THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-40-00626

The Catawba Indian Nation a/k/a
The Catawba Indian Nation of South Carolina a/k/a
The Catawba Indian Tribe of South Carolina, ... Appellant,

v.

State of South Carolina and Mark Keel, in
his official capacity as Chief of the South
Carolina Law Enforcement Division, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

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INTRODUCTION

It is a central purpose of the Settlement Agreement between the Catawba Nation and the State of South Carolina "to promote tribal self-determination and economic self-sufficiency." 25 U.S.C. § 941(a)(1); *see id.* § 941(a)(8) (recognizing that the Settlement Agreement advances this purpose). Section 16.8 of the Settlement Agreement gives the Catawba Nation a unique right to offer video gambling on its Reservation provided video gambling is "authorized by State law." This is a simple phrase, and its meaning is unambiguous: *any* state-law authorization of video gambling triggers the Catawba Nation's right under the Settlement Agreement to offer the same form of video gambling on its Reservation.

The Gambling Cruise Act is plainly an authorization of video gambling. Following Congress's 1992 amendment of the Johnson Act, the General Assembly had the choice of whether to permit or prohibit gambling "cruises to nowhere," and it chose to permit—*i.e.*, to *authorize*—gambling cruises. It was well within the General Assembly's power to prohibit gambling cruises, but it chose instead to allow them. It thus provided coastal counties and municipalities with the ability to earn revenue through surcharges on tickets and profits. The Settlement Agreement gives the Catawba Nation the equivalent right to support itself and its people with revenue from video gambling. The circuit court erred in ruling otherwise, and it should be reversed.

ARGUMENT

I. This action is not barred by res judicata.

The State argues that this action is barred because the legal theory relied on by the Catawba Nation could have been raised in *Catawba Indian Tribe v. South Carolina*, 372 S.C. 519, 642 S.E.2d 751 (2007). State Br. at 15. The State relies on the general rule that res judicata bars relitigation of matters decided in a previous action as well as any claims that *could have* been raised in the prior action. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 104 (1999). But that general rule is subject to an important exception: when the first action seeks declaratory relief, res judicata "is only a bar to matters which were actually litigated, not those that might have been litigated." *Robison v. Asbill*, 328 S.C. 450, 453, 492 S.E.2d 400, 401 (Ct. App. 1997) (internal quotation marks omitted). As explained in the *Restatement (Second) of Judgments* § 33, a plaintiff seeking declaratory relief "is seen as merely requesting a judicial declaration as to the existence and nature of a relation between himself and the defendant. The effect of such a declaration ... is not to merge a claim in the judgment or to bar it." Indeed, the "vast majority of states" agree with South Carolina that a declaratory judgment is not preclusive as to matters not raised. *Andrew Robinson Int'l, Inc. v. Hartford Fire Ins. Co.*, 547 F.3d 48, 56 (1st Cir. 2008) (citing cases from numerous jurisdictions, including South Carolina).

Citing the Circuit Court's decision, the State argues that *Robison* is inapposite because "In *Robison*, unlike here, Plaintiff had *prevailed* in the first suit, and then later sought coercive relief in further support of its declaratory relief." State Br. at 21.[1] This analysis is incorrect. *See Restatement (Second) of Judgments* § 33 ("[R]egardless of outcome, the plaintiff or defendant [in a declaratory judgment action] may pursue further declaratory or coercive relief in a subsequent action."). The outcome in *Robison* did not turn on the plaintiff's success in the prior declaratory judgment action. The key to the *Robison* decision—and the reason why a declaratory judgment action "is not res judicata as to matters not at issue and not passed upon"—is that a declaratory judgment action does not involve coercive relief, such as money damages or a writ of mandamus. *See Robison*, 328 S.C. at 453, 492 S.E.2d at 401; *cf. Plum Creek Dev.*, 334 S.C. at 39, 512 S.E.2d at 111 (holding that

