville County, ... Appellants.

APPELLANTS' FINAL REPLY BRIEF

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Introduction

This appeal is about a temporary injunction entered against a duly-enacted Greenville County ordinance governing the location of sexually oriented businesses, Ordinance No. 4869. That ordinance added a court-tested definition of "semi-nudity" to an ordinance that the South Carolina Supreme Court has previously upheld. (*See* Aplts. Initial Br. at 14 (citing six published decisions upholding adult business ordinances using the same definition).)

The County's initial brief showed that the trial court incorrectly enjoined the ordinance *without* showing that Plaintiffs were exempt from it or showing any way in which it is unconstitutional. Indeed, the trial court did not even engage the merits of the constitutional question—although doing so was necessary to determine whether Plaintiffs had made out a prima facie case showing entitlement to an injunction. (Aplts. Initial Br. at 15-17.) Rather, the trial court merely surmised that "Plaintiffs *would* suffer irreparable harm *if* the subject ordinance abridges its constitutional freedom of expression." (Injunction Order at 4, R. p. 5 (emphasis added).) But the ordinance does not, and the trial court's order offers no analysis to the contrary.

Neither does the Plaintiffs' response brief on appeal.

Instead, Plaintiffs' brief misstates the record (while wrongly claiming that the County's brief does), mischaracterizes the proceedings and orders below, and relies on inapposite cases to defend the injunction. Because Plaintiffs failed to carry their burden, this Court should reverse.

Reply to Respondents' Statement of the Case

1. Plaintiffs wrongly argue in their statement of the case that the ordinance "purported to regulate the content of entertainment, *i.e.*, the speech offered by Respondent, Greenville Bistro." (Resp. Initial Br. at 1.) This argument is wrong on multiple levels.

First, the definition of "semi-nudity" in Ordinance No. 4869 relates to live *conduct*, specifically, "the showing of the female breast below a horizontal line across the top of the

areola and extending across the width of the breast at that point, or the showing of the male or female buttocks." It does not regulate the content of speech. As the Supreme Court has observed, "[b]eing 'in a state of nudity' is not an inherently expressive condition." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000).

Second, the County's regulation of adult cabarets, where persons appear in a state of nudity or semi-nudity, is based on such establishments' well-recognized "adverse secondary effects," including "personal and property crimes, prostitution, potential spread of disease," as well as "illicit drug use and drug trafficking, negative impacts on surrounding properties," and "sexual assault and sexual exploitation." (Compl. Ex. G, Ordinance No. 4869 at 1, R. p. 176.)

"Zoning ordinances merely restricting the location of adult businesses without banning them altogether are considered content neutral as long as they are based on their prevention of the harmful secondary effects the Supreme Court has noted these sexually oriented businesses may cause." *Harkins v. Greenville County*, 340 S.C. 606, 614, 533 S.E.2d 886, 890 (2000) (citing *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)).

Thus, the ordinance at bar is not a regulation of "content."

2. Plaintiffs block-quote the trial court's June 2, 2017 order granting in part and denying in part a temporary restraining order. (Resp. Initial Br. at 1.) That order, however, was in effect only until the hearing on the temporary injunction. Moreover, the order was granted in part only because the trial court, at that time, thought that there was an issue of whether Greenville Bistro was a "successor" to the previous business at the site. But the July 17, 2017 temporary injunction order—the order under appeal here—specifically held that "Plaintiff, Greenville Bistro, is not a successor to the earlier operator of the business at the location which is the subject of this

action," and that "there is '*no evidence which establishes a connection between these parties.*'" (Injunction Order at 2, 4, R. pp. 3, 5.)

Finally, the June 2, 2017 order says nothing about Ordinance No. 4869, which is the ordinance that was enjoined and is at issue in this appeal. Plaintiffs' quotation thus serves only to confuse.

Reply to Respondents' Statement of Facts

1. Plaintiffs' statement of facts should be disregarded for failure to comply with Rule 208(b)(4), SCACR, which requires the brief to "contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." Plaintiffs repeatedly fail to cite record evidence for their factual assertions.

