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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Perry M. Buckner, III, Circuit Court Judge

Opinion No. 5643 (S.C. Ct. App. filed May 1, 2019)

Appellate Case No. 2019-001756

Lower Court Case No. 2014-CP-15-00135

Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves……...….PETITIONER,

v.

South Carolina Municipal Insurance and Risk Financing Fund……..…….RESPONDENT.

REPLY BRIEF OF PETITIONER

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INTRODUCTION

On both the Coverage Contract issue and the Tort Claims Act immunity issue, Respondent SCMIRF presents arguments that cannot be reconciled with the plain language of the Coverage Contract or the text of the South Carolina Tort Claims Act. In its opposition, SCMIRF persists in trying to recast the policy it sold to the Town of Cottageville into a single limit policy with $1,000,000 in indemnity coverage for all of Petitioner Reeves's claims. Yet, SCMIRF cannot escape the fact that the Coverage Contract is a "per occurrence" policy providing $1,000,000 in coverage for each occurrence and, with respect to claims brought under the "Law Enforcement Liability" section of the policy, there is no annual aggregate limit. Not to be deterred from accepting the plain language of the contract it drafted, SCMIRF makes the remarkable assertion that "[t]he Coverage Contract also contains numerous provisions *designed to limit SCMIRF's liability* to the $1,000,000 liability limit." (Opp. At 11) (emphasis added). In doing so, SCMIRF has shown its true colors—it sells South Carolina towns and municipalities "per occurrence" policies that are, in fact, "designed to limit SCMIRF's liability" to $1,000,000 total. This is the heart of this dispute.

The Coverage Contract makes clear that coverage is provided based on *conduct* not resulting *injuries*. Yet SCMIRF argues that coverage should be determined by reference to the definitions of injuries in the policy, rather than by first looking to the "Coverage Agreement" that plainly describes what conduct is covered under the policy. In doing so, SCMIRF implicitly rewrites the "per occurrence" policy into an aggregate limits policy. This is because the definitions of injuries it points to are narrower than the conduct indemnified under the policy. Consequently, under SCMIRF's reading of its own policy, there is never coverage for constitutional torts when accompanied by wholly separate claims for bodily injury, regardless of the nature of the constitutional and bodily injuries. Not only does this approach run afoul of the plain language of

the coverage policy, but it creates a tremendous public policy problem. If South Carolina municipalities purchase a policy from SCMIRF under the false belief that their law enforcement officers are protected from personal liability for constitutional claims, those police officers are in for a rude awakening when coverage is denied. The law on insurance coverage developed to protect insureds from the bad faith of those who deny coverage in this manner.

Respondent's companion argument regarding its purported status as a political subdivision of the State of South Carolina is designed to protect it from such bad faith suits brought on behalf of South Carolina taxpayers. When presented with facts demonstrating that it was created by and is administered and controlled by a private corporation, SCMIRF's chief complaint is procedural—that uncontested facts undermining its reach for immunity should be ignored entirely by this Court because, in SCMIRF's view, these facts are purportedly "new legal issues." Contrary to SCMIRF's protest, the question of its entitlement to Tort Claims Act immunity and the related question of its status as a political subdivision of the state have been central issues in this case since its inception. SCMIRF's attempt to recast Petitioner's emphasis on facts from the record on appeal as creating "new issues" should not work to save it from improperly claiming Tort Claims Act immunity.

ARGUMENT

I. SCMIRF's Proposed Three-Part Analysis Eliminates Coverage Plainly Provided Under the Coverage Contract

Respondent SCMIRF erroneously asserts that analysis of whether Petitioner Reeves's claims are covered under its Coverage Contract must begin with whether they fall within the definition of "Wrongful Act," rather than first considering whether the conduct at issue is covered in the provision of the policy entitled "Coverage Agreement." (*See* Resp. Br. 12, 23-26). This approach is flawed because it ignores the plain language of Section IV of the Coverage Contract

that expressly provides coverage for conduct engaged in by law enforcement personnel that is broader than that defined as a "Wrongful Act." In urging this approach, SCMIRF implicitly rewrites its "per occurrence" policy into an aggregate limits policy by skipping past the question of how many separate "occurrences" arise from the various claims and, instead, focusing the coverage analysis solely on the *injuries* suffered by the claimants. SCMIRF then misapplies a "duplication of coverage" provision to shoehorn disparate injuries flowing from disparate wrongful acts by different insureds into a single claim subject to a single limit of $1,000,000. The plain language of the Coverage Contract simply does not support SCMIRF's reading of it.

