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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas

The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-001773

The Town of Hilton Head Island, South Carolina, John J. McCann,
and Stephen G. Riley Appellants,

v.

Beaufort County, South Carolina.....Respondent.

**MOTION TO DISMISS APPEAL OR TRANSFER TO THE COURT OF APPEALS AND
INCORPORATED MEMORANDUM IN SUPPORT**

M. Dawes Cooke, Jr., Esq. (S.C. #1376)
John W. Fletcher, Esq. (S.C. #69550)
BARNWELL WHALEY PATTERSON &
HELMS, LLC
211 King Street, Suite 300 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700 Fax: (843) 577-7708
*Counsel for Respondent Beaufort County,
South Carolina*

**MOTION TO DISMISS APPEAL OR TRANSFER TO THE COURT OF APPEALS AND
INCORPORATED MEMORANDUM IN SUPPORT**

AND NOW COMES Respondent Beaufort County, South Carolina (“County”), by and through its undersigned counsel, and files the following Motion to Dismiss Appeal or Transfer to the Court of Appeals and Incorporated Memorandum in Support:

INTRODUCTION

1. Unlike other municipalities in the County, Appellant Town of Hilton Head (“Town”) does not have a police department.

2. Because of its large population (including a large seasonal tourist population), the Town’s law enforcement demands exceed those of other parts of the County.

3. Since its incorporation, the Town has contracted for the Beaufort County Sheriff’s Office (“BCSO”) to be its police department and paid the County an annual fee for the cost of this service. By doing so, the Town saved its taxpayers many millions of dollars over the years.

4. This lawsuit was filed after the Town—after decades of doing so—refused to continue to compensate the County for the costs of providing the Town with the services that police departments provide in other municipalities.

5. Despite the Town’s refutation of its agreement with the County, the County never stopped providing police services to the Town.

6. To equitably underwrite the costs of providing those services, the County considered a uniform service charge on properties in the Town. The County consulted with TischlerBise, a respected firm, to assist it in this regard.

7. On August 24, 2020, County Council passed Ordinance 2020/29 (“Ordinance”) (Ex. A), imposing a law enforcement service charge (“LESC”) on real property in Hilton Head. It enacted the Ordinance in accordance with governing laws and in compliance with legal requirements and complied with TischlerBise’s independent recommendations. That LESC is imposed on “properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff’s Office **over and beyond the level of services provided in the**

incorporated municipalities which provide their own law enforcement services." (See Ex. A § 1(h) (emphasis added)). The LESC is payable and collected in the same manner as real property taxes. (See *id.* § 5).

8. Appellants commenced this lawsuit, contending that the Ordinance creating the LESC was invalid.

9. The parties filed cross-motions for summary judgment. After full briefing and oral argument, the trial court granted the County's Motion for Summary Judgment, but denied Appellants' Motion for Summary Judgment. After the trial court denied Appellants' Motion to Alter or Amend under Rule 59(e), Appellants filed the instant appeal directly to this Court—bypassing the Court of Appeals.

10. In their cover letter accompanying the Notice of Appeal, Appellants state that "[t]his case is being filed in the Supreme Court under Rule 3(D)(1)(A)(ii) (sic), SCACR, because the case concerns the constitutionality of an ordinance." It is most likely that Appellants intended to reference Rule 203(d)(1)(A)(ii).

11. For the reasons that follow, there was no basis for the direct appeal of this matter to this Court. To the contrary, appeal should have been taken directly to the Court of Appeals. As a result, the Court should dismiss this appeal with prejudice or, in the alternative, transfer this appeal to the South Carolina Court of Appeals.

ARGUMENTS/DISCUSSION

12. Appellate Court Rule 203(d)(1)(A)(ii) provide that an appeal may be taken directly to the Supreme Court from:

Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance **where the principal issue is one of the constitutionality of the law or ordinance**; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

See Rule 203(d)(1)(A)(ii), SCACR (emphasis added).

13. While Appellants have paid lip service to their constitutionality arguments, it is beyond dispute that “the principal issue” in this case is *not*—and has never been—the constitutionality of the Ordinance. Instead, the “principal issue” in this matter has been whether the LESC is a service charge or a “tax” under South Carolina statute.

14. The operative pleading in this matter is Appellants’ September 21, 2023 Amended Complaint. (*See* Ex. B). In that 11-page pleading, Appellants’ primary position was that the LESC is not a valid fee authorized by S.C. Code § 6-1-300(6).

15. The only allegations in Appellants’ Amended Complaint that the Ordinance is unconstitutional are:

40. The classification created by Ordinance 2020-29 is arbitrary, and does not treat the Plaintiffs in the same manner as others who are similarly situated.

