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JUN 09 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2014-000847

Preservation Society of Charleston,
Historic Charleston Foundation, Historic
Ansonborough Neighborhood Association,
South Carolina Coastal Conservation
League, Charlestowne Neighborhood
Association, Charleston Chapter of the
Surfrider Foundation, and Charleston
Communities for Cruise Control,.....Appellants,

v.

South Carolina Department of Health and
Environmental Control and South Carolina
State Ports Authority,.....Respondents.

MOTION FOR CERTIFICATION

Respondent South Carolina State Ports Authority ("Ports Authority"),
pursuant to Rules 204(b) and 263(b) of the South Carolina Appellate Court
Rules ("SCACR"), S.C. Code Ann. § 14-8-210(b), and in accordance with Rule
240, SCACR, hereby moves for certification of the above-captioned appeal for

review by this Honorable Court. In support thereof, the Ports Authority respectfully shows as follows:

1. The Administrative Law Court (“ALC”) issued an order granting the Ports Authority’s motion for summary judgment for lack of standing on April 11, 2014.

2. Appellants Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control (collectively, “Appellants”) filed a notice of appeal from the order of the ALC on April 21, 2014.

3. On July 3, 2014, the Ports Authority moved to partially dismiss the appeal on the basis that two of the four orders from which Appellants appealed were not appealable.

4. By Order dated September 11, 2014, the Court of Appeals denied the Ports Authority’s motion to dismiss.

5. On October 14, 2014, Appellants filed their Initial Brief and Designation of Matters to be Included in the Record on Appeal.

6. On October 17, 2014, Appellants filed a Motion to Amend the Initial Brief to include an omitted Statement of Issues on Appeal and Statement of the Case, as required by the Appellate Court Rules.

7. By Order dated October 22, 2014, the Court of Appeals granted Appellants' motion and accepted the First Amended Initial Brief.

8. On November 6, 2014, Respondents Ports Authority and South Carolina Department of Health and Environmental Control ("DHEC") (collectively, "Respondents") filed a joint Motion to Strike from Appellants' Initial Brief reference to a letter and all matters which were not before the ALC and therefore improperly a part of Appellants' briefs on appeal.

9. By Order dated November 21, 2014, the Court of Appeals granted Respondents' Motion to Strike and required Appellants to file an amended brief removing the offending portions of the First Amended Initial Brief.

10. On December 1, 2014, Appellants filed a Second Amended Initial Brief.

11. On January 21, 2015, the Ports Authority filed its Initial Brief and Designation of Matters to be Included in the Record on Appeal.

12. On February 19, 2015, DHEC filed its Initial Brief and Designation of Matters to be Included in the Record on Appeal.

13. On March 16, 2015, Appellants filed their Initial Reply Brief.

14. The Record on Appeal was filed by Appellants on April 13, 2015.

15. After consultation between the parties regarding an omission in the Record on Appeal, Appellants filed an Appendix to the Record on Appeal on April 23, 2015.

16. On April 30, 2015, DHEC filed its Final Brief.

17. On May 4, 2015, Appellants and the Ports Authority filed their respective Final Briefs.

18. Consequently, this appeal is fully briefed and all filings have been made and served.

19. Under Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b), this Court may certify cases that involve legal principles of major importance or issues of significant public interest. Certification of this case is appropriate under the Court's standard for the following reasons:

Legal Principles of Major Importance

a. This appeal was taken from the contested case challenge to the State critical area permit issued by DHEC's Office of Ocean and Coastal Resource Management ("OCRM") to the Ports Authority authorizing the placement of five (5) additional pile clusters (amongst thousands of existing pile clusters) as a part of the planned relocation of the current cruise terminal operations to a location 600 yards away, but still within the existing Union Pier Terminal footprint in downtown Charleston;

b. The ALC granted the Ports Authority's motion for summary judgment, finding Appellants have failed to satisfy their burden of demonstrating any of the three constitutional elements of standing required to maintain a case or controversy;

c. This case is one of three companion cases filed by many of these same Appellants. This Court has already heard and ruled on one of the three cases related to the proposed renovations to the Union Pier Terminal. In *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, this Court ruled that many of these same Appellants lacked standing to bring a nuisance and zoning action against Carnival Corporation, the Ports Authority, and the City of Charleston. 407 S.C. 67, 79, 753 S.E.2d 846, 852-53 (2014);

d. The standard applied by this Court to the allegations of injury in *Carnival* applies equally in this appeal in evaluating Appellants' standing to challenge DHEC's permit;

e. The allegations of injury in this case are the same as the generalized grievances advanced and rejected by this Court in the companion case. The connection between the alleged injuries and the project permitted by DHEC, even if the injuries are presumed, is similarly attenuated and/or caused by the actions of third parties who are not a part of this lawsuit, and no judicial decision will redress the injuries that are alleged;

f. The ALC also found, based on opinions of this Court, that the representative groups including the Appellants did not comply with the requirements of associational standing and thus could not challenge the permit on behalf of their respective memberships;

g. Additionally, as did this Court in *Carnival*, the ALC rejected Appellants' alternative argument that the public importance exception should act to overcome any finding of lack of standing under the traditional three-part test;

h. In addition to the issues presented in the ALC's standing order, this appeal contains other legal issues of importance on account of Appellants' appeal of collateral orders of the ALC involving:

- i. An award of sanctions against Appellants for filing a frivolous motion;
- ii. The denial of a motion to vacate the Permit issued by DHEC, which was in form and function a motion for summary judgment from which an appeal is not permitted; and
- iii. The denial of a motion to expand discovery, which was vacated by the ALC and therefore not the proper subject of an appeal.

