No. 101P24 FIRST JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

GERALD COSTANZO, BRYAN DAGGETT, JOHN DUMBLETON, PHILIP SCHNEIDER, CLARA SCHNEIDER, MARGARET BINNS, MOHAN ADKARNI, GREGORY A. WANDER, RONALD BUCHANAN, STACEY MCCONNELL, GARY S. MILLER, JEFFREY P. FUSSNER, WILLIAM T. COLLINS, REX LUZADER, ELIZABETH SCHWEPPE, GERRILEA ADAMS, RICHARD J. CHOWN, PATRICIA C. CHOWN, GARY GOSNELL, MARY MAGNER, MICHAEL C. BRIGATI, ROBERT RICHARDSON, MARYANN DUMBLETON, and COROLLA CIVIC ASSOCIATION,

Plaintiffs,

v.

CURRITUCK COUNTY, NORTH CAROLINA; THE CURRITUCK COUNTY TOURISM DEVELOPMENT AUTHORITY; THE CURRITUCK COUNTY BOARD OF COMMISSIONERS; and DANIEL F. SCANLON II, CURRITUCK COUNTY MANAGER and BUDGET OFFICER, both in his official capacity and in his individual capacity,

Defendants.

From Currituck County

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PLAINTIFFS' RESPONSE TO PETITION FOR DISCRETIONARY REVIEW

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INDEX

TABLE OF CASES AND AUTHORITIES

Cases:

Statutes:

Other Authorities:

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PLAINTIFFS' RESPONSE TO PETITION FOR DISCRETIONARY REVIEW

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INTRODUCTION

The requirements of Section 7A-31(c) are plain and nonnegotiable. Defendants have met none of them. The Court of Appeals resolved a straightforward statutory interpretation issue involving a local act passed by the General Assembly that applies to a single county. That decision neither involves a matter of significant public interest nor implicates legal principles of major significance to the jurisprudence of the entire state. The petition should be denied.

The General Assembly has passed numerous local acts that allow municipalities to charge occupancy taxes in addition to preexisting sales taxes. Each local act is worded differently to reflect the unique character of the county to which it applies.

In the original version of the local act at issue here, the General Assembly directed Currituck County to spend at least 75% of its occupancy tax on "tourist related purposes," while permitting up to 25% of the tax to be spent on general county services. When the County spent the entirety of the occupancy tax on general county services, the General Assembly responded by removing any language that would permit the County to spend occupancy tax revenues on general services. The local act's language was reworded to require that the entirety of that revenue be spent to increase "tourism-related expenditures, including beach nourishment."

Yet even after the amendment, the County continued to spend the bulk of that money on general services. Plaintiffs, who are part of the County's tourism industry, sued to require the County to comply with the plain text of the amended act and spend the money to promote tourism. In its decision below, the Court of Appeals agreed with Plaintiffs that the County's spending had not complied with the act's plain text.

Nothing in that decision implicates legal principles of major significance to the jurisprudence of the state. The text the General Assembly selected for Currituck's occupancy tax act is unique; Defendants have not identified even one other local act that has identical operative language. Thus, the Court of Appeals' decision—which applied well-established canons of statutory construction to give the local act its plain meaning—will not have a wider impact. And the Court of Appeals' holding that the County lacked legislative discretion to ignore the boundaries set by the local act's plain text broke no new ground, for it is long settled that municipalities can operate only within their statutory authority. This Court's review of either point would not advance North Carolina law in any meaningful way.

Likewise, Defendants have failed to show significant public interest. A single blogpost published after the decision's issuance does not represent a degree of public interest sufficient to justify review of an otherwise straightforward and unremarkable Court of Appeals decision. The unique nature of

Currituck's occupancy tax act means that the decision will not have broader effect outside of the county. What's more, if Defendants want unfettered spending authority, they can again ask the General Assembly to amend the act.

Defendants have failed to demonstrate a single ground warranting discretionary review under Section 7A-31(c). This Court should deny review.

