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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2024-001481

Richard A. Butts, individually and on behalf of
all others similarly situated, Respondent,

v.

Miriam Mace, in her official capacity as Treasurer of Georgetown County,
and Georgetown County, South Carolina, Appellants.

MOTION FOR A STAY OF BRIEFING DEADLINES

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellants Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Georgetown County, South Carolina (collectively, “Appellants”) respectfully move this Court for a stay of briefing deadlines pending the circuit court’s decision on a motion for summary judgment in *Brown v. Young*, C/A No. 2021-CP-38-01268, another road user fee case. Appellants request such a stay because *Brown* is likely to give rise to an appealable order involving the same issues as this appeal, and Appellants will request that any appeal in *Brown* be consolidated with this appeal. *See* Rule 214, SCACR. Under these circumstances, a stay would conserve the Court’s resources and benefit the parties’ presentation of the issues.

This appeal arises from a putative class action lawsuit challenging Georgetown County’s collection and retention of a road user fee. Respondent contends the fee is an invalid tax under this Court’s decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). In *Burns*, the Court examined a Greenville County road maintenance fee and held the fee was invalid under S.C. Code Ann. § 6-1-300(6) because it did not “benefit[] the payer in some manner different from the members of the general public not paying the fee.” *Burns*, 433 S.C. at 587, 861 S.E.2d at 33. Respondent’s suit is one of many cases challenging road user fees across the state.

In June 2022, the Governor signed into law Act 236.¹ Act 236 amended S.C. Code Ann. § 6-1-300(6), eliminating the “some manner different from” language this Court relied on in *Burns*. Under the current version of section 6-1-300(6), a service or user fee is valid if it is “used to the benefit of the payers, even if the general public also benefits.” Furthermore, Section 2(E) of Act 236 states that it “applies retroactively to any service or fee imposed after December 31, 1996.”

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order assigning this case and all other road user fee cases “that may arise out of the retroactivity provision in section 2(E) of Act No. 236” to the Honorable Roger M. Young, Sr. May 17, 2023 Order.² The stated purpose of the Order was to “promote the effective and expeditious disposition of this litigation by uniform rulings” and “conserve the resources of the parties, their counsel, and the judiciary.” *Id.*

¹ 2022 S.C. Acts 236.

² The Order specifically referenced the following road user fee cases: *Thompson v. Killian*, C/A No. 2021-CP-02-02323; *Calkins v. Town of Hilton Head Island*, C/A No. 2021-CP-07-01967; *Biggs v. Florence County*, C/A No. 2021-CP-21-01560; *Butts v. Christian*, C/A No. 2021-CP-22-00928; *Hyman v. Gosnell*, C/A No. 2021-CP-26-07309; *Portee v. Carpenter*, C/A No. 2021-CP-28-00873; *Brown v. Young*, C/A No. 2021-CP-38-01268; *Mitchell v. Richland County*, C/A No. 2021-CP-40-03410; *Hargrove v. Alverson*, C/A No. 2021-CP-42-03595; *Abrams v. Alverson*, C/A No. 2021-CP-42-03736.

On September 21, 2023, Respondent moved for partial summary judgment in this action, requesting a declaration that Section 2(E)'s retroactivity provision is unconstitutional. On June 25, 2024, the circuit court granted Respondent's motion, ruling that Section 2(E) of Act 236 is unconstitutional as a matter of law. On August 8, 2024, the circuit court denied Appellants' motion to alter or amend pursuant to Rule 59(e), SCRCF. Appellants timely served and filed their notice of appeal, and Appellants' initial brief is currently due on or before November 8, 2024.

On October 18, 2024, Defendants in *Brown v. Young*, another road user fee case pending in Orangeburg County, filed a motion for summary judgment requesting a declaration that "the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional." **Exhibit A** (Motion for Summary Judgment) at 1. Importantly, the *Brown* Defendants' motion also requests the following alternative relief:

Alternatively, if the Court rules that the retroactivity language is unconstitutional, the Court is asked to enter and certify final judgment on that constitutional question pursuant to Rule 54(b) so as to allow for an immediate appeal to be joined or consolidated with the currently pending appeal filed in the *Butts v. Mace*, Civil Action Number 2021-CP-22-00928, consistent with the May 17, 2023 Order issued by the Chief Justice of the South Carolina Supreme Court.

Id. at 1-2. The undersigned is aware that the parties in *Brown* are in the process of scheduling a hearing on the motion.

Because the pending motion in *Brown* is likely to give rise to an appealable order raising the same issues as this appeal, Appellants respectfully request that the Court stay all briefing deadlines in this matter until a notice of appeal is filed in *Brown*.³ Thereafter, the parties could join in and/or submit briefs on a uniform schedule. Appellants' request would therefore conserve

³ Rule 203(d)(1)(A)(ii), SCRCF, would require a notice of appeal from the circuit court's order in *Brown* to be filed with this Court.

the resources of the Court and the parties and would benefit the presentation of the issues for the Court's consideration.

Counsel for Appellants have discussed the requested stay with counsel for Respondent. Respondent does not consent to Appellants' request, citing possible delays associated with hearing and ruling on the motion in *Brown*. Appellants respectfully submit these concerns do not outweigh the benefits associated with hearing the same issues, raised in this matter and in *Brown*, at the same time.

Respectfully submitted,

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