[1] The State also relies on *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997), asserting that in *Pye*, the Court of Appeals found a declaratory judgment action to be res judicata as to a subsequent action for damages. This is not an accurate description of the decision in *Pye*. In that case, a previous declaratory judgment action decided a particular *factual question*, and the Court of Appeals held that this determination was conclusive in the subsequent action. *See id.* at 435, 480 S.E.2d at 459 (concluding that prior action determined "the issue of liability"). Thus, although *Pye* phrased its analysis in terms of res judicata, the decision is more accurately described as a collateral estoppel case. *See In re Crews*, 389 S.C. 322, 339-40, 698 S.E.2d 785, 794 (2010) (explaining that collateral estoppel, not res judicata, applies when a party attempts to relitigate an issue—as opposed to a cause of action—previously decided in another action). *Pye* is thus not applicable to this case. Even if it were, *Catawba Indian Tribe* involved only questions of law—no factfinder made any determination of fact in that case. This case, likewise, presents only questions of law.

res judicata barred action for damages following petition for mandamus because mandamus, unlike a declaratory judgment, is a coercive remedy).

The State cites several inapplicable cases in an attempt to undermine the elementary principle that a declaratory judgment action is not res judicata as to matters not raised. None of these cases is persuasive.

In *Greenwood Drug Co. v. Bromonia Co.*, 81 S.C. 516, 62 S.E. 840 (1908), the Greenwood Drug Company agreed to purchase medicine and related advertising from the Bromonia Company. After Greenwood Drug failed to pay, Bromonia sued for breach of contract and obtained a judgment, which Greenwood Drug paid. Subsequently, Greenwood Drug sued Bromonia for fraudulent misrepresentation, alleging that Bromonia had fraudulently induced Greenwood Drug to enter the contract. As the lower court noted, "'The complaint in the second case is practically the same as the answer in the first case, except that it alleges a scienter on the part of the Bromonia Company when it made the alleged false statements.'" *Id.* at 841 (quoting trial court order). Accordingly, the lower court found the second lawsuit barred by res judicata. The South Carolina Supreme Court affirmed, noting that the validity of the sales contract was necessarily implicit in the earlier judgment.

The differences between *Greenwood Drug* and this case are obvious. First, neither action in *Greenwood Drug* was a declaratory judgment action; rather, both suits were actions at law for money damages. Therefore, the general rule of res judicata applied, rather than the special rule for declaratory judgment actions.

Second, the decision in *Catawba Indian Tribe* did not decide, explicitly or implicitly, the argument raised in this action. In *Catawba Indian Tribe*, the claim was that the Catawba Nation was permitted to operate video gambling devices on its Reservation, regardless of the State's ban on such gambling enacted in 1999. In this litigation, the claim is that the 2005 Gambling Cruise Act constitutes a state-law authorization of video gambling devices within the meaning the Settlement Agreement. In short, the claim in *Catawba Indian Tribe* was based on the *nonapplicability* of State law; the claim in this action is based on the *applicability* of State law, *as established by the decision in Catawba Indian Tribe.*

Next, the State cites *Yelsen Land Co. v. State*, 397 S.C. 15, 723 S.E.2d 592 (2012). This case is likewise unavailing. *Yelsen Land Company* concerned title to tidelands adjacent to Morris Island. In the first action, the jury found that the State owned the tidelands because the language of Yelsen Land Company's deed did not contain language specifically conferring title. Years later, the company brought a second action, alleging that a newly discovered document—which had existed, and was in the chain of title, prior to the first action—conferred title to the tidelands. *See id.* at 20-21, 723 S.E.2d at 595. The South Carolina Supreme Court held that the second suit was barred because it presented the same issue as the first: ownership of the tidelands. However, this case on appeal is different because, as the State admits, the Catawba Nation is raising a different legal theory

than the one in the prior action. *See* State Br. at 17 (acknowledging that the legal theory in this action is new).