The parties agree that SCMIRF sold the Town of Cottageville a "per occurrence" policy. Yet, one of the errors in SCMIRF's approach is in failing to consider how many separate "occurrences" there are among Reeves's claims in the *Cottageville* and *Craddock* lawsuits. Indeed, in discussing the term "Occurrence" in its response, SCMIRF cites only a partial definition from the Coverage Contract while ignoring that it has multiple meanings depending on the context in which it is used. (Resp. Br. at 9-10.) As defined in the General Provisions section of the policy, "when used to describe coverage limits on a per 'Occurrence' basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word 'Occurrence' means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim, when an Occurrence . . . , a Wrongful Act, a Loss, or an Offense causing Personal Injury or Advertising Injury . . ." (Coverage Contract § I(B)(4), R. 108 (emphasis added)).

Thus, in determining whether there are multiple covered occurrences among the claims brought by Petitioner Reeves, the analysis must begin with whether the conduct is covered under the relevant Coverage Section of the policy—not whether the conduct meets the definition of

"Wrongful Act." This is a critical point, as Section IV's Coverage Section provides coverage for conduct broader than that simply meeting the definition of a "Wrongful Act." (*See* Pet. Br. at 15-16). In particular, Section IV's Coverage Agreement expressly provides coverage for conduct falling outside the South Carolina Tort Claims Act, such as federal civil rights claims brought under 42 U.S.C. § 1983, whereas the definition of Wrongful Act by its terms excludes federal civil rights claims. (Pet. Br. at 15-16). *Compare* Coverage Contract § IV(G)(27), R.169-70 (defining "Wrongful Act" to conduct "committed by a Member or a Covered Person(s) while acting within both the course and the scope of his or her official duties, as provided under the 'South Carolina Tort Claims Act.'"), *with* Coverage Contract § IV(A)(1), R. 156 (providing broader coverage by narrowing the "South Carolina Tort Claims Act" limitation to only those claims "where a South Carolina state law is involved."). Thus, when the coverage analysis is properly undertaken in accordance with the plain language of the policy, it becomes clear that there are multiple occurrences arising from Petitioner Reeves's claims. These include violations of Bert Reeves's right to be free from unlawful seizure, his right to be free from excessive force, his Estate's negligence and survival claims arising from Price's infliction of a gunshot wound, and his children's wrongful death claims for *their* injuries. (Pet. Br. at 29). Because these claims represent multiple occurrences under the policy, and because each occurrence is subject to a $1,000,000 coverage limit, there is more than $1,000,000 in coverage available for Reeves' claims.[1]

[1] Indeed, the issue in this declaratory judgment action is to determine whether there is more than $1,000,000 in coverage available under the policy for Reeves's claims, not to tally up the total amount of coverage available for all of the claims. SCMIRF admits there is already $1,000,000 in coverage, so the question before the Court is whether two or more claims among those brought in the *Cottageville* and *Craddock* lawsuits amount to more than a single occurrence under the policy. As established by the examples provided on page 29 of Petitioner's opening brief, this can be calculated any number of ways.

II. Reeves's Claims Were Not Exclusively the "Direct and Immediate" Result of His Shooting Death

SCMIRF's opposition merely echoes the Court of Appeals' erroneous conclusion that each of the injuries in this case were the "direct and immediate" consequence of Officer Price's shooting of Bert Reeves. This is incorrect for several reasons. First, this conclusion appears to arise from Respondent's misreading of the definition of "Bodily Injury" contained in Section IV of the policy, which provides that "Bodily Injury does not include such injuries if they result directly and immediately from the infliction of Personal Injury" and that "any such resulting injuries shall be deemed to be part of the Personal Injury." (*See* Coverage Contract § IV(G)(4), R. 166 (emphasis added)). This definition makes clear that a single act can result in coverage where there is both Bodily Injury and Personal Injury, but it deems Bodily Injury that *results directly and immediately* from the infliction of Personal Injury as a part of the Personal Injury. But the converse is not true: Personal Injury that results directly and immediately *from the infliction of Bodily Injury* is not deemed to be a part of the Bodily Injury. Those remain separate claims subject to separate limits.