2. Plaintiffs' first statement is that from 1999 through 2015, Platinum Plus entertainers "did not display 'specified anatomical areas,' or appear 'semi-nude,' both as defined by the Greenville County Code, and was, therefore, not considered to be a sexually oriented Adult Use." (Resp. Initial Br. at 2.) This statement is not supported by a citation to the record per Rule 208(b)(4). Moreover, Plaintiffs' own submissions flatly contradict the alleged fact. (Complaint, Ex. C, at 3, R. p. 153 (holding that both 2002 and 2015 orders prohibited Platinum from allowing nudity, exposure of specified anatomical areas, and specified sexual activities on the premises—and finding "beyond a reasonable doubt" that Platinum had violated these regulations).)

3. Next, Plaintiffs cite page 5 of the County's Initial Brief to claim that the County's representation that it "sued multiple sexually oriented businesses" is "untrue." (Resp. Initial Br. at 3 & n. 1.) But page 5 of the County's Initial Brief is not talking about the *Solicitor's* 2015 Nuisance Action against Platinum Plus; rather, it concerns the County's earlier (2000) lawsuit, *Greenville County v. Kenwood Enterprises*, seeking an injunction against three strip clubs

(Platinum, Heartbreakers, and Diamonds). The County cited Exhibit 2 to its Answer and Counterclaim filed below, which is the *Kenwood Enterprises* January 2001 permanent injunction prohibiting all three clubs from operating sexually oriented businesses at their premises. (*See* Ans. & CC Ex. 2 at 26, R. p. 220 ("Defendants are hereby enjoined from further operation of their businesses in violation of Ordinance 2673 and are ordered to comply with the Ordinance by ceasing the operation of their businesses as sexually-oriented businesses at their current locations.").)

4. Plaintiffs also wrongly assert that "the County, through the Solicitor's Office, brought a nuisance action...." (Resp. Initial Br. at 3.) But that is incorrect. Greenville County had no part in the nuisance action.[1] The Solicitor is an employee of the State of South Carolina, *see* S.C. Code Ann. 1-7-325, and the nuisance action was between the Solicitor (representing the State) and Frontage Road Associates, Inc. (the property owner) and Elephant, Inc. (the prior tenant). (*See* Complaint, Ex. B at 1, R. p. 137 ("Petitioner, the State of South Carolina, on the relation of William Walter Wilkins, III, Solicitor ... filed a Verified Petition in the above-captioned case....").)

5. Greenville Bistro claims that its establishment (Bucks, Rack & Ribs) "is operated so that dancers do not display 'specified anatomical areas,' or engage in 'specified anatomical areas,'" (Resp. Initial Br. at 5), but the claim is unsupported by any record citation and is proven false by five separate law enforcement affidavits entered below. (*See* Aplts. Initial Br. at 10-11 & n.7 (citing Redman, Hunnicutt, Hayden, Arflin, and Whitmire Affidavits (Hrg. Exs. 14-18, R. pp. 233-240).)

[1] This fact also disproves Plaintiffs' unsupported argument at page 7 (and repeated elsewhere in their brief) that Greenville County "enter[ed] into a Consent Order permitting" Greenville Bistro's type of business—a sexually oriented business—at 805 Frontage Road.

6. Greenville Bistro correctly states that Ordinance 4869 was adopted on February 21, 2017, but wrongly alleges that the trial court's February 10, 2017 order was a "Consent Order" and that it "permit[ed] Respondents to open and operate in their present format." (Resp. Initial. Br. at 5.) This claim is wrong on multiple levels.

First, the February 10, 2017 order was not a "Consent Order." It was an order entered over the Solicitor's objection in the nuisance case.

Second, the February 10, 2017 order did *not* "permit[] Respondents to open and operate in their present format." That order—again, in a proceeding that Greenville County was not part of—did three things: (1) released the real property at 805 Frontage Road from certain previous orders of the trial court, (2) refused to impose monitoring requirements on the new tenant, Greenville Bistro, and (3) emphasized that full compliance with all applicable laws and ordinances was expected. (Ans. & CC Ex. 5 at 1-4, R. pp. 225-228.) The February 10, 2017 order did not bless Greenville Bistro's "present format," as Greenville Bistro had not yet commenced operations. As the affidavits cited above show, Greenville Bistro's business "format" of having dancers that display their breasts and buttocks and engage in erotic touching of those same body parts, makes it a sexually oriented business—which has long been prohibited at 805 Frontage Road.