41. Further evidence that the classification created by Ordinance 2020-29 is this: the only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

42. Beaufort County Ordinance 2020-29 does not apply and is not applied equally to persons similarly situated.

43. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike.

44. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

(*See id.* ¶¶ 40-44).

16. Appellants’ 14-page March 10, 2025 Notice of Motion and Motion for Summary Judgment generally argues in the last substantive page that the Ordinance is unconstitutional ***without citation to any case law***, without specifically identifying the suspect classification, and

without even identifying the level of scrutiny applicable to this argument. The sum total of Appellants' constitutional argument was:

Beaufort County has argued and will argue that the Town does not have a municipal police department, that other municipalities in Beaufort County do and that such justifies the LESC imposed by Ordinance 2020-29. Beaufort County has and will argue that the "benefit" that the Plaintiffs receive is that they would pay more if the Town had a municipal police department.³²

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and those services are delivered in every other municipality in Beaufort County by Beaufort County. Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.

Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

(*See* Ex. C, at 12).

17. Appellants' June 9, 2025 Reply to Beaufort County's Motion for Summary Judgment contains no argument that the Ordinance is unconstitutional. (*See generally* Ex. D).

18. The Order granting the County's Motion for Summary Judgment (and denying Appellants' Motion) exclusively addressed Plaintiff's argument that the Ordinance and LESC violated S.C. Code § 6-1-300(6). (*See* Ex. E).

19. After the Court granted the County's Motion for Summary Judgment (and denied Appellants' Motion for Summary Judgment), on August 15, 2025, Appellants filed their 9-page Notice of Motion to Alter or Amend (Rule 59, SCRPC). (*See* Ex. F). In this Motion, Appellants argued—in the span of slightly more than one page—the following with regard to Equal Protection:

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and EMS services are delivered in every other municipality in Beaufort County by Beaufort County. Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.

Beaufort County Ordinance 2020-29 creates a classification based on the claim that property taxpayers in the Town receive a benefit because they do not fund a municipal police department, but real property taxpayers in the other municipalities receive a benefit because they do not fund municipal EMS departments. Beaufort County treats them differently because they are not charged a user fee for EMS services.

Because Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and all persons similarly situated are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV and S.C. Const. art. I, § 3.

The Order does not include findings of fact or conclusions on the Town's equal protection claim, and the Town urges the Court to alter or amend the Order to find in the Town's favor based on denial of equal protection that Ordinance 2020-29 imposed on real property tax payers in the Town.

(*See id.*, at 2-3).

20. Throughout the proceedings below, Appellants' Equal Protection arguments were consistently made in a conclusory matter with no citation to any legal authority (other than the U.S. and state constitutions). Appellants never argued in detail why the Ordinance and LESC violated the constitution. Appellants never delineated the level of scrutiny that should apply or why that standard applied. Appellants never referred the trial judge to a single case explaining or supporting their contention that the Ordinance and LESC were unconstitutional.

21. Instead, Appellants made generic, half-hearted arguments and never elaborated on them.

22. Appellants' constitutional arguments quoted above would not have been sufficient to preserve the issue on appeal. "An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015) (quoting *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011)); accord *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting where party fails to cite authority or argument is conclusory statement, party is deemed to have abandoned issue); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006)

(noting when appellants fail to cite case law for positions and make conclusory arguments, they abandon those issues on appeal).

23. Appellants never properly raised or preserved their constitutional arguments for appellate review. As a result, those constitutional arguments could not possibly provide the jurisdictional basis for an appeal directly to this Court. Consequently, the Court should dismiss this appeal.

24. Even if Appellants properly preserved the constitutionality issue, that issue was certainly not the “principal issue” in this case.

25. To the contrary, throughout this lawsuit, Appellants have focused their briefing and motions on its contention that the Ordinance was invalid because it was not a service or user fee under S.C. Code § 6-1-300(6) (service or user fee requires that revenues (a) benefit payers (even if general public also benefits); (b) are used only for specific contemplated improvement; (c) do not exceed cost of improvement; and (d) are uniformly imposed).

26. The factual record and legal arguments presented to the trial court were squarely focused on the question of whether the Ordinance and LESC were a service or user fee under S.C. Code § 6-1-300(6).

27. Even if there is a constitutional issue in this appeal, it is ***not*** the principal issue. As a result, the Court should dismiss this appeal or transfer this case to the Court of Appeals.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: *s/ John W. Fletcher*

M. Dawes Cooke, Jr., Esq. (S.C. #1376)

John W. Fletcher, Esq. (S.C. #69550)

211 King Street, Suite 300 (29401)

PO Drawer H

Charleston, SC 29402

Phone: (843) 577-7700 Fax: (843) 577-7708

Counsel for Respondent

Charleston, South Carolina
Dated: September 24, 2025