ORIGINAL

24-144

IN THE
Supreme Court of the United States

THOMAS CHARLES FELTON JONES,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

On Petition for a Writ of Certiorari to the South Carolina Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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August 6, 2024

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QUESTION PRESENTED

Whether a county ordinance that criminalizes any verbal act that resists, hinders, impedes, or interferes with a law enforcement officer is facially invalid because it is substantially overbroad and violates the First Amendment?

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The State v. Thomas Charles Felton Jones, 2020-000108, transferred to South Carolina Supreme Court by order filed Nov. 15, 2022 (South Carolina Court of Appeals)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Thomas Charles Felton Jones respectfully petitions for a writ of certiorari to review the judgment of the South Carolina Supreme Court.

OPINION BELOW

The opinion of the South Carolina Supreme Court is reported at *State v. Thomas Charles Felton Jones*, 901 S.E.2d 284 (S.C. 2024) and is reproduced at Appendix A-1.

JURISDICTION

The South Carolina Supreme Court issued its opinion on May 8, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

"Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. Am. I

"[N]o state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S Const. Am. XIV.

STATUTORY PROVISIONS INVOLVED

"It shall be unlawful for any person within the unincorporated area of the county to . . . by any act, physical or verbal, resist, hinder, impede or interfere with any law enforcement offer in the lawful discharge of his or her duty, or to aid or abet any such act." Greenville Co. Code of Ordinances § 15-10(b); App. C-1.

INTRODUCTION

Petitioner Thomas Charles Felton Jones's case presents this Court with the opportunity to enforce its decision in *City of Houston v. Hill*, 482 U.S. 451 (1987), and reaffirm the rights preserved by the First Amendment. Despite the existence of *Hill* for the last thirty-six years, Greenville County, South Carolina has enforced a nearly identical ordinance since 2006 that criminalizes "any act, physical or verbal" that "resist[s], hinder[s], impede[s] or interfere[s]" with a law enforcement officer. *See Hill*, 482 U.S. at 455 (noting the Houston ordinance prohibited any person to "interrupt any policeman in the execution of his duty"). App. C-1. Jones was arrested, convicted, and sentenced to incarceration under this ordinance because of his verbal criticism of the deputies during a traffic stop he observed occurring outside of his home while he stood on his own property. App. B-1–39.

The South Carolina Supreme Court's refusal to address Jones's facial challenge to the ordinance on First Amendment overbreadth grounds allows the continued criminalization of a substantial amount of constitutionally protected speech and the daily suppression of speech in Greenville County. The supreme court found Jones's experience "appalling" and the officers' behavior "egregious" but nonetheless declined to reach the facial challenge because of a "preference for restraint." App. A-5. Yet, such restraint is inconsistent with this Court's precedent on overbreadth facial challenges under the First Amendment and fails to recognize the impact of the continued existence of this facially unconstitutional ordinance on the rights of Greenville County citizens to engage in protected speech.

This Court should grant certiorari for two reasons. First, the South Carolina Supreme Court's reliance on

a preference for judicial restraint rests on a flawed interpretation of this Court's decision in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008). This misinterpretation ignores this Court's precedent regarding the special standard for facial challenges to First Amendment restrictions on overbreadth grounds.

Second, the ruling of the South Carolina Supreme Court conflicts with the controlling decision of this Court in *Hill*. The Greenville County ordinance criminalizes the exercise of free speech in precisely the same manner as the ordinance in *Hill*, criminalizing a substantial amount of protected speech. The ordinance remains in effect more than four years after Jones's conviction, subjecting countless people to conviction and incarceration for engaging in protected speech. Equally as troubling, the mere threat and fear of arrest, conviction, and incarceration under this ordinance chills speech critical of law enforcement and government. The risks presented by the language of the ordinance are only exacerbated further by the unfettered discretion the ordinance affords law enforcement officers.