7. Next, at page 5, footnote 4 of Respondents' Initial Brief, Plaintiffs argue that "infirmities exist" in the South Carolina Supreme Court's decisions in *Harkins v. Greenville County*, 340 S.C. 606, 553 S.E.2d 886 (2000), and *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2001), but Plaintiffs never identify any such infirmities.

8. Plaintiffs next make the following circular argument: "The February, 2017 Order, did require compliance with all applicable Greenville County Ordinances, but that requirement is

immaterial since the enforcement of Ordinance 4869 has been restrained, and then enjoined, making it inapplicable." (Resp. Initial Br. at 6.)

Of course, this appeal explains why the injunction against Ordinance No. 4869 was wrongly entered, namely: (1) nothing exempts Greenville Bistro from that ordinance, and (2) there is no showing whatsoever that it is unconstitutional. So Plaintiffs' concession that the February 2017 order required Greenville Bistro's compliance "with all applicable Greenville County Ordinances" shows that that order plainly does not provide a shield against Ordinance No. 4869.

9. Plaintiffs also argue that the County's brief is "misleading" because it argued that the Certificate of Occupancy (Complaint, Ex. F, R. p. 175), was simply for a restaurant, not a sexually oriented business. Plaintiffs say that "an adult cabaret can be a restaurant," but that obviously does not excuse a restaurant that has sexually oriented entertainment—making it a "sexually oriented business"—from operating in a location where sexually oriented businesses are prohibited.

10. Finally, Plaintiffs defend the injunction by saying that two orders below "found Greenville County's current regulation of sexually-oriented Adult Uses to be constitutionally infirm and restrained, and subsequently enjoined, the County from enforcing parts of those regulations." (Resp. Initial Br. at 7.)

But this *ipse dixit* does not justify or explain the grounds for the injunction. Yet plaintiffs rely on it often throughout their initial brief. Neither order below, nor Plaintiffs' initial brief, gives any *reason* why Ordinance No. 4869 is unconstitutional. Thus, this Court should reverse the injunction, as Plaintiffs have failed to sustain their burden of showing they are entitled to it.

Reply Argument

I. Federal precedent—which upholds regulations containing the verbatim language as Ordinance No. 4869—shows that the injunction should be reversed.

In heading II, Plaintiffs make three basic arguments about federal law. All three are wrong.

First, Plaintiffs suggest that the County eschews federal precedents. (Resp. Initial Br. at 8.) But the County's opening brief cited several decisions upholding the same definition of "semi-nudity" (contained in Ordinance No. 4869's definition of "adult cabaret"), and most were from federal courts. (Aplts. Initial Br. at 14 (citing, *inter alia*, *MJJG Rest., LLC v. Horry Cty.*, 102 F. Supp. 3d 770, 778 n.6, 788 (D.S.C. 2015) (quoting "semi-nudity" definition that is the same as Ordinance No. 4869's definition, and holding that the ordinance is narrowly tailored to serve the substantial government interest in preventing negative secondary effects); *Richland Bookmart, Inc. v. Knox Cty.*, 555 F.3d 512, 519, 528-30 (6th Cir. 2009) (same); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291, 294-95, 299 (6th Cir. 2008) (same); *see also Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 773 S.E.2d 728, 741 (Ga. 2015) (same).

Because both federal and state courts have often rejected First Amendment challenges to language like that in Ordinance No. 4869, Plaintiffs failed to show a likelihood of success on their First Amendment challenge. Without showing that the ordinance is unconstitutional, Plaintiffs cannot show that they would suffer irreparable harm from its enforcement, or that they have a need for any alternative remedy at law.

Second, Plaintiffs argue that while "even laws in derogation of the First Amendment are presumed to be constitutional under South Carolina law, they are presumptively **unconstitutional** under **federal law**." (Resp. Initial Br. at 10.) But Plaintiffs simply assume their own conclusion (that Ordinance No. 4869 is "in derogation of the First Amendment")—a conclusion that ample authority shows is wrong. Stating the conclusion in **boldface type** does

not strengthen it.

From this springboard, Plaintiffs cite *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981) and its progeny, but that case in inapposite because it involved a ban on all live entertainment throughout a municipality. *Id.* at 65. Ordinance No. 4869 does not ban all live entertainment, or even all adult cabarets, throughout Greenville County. Rather, the ordinance regulates only sexually oriented businesses, and it allows for hundreds of sites where adult cabarets like Greenville Bistro's can locate as of right in the County. (Hrg. Ex. 19, Hanning Aff. ¶¶ 4-7, R. pp. 241-247.)