Significant Public Interest

i. Aside from the legal principles of major importance and application of this Court's precedent, the proposed and permitted renovation to the Union Pier Cruise Terminal in downtown Charleston has generated significant interest from the public;

j. Appellants, comprised of historic, neighborhood, and conservation groups, have been vocal in their opposition to the cruise industry and cruising public, and have seized upon the Ports Authority's capital improvement project as an opportunity to expel a thriving component of Charleston's maritime industry from the Charleston peninsula;

k. The Ports Authority has expended significant time and resources in planning and developing a \$35 million capital improvement project to modernize and reshape Union Pier, but has been delayed in part through the litigate-on-all-fronts efforts of a vocal minority of citizens that would prefer the Charleston peninsula be purged altogether of its maritime history;

l. Notwithstanding, the proposed cruise terminal and redevelopment plan has the overwhelming support of the City of Charleston and the State;

The Ports Authority submits that the foregoing involves legal principles of major importance and constitutes issues of significant public interest that would justify the Court exercising its discretion in certifying this appeal for its immediate review.

20. This Court may also certify a case on such other grounds as it deems appropriate. Rule 204(b), SCACR; S.C. Code Ann. § 14-8-210(b).

Certification of this case is appropriate here for the following additional reasons:

Alternative Grounds for Certification

a. As an economic driver of the State's economy, the Ports Authority has sought to diversify its business interests through the construction and operation of a modern cruise terminal to satisfy the needs of both the cruise ship operators and cruising public, as well as update and maintain the public safety and national security measures required of a modern terminal;

b. The proposed cruise terminal is the culmination of years of planning and public input. Appellants were unsuccessful in changing public opinion and governmental support for the project, so their strategy has shifted to litigating on all available fronts to delay this project as long as possible;

c. Given the importance of the issues and this Court's action in the companion cases, it is likely that any opinion of the Court of Appeals would be appealed to this Court anyway, unnecessarily delaying resolution of this appeal and the capital improvement project even longer.

21. This motion for certification is not interposed for delay, but is intended to advance this appeal in a timely and judicious manner. While fully briefed, this appeal has not yet been set for hearing by the Court of Appeals.

22. The Ports Authority submits the attached memorandum in support of the within motion as required by Rule 240(c), SCACR.

WHEREFORE, having fully set forth his motion, the Ports Authority requests that the above-captioned appeal be certified for review by the Court, and that the Ports Authority be granted such other and further relief as is just and proper.

Respectfully submitted,



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Carolina State Ports Authority*

June 5, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

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South Carolina Department of Health and
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PROOF OF SERVICE

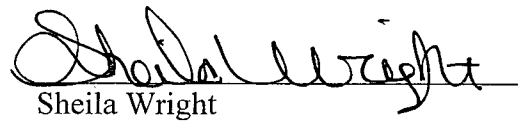
This is to certify that I, a paralegal with the law firm Willoughby & Hoefler, P.A.,
have caused to be served this day one (1) copy of a **Motion for Certification** and
Memorandum in Support of Motion for Certification by placing same in the care and
custody of the United States Postal Service with first class postage affixed thereto and
addressed as follows:

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Bradley D. Churdar, Esquire
**South Carolina Department of
Health and Environmental Control**
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

J. Blanding Holman, Esquire
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403


Sheila Wright

Columbia, South Carolina
This 5th day of June 2015

WILLOUGHBY & HOEFER, P.A.

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SC Court of Appeals

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June 5, 2015

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: *Preservation Society of Charleston v. S.C. State Ports Authority*;
Appellate Case No. 2014-000847

Dear Mr. Shearouse:

Pursuant to Rules 204(b) and 240, of the South Carolina Appellate Court Rules, enclosed for filing please find the original and seven (7) copies of a **Motion for Certification** and **Memorandum in Support** on behalf of Respondent South Carolina State Ports Authority in the above-captioned matter.

By copy of this letter to counsel, I am serving Appellants Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Historic Charleston Foundation, as well as counsel for co-Respondent South Carolina Department of Health and Environmental Control, with a copy of this Motion and enclose a proof of service to that effect. Also by copy of this letter, as well as by separate letter, I have notified the Clerk of Court of the Court of Appeals and enclose a copy of same for your records. Finally, under the Ports Authority's longstanding interpretation of Rule 240(d), and as an agency of the State, it is exempt from the filing fee requirement for the within motion.

The Honorable Daniel E. Shearouse

June 5, 2015

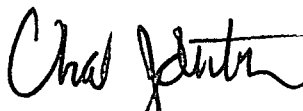
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I would appreciate your acknowledging receipt of the Motion and Memorandum by file stamping the enclosed extra copies of same and returning them to me via our courier.

If you have any questions, or require additional information, please do not hesitate to contact me. With best regards, I am,

Respectfully,

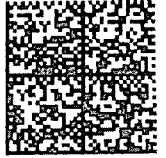
WILLOUGHBY & HOEFER, P.A.



Chad N. Johnston

Enclosures

cc: The Honorable Jenny Abbott Kitchings (via U.S. Mail with enclosures)
Amy Armstrong, Esquire (via U.S. Mail with enclosures)
Jefferson Leath, Esquire (via U.S. Mail with enclosures)
J. Blanding Holman, Esquire (via U.S. Mail with enclosures)
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TO:

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