Allowing the South Carolina Supreme Court's decision to stand and require case-by-case review of the ordinance's constitutionality poses severe risks to the exercise of free speech protected by the First Amendment. Review of the supreme court's decision is necessary to protect the rights of Greenville County residents and people around the Nation silenced by comparable ordinances. The threat of conviction and incarceration for engaging in speech critical of the government casts a chilling shadow on one of this Nation's most fundamental rights. This case is a chance for this Court to reaffirm the protections of the First Amendment and to remind municipalities around the Nation of this Court's decision in *Hill*.

STATEMENT OF THE CASE

On October 17, 2006, the Greenville County, South Carolina County Council adopted ordinance no. 4053, which enacted section 15-10, titled "Interfering with a County Law Enforcement Officer." App. C-1. The ordinance provides:

> It shall be unlawful for any person within the unincorporated area of the county to commit an assault, battery or by any act, physical or verbal, resist, hinder, impede or interfere with any law enforcement officer in the lawful discharge of his or her duty, or to aid or abet any such act.

Greenville Co. Code of Ordinances § 15-10(b); App. C-1. Violation of this overly broad language is a misdemeanor punishable by up to thirty days' incarceration. *Id.* at § 15-10(c)(1); App. C-1.

Relevant Facts

Petitioner Thomas Charles Felton Jones encountered the unfettered discretion the ordinance affords to Greenville County law enforcement officers on July 21, 2018, during an interaction between himself and Deputy Charles Lancaster, of the Greenville County Sheriff's Office. App. B-14–15, 26–30. Deputy Lancaster and Deputy Jonathan Cooper initiated a traffic stop on Jones's friend, Shontona Enicha Williams, outside Jones's house. App. B-12–13; 23–25. Jones exited the rear of his house to observe the traffic stop from his own property. App. B-12–14; 24–27. Deputies Lancaster and Cooper testified that Deputy Lancaster requested Jones to back up. App. B-14–15; 27–30. Yet, Deputy Lancaster was unable to identify an instance on his body worn camera recording of asking Jones to back away until the moment immediately before Jones's arrest—and immediately after Jones verbally

criticized the officers. App. B-30–33; App. E-1 at 4:10 to 4:25.

Jones peacefully asked the officers why Williams was pulled over. App. B-14–15; 26–28. Deputy Lancaster responded that Williams failed to use her turn signals. App. E-1 at 1:55 to 2:30. At this point, Deputy Lancaster asked Jones, "Do you need anything man?" App. E-1 at 2:47. Jones informed Deputy Lancaster that he and Williams were friends and that Williams was staying at his house for the night. App. E-1 at 2:55-3:01. Jones informed Deputy Lancaster that he and the other deputy were at his property. App. E-1 at 2:59. During this time, Jones took a few steps back and continued to observe the traffic stop. App. E-1 at 3:08.

While Williams and Deputy Cooper discussed the traffic stop, several more officers arrived pursuant to an earlier call for back up. App. E-1 at 3:15-4:10. Jones questioned the necessity of the extra back up and disputed the officers' assertions that there was a large group of people in the area. *Id.* The following exchange, which lasted only eleven seconds, occurred:

> Jones: "They know damn well there was no big group of people out here."
>
> Deputy Lancaster: "Alright man, do you need to be here?"
>
> Jones: "Yeah, this is my house."
>
> Deputy Lancaster: (pointing toward the house) "You can go back there, or you can be arrested for interfering. Step back."
>
> Jones: [Does not move]

> Deputy Lancaster: "Alright, turn around."

App. E-1 at 4:14 to 4:25. At that moment, "[b]oth deputies rushed toward Jones, tackled him, tased him, handcuffed him, and then arrested him." App. A- 2. Jones lost consciousness during the officers' assault. App. A-3; App. E-1 at 7:00-7:30. Before the officers rushed toward him, Jones had observed the traffic stop from the same location for over a minute without issue. App. E-1 at 3:15-4:14. It was only *after* he made a comment critical of the officers that he was suddenly "interfering" with the deputies. *Id.*

Deputy Cooper testified concerning the Sheriff's Office policies and procedures regarding proximity of bystanders. App. B-18–19. Deputy Cooper testified that interference is committed whenever any bystander's presence distracts him from the crime scene or investigation. App. B-18, l.10-15. Deputy Cooper elaborated on his interpretation of the ordinance: "interfering is when a defendant, person, whoever, if they take my attention away from the investigation. So therefore, hindering me from doing my job." App. B-19–20, l. 21-24. Deputy Cooper testified that Jones's "walking up and talking" loud enough to be heard constituted the offense, because:

> I'm now having to take my attention off just [Williams] and now trying to run everything on my computer so on and so forth. Well now, I have some random person just walking up that I don't know from Adam. So therefore, my attention is divided away from what I need to be doing.

