

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Oct 25 2024

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

S.C. SUPREME COURT

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.

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Carroll Brown, individually and on behalf)
of all others similarly situated,)
)
Plaintiff,)

Civil Action No. 2021-CP-38-1268

v.)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT
AND/OR FOR ENTRY OF
DECLARATORY JUDGMENT AND
FOR RULE 54(B) CERTIFICATION**

Harold M. Young, in his official capacity)
as Orangeburg County Administrator;)
Matt Stokes, in his official capacity as)
Orangeburg County Treasurer; Orangeburg)
County; and Orangeburg County Council,)
)
Defendants.)

TO: TERRY E. RICHARDSON, JR.; WILLIAM C. LEWIS; BRADY R. THOMAS;
DAVID R. PRICE, JR.; SAMUEL B. TOOKER; CHARLES J. HODGE AND
T. RYAN LANGLEY, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council (collectively referred to as “Orangeburg Defendants”) will move before Circuit Court Judge Roger M. Young, Sr., at such time and place as may be set by the Court, for an Order, pursuant to Rule 54(b), Rule 56, and Rule 60(a) and (b), SCRCP, declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional and granting summary judgment to the Orangeburg Defendants on their mootness defense. 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.

The grounds for this motion are as follows:

On May 17, 2023, the Chief Justice of the South Carolina Supreme Court issued an Order consolidating each of the pending lawsuits within South Carolina seeking the recovery of road maintenance fees collected in various jurisdictions. The consolidation was ordered to provide for the adjudication by a single circuit court judge, Judge Roger M. Young, with regard to the retroactivity provision in Section 2(E) of Act No. 236. The Chief Justice issued that Consolidation Order to “promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *See*, Consolidation Order entered May 17, 2023.

The Orangeburg Defendants understand that the Plaintiff in only one of these consolidated actions, specifically *Butts v. Mace*, Civil Action Number 2021-CP-22-00928 (pending in Georgetown County), filed a Motion for Partial Summary Judgment requesting that Judge Young, under the authority granted by the Chief Justice in the Consolidation Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. Despite the Consolidation Order having been issued, the Motion for Partial Summary Judgment was filed only in the *Butts* case and that motion was not served on the Orangeburg Defendants in the above-captioned action pending in Orangeburg County, which is consolidated with the *Butts* case.

The Orangeburg Defendants further understand that the Motion for Partial Summary

Judgment in *Butts* was scheduled for a hearing on April 16, 2024, before Judge Roger Young. The Orangeburg Defendants were not provided with notice of that hearing by the Court. Likewise, the Orangeburg Defendants understand that the hearing was held on April 16, 2024, without the attendance or participation of their counsel and that Judge Young issued an Order Granting Plaintiff's Motion for Partial Summary Judgment on June 25, 2024, in which Judge Young granted partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of the issuance of that Order by the Court. Subsequently, Judge Young issued an Order Denying Defendants' Motion to Alter and Amend which was entered on August 8, 2024. A copy of that Order was not entered in the above-captioned action pending in Orangeburg County, despite being consolidated with the *Butts* case, and the Orangeburg Defendants were not provided with written notice of that Order by the Court.

It is the Orangeburg Defendants' understanding that the Chief Justice's Consolidation Order intended to allow the parties asserting a mootness defense to be heard on the retroactivity issue and for Judge Young to decide the issue in an "effective and expeditious" manner "by uniform rulings." Despite the Court treating the Order from the Chief Justice as a "Consolidation Order," given that reference in the June 25, 2024 Order, the Court through procedural oversight, error, or mistake did not treat the cases as consolidated in that the Orangeburg Defendants were not provided notice of the hearing, did not participate in the hearing, and were not provided written notice of the issuance of the two Orders.

The Orangeburg Defendants therefore respectfully request that the Court allow for the

Orangeburg Defendants to be heard on the retroactivity issue as originally directed and intended by the Chief Justice. The Orangeburg Defendants make this request for two reasons: First, because the retroactivity issues were adjudicated by the Court only in the *Butts* case, the Orangeburg Defendants do not have standing as an aggrieved party to participate as parties in the pending appeal in the Supreme Court and, as a result, are being denied their opportunity to be heard on this issue, thereby implicating fundamental fairness and due process. Second, while defense counsel in the *Butts* case made a number of the pertinent arguments, there was no argument made that the authority on which this Court relies in *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), is no longer “good law” and should be overruled in light of recent authority from the United States Supreme Court addressing the application of the separation of powers doctrine under similar circumstances. Specifically, the United States Supreme Court has ruled that “the legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.” *Patchak v. Zinke*, 138 S.Ct. 897, 905 (2018). “To distinguish between permissible exercises of the legislative power and impermissible infringements of the judicial power, this Court’s precedents establish the following rule: Congress violates Article III when it compels findings or results under old law. But Congress does not violate Article III when it changes the law.” *Id.* (Citations omitted). The Supreme Court further held that “[u]nder this Court’s precedents, Congress has the power to apply newly enacted outcome-altering legislation in pending civil cases.” 138 S.Ct.at 910. The same is true under the separation of powers doctrine as set forth in Article I, § 8 of the South Carolina Constitution.

Given the foregoing procedural history and the Chief Justice’s directions, the Orangeburg Defendants have filed the present motion to attempt to correct the procedural errors made by the adjudication of the retroactivity issue in the *Butts* case alone which may technically be a bar or impediment to the Orangeburg Defendants having standing as an aggrieved party before the Supreme Court and thus impairing its right to be heard on this issue.

The Court is, therefore, requested to address the constitutionality of the retroactivity language contained in Section 2(E) of Act No. 236 and to issue a final order, pursuant to Rule 54(b), on that issue to allow for an immediate appeal to the South Carolina Supreme Court, which appeal may, at its discretion, be joined or consolidated with the currently pending appeal filed in the *Butts v. Mace*, Civil Action Number 2021-CP-22-00928. The Orangeburg Defendants request that the Court enter and certify final judgment on that constitutional question within its power under Rule 54(b), SCRCP, as contemplated by or within the spirit of the Chief Justice’s Order which was intended to “promote the effective and expeditious disposition of this litigation by uniform rulings” so as to “conserve the resources of the parties, their counsel, and the judiciary.” *See*, Consolidation Order entered May 17, 2023.

This motion is based upon the pleadings filed in this case; a memorandum of law as will be submitted by October 25, 2024, as directed by the Court; the Consolidation Order issued by Chief Justice Donald W. Beatty entered May 17, 2023; the referenced Orders issued in the consolidated case of *Butts v. Mace*, Civil Action Number 2021-CP-22-00928; and such other matters as may be presented to the Court.

s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

s/ Bradley T. Farrar

BRADLEY T. FARRAR #66381
AIKEN COUNTY ATTORNEY'S OFFICE
1930 University Parkway, Suite 3600
Aiken, South Carolina 29801
(803) 642-3628
Email: bfarrar@aikencountysc.gov

*Counsel for Defendants Harold M. Young, in his
official capacity as Orangeburg County
Administrator, Matt Stokes, in his official capacity
as Orangeburg County Treasurer, Orangeburg
County, and Orangeburg County Council*

October 18, 2024