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May 24 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

CASE NO.: 2019-CP-07-00818
APPELLATE TRACKING NO.: 2021-00321

Mare Baracco,.....Petitioner,

v.

County of Beaufort,.....Respondent.

MOTION TO CERTIFY APPEAL

In accordance with Rule 204 of the *South Carolina Appellate Court Rules*, the Petitioner (Appellant/Respondent in the case pending in the Court of Appeals), moves for an Order of the Court certifying the above appeal directly to the South Carolina Supreme Court. This motion is based on the following three grounds:

1) The Petitioner brought this action alleging Beaufort County failed to adhere to its responsibilities of providing public documents under the *South Carolina Freedom of Information Act*.

2) The issue of citizens' access to public documents raises important questions of statewide importance.

3) The County's financial superiority makes the Petitioner's prosecution of her claim unduly expensive and burdensome and disadvantages the Petitioner.

For these reasons and because a decision by the Court of Appeals, regardless of outcome, will be subject to continued appeal, which disadvantages the Petitioner, she moves for an Order of the Court allowing the Supreme Court to transfer the case under Rule 204 in order that a final decision can be rendered on an issue of great importance.

May 23, 2022

/s/ Thomas R. Goldstein
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Attorneys for Appellant

CERTIFICATE OF COUNSEL

I certify that prior to filing this motion to transfer case, I consulted with opposing counsel who objects to the relief requested.

May 24, 2022

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186

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MEMORANDUM IN SUPPORT OF MOTION TO CERTIFY APPEAL

Petitioner seeks a transfer of this case from the Court of Appeals to the Supreme Court based on the important statewide issues of public importance raised and the unfairness of the financial disparity between the parties. Petitioner filed this action under the *Freedom of Information Act* April 10, 2019, and received a Final Order disposing of the case on November 13, 2020 and February 2, 2021. (To be fair to Beaufort County, Petitioner’s counsel experienced a heart attack in April 2019 that required open heart surgery in August 2019, and during that time, both the Court and opposing counsel were extraordinarily courteous in affording counsel adequate time to recover.) However, the circuit court, *sua sponte*, assigned the case to a special referee, which not only further delayed resolution, but also saddled Petitioner with additional expenses. To date, Petitioner has incurred attorney’s fees and costs in excess of \$36,547.19, including an additional obligation to the special referee in the amount of \$3,640.00, an unconscionable figure in a *Freedom of Information*

Act case because the General Assembly provides that such cases should be resolved quickly and inexpensively. See § 30-4-100(a), S. C. Code, ann.: “Upon the filing of the request for declaratory judgment or injunctive relief, related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties.” This Record on Appeal amply demonstrates that Beaufort County is prepared to drive up the costs to a stratospheric level.

Flowing from the Court’s Constitutionally endowed powers bestowed by Article V, § 5 and Rule 204 of the *South Carolina Appellate Court Rules*, the Court has the ability to certify cases involving statewide public policy “where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b) As set forth in Petitioner’s motion to certify the appeal, the Petitioner submits there are **at least** three compelling reasons to allow the case to come before this Court without an intermediate appellate decision:

- 1) The Petitioner brought this action to require Beaufort County to obey its responsibilities under the *South Carolina Freedom of Information Act*.

This Court has issued a plethora of decisions upholding the right of citizens to examine public records, and in enacting the *Freedom of Information Act*, the General Assembly specified that any violation of the *Act* is a serious violation constituting irreparable harm. “. . . a violation of this chapter must be considered to be an irreparable harm for which no adequate remedy at law exists.” § 30-4-100(a), S. C. Code, ann. The amount of time and the amount of money Petitioner has invested in a non-jury matter that the General Assembly intended be resolved within ten days after service of process demonstrates two incontrovertible points: First, Beaufort County has demonstrated its willingness to spend taxpayer money at a profligate level to maintain secrecy of public government documents. Second, Beaufort County has demonstrated it has no intention of

obeying this Court's many clear directives regarding the *Freedom of Information Act*, a pernicious and flagrant disregard of its responsibilities to be transparent, and these violations "involve an issue of significant public interest."

