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Jun 20 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2022-001469
Case No. 2020-CP-40-2839

South Carolina Public Interest Foundation and John
Crangle, individually, and on behalf of all others
similarly situated,

Respondents,

v.

Richland County and Richland County Council,

Appellants.

REPLY BRIEF OF APPELLANTS

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TABLE OF AUTHORITIES

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ARGUMENTS

I. The trial court erred in finding that the Respondents enjoyed public importance standing to bring their claims for declaratory and injunctive relief.

As a threshold issue, the Appellants Richland County and Richland County Council assert that the trial court erred in finding that the Respondents enjoyed public importance standing to bring their claims for declaratory and injunctive relief. The Appellants focused on what the Supreme Court has held is “the linchpin of our analysis” that being “whether a need for future guidance exists.” *South Carolina Public Interest Foundation v. Wilson*, 437 S.C. 334, 878 S.E.2d 891, 895 (2022). In so doing, the Appellants are critical of the trial court which disregarded that “linchpin” and, in fact, never addressed with specificity (or for that matter generally) whether there was a need for future guidance.

On appeal, the Respondents commit the same error. At no point have the Respondents discussed any need for future guidance. In a conclusory manner, the Respondents maintain that the practice of “non-voting” “is pervasive among all Council members.” *See*, Respondents’ Brief, p. 6. Yet, that is not supported by any evidence. By name, the Respondents focused their claims primarily on the voting tendencies of Councilman Jim Manning, who is the only Council member actually identified by name in the Stipulation of Facts. The Amended Complaint mentions only Councilman Manning and Councilwoman Gwen Kennedy by name.

(R. 34-36). However, Councilman Manning and Councilwoman Kennedy are no longer on Richland County Council, and were not when judgment was entered. (R. 59). Likewise, there is no reference in the Stipulation of Facts or the attached minutes to show that non-declared votes are “pervasive” among current Council members. In fact, neither the trial court nor the Respondents identify by name a single current Council member who casts non-declared votes or who would need the “future guidance” to be offered by this litigation. Consequently, the trial court erred in bestowing public importance standing on the Respondents.

II. The trial court erred in finding that the Respondents presented a justiciable claim.

In their opening brief, the Appellants also present a detailed discussion as to whether the Respondents present a justiciable claim. The Appellants explain that how or whether the Richland County Council interprets and enforces its own rules on voting presents a purely political question which is non-justiciable. They also describe how the proper application of the separation of powers doctrine precludes the judiciary from compelling a legislative body to implement or enforce its own parliamentary rules.

To address those critical issues, the Respondents provide two quotes from the trial court’s order and nothing more. There is no supporting case law and no analysis of these issues. The separation of powers doctrine is not even mentioned.

After quoting the trial court, the Respondents then conclude that “the Circuit Court properly found that the Plaintiffs had raised a justiciable controversy.” *See*, Respondents’ Brief, p. 9.

III. The trial court erred in finding that Richland County violated its own rules as well as a common law duty for legislators to cast a vote on every matter before them.

As to the merits, the Respondents again commit the same error as the trial court did. The Respondents misapprehend the difference between a non-declared vote and an abstention. As the Appellants explain in detail in their opening brief, those are two different concepts in voting. Depending on whether there is a non-declared vote or an abstention, the responsibilities of the council member are different and how the vote is tallied is different. A non-declared vote is tallied with the prevailing side, and there is no responsibility to state a reason for the non-declared vote. In contrast, an abstention is not counted as a vote either for the prevailing or non-prevailing side. An abstention is *not* a vote, and as a result, the council member who abstains is required to state a reason for the abstention that is to be recorded in the minutes. In sum, a non-declared vote is a vote; an abstention is not.

The Respondents, nonetheless, continue to argue that “[t]he problem arises when a member fails to vote and fails to explain his non-vote.” *See*, Respondents’ Brief, p. 12. However, that presents no problem. If the council member abstains,

then that is not tallied as a vote and the member is required to state a reason for the abstention that is to be recorded in the minutes, and that fully satisfies the requirements of Rule 5.21 as well as S.C. Code Ann. 8-13-700(B). However, if the council member does not declare a vote (which is different than an abstention), that non-declared vote is tallied with the prevailing side, and there is no responsibility to state a reason for the non-declared vote.

The Respondents, like the trial court, uses the term “non-vote,” and in doing so erroneously treats both non-declared votes and abstentions the same, which they are not. The concept of a “non-declared vote” is actually consistent with the common law and has been implemented by County Council as part of Rule 5.21. It is also consistent with state statutory and constitutional law. Importantly, neither the Respondents nor the trial court cited to any statute or provision of the South Carolina Constitution mandating that County Council adopt or enforce a rule requiring each member to actually cast a vote on each question asked.

To reiterate, the voting by Council members being challenged in this litigation is in compliance with Rule 5.21. That rule allows for a non-declared vote, where no abstention is made on the record, to be recorded with the prevailing side. Nonetheless, to the extent that individual Council members may not have complied with Rule 5.21 or the Council has not strictly enforced this rule, that is entirely within the Council's legislative prerogative and cannot be challenged by

the Respondents or be subject to review by the judiciary.¹

CONCLUSION

Based on the foregoing discussion and analysis, the Appellants Richland County and Richland County Council respectfully renew their request that the Court reverse the declaratory judgment and injunctive relief ordered by former Circuit Court Judge DeAndrea Gist Benjamin and remand for the entry of judgment in favor of the Appellants.

Respectfully submitted,

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June 20, 2023

¹ In the “Conclusion” section of their brief, the Respondent asks this Court to “affirm” the request for attorney’s fees and costs. It is unclear what is intended by that statement. The trial court’s order simply states in reference to a request for attorney’s fees and costs that “Plaintiffs may file such a motion within 15 days after the filing of this Order.” The trial court never actually granted the Respondents an award of attorney’s fees and costs. The Respondent did file a motion for attorney’s fees and costs, to which the Appellants filed an opposition memorandum that argued, *inter alia*, that the three prerequisites under S.C. Code Ann. § 15-77-300 have not been satisfied. That motion has never been heard or decided, and hence, there is no ruling to be “affirmed” as requested. In the interim, the trial judge left the state bench and has assumed a judgeship with the Fourth Circuit Court of Appeals. The trial judge did not rule on that motion before leaving the state bench.

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Final Reply Brief of Appellants complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants certifies that the Final Reply Brief of Appellants complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellants, does hereby certify that service of the **Final Reply Brief** was made upon Respondents' counsel by email only this the 20th day of June 2023 as follows:

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**Also Admitted in North Carolina*

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Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: South Carolina Public Interest Foundation and John Crangle, individually, and on behalf of all others similarly situated v. Richland County and Richland County Council
Appellate Case Number: 2022-001469
Civil Action Number: 2020-CP-40-2839
Our File Number: 314.20346

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing the **Final Brief of Appellants** and the **Final Reply Brief of Appellants** in the above referenced matter. In accordance with Section (d)(1) of this same Order, I am hereby serving copies on Respondents' counsel by email only.

The hard copies of the Record and Briefs as requested in the Court's May 2, 2023 letter will be sent via U.S. Mail. If you have any questions, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: James G. Carpenter, Esquire (*w/ Enclosures, Via Email Only*)