Respondent's assertion to the contrary is based on an erroneous reading of the "No Duplication of Coverage or Coverage Limits" provision contained in Section I of the policy.[2] It provides that if an act or omission may be covered under more than one Coverage Section of the policy (e.g., covered under both Section II's Property Coverage and Section IV's Law Enforcement Liability), the claim will be subject to a single coverage limit. (*See* Coverage Contract § I(C)(9), R. 112). An example would be a claim for property damage arising from a car

[2] As discussed in Petitioner's Opening Brief, Section IV of the policy contains its own Limit of Liability provision that preempts the "No Duplication of Coverage or Coverage Limits" language in Section I of the policy. Nevertheless, even applying the Section I language to Section IV, coverage is not limited in the manner Respondent suggests. (*See* Pet. Br. at 30).

accident caused by a police officer's negligent driving. Under the "No Duplication of Coverage or Coverage Limits" provision, the injured party could not recover damages subject to the combined limits of Section II and Section IV, even if the claim meets the coverage criteria of both Coverage Sections. Respondent takes this basic premise, however, and incorrectly argues that, when combined with the "deeming" language contained in the definition of Bodily Injury, "the basis for a 'Personal Injury' cannot also be the basis for a 'Bodily Injury,' *or vice versa*." (Resp. Br. at 16 (emphasis added)). There is simply no principle of logic that permits any fair reading of these two provisions to prohibit "Bodily Injury" from serving as the basis for "Personal Injury." Rather, the "deeming" provision in Section IV works in one direction only—it only addresses bodily injury flowing directly and immediately from the infliction of personal injury, not the other way around—and nothing in the "No Duplication of Coverage or Coverage Limits" section states otherwise.[3] Indeed, as terms of exclusion, the "no duplication of coverage" language in Section I and the "deeming" language in the definition of "Bodily Injury" must be interpreted narrowly. *See M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010) ("Policies are construed in favor of coverage, and exclusions in an insurance policy are construed against the insured."); *Forner v. Butler*, 319 S.C. 275, 277, 460 S.E.2d 425, 427 (Ct. App. 1995) ("[E]xclusions in an insurance policy are to be construed most strongly against the insurer.").

Thus, it cannot be said that "[t]he resulting injury in this case is the same for both the negligence claims and the Section 1983 claims—that the conduct of Cottageville, Price and

[3] As an example, the "No Duplication of Coverage or Coverage Limits" provision expressly states that "Personal Injury will not be deemed to constitute separate Advertising Injury for coverage purposes, or vice-versa," (*see* Coverage Contract § I(C)(9), R. 112), but there is no corollary provision regarding the deeming of Personal Injury with Bodily Injury. Clearly the drafters of the policy (i.e., SCMIRF), could have included similar language had they intended to limit the policy in the manner Respondent now suggests. They did not, however, and—importantly—the Town of Cottageville purchased this policy from SCMIRF without such restriction.

Craddock 'proximately caused the death of Bert Reeves." (Resp. Br. at 16). As explained at length in Petitioner's opening brief, Reeves suffered a range of injuries, some of which occurred and were completed prior to his death. For example, in the *Cottageville* case, a federal jury found that Price violated Reeves's Fourth Amendment right to be free from unlawful seizure—a claim based on Price having cornered Reeves on the street and blocked him in during the confrontation prior to the shooting. (*See* Pet. Br. at 32; *see also* Cottageville Compl. ¶¶ 15, 42 ("Officer Randall Price blocked Decedent's travel down Nut Hatch Lane and presented his service revolver to Decedent Bert Reeves, placing Decedent in reasonable fear of immediate and grave bodily harm."), R. 24-25, 29-30). Nothing about this unlawful seizure claim directly or immediately resulted in bodily injury to Reeves; rather, it was Price's subsequent unlawful application of excessive force that caused Reeves's bodily injuries. Put simply, Price's boxing in of Reeves on the road prior to the shooting was a separate and independent constitutional violation that did not cause any bodily injury. This fact alone demonstrates that there is more than one occurrence under the policy—claims related to Reeves's death and the constitutional claim against Price for his unlawful seizure of Reeves *prior* to the shooting.