FACTUAL BACKGROUND

I. Corolla's tourism industry disproportionately benefits the County.

The plain text of the local act at issue reflects the unique geographic, economic, and political relationship between Corolla and Currituck County. Currituck County comprises the northeast corner of North Carolina. Ninety percent of Currituck sits on the mainland. (White Dep. 32:21-33:5). The remaining ten percent is a thin strip of land in the Outer Banks. (White Dep. 32:21-33:5). Corolla is the main revenue generating area on Currituck's portion of the Outer Banks. Apparently, there is not even a road directly linking Corolla to the mainland portion of Currituck County. *See Currituck County*, Google Maps, https://tinyurl.com/Currituck-GoogleMaps, (last visited May 2, 2024).

Corolla is a tourist destination; the rest of Currituck is not. (White Dep. at 19:23-20:2). Ninety-nine percent of the County's occupancy tax revenue—the tax at issue in this case—comes from Corolla. (R p 5 ¶ 14).

Corolla disproportionately generates the County's wealth, even without the occupancy tax. For instance, Corolla generates 52% of the County's property taxes, even though it comprises only 10% of its landmass. (White Dep. 35:18-19). That property tax then goes into the County's general fund, where it can be spent for any public purpose in any part of the County. *See* N.C. Gen. Stat. § 153A-149(b). The County's general fund is further bolstered by the significant amount of sales taxes paid by Corolla's tourists during their visits. *See, e.g.*, *id.* §§ 153A-151, 105-113.82(g).

Contrary to Defendants' assumptions, there is no evidence that tourists require an excess of services. Instead, the evidence shows that Currituck's EMS receives fewer calls from Corolla than the rest of the county. (R p 126). That disparity holds true even during peak summer season, when there are twice as many tourists in Corolla than there are people in the remainder of Currituck. (R p 126). Similarly, there are fewer calls to the police in Corolla than the rest of the county. (R p 127). The number of arrests on Corolla is also far fewer. (R p 128). And tourists arriving from west or south generally take the shortest route to reach Corolla, which is through neighboring Dare County via Highway 64, with the result that they never touch Currituck's mainland.

See, e.g., *Driving Directions from Charlotte to Corolla, N.C.*, Google Maps, https://tinyurl.com/CharlotteToCorolla, (last visited May 2, 2024).

II. The General Assembly both authorizes the County to collect an occupancy tax and limits how the County can spend it.

In 1987, the General Assembly enacted a local act that authorized the County to charge a three percent occupancy tax. *See* Act of May 18, 1987, ch. 209, 1987 N.C. Sess. Laws 277-79. This tax was paid by the proprietors of hotels, inns, rental cottages, and similar lodging establishments based on the "gross receipts derived from the rental of any room." § 1(a), 1987 N.C. Sess. Laws at 277. Since the occupancy tax was "in addition to any State or local sales tax," it functioned as a bonus revenue source for the County, on top of its normal tax revenues. *Id.* This local act applied only to Currituck County.

The occupancy tax is generated primarily by tourists to Corolla, so in the original version of the act, the General Assembly directed the County to use "at least seventy-five percent" of the tax "*only* for tourist related purposes," which was defined at that time to "include[e] construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services." § 1(e), 1987 N.C. Sess. Laws at 279 (emphasis added). In addition, the General Assembly permitted the County to deposit "the remainder of the net proceeds" into "the Currituck County General Fund" to "be used for any lawful purpose." *Id.*

Instead of focusing on tourist-specific items, however, the County used the occupancy tax to subsidize its own general spending. (R pp 147-48; Jarvis Dep. at 12:4-21, 16:7-17:4)). Meanwhile, the General Assembly received and considered data showing that the imposition of an occupancy tax, on top of underlying sales taxes, hurts the local tourism industry unless the proceeds are invested in making the area more attractive to tourists. (R p 178 ¶ 12). So, in 2004, the General Assembly amended Currituck's occupancy tax act to remove the County's ability to spend any of its occupancy tax dollars on general county services and force it to directly promote the tourism industry. *See* Act of July 13, 2004, ch. 95, 2004 N.C. Sess. Laws at 115-17; (R p 178 ¶ 12). Under the amended local act, Currituck would maximize its own tax revenue by using the occupancy tax to increase the number of tourists as a whole and thus receive a boost in sales taxes and other economic benefits that tourists bring.