The examples of "significant public interest" are numerous. Just in the last month, a local municipal government, Isle of Palms, in Charleston County voted, 7-2, to discontinue City Council Committees in favor of "workshops," which, according to the deliberation, allows Councilmembers to participate in forming government policy outside the public's view, so long as they keep below a quorum. Also in the last month, four current and former Beaufort County Councilmembers published an open letter in the local paper, *The Island Packet*, urging voters not to support Council Chair Stu Rodman for what they allege is his continued efforts to conduct government business in secret, which is the main focus of the present action. Such flouting of rules designed to promote open government demonstrates why the issues in this case are of statewide significant public interest and why the citizens of South Carolina need a strong statement from the highest Court reminding local governments of their responsibilities to adhere to their obligations under the *South Carolina Freedom of Information Act*.

2) The issue of citizens' rights to review government activity is an issue of important statewide public policy.

As set forth above, the willingness of local governments to flout the minimum requirements of government transparency is both disconcerting and dangerous. Local governments continue to push the boundary of lawful constraint, and the only thing standing between adhering to legal requirements and the unbridled unlawfulness of ignoring them is the judicial pronouncements of this Court. Government officials conducting government business in schemes to escape transparency is a significant statewide problem, as the present case demonstrates, and if the Court

finds such conduct unlawful, such a finding requires a strong statement of condemnation from the highest court.

3) The County's financial superiority has made the Petitioner's prosecution of her claim almost impossible.

The financial disparity between the parties is obvious. The County has unlimited economic superiority, and because there is no consequence for violating the *Freedom of Information Act*, except for paying attorney's fees with taxpayer's money, the Petitioner requests that this Court continue its vigilance against the increasingly bold violations of the *Act*. Prior to the 2017 amendments to the *Act*, there existed a theoretical possibility of criminal action for violations, but the General Assembly abrogated those penalties in the 2017 amendments. § 30-4-10, S.C. Code, ann provided for criminal penalties until the May 2017 amendments reduced the penalty to "actual or compensatory damages or equitable relief [or] impose a civil fine of five hundred dollars."

In trial courts, litigants are required to operate within the provisions of the *Rules of Civil Procedure*, and Rule 1 states: "[The Rules] shall be construed to secure the just, speedy, and inexpensive determination of every action." The General Assembly follows the same formula in adopting the *Freedom of Information Act* by defining the Act's "Findings and purpose" to include: ". . . provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials **at a minimum cost or delay** to the persons seeking access to public documents or meetings." (emphasis added) This record demonstrates that Beaufort County Council has tacitly vetoed not only the General Assembly's clear directives, but also ignored this Court's numerous pronouncements on the importance and vitality of the *South Carolina Freedom of Information Act*. The County has grievously misused its superior financial resources to thwart both the will of the Legislature and the

rights of the Petitioner, and this case represents an unconscionable expenditure of government resources to promote unlawful conduct and thwart the purpose of the *Freedom of Information Act*.

For any or all of these reasons, Petitioner respectfully requests this Court transfer the pending appeal to it so as to promote a judicial review of the decisions below “at a minimum cost or delay.”

Respectfully submitted,

May 24, 2022

/s/ Thomas R. Goldstein
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APPELLATE TRACKING NO.: 2021-00321

Mare Baracco,.....Appellant,

v.

County of Beaufort,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant’s Motion to Certify Appeal upon the Respondent, Beaufort County by depositing a copy of it in the United States mail, postage prepaid on May 24, 2022, addressed to its attorney of record, E. Richardson LaBruce, Finger, Melnick & Brooks, P.A., P. O. Box 24005, Hilton Head Island, South Carolina 29925-4005 and also by providing a copy by electronic means.

May 24, 2022

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May 24, 2022

Hon. Patricia A. Howard
Clerk of Court
S. C. Supreme Court
Post Office Box 11330
Columbia, S C. 29211

Hon. Jenny A. Kitchings
Clerk of Court
S. C. Court of Appeals
Post Office Box 11629
Columbia, S C. 29211

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SC Court of Appeals

RE: Baracco v. Beaufort County—Appellate Tracking Number 2021-000321
2019 CP 07 00818

Dear Ms. Howard and Ms. Kitchings,

I enclose an original and six copies to the Supreme Court of Petitioner's (Appellant/Respondent's) Motion to Certify Appeal to the Supreme Court under Rule 204 along with our firm's check in the amount of \$50.00. I am also filing this electronically. Would you be so kind as to file these with the Court and advise me if anything further is required to perfect this filing? I thank you in advance for your attention to this request. By copy of this letter, I am providing a copy to opposing counsel. With kind regards, I am

Very truly yours,

TRG/


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

encl.: Motion to Transfer Appeal, check No. 19935

cc:
Richardson LaBruce, Esq. (with enclosure)