The State gets a little closer to the mark when it cites *Ortega v. First Republic Bank*, 792 S.W.2d 452 (Tex. 1990), in that *Ortega* (unlike *Greenwood Drug* and *Yelsen Land Company*) involved successive declaratory judgment actions. Nevertheless, *Ortega* does not support the State's argument. *Ortega* involved a testamentary trust. In the first declaratory judgment action, the trustee sought "to resolve the question of whether adopted children were beneficiaries of the trust." *Id.* at 453. The trustee also raised the question of whether adopted children or their descendants were contingent beneficiaries of the trust (*i.e.*, they would take if all of the natural children and their descendants died). *See id.* at 455. The court in the first action held that adopted children were not beneficiaries of the trust but did not explicitly state that they were also not contingent beneficiaries. *See id.* at 453. More than 20 years later, the adopted children brought a new declaratory judgment action arguing that they were contingent beneficiaries. The court concluded that the prior action was res judicata because the question of whether adopted children could be contingent beneficiaries was actually raised in, and decided by, the first declaratory judgment action. *See id.* at 456 ("[T]he trustee ... sought to determine in a single lawsuit all possible rights of the adopted children under the trust. The judgment in the 1963 action therefore provided that the adopted children are not contingent remaindermen of the ... trust."). Here, as the

State concedes, the legal theory raised by the Catawba Nation was not raised in the previous declaratory judgment action, and certainly it was not decided there. Accordingly, *Ortega* is of no help to the State.

The scenario presented in *South Carolina Public Interest Foundation v. Greenville County*, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013), also cited by the State, is much like the situation in *Ortega*. *SCPIF* was the second of two actions challenging the Greenville County Council's practice of creating a special reserve fund for local infrastructure projects. In the first action, the complaint alleged that creation of the reserve account for fiscal years 1994-1997 violated § 7-81 of the Greenville County Code, which requires appropriations to be made by the Council as a body, *i.e.*, that the Council had improperly delegated its authority. *See id.* at 504. The court in that action concluded that the County Council had not violated § 7-81. The second action raised the same claim—that establishment of the reserve fund was an illegal delegation of power—as to fiscal years 2006 and 2007. The Court of Appeals concluded that both actions involved the same issue, namely, the legality of the Council's delegation of power. Again, this case on appeal is different because the legal theory in this case differs from the legal theory raised in *Catawba Indian Tribe*. Therefore, *SCPIF* is not controlling.

II. The Gambling Cruise Act "authorized by State law" the operation of video gambling, entitling the Catawba Nation to exercise its rights under the Settlement Agreement.

A. Any ambiguity in the Settlement Agreement must be construed in favor of the Catawba Nation.

The Settlement Agreement entitles the Catawba Nation to "permit on its Reservation video poker or similar electronic play devices to the same extent that the devices are *authorized by State law*." Settlement Agreement § 16.8; S.C. Code Ann. § 27-16-110(G) (emphasis added). In *Catawba Indian Tribe*, the South Carolina Supreme Court held that this language unambiguously provides that authorization must be determined according to existing State law. *See Catawba Indian Tribe*, 372 S.C. at 526, 642 S.E.2d at 754. Under settled principles of law, any remaining ambiguity—*e.g.*, as to the meaning of "authorized" or "extent"—must be resolved in favor of the Catawba Nation. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) ("[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit."); *see also Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 500-01 (1979) (holding that state laws enacted pursuant to federal authority readjusting jurisdiction over Indian tribes are reviewed under the same standards as federal laws); *State v. Major*, 725 P.2d 115, 121 (Idaho 1986) (applying preference in favor of Indian tribes to state statute).[2]

[2] The State in its brief does not dispute that any ambiguities in the Settlement Agreement must be construed in favor of the Catawba Nation. Though the State

B. The Gambling Cruise Act is a State law authorizing video gambling.

Until 1992, the Johnson Act, 15 U.S.C. § 1175, made it illegal to possess or use any gambling device on an American-flag vessel within the special maritime jurisdiction of the United States. *See Casino Ventures v. Stewart*, 183 F.3d 307, 309 (4th Cir. 1999). This prohibition was not applied to foreign-flag vessels, thereby placing American cruise ships at a competitive disadvantage. *See id.* Congress remedied this problem by amending the Johnson Act to allow use of gambling devices outside the territorial waters of a state "unless the ship is on a cruise to nowhere and the state in which that cruise begins and ends has enacted a statute" prohibiting such cruises. *Id.* (internal quotation marks omitted). Subsequently, the South Carolina Supreme Court held that the State's existing laws prohibiting video gambling machines, including S.C. Code Ann. § 12-21-2710, did not prohibit the possession or use of video gambling machines on gambling cruises. *See Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 384-86, 556 S.E.2d 357, 360-61 (2001).