The U.S. Supreme Court's leading adult business case explicitly distinguished *Schad* in a case where, as here, a location restriction applies only to the category of businesses—adult businesses—associated with secondary effects. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51 (1986) ("Moreover, the Renton ordinance is 'narrowly tailored' to affect only that category of theaters shown to produce the unwanted secondary effects, thus avoiding the flaw that proved fatal to the regulations in *Schad v. Mt. Ephraim*....").

Following *Renton*, the South Carolina Supreme Court has explicitly, and correctly, followed *Renton* in upholding Greenville County's sexually oriented business ordinance (Ordinance No. 2673) and a permanent injunction against operating a sexually oriented business at 805 Frontage Road. *See Harkins*, 340 S.C. at 613-14, 533 S.E.2d at 889-90; *Kenwood Enterprises*, 353 S.C. at 169-174, 577 S.E.2d at 434-37 (holding that the strip club's arguments "are governed by" *Renton* and citing *Renton* 15 times in upholding ordinance).

Third, Plaintiffs argue that "irreparable harm is presumed when the government tries to restrict speech by limiting the content of expressive activity." (Resp. Initial Br. at 12.) As an initial matter, the South Carolina Supreme Court in *Harkins* stated that that Court "accords

ordinances regulating sexually oriented businesses a presumption of constitutionality which the attacking party has the burden of overcoming." 340 S.C. at 621, 533 S.E.2d at 893. *Harkins* is binding here.

Moreover, as the County has already explained, the ordinance's location restrictions for adult cabarets featuring live semi-nudity regulate *conduct*, not the content of speech. Contrary to Plaintiffs' suggestion, none of the U.S. Supreme Court's cases apply strict scrutiny (including its least-restrictive-means requirement) to adult business regulations. *See, e.g., Renton*, 475 U.S. at 50 (reversing appeals court for applying too high a standard and holding that question is whether the ordinance "is designed to serve a substantial government interest and allows for reasonable alternative avenues of communication"); *see also Kenwood Enters.*, 353 S.C. at 169-170, 577 S.E.2d at 434 (following *Renton* on this point).

Plaintiffs cite *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000), but the case does not aid their cause. Instead, in applying strict scrutiny to a content-based regulation of actual speech (TV programming), the Supreme Court explicitly distinguished *Renton* and other adult business zoning cases. *Id.* at 815 ("Our zoning cases, on the other hand, are irrelevant to the question here. We have made clear that the lesser scrutiny afforded regulations targeting the secondary effects of crime or declining property values has no application to content-based regulations targeting the primary effects of protected speech.") (citing *Renton* and *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976)).

Additionally, even federal courts do not presume the unconstitutionality of a law at the preliminary injunction stage. Rather—consistent with South Carolina authority—an ordinance is presumed constitutional and the party seeking preliminary injunctive relief bears the burden of showing that he satisfies all of the elements to justify the extraordinary relief of a court order

enjoining enforcement of a duly enacted law. *See, e.g., MJJG Restaurant Corp. v. Horry County, S.C.*, 11 F. Supp. 3d 541, 556 (D.S.C. 2014) (denying motion for preliminary injunction against Horry County's similar adult business ordinance, and holding that "where a plaintiff is seeking a preliminary injunction, the burden shifts to the plaintiff to provide that it is likely to succeed on the merits") (citing *Winter v. Natural Resources Defense Council*, 55 U.S. 7, 20 (2008)).

Finally, Plaintiffs essentially concede that they did not make the required legal or evidentiary showing to justify the injunction. Claiming potential economic damages—which are themselves an adequate remedy at law—is insufficient here. *Renton*, 475 U.S. at 54 ("'The inquiry for First Amendment purposes is not concerned with economic impact.'") (quoting *Young*, 427 U.S. at 71 (Powell, J., concurring)). Beyond block-quoting irrelevant cases, Plaintiffs cite only their complaint, not actual evidence or relevant authority showing a constitutional violation. (Resp. Initial Br at 13 (claiming that "[t]he complaint herein shows" that Greenville County's actions are unconstitutional). This is simply more *ipse dixit*.

II. Plaintiffs failed to meet their burden under any of the prongs for issuance of a temporary injunction under South Carolina law.