App. B-20–21, l. 18-24.

Procedural History/Raising of Federal Issue

After his arrest that night, the deputies ultimately charged Jones with interfering with a law enforcement officer (Greenville County Ordinance § 15-10) and resisting arrest with assault (S.C. Code Ann. § 16-9-320(B)). App. B-14–18; 47–49. The Greenville County Grand Jury subsequently indicted Jones for a single count of Resisting Arrest with Assault and a single count of Interfering with a County Law Enforcement Officer. On January 14, 2020, the State called Jones's case to trial before the Honorable Robin B. Stilwell and a jury.

Prior to trial, Jones moved to dismiss the charges, arguing the ordinance was facially invalid because it was unconstitutionally overbroad and vague, in violation of the First and Fourteenth Amendments to the United States Constitution and the Due Process Clauses of the United States and South Carolina Constitutions. App. B-1–12. Jones also submitted a written memorandum outlining his objections to the ordinance. App. D-1–6. Jones relied primarily upon *City of Houston v. Hill*, 482 U.S. 451 (1987). At the end of the State's case, Jones renewed his facial challenge and also moved to have the ordinance invalidated as applied. App. B-34, l. 17-20. The trial court denied all the motions. App. B-36–37.

The jury convicted Jones of Interfering with a County Law Enforcement Officer and acquitted him of Resisting Arrest with Assault. App. B-37, lines 4-8. Jones was sentenced to thirty days' incarceration and a fine of $1,000, suspended upon the service of ten days' incarceration (served on weekends) and payment of a fine of $500, plus costs and assessments. App. B-39, l. 20-25. Jones served ten days' incarceration and paid a $500 fine plus costs and assessments.

Following sentencing, Jones served a Notice of Appeal on January 21, 2020. Jones appealed his conviction to the South Carolina Court of Appeals. Following the filing of briefs, jurisdiction of the appeal was transferred to the South Carolina Supreme Court on November 15, 2022, because it challenged the constitutionality of an ordinance. *See* App. A-3. The South Carolina Supreme Court heard oral argument on June 6, 2023. App. A-1. Jones argued before the South Carolina Supreme Court that the ordinance was both facially invalid on overbreadth grounds and unconstitutional as applied to him under the First Amendment and Fourteenth Amendment of the United States Constitution. *See* App. A-4

The South Carolina Supreme Court issued its opinion on May 8, 2024, reversing Jones's conviction on his as-applied challenge. App. A-1. However, the supreme court declined to address the broader facial challenge to the ordinance, reasoning that it should decide the case on the narrowest grounds possible. App. A-4–7. In its justification, the supreme court cited to this Court's decision in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008) for the proposition that exercising restraint on facial challenges is preferable. App. A-4–5.

The supreme court concluded that Jones did nothing more than observe and ask questions of the officers, noting that "there is no indication Jones did anything beyond engage in protected speech." *Id.* Despite recognizing the tremendous discretion that the ordinance affords law enforcement officers and the fact that it "can be grossly abused," the Supreme Court "decline[d] the temptation to go further than necessary solely because of the egregious behavior of the deputies in this case." App. A-4.

REASONS FOR GRANTING THE PETITION

The South Carolina Supreme Court ignored the special nature of First Amendment overbreadth challenges and disregarded controlling precedent of this Court.

Review is warranted here because the South Carolina Supreme Court erred in declining to reach the facial challenge to the Greenville County ordinance under which Jones was arrested, convicted, and incarcerated.