At this point, the South Carolina General Assembly was faced with a choice: it could enact legislation opting South Carolina out of the Johnson Act, thereby prohibiting any ship carrying electronic gaming machines from entering State waters. Such an enactment would have been fully consistent with, and

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argued before the Circuit Court that *Catawba Indian Tribe* rejected the rule of liberal construction in favor of Indian tribes, it has abandoned that argument on appeal. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("Of course, a respondent may abandon an additional sustaining ground ... by failing to raise it in the appellate brief.").

would further the policy behind, § 12-21-2710. *See Casino Ventures*, 183 F.3d at 311-12 (holding that by giving states the option to prohibit or allow gambling cruises, the Johnson Act "recognizes the vital state regulatory interests in gambling controls"). Prohibiting gambling cruises, however, would have deprived South Carolina coastal counties and municipalities of a significant source of revenue.[3]

The Gambling Cruise Act, S.C. Code Ann. § 3-11-100 *et seq.* (Supp. 2012), represents the General Assembly's decision to authorize the continued operation of gambling cruises out of South Carolina ports as a matter of State law, while allowing local governments to prohibit such cruises by enacting their own ordinances. Through the Gambling Cruise Act, the State authorizes and extensively regulates the operation of various gambling devices, including but not limited to "slot machines" and "video poker or blackjack machines." *Id.* § 3-11-100(2) (defining "gambling device"). The Act delineates what vessels are (and are not) covered, *see id.* § 3-11-100(1); limits the authority of local governments to punish violations of their ordinances, *see id.* § 3-11-210; and allows local governments to impose surcharges on tickets and on gross revenues, *see id.* § 3-11-400(C)(2). Additionally, the Act requires the operator of a gambling vessel to make a monthly report to the Department of Revenue of the win-loss percentage of each gambling machine on the vessel and provides for a $100-per-day civil

[3] In 2010, when North Charleston decided to allow casino boats to use its docks, it was estimated that doing so would add $700,000 to $1 million annually to the city's revenues.
See http://www.carolinalive.com/news/story.aspx?list=195106&id=533151

penalty, payable to the State, for non-compliance. *See id.* § 3-11-400(C)(3)(b); *cf. Ventures S.C., LLC v. S.C. Dep't of Revenue*, 378 S.C. 5, 7, 661 S.E.2d 339, 340 (2008) (Department of Revenue threatened gambling cruise operator with fines of "up to $41,500 per day for each day the report was late").

The Settlement Agreement entitles the Catawba Nation to offer "video poker and similar electronic play devices *to the same extent that the devices are authorized by State law.*" Settlement Agreement § 16.8 (emphasis added). By choosing to regulate—rather than prohibit—the use of gambling machines on cruises to nowhere, the State has "authorized" such devices "by State law," as contemplated by the Settlement Agreement. *Cf. California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 211 (1987) (recognizing that regulating gambling authorizes gambling to take place); *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1031 (2d Cir. 1990) (holding that Connecticut's authorization of charity "Las Vegas nights," although limited and strictly regulated, nevertheless entitled the plaintiff Indian tribe to negotiate a compact under the Indian Gaming Regulatory Act for the operation of the same games on its reservation).

According to the terms of the Settlement Agreement, the Catawba Nation has the same right as coastal counties and municipalities to support itself with revenue from video gambling. *Accord White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44 (1980) (recognizing "federal policy of encouraging tribal independence"). It is fundamentally unfair, and contrary to the terms of the Settlement

Agreement, to allow Horry County and the City of North Charleston to earn revenue through video gambling while prohibiting the Catawba Nation from doing the same thing. It should be noted that the Catawba Nation's gaming rights under the Settlement Agreement are in lieu of the rights the Catawba Nation would otherwise have under the Indian Gaming Regulatory Act, the central purpose of which is to provide "a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments." 25 U.S.C. § 2702(1). The circuit court's ruling thereby deprives the Catawba Nation of the benefit of its bargain.