Section III of Plaintiffs' brief begins by repeating the canard that Greenville County "agreed to a consent order" permitting Greenville Bistro's kind of business at 805 Frontage Road, and then concludes by retreating from—and then reasserting—the unsupported First Amendment claim.

First, Plaintiffs argue that "the heart of the matter" is that "Greenville County agreed to a consent order permitting a similar business to the previous business to operate at the subject location, and, 12 days later, amended its code to preclude that similar business from operating, thereby vitiating the Consent Order to which it agreed 12 days earlier." (Resp. Initial Br. at 16.)

That claim is wrong: (1) Greenville County was not a party to the Solicitor's nuisance

action, (2) the February 10, 2017 order entered in that action was not a "consent order," and (3) that order does not—and could not—authorize Greenville Bistro to operate *any* kind of sexually oriented business in violation of either Ordinance No. 2673 or Ordinance No. 4869.[2]

Nor is there any doubt that the adoption of the ordinance 12 days later—but well before Greenville Bistro obtained a certificate of occupancy or commenced operations—governs Greenville Bistro's operations. Nothing in any order below prohibited the Greenville County Council from adopting new legislation such as Ordinance No. 4869. *See also Sherman v. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1986) (pending ordinance binding from time it is first noticed for public hearing).

Next, Plaintiffs attempt to address the rule from *Curtis v. State* that "when a plaintiff's prima facie case depends on an allegation that a statute is unconstitutional, the trial judge must consider the matter in determining the reasonable necessity for a temporary injunction." 345 S.C. 557, 576-77, 549 S.E.2d 591, 601 (2001). In violation of this rule, the trial court failed to identify any particular reason why Ordinance No. 4869 is unconstitutional. (Hrg. Tr. at 16:6-11, R. p. 107.)

Instead of refuting the County's analysis, Plaintiffs argue that "while it would have been helpful" for the trial court "to identify which count [Count I or Count II] of the Complaint on

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[2] Plaintiffs' position is internally inconsistent. First, Plaintiffs claim that they are somehow protected by a consent order that imposed burdens on the prior tenant—a tenant with whom they have absolutely "no connection." Then they claim that Ordinance No. 4869, "which included a new definition of 'semi-nude,' bann[ed] a form of expression *already prohibited by the Consent Order applicable to Bucks, Racks & Ribs*." (Resp. Initial Br. at 5.) The prior consent orders neither bind nor protect Greenville Bistro (Bucks), as the trial court reiterated that there is no evidence establishing a connection between Greenville Bistro and Elephant, Inc. (Platinum Plus). But even assuming that the prior orders applied to Greenville Bistro, if they already prohibit Bucks' dancers from engaging in the equivalent of semi-nudity (because that would make the business an "adult cabaret," one kind of sexually oriented business prohibited at the property), then Greenville Bistro has no claim or grounds for injunction against Ordinance No. 4869.

which it focused," it "appears from the tenor of the July 17, 2017, Order was the vindication of First Amendment rights established by the earlier consent orders and vitiated by Ordinance 4869, and not on the constitutional issues." (Resp. Initial Br. at 17.)

That statement is both confusing—because "First Amendment rights" are "constitutional issues"—and incorrect. The court below did not grant relief under Count I (successor status claim), but did grant relief under Count II (free speech claim).

Count I of the complaint alleged that Greenville Bistro is "a ***successor*** to Elephant, Inc.," (Complaint at 10 ¶ 52, R. p. 21), and Plaintiffs' first prayer for relief requests a declaratory judgment to that effect. (*Id.* at 13, R. p. 24.) But the injunction order rejected that contention: "[N]othwithstanding assertions to the contrary by Plaintiff, there is no finding that Greenville Bistro is a successor to previous businesses at the subject location." (Injunction Order at 4, R. p. 5.)

So the trial court plainly granted relief based on the constitutional claim when it enjoined Ordinance No. 4869, even though it failed to identify any constitutional defect in that ordinance. Plaintiffs are likewise unable to identify a constitutional defect, so they press the extraordinary argument that the trial court *did not need to* identify such a defect in Ordinance No. 4869:

> The operative language in *Curtis* is whether or not a constitutional analysis is "necessary to determine the likelihood of success on the merits." In the case *sub judice*, a constitutional analysis is not necessary because the case is easily decided on the vitiation of the earlier Consent Orders by Ordinance 4869, without reaching the constitutional issues.