First, the supreme court misinterpreted this Court's precedent on employing restraint to facial challenges, ignoring the unique nature of overbreadth challenges and the fundamental right to free speech. This flawed adherence to "restraint" enables the continued criminalization and suppression of protected speech and ideas. The supreme court disregarded the fact that restrictions on the First Amendment are subject to heightened standards inapplicable in other contexts and disregarded the tests this Court has announced in evaluating facial challenges on First Amendment overbreadth grounds.

Second, the supreme court ignored the fact that the ordinance's constitutionality is controlled by this Court's precedent in *Hill*, which invalidated an ordinance that criminalized speech in near-identical ways as the ordinance here. Despite the similarity of the ordinances, the significant infringement on citizens' rights to engage in protected speech, and the fact that its decision sanctions the ongoing chilling of speech, the supreme court elected instead to shield the ordinance from complete invalidation by relying on the dubious notion that Jones's case presents unique facts.

The foregoing reasons demonstrate that the South Carolina Supreme Court erred in declining to reach Jones's facial challenge and review is warranted.

A. The South Carolina Supreme Court's decision misinterprets *Washington State Grange* and disregards this Court's precedent on overbreadth challenges

The South Carolina Supreme Court erred in relying on this Court's decision in *Washington State Grange* to decline to reach Jones's facial challenge. Specifically, the supreme court improperly disregarded the different test controlling facial challenges to substantially overbroad restrictions on speech under the First Amendment. For this reason, the supreme court's decision was error, certiorari should be granted, and the ordinance facially invalidated.

In support of its decision to decline to reach the facial challenge, the supreme court relied on the below quoted language from this Court's decision in *Washington State Grange*:

> Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of 'premature interpretation of statutes on the basis of factually barebones records.'
>
> . . .
>
> Exercising judicial restraint in a facial challenge 'frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy.'

Jones, App. A-4–5 (quoting *Wash. State Grange*, 552 U.S. at 450).

The supreme court misinterpreted this Court's pronouncement regarding a preference for restraint in facial challenges by ignoring the fact that *Washington*

State Grange differed significantly from the type of facial challenge here. App. A-4–5. First and foremost, *Washington State Grange* did not address a facial challenge on First Amendment overbreadth grounds, as Jones does here. *See id.*, 552 U.S. at 449-50. This Court has repeatedly noted—including in *Washington State Grange*—that such overbreadth facial challenges are tested against a different standard. *See id.* at 449 n.6 ("Our cases recognize a *second type of facial challenge* in the First Amendment context under which a law may be overturned as impermissibly overbroad because a substantial number' of its applications are unconstitutional, 'judged in relation to the statute's plainly legitimate sweep.'" (emphasis added)); *see also United States v. Stevens*, 559 U.S. 460, 473 (2010) (observing the difference between a "typical facial attack" and a "second type of facial challenge"); *United States v. Hansen*, 599 U.S. 762, 769-70 (recognizing a difference in standards for First Amendment overbreadth facial challenges); *City of Chicago v. Morales*, 527 U.S. 41, 79 n.2 (Scalia, J., dissenting) (noting this Court's decisions established that "the overbreadth doctrine is a specialized exception to the general rule for facial challenges, justified in light of the risk that an overbroad statute will chill free expression").

In contrast to Jones's facial challenge, *Washington State Grange* involved a facial challenge to a newly adopted—yet never implemented—law altering the primary system in the State of Washington (Initiative 872). 552 U.S. at 455 (noting the law was never implemented); App. A-4 (describing Jones's challenge); App. C-1 (reflecting that the ordinance was adopted in 2006). This Court made clear that the law was subject not to the test for overbreadth challenges but instead evaluated whether "the law is unconstitutional in *all* of its applications." *Id.* at 449-50 (emphasis added).

Furthermore, Initiative 872 had never actually been implemented, preventing courts from ever having the opportunity to construe the law or "accord the law a limiting construction to avoid constitutional questions." *Id.* at 450, 455. Here, the Greenville County ordinance has been in effect for eighteen years, and its existence alone chills the exercise of protected speech by its mere threat of enforcement. App. C-1.