Specifically, the General Assembly struck out the clause permitting the County to deposit up to twenty-five percent of the act into its General Fund and use it "for any lawful purpose." § 2, 2004 N.C. Sess. Laws at 115. It also removed the phrase "tourist-related purposes" along with the accompanying language about "construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services." *Id.* In replacing that language, the General Assembly directed *all* occupancy tax revenues be spent on "tourism-related

expenditures," with one-third going directly "to promote travel and tourism." *Id.* The remainder was to be spent on other "tourism-related expenditures," with "beach nourishment" identified as a specific permitted use. *Id.*

The General Assembly instituted a separate governmental entity, the Currituck County Tourism Development Authority (TDA), to oversee the tax's spending. § 3, 2004 N.C. Sess. Laws at 116-17.[1] The General Assembly explicitly instructed the TDA to spend the tax on the purposes previously outlined: to "promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county." § 3, 2004 N.C. Sess. Laws at 117.

Defendants recognized that, under the plain language of the act, their days of spending occupancy tax dollars on general county services were over. Apparently displeased with that change, the County Commissioners lobbied the General Assembly to amend the act and reauthorize them to spend the tax revenue more broadly. (Owen Etheridge Dep. at 53:9-55:18). A legislator agreed to introduce a bill on Defendants' behalf that would have reinstated the clause from the original act which allowed up to 25% of the occupancy tax to be spent as part of the general fund. H. 1102, 2007-2008 Sess. (N.C. 2007),

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[1] As detailed below, every voting member of Currituck's TDA is also a Currituck County Commissioner. The two entities, both of which are Defendants here, are effectively identical.

available at https://tinyurl.com/HB-1102. The proposed bill would have also restored the language permitting the County to spend the remainder on "tourist-related services," defined to include "construction and maintenance of public facilities and buildings; garbage, refuse, and solid waste collection and disposal, police protection, and emergency services." *Id.* § 1(e). In Defendants' own words, the proposed bill would have "changed everything" by "reinstituting" the County's ability to spend occupancy tax dollars on general public services. (Hill Dep. 35:1-21). The proposed bill was not enacted. (Owen Etheridge Dep. at 56:19-20).

III. The County disregards the General Assembly's directions.

Unable to convince the General Assembly to reinstate its original spending authority, Defendants embarked on a new plan to keep the occupancy tax revenues flowing into the general fund: they would ignore the amended law. Despite the plain language of the 2004 amendment, the County continued to spend occupancy tax revenues on general public safety services, a water treatment facility, special service districts, and other items with no specific tourism purpose. (R pp 14-26). Perhaps the most blatant example of the County's misuse of these funds was its decision to pay for its defense of this lawsuit using the occupancy tax revenues. (White Dep. at 50:3-15; R p 148). Though created to oversee the spending of occupancy tax funds, the TDA never bothered to

determine whether the expenditures named above had any relation to tourism. (White Dep. at 26:20-27:1; Jarvis Dep. 42:9-17).

The spending limitations were needed given the unique structure of Currituck's TDA. In all other counties, the TDA has a majority of members from the tourism industry. (R pp 137-38). Currituck is the *only* county where the TDA does not have a single representative of the tourism industry as a voting member. (R pp 137-38). Instead, and tellingly, the TDA's voting membership is composed entirely of County Commissioners. (R pp 137-38). But County Commissioners in Currituck are elected by total county vote, and Corolla comprises only 10% of Currituck's voting population. *See Board of Commissioners*, Currituck Cnty., https://currituckcountync.gov/board-of-commissioners/, (last visited May 2, 2024); (PDR at 7). That means that the residents of Corolla, despite generating 99% of the occupancy tax (R p 5 ¶ 14), effectively have no say either through the County Commissioners or the TDA in how those funds are spent. Meanwhile, the TDA unabashedly spends the occupancy tax funds to the benefit of mainland constituents while