C. The Settlement Agreement does not include a geographic component.

The State argues that the Catawba Nation's rights under the Settlement Agreement can only be triggered by an authorization of video gambling within state territory, and that the Gambling Cruise Act—which permits video gambling only outside state territorial waters—therefore is not a state-law authorization as contemplated by the Settlement Agreement. In support of this argument, the State emphasizes the statement of our Supreme Court in *Catawba Indian Tribe* that § 12-21-2710 prohibits gaming devices "within this State." State Br. at 33. This language, according to the State, makes clear that the Settlement Agreement contains a geographic component, *i.e.*, that only an authorization of video gambling within the physical boundaries of South Carolina will trigger the Catawba Nation's gaming rights under the Settlement Agreement. The State misplaces its

reliance on a single phrase, taken out of context.[4] In *Catawba Indian Tribe*, the South Carolina Supreme Court was not presented with, and it did not address or decide, any question regarding the geographic scope of the phrase "authorized by State law." The question before the Court, and its decision, concerned only the impact on the Settlement Agreement of changes in State gambling laws.

The task for this Court is to apply the language of the Settlement Agreement, which entitles the Catawba Nation to offer video gambling "to the same extent ... authorized by State law." Settlement Agreement § 16.8. The Settlement Agreement does not refer to an authorization of video gambling "within this State" but rather to an authorization of video gambling "by State law." Although it is to be expected that most state laws authorizing video gambling would apply to conduct within the borders of South Carolina, the Settlement Agreement imposes no such requirement.

D. **The State's remaining arguments are unpersuasive.**

The State makes several additional arguments, none of which is persuasive.

First, the State opines that the Gambling Cruise Act must not be an authorization under the Settlement Agreement because if it were, the South Carolina Supreme Court would have said so in *Catawba Indian Tribe*. According to the State, "If the Court had thought that the Gambling Cruise Act ... in any way

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[4] The phrase cited by the State appears in the following sentence: "By Congress's express approval of the State Act and by the terms of the Settlement Agreement and the State Act, Respondent relinquished any attributes of sovereignty relating to games of chance *in this state*." *Catawba Indian Tribe*, 372 S.C. at 528, 642 S.E.2d at 756 (emphasis added).

controlled the question of the Tribe's gaming rights, undoubtedly, it would have considered that point as part of its interpretation of the Settlement Act." State Br. at 30; *see id.* at 32, 34. But, the Gambling Cruise Act was not before the Court in *Catawba Indian Tribe*, and the South Carolina appellate courts have made clear that they will not reach out to decide issues and arguments not presented to them. *See Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216 n.4, 734 S.E.2d 142, 145 n.4 (2012) ("We decline, as we must, to entertain arguments not presented to us."); *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

Next, the State contends that the Catawba Nation is arguing that the Gambling Cruise Act "somehow modifies or undermines" the general prohibition of video gambling machines in S.C. Code Ann. § 12-21-2710. State Br. at 32. Contrary to the State's contention, the Catawba Nation does not make this argument. Indeed, the Gambling Cruise Act itself makes clear that it is not intended to alter generally applicable prohibitions on gambling. *See* S.C. Code Ann. § 3-11-400(B). But what is generally applicable to citizens of the State does not necessarily apply to the Catawba Nation. In arguing otherwise, the State disregards the terms of the Settlement Agreement. As set forth in the Settlement Agreement, the Catawba Nation agreed to forgo its rights under the Indian Gaming Regulatory Act in exchange for the unique right—not shared by the

general citizenry of South Carolina—to offer video gambling on its Reservation based upon **any** state law authorization of video gambling.

In this vein, it is important to note that the Catawba Nation does not contend that it is entitled to offer video gambling at any location it chooses in South Carolina. Such a claim truly would undermine § 12-21-2710. To the contrary, and consistent with the Settlement Agreement, the Catawba Nation argues only that it is entitled to offer video gambling "on its Reservation," *i.e.*, on its own sovereign territory. Settlement Agreement § 16.8. The Catawba Nation's authority under the Settlement Agreement is thus similar to the grant of authority under the Gambling Cruise Act, which allows the operation of video gambling machines only outside State territorial waters.