(Resp. Initial Br. at 17.)

But of course, since Plaintiffs' prima facie case under Count II presents a constitutional claim, it was incumbent upon the trial court to identify a constitutional defect (showing Plaintiffs likelihood of success on the merits) before enjoining the legislation. *Curtis*, 345 S.C. at 576-77,

549 S.E.2d at 601; *see also Alston v. Ball*, 93 S.C. 553, 77 S.E. 727, 728 (1913).

Next, directly after arguing that the trial court did not need to "reach[] the constitutional issues," (Resp. Initial Br. at 17), Plaintiffs do an about-face to re-argue those same constitutional issues.

Here, Plaintiffs repeat their "presumptively unconstitutional" argument, and their claim that they do not operate a sexually oriented business as defined in Ordinance No. 2673 or Ordinance No. 4869. (Resp. Initial Br. at 17-19.) Both arguments have been thoroughly refuted, both in the County's opening brief and in this brief, *supra*. (*See, e.g.*, Aplts. Initial Br. 4 & nn.1, 3 (defining "nudity" and "specified sexual activities"), and at 10-11 (citing affidavits showing both nudity and specified sexual activities, such as erotic fondling and simulated sex acts, occurring on the premises).) Those refutations need not be repeated here.

Last, Plaintiffs argue that the 18-year-old opinion in *Harkins*, which held that Greenville County had sufficient sites (nine) for sexually oriented businesses, 340 S.C. at 621, 533 S.E.2d at 893, is of "no precedential value currently." (Resp. Initial Br. at 18.)

Plaintiffs attack a straw man. The County is not relying on the nine sites *Harkins* found sufficient.[3] Rather, the County relies on current evidence showing that "there are 89 zoned parcels (and thousands of parcels in the unzoned portion of the County) that meet the location regulations for sexually oriented businesses. (Hrg. Ex. 19, Hanning Aff. ¶¶ 4-7.)." (Aplts. Initial Br. at 12.)

Thus, Plaintiffs have failed to justify the injunction against Ordinance No. 4869.

Conclusion

Greenville Bistro obtained a certificate of occupancy to open a regular, non-sexually

[3] Of course, if Greenville Bistro were a successor to Elephant, Inc. d/b/a Platinum Plus—it is not—the prior judgment in the *Greenville County v. Kenwood Enterprises, Inc.* case would be res judicata barring any complaint from Greenville Bistro about the sufficiency of sites.

oriented restaurant at a location where sexually oriented businesses have been prohibited for more than twenty years. But instead, Greenville Bistro opened a sexually oriented business, specifically an adult cabaret, after repeated warnings that such a business was prohibited.

The trial court wrongly enjoined Ordinance No. 4869, a duly-enacted ordinance designed to address the recognized negative secondary effects of sexually oriented businesses, without a showing that Greenville Bistro was exempt from the ordinance or that the ordinance is unconstitutional.

Any time that the government "is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1301 (2012). That is particularly true when the legislative body is addressing the negative secondary effects of sexually oriented businesses through a mere location restriction prohibiting such businesses from operating in close proximity to churches, child care facilities, and residences. (*See* Hrg. Ex. 19, Hanning Aff. ¶ 4, R. p. 241 (showing that a sexually oriented business may not operate at 805 Frontage Road under the zoning ordinance because is too close to a residential district, a church, and a childcare facility).)

For the foregoing reasons and for those stated in Greenville County's Initial Brief, the County respectfully requests that this Court reverse the injunction against Ordinance No. 4869.

Respectfully submitted,

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Dated: April 2, 2020

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CERTIFICATE OF COUNSEL

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

Respectfully submitted,

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PROOF OF SERVICE

I certify that on April 2, 2020, I have served all counsel in this action with a copy of the foregoing by emailing same to the following email addresses per section (g)(3) of the Supreme Court of South Carolina's March 20, 2020 Order RE: Operation of the Appellate Courts During the Coronavirus Emergency:

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Attachments: 2020_04_02_County Final Reply Brief.pdf; 2020_04_02_Mot Leave.pdf

Dear Gentlemen:

Attached for service on you please find the Appellant's Final Reply Brief and Motion for Leave to File Out of Time.

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