Moreover, the supreme court in Jones's case had the opportunity to "accord the law a limiting construction," yet did not do so. *See* App. A-1–7. Instead, the supreme court simply emphasized that the particular facts rendered Jones's arrest invalid, ignoring the special nature of First Amendment overbreadth challenges and the rationale underpinning the different test. *Id.* at 5-7. The overbreadth doctrine allows litigants "to challenge a statute, not because their own rights of free expression are violated, but because of a judicial prediction or assumption that *the statute's very existence may cause others not before the court to refrain from constitutionally protected speech* or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) (emphasis added). The supreme court ignored this principle in refusing to reach Jones's facial challenge, permitting the ongoing criminalization and suppression of constitutionally protected speech.

Following the supreme court's decision in Jones's case, this Court reiterated the different standard for overbreadth challenges: "In First Amendment cases, however, this Court has lowered that very high bar [in typical facial challenges]. To 'provide[] breathing room for free expression,' we have substituted a less demanding though still rigorous standard." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2024 U.S. Lexis 2884 *23 (July 1, 2024) (quoting *Hansen*, 599 U.S. at 769). This standard asks whether "a substantial number of [the law's] applications are unconstitutional, judged in

relation to the statute's plainly legitimate sweep." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 594, 615 (2021).

In *Moody*, this Court considered "whether two state laws regulating social-media platforms and other websites facially violate the First Amendment." 2024 U.S. Lexis 2884 *13. Ultimately, this Court vacated the Eleventh Circuit's and Fifth Circuit's decisions "because neither Court of Appeals properly considered the facial nature of NetChoice's challenge" and remanded the cases for further proceedings. *Id.* at 14, 27. Instead, the Courts of Appeals both treated each challenge as an as-applied challenge, failing to perform the "necessary inquiry" of "whether a law's unconstitutional applications are substantial compared to its constitutional ones." *Id.* at 14-15. To do so, "a court must determine a law's full set of applications, evaluate which are constitutional and which are not, and compare the one to the other." *Id.* at 15. Just like the Eleventh and Fifth Circuit Courts of Appeals, the South Carolina Supreme Court failed to perform this "necessary inquiry." *See* App. A-1–7.

Unlike in *Moody*, however, remand is unnecessary and this Court can remedy the supreme court's error here because this Court already answered that inquiry in the affirmative in *Hill* regarding a virtually identical ordinance. *See* 482 U.S. at 466 (finding the ordinance substantially overbroad because it "criminalizes a substantial amount of constitutionally protected speech, and accords the police unconstitutional discretion in enforcement"). As discussed below, the supreme court's decision conflicts with controlling precedent of this Court, ignoring the identical nature of the ordinance in Jones's case to the one invalidated in *Hill*.

By misinterpreting this Court's pronouncement in *Washington State Grange* regarding judicial restraint

and disregarding the longstanding specialized standard for First Amendment overbreadth challenges, the South Carolina Supreme Court erred. This error is compounded further by the supreme court's failure to recognize that *Hill* controls the correct outcome for this ordinance—facial invalidation.

B. The South Carolina Supreme Court's decision conflicts with *Hill*.

Hill centered on a City of Houston, Texas ordinance:

> It shall be unlawful for any person to assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty, or any person summoned to aid in making an arrest.

Code of Ordinances, City of Houston, Texas, § 34-11(a) (1984); *See Hill*, 482 U.S. 451. This Court held the ordinance facially invalid because it was substantially overbroad, concluding that the ordinance encompassed a substantial amount of constitutionally protected conduct. *Hill*, 482 U.S. at 460-66. The Greenville County ordinance here is eerily similar to the Houston ordinance:

> It shall be unlawful for any person within the unincorporated area of the county to commit an assault, battery or by any act, physical or verbal, resist, hinder, impede or interfere with any law enforcement officer in the lawful discharge of his or her duty, or to aid or abet any such act.

Greenville Co. Code of Ordinances § 15-10(b); App. C-1. These similarities dictate the same result—facial invalidation of the ordinance.