Likewise, as described more fully in Petitioner's opening brief, the other constitutional injuries Reeves suffered did not "directly and immediately" result in bodily injury, as Respondent now argues. For example, Count III in the *Craddock* complaint presents a claim under § 1983 for a violation of Reeves's Fourteenth Amendment rights arising from Craddock's unlawful withholding of medical care to Reeves *after the shooting occurred*. Thus, there is simply no factual basis to argue that any of Reeve's bodily injuries flowed "directly and immediately" from Craddock's failure to render aid. In fact, no subsequent bodily injury was inflicted by Craddock or anyone else after Price shot Reeves. The pain and suffering Reeves experienced as he lay dying

was a continuation of the bodily injury caused by Price; Craddock's failure to render aid despite his legal obligation to do so did not inflict further bodily injury, as that term is defined in the policy. Rather, this claim is to vindicate Craddock's violation of Bert Reeves's Fourteenth Amendment rights. To be clear, although Reeves was not constitutionally entitled to have his life saved by Craddock—the Chief of Police and a licensed EMT—Craddock was obligated under the Due Process Clause of the Fourteenth Amendment to provide reasonable medical care to Reeves as he lay on the ground for twenty minutes.[4] *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) ("The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons . . . who have been injured while being apprehended by the police."). Because the *Craddock* lawsuit alleges that Craddock failed to provide this constitutionally required medical care, Craddock violated Bert Reeves's Fourteenth Amendment rights—a claim that is wholly-separate from all other claims in this case.[5]

The flaw in Respondent's argument is that it fails to consider with any degree of precision the nature of the underlying claims and simply concludes that because Bert Reeves suffered the

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[4] This includes Craddock's failure to treat the non-fatal injuries Bert Reeves suffered prior to being shot, such as the blunt head trauma, scalp abrasion, and scalp hemorrhage. (*See* Pet. Br. at 23). Respondent fails to address these injuries—none of which caused his death—or otherwise explain why the constitutional claim associated with them (i.e., Craddock's deliberate indifference to them) is not a separate occurrence under the Coverage Contract.

[5] Respondent's attempt to recast the three federal claims brought against John Craddock under 42 U.S.C. § 1983 in the *Craddock* lawsuit as state law claims for survival and wrongful death for purposes of declaring them as duplicative of the damages recovered in the *Cottageville* case has no support in the record. (*See* Br. of Resp. at 21 (referring to a non-existent "wrongful death claim in the Craddock suit"). Indeed, a quick glance at the *Craddock* complaint dispels this argument. Each of the claims raised against John Craddock in that lawsuit are based on violations of Bert Reeves's Fourth and/or Fourteenth Amendment rights. (*See* Craddock Compl. ¶¶ 3, 31, 40, 46 (R. 49-58)). There are no state law claims alleged in that complaint, nor would the federal court have subject matter jurisdiction to hear purely state law claims brought by one South Carolina citizen against another. Thus, Respondent's argument lacks any support in the record of this case or under basic principles of federal law.

greatest physical harm that can be inflicted on someone—death—his constitutional injuries must all be deemed to be a part of his death. But, as discussed above, this conclusion finds no support in the law underlying federal civil rights litigation, which is designed to vindicate "the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983; *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 685 (1978) ("Section 1983 claims are intended to give a broad remedy for violations of federally protected civil rights."). For this reason, proof of compensatory injury is not a required element of a federal civil rights claim. *See Carey v. Piphus*, 435 U.S. 247, 266 (1978) ("[E]ven if they did not suffer any other actual injury, the fact remains that they were deprived of their right to procedural due process."). Here, the injury arising from Price's unlawful seizure is the deprivation of Bert Reeves's right to be free from it. The bodily harm that Bert Reeves's *later* suffered was a consequence of the excessive force that Price subsequently applied to him by firing his weapon. Were these acts deemed to be the same, there would have been no legal basis for the *Cottageville* jury to have found Price liable for separate constitutional violations for excessive force and unlawful seizure.