Finally, the State's reliance on an unpublished district court decision that construes the Indian Gaming Regulatory Act, *Seminole Tribe v. Florida*, 1993 WL 475999 (S.D. Fla. 1993), is misplaced. In *Seminole Tribe*, the plaintiff Indian tribe argued that the state's collection of an admissions tax for gambling cruises "manifest[ed] a public policy of permitting casino gambling," *id.* at *14, and therefore that Florida was obligated under the Indian Gaming Regulatory Act to negotiate in good faith an agreement that would allow the tribe to offer casino-type gambling on its reservation. The district court rejected this argument, reasoning that the mere collection of an admissions tax, paid even by passengers who did not gamble, did not demonstrate a public policy in favor of casino gambling. *See id.*

Seminole Tribe is nothing like this case. The Catawba Nation does not argue that its rights under the Settlement Agreement are triggered because the Gambling Cruise Act manifests a public policy in favor of video gambling in South Carolina.[5] Rather, the Catawba Nation relies on the plain language of the Settlement Agreement, which makes clear that South Carolina's affirmative decision to authorize video gambling through the Gambling Cruise Act is an authorization of video gambling "by State law," entitling the Catawba Nation to offer video gambling on its Reservation. *Cf. Mashantucket Pequot Tribe*, 913 F.2d at 1031 (holding that state-law authorization of charity "Las Vegas nights" entitled the tribe to negotiate for the operation of the same games on its reservation). No such argument was presented to the district court in *Seminole Tribe*. And, in any event, the Indian Gaming Regulatory Act is specifically inapplicable to this case because the Catawba Nation agreed to the terms of the Settlement Agreement in lieu of the IGRA.

[5] It should be noted, however, that the State's professed public policy against gambling is significantly undermined by the existence of a State-run lottery and the availability of licenses to operate bingo parlors. *Cf. Cabazon Band of Mission Indians*, 480 U.S. at 211 (holding that California did not prohibit, but rather only regulated, gambling based on its operation of a state lottery and other forms of gambling, including legalized bingo).

CONCLUSION

Under the Gambling Cruise Act, a South Carolina company can own a ship and video gambling machines, and it can make money from video gambling by offering cruises to nowhere. Moreover, any South Carolina citizen can play video poker, despite § 12-21-2710's general ban on video gambling machines, for the price of a ticket on a South Carolina gambling cruise. At the same time, local governments can make money by permitting such businesses to operate from their ports and by imposing surcharges as permitted by the Gambling Cruise Act—revenues which come directly from the operation of a video gambling enterprise.

The negotiated terms of the Settlement Agreement entitle the Catawba Nation to an equivalent opportunity to obtain revenue, employ its members, and ensure its independence. The Gambling Cruise Act is a state-law authorization of video gambling within the meaning of § 16.8 of the Settlement Agreement. The circuit court improperly denied the Catawba Nation its right, under the plain terms of the Settlement Agreement, to offer video gambling on its sovereign Reservation lands. Accordingly, this Court should reverse the circuit court.

Signature on next page.

April 25, 2013
Greenville, South Carolina

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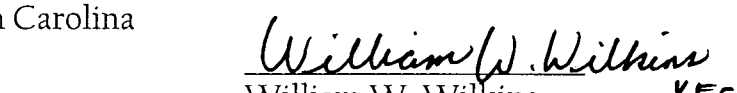

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Reply Brief of Appellant complies with South Carolina Supreme Court's August 13, 2007 Order.

April 25 2013
Greenville, South Carolina

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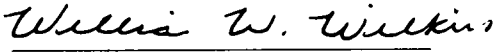

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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant by depositing a copy of same in the United States Mail, postage prepaid addressed to Respondents' attorney of record, C. Havird Jones, Jr., Assistant Deputy Attorney General Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, South Carolina 29211.

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