First, exactly as in *Hill*, "the enforceable[1] portion of the ordinance deals not with core criminal conduct, but with speech." *Id.* at 460; App. C-1. The remaining non-preempted terms "resist," "hinder," "impede," and "interfere" are extraordinarily similar to the remaining terms in the Houston ordinance. *Id.* at 461 (noting the enforceable portion of the ordinance prohibited a person to "oppose, molest, abuse or interrupt" a police officer); *see* Merriam-Webster Dictionary (noting oppose is a synonym of resist); (defining "hinder" as "to delay or prevent action"); (defining "interrupt" as "to stop or hinder by breaking in").

In effect, the enforceable terms of the ordinance all encompass the notion of "interruption" or verbal challenge to a police officer. Moreover, the ordinance's criminalization of *verbally* accomplishing such a result infringes upon a significant range of constitutionally protected speech. App. C-1. Indeed, Deputy Cooper testified that his interpretation of "hindering" was anything that could make him lose focus, including even a person "walking up and talking" loud enough to be heard. App. B-21, l. 18-24. As a result, a person violates this ordinance by any verbal act that makes an officer lose focus or deviate from his or her subjectively-defined duties, just like "the interruption" criminalized by the Houston ordinance and that this Court found unconstitutionally overbroad. 482 U.S. at 461, 466-67. The ordinance affords unlimited, entirely subjective discretion, authorizing officers to

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[1] The City of Houston conceded that the other language in the ordinance was preempted by various state laws, thereby leaving an ordinance that prohibited verbal interruptions of police officers. 482 U.S. at 460-61. Similarly, after excising the portions (the commission of assault or battery on an officer) of the ordinance here that are preempted by state law, the "enforceable" portion criminalizes verbal interruptions or challenges of law enforcement officers. *See* App. C-1.

"arrest individuals for words or conduct that annoy them." *Hill*, 482 U.S. at 465.

As in *Hill*, the ordinance here encompasses a substantial range of protected speech and conduct; notably, it is not narrowly drafted so that its scope is limited to fighting words. *See* 482 U.S. at 462 (comparing restrictions on fighting words that "by their very utterance inflict injury or tend to incite an immediate breach of the peace" (quoting *Lewis v. City of New Orleans*, 415 U.S. 130, 132 (1974)). In fact, the breathtakingly broad scope espoused by Deputy Cooper reflects an ordinance that subjects Greenville County residents to criminal charges for even the most benign questioning of an officer that, in his or her sole unfettered discretion, distracts from an investigation. App. B-18–20, B-21, l. 18-24. Such suppression of the right to engage in free speech is plainly and facially unconstitutionally overbroad under this Court's decision in *Hill*.

In evaluating the constitutionality of the Houston ordinance, this Court considered its decision in *Lewis*, which invalidated a statute that prohibited a person to "curse or revile or to use obscene or opprobrious language toward" or referring to police officers. *Id.* at 462; *Lewis*, 415 U.S. at 132. This Court determined the Houston ordinance was more sweeping than the ordinance invalidated in *Lewis* since it was not even limited to obscene or opprobrious language. *Id.* at 462. In both instances, this Court facially invalidated the laws as overbroad and violative of the First Amendment. *See Lewis*, 415 U.S at 133-34 (concluding the state law is constitutionally overbroad and facially invalid because it was "susceptible of application to protected speech").

The ordinance here is even more sweeping than the ordinance in *Hill* (and therefore in *Lewis*), as it explic-

itly encompasses speech, whereas the Houston ordinance only implicitly included verbal acts. *See* App. C-1. The criminalization of speech that is not limited to even obscene or opprobrious language, let alone fighting words, infringes upon a significant range of protected speech—a constitutionally impermissible restriction on the First Amendment.[2] That is precisely what the Greenville County ordinance does. *Id.*

As this Court observed, "[t]he Constitution does not allow such speech to be made a crime. The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Hill*, 482 U.S. at 462-63. The right to free speech is one of the most fundamental guarantees of the Bill of Rights. *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940). This Court has recognized the right to free speech includes the right to engage in even "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Police officers are not insulated from such criticism or opposition. *See Hill*, 482 U.S. at 461 (recognizing that "the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers").