Indeed, had Reeves's Estate brought only a single § 1983 claim for Price's unlawful seizure of him and a wrongful death claim on behalf of Reeves's two children for their pain and loss of their father, there would be no question that there are two separate occurrences under the policy, each subject to separate $1,000,000 limits. This is because none of the children's wrongful death injuries could be said to have "result[ed] directly and immediately from the infliction" of the unlawful seizure. But SCMIRF's position appears to be that because Reeves brought claims in addition to the unlawful seizure and wrongful death claims, they all must merge into a single occurrence. There is simply no principled reason to gloss over the specifics of the various claims to support this result.

As discussed at length in Petitioner's opening brief, Bert Reeves's two young children suffered their own wrongful death injuries that South Carolina law has long-recognized are entirely different in character than the injuries suffered by their father. (Pet. Br. at 24-25). The wrongful death claim in the *Cottageville* lawsuit was brought on behalf of these children to compensate them for their own injuries: their loss of their father's companionship, their loss of their father's financial support, and their pain and suffering. South Carolina law makes clear that these are distinct claims resulting in wholly separate damages. Yet, adopting SCMIRF's position that there is only a single occurrence in this case would require the Court to abrogate over 100 years of jurisprudence regarding the distinction between wrongful death claims and survival claims. *See Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 27, 81 S.E. 189, 189 (1914) (explaining the distinction between wrongful death and survival actions). Petitioner addressed this concern at length in her opening brief, yet Respondent failed to devote any meaningful discussion to it in its opposition. Likely for good reason—there is simply no legal justification to assert that wrongful death claims are one in the same as survival claims. The circuit court recognized as much when deciding this issue in Petitioner's favor. (*See* Order dated June 29, 2016 at 6, R. 6).

III. SCMIRF's Status as a "Political Subdivision" of the State is Properly Before the Court

Respondent misunderstands the Court's task in resolving the second question presented, which ultimately is to resolve—correctly and on the merits—whether SCMIRF is entitled to Tort Claims Act immunity in a case alleging bad faith. Resolving this question turns, in part, on whether SCMIRF is a bona fide political subdivision of the state. Both parties have raised arguments for and against the political subdivision issue at all stages of this case, and the Circuit Court and the Court of Appeals have each considered the question. Thus, there is no "new" legal issue presented in Petitioner's brief, despite Respondent's attempt to characterize "facts" drawn from the record

and highlighted in this appeal as "new legal issues." Put simply, the issue is and always has been SCMIRF's entitlement to Tort Claims Act immunity. A subsidiary question fairly comprised therein is the issue of whether SCMIRF is a political subdivision of the state. The rules of appellate procedure recognize as much. *See* Rule 242(d)(2), SCACR ("A question presented will be deemed to include every subsidiary question fairly comprised therein.").[6] Rather, the political subdivision issue is inherently fact bound, and Petitioner has endeavored to present facts from the record at all stages of this declaratory judgment action relevant to her position.

While it is true that the Municipal Association's dominance over SCMIRF has been brought front and center for the first time in this appeal—these facts should come as no surprise to Respondent. First, SCMIRF cannot credibly feign surprise or prejudice when faced with information about its own creation, control, and administration by the privately-operated Municipal Association. That it has thus far failed to acknowledge these facts and the material questions they raise in prior arguments with the Court does not render them outside the realm of consideration. Second, the facts relevant to the Municipal Association's dominance and control over SCMIRF are drawn from the record on appeal. Thus, there are no new legal "questions" or "issues" presented that SCMIRF did not have an opportunity to address in the lower courts. Rather,

[6] The cases cited by Respondent regarding the preservation of issues on appeal are not factually similar and do not address the core issue of whether the mere citation of facts in the record in support of an already-preserved legal issue is prohibited on appeal. *See, e.g., Elam v. S.C. DOT*, 361 S.C. 9, 23, 602 S.E.2d 772, 77-790 (2004) (addressing narrow question of issue preservation in the context of a post-trial motion brought under Rule 59(e), SCRCP). Indeed, if Respondent's position that facts relevant to an already-preserved legal issue cannot be mentioned for the first time during subsequent stages of an appeal to clarify issues or highlight an error in a lower court's ruling, then parties would be hamstrung in refining arguments with precision as a case progresses from through final appellate review. Adopting such a position would not promote judicial economy; rather, it would promote process over merit and, where a decision is rendered without consideration of material, dispositive facts, subsequent cases presenting the same questions will inevitably follow.

Petitioner focused in on particular *facts* so that this Court may have a better understanding of SCMIRF before affirming or reversing the determination that it is entitled to Tort Claims Act immunity.

In response, SCMIRF devotes six pages of its briefing to characterizing "facts" as "legal issues" and arguing why the Court should ignore this salient information. Yet, nowhere in its briefing does SCMIRF *dispute* the veracity of this information. Indeed, none of the facts below have been contested by Respondent:

- That the Municipal Association is a private corporation operated and controlled by private individuals who serve no role in South Carolina government;
- That the Municipal Association created SCMIRF in 1990;
- That in creating SCMIRF, the Municipal Association retained the power to appoint SCMIRF's initial board of directors;
- That SCMIRF's Bylaws provide that the Municipals Association's Director of Risk Management Services serves as the Secretary and Treasurer of SCMIRF's Board of Trustees;
- That the document SCMIRF claims establishes it as a "joint interlocal agency," in fact, provides that the Municipal Association serves as "Administrator of the Fund" and "shall provide overall supervision of the Fund";
- That claims adjustment for liability under $300,000 rests with the Municipal Association, while claims adjustment for liability over $300,000 rests with SCMIRF's private insurance carrier;
- That the Municipal Association retains the unilateral right to reduce the size of SCMIRF's Board of Trustees and to shorten the terms of any of its trustees at will; and
- That the Municipal Association claims SCMIRF—a purported "political subdivision of the state"—as a related entity in its federal tax filings.[7]

[7] Petitioner acknowledges that this fact is not in the record on appeal and only became know to Petitioner after certiorari was granted in this appeal. Nevertheless, it is a matter of public record and, if SCMIRF truly is a political subdivision of the state accountable to the citizens of South

(Pet. Br. at 37-41). Rather, Respondent asks the Court to ignore these facts in deciding whether it is a political subdivision of the State of South Carolina, and thus, whether it should benefit from Tort Claims Act immunity.

Instead, Respondent focuses on its Board of Trustees' purported independence, but as demonstrated in its briefing, its Board's role (like many boards of trustees) is limited to policy making and similar functions. (Resp. Br. at 36). As Respondent concedes, SCMIRF's administration is handled by the Municipal Association's personnel. While SCMIRF contends that the Municipal Association's administration of SCMIRF "is performed 'on behalf of the Board of Trustees' and 'as the Board of Trustees may direct," it fails to acknowledge that *the Municipal Association controls the size and tenure of the Board of Trustees*. Thus, it could hardly be said that SCMIRF's Board is independent from the Municipal Association when the Municipal Association retains the exclusive authority to dismiss trustees at will upon 30-days' notice. (Pet. Br. at 40-41). In this respect, the Municipal Association is no different than a majority shareholder.

Further, SCMIRF fails to address any of the significant policy questions that arise from the Court of Appeal's holding in light of facts demonstrating the Municipal Association's dominance over SCMIRF: (1) Under what legal authority can private corporations create political subdivisions; (2) how can a political subdivision of the State of South Carolina be created and controlled by a private corporation that lacks political oversight or public accountability; (3) how can a private corporation claim a political subdivision as a related entity for tax purposes? These and other serious questions were raised in Petitioner's opening brief; Respondent's silence on each speaks volumes.

Carolina, it cannot simultaneously demand that the Court ignore matters regarding its governance by a private entity that are in the public domain.

At bottom, SCMIRF's arguments rest on the claim that "[i]f one municipality is covered by the Tort Claims Act, a group of political subdivisions sharing a joint self-insurance pool run by an agency—here SCMIRF—must also be covered by the Tort Claims Act." (Resp. Br. at 42). While this may appear to be an attractive argument in the abstract, when the fact of the Municipal Association's creation and control over SCMIRF comes into view, the argument collapses. Private corporations that create, control, and retain the power to disband "political subdivisions" at will have no right under South Carolina law to Tort Claims Act immunity.

CONCLUSION

For the foregoing reasons, and the reasons stated in Petitioner's opening brief, the Court should reverse the judgment of Court of Appeals on the Coverage Issue, and vacate the judgment below as to the Political Subdivision Issue and hold that a tort claim for bad faith brought against SCMIRF would not be subject to the Tort Claims Act.

July 31, 2020

Respectfully submitted,

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