The importance of the right is based on the essential nature of speech and the exchange of ideas to the orderly implementation of government and a free society. *See Roth v. United States*, 354 U.S. 476, 484 (1957) (noting the right to free speech was "fashioned

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[2] Given that a "properly trained officer may reasonably be expected to 'exercise a higher degree of restraint,'" even the fighting words exception might require a narrower application in cases involving words addressed to a police officer. *See Lewis*, 415 U.S. at 135 (Powell, J., concurring).

to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people"); *Stromberg v. California*, 482 U.S. 359, 369 (1931) ("The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the public, is a fundamental principle of our constitutional system.").

This Court has recognized the negative consequences of restrictions on the right to free speech:

> Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Whitney v. California, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring). The harmful effects on society by the suppression of speech is precisely why this Court has emphatically protected the right to free speech and guarded against even the possible chilling of speech and expression. *NAACP v. Button*, 371 U.S. 415, 433 (1963) (recognizing that the "threat of sanctions may deter their exercise [of First Amendment freedoms] almost as potently as the actual application of sanctions").

The existence of the Greenville County ordinance alone produces this "chilling effect." Equally as concerning as the actual arrest, prosecution, and conviction for engaging in protected speech is the deterrent effect on citizens exercising their First Amendment rights out of fear of such consequences. *See United States v. Williams*, 553 U.S. 285, 292 (2008) (recognizing that "the threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas").

The sequence of events leading up to Jones's arrest highlights the chilling effect and officers' ability to use the threat of arrest to deter the exercise of protected speech. Jones calmly and quietly stood on his own property while observing his friend's traffic stop. App. A-2–3. Jones then verbally criticized the additional police presence when a backup officer arrived. Deputy Lancaster immediately *threatened* Jones with arrest for interfering if he does not go inside his home. App. E-1 at 4:14 to 4:25; App. A-2 ("You can go back over there, or you can be arrested for interfering."). Critically, it was only *after* Jones verbally criticized the officers' actions that he was threatened with arrest.

This type of threat serves to deter—and, therefore, suppress—protected speech for fear of the consequences. Given Deputy Lancaster's acquiescence to

Jones's presence prior to the criticism, it is apparent that Jones would not have been threatened with arrest had he not made the comment. App. E-1 at 3:15-4:14. The subsequent arrest only underscores the risk this ordinance presents in suppressing protected speech. Moreover, Jones's friend observed this entire interaction, followed by Jones's violent arrest and tasing by the officers, serving to deter her, as well as anybody she described the experience to, from ever making comments critical of officers. *See* App. E-1.

Finally, just like the Houston ordinance, this ordinance provides the police "with unfettered discretion to arrest individuals for words or conduct that annoy or offend them." *Hill*, 482 U.S. at 465; App. C-1. The virtually unlimited scope of the ordinance "effectively grants police the discretion to make arrests selectively on the basis of the content of the speech." *Id.* at 465 n.15. The deputies' interpretation of the ordinance here as encompassing any verbal communication that deviates their focus from the investigation demonstrates the extent to which protected speech is encompassed by the ordinance. App. B-20, l. 21-24. "The opportunity for abuse, especially where a statute has received a *virtually open-ended interpretation*, is self-evident." *Id.* at 466 (quoting *Lewis*, 415 U.S. at 136 (emphasis added)).

Greenville County's ordinance, just like the one invalidated in *Hill*, "criminalizes a substantial amount of constitutionally protected speech, and accords the police unconstitutional discretion in enforcement." *Id.* at 466. "Far from providing the 'breathing space' that 'First Amendment freedoms need . . . to survive,' . . . the ordinance is susceptible of regular application to protected expression." *Id.* at 467 (quoting *Button*, 371 U.S. at 433). As a result, the ordinance is substantially overbroad and facially invalid.

The South Carolina Supreme Court's decision ignored this Court's decision in *Hill* and is therefore in error. Jones accordingly requests this Court grant certiorari and invalidate the ordinance on its face.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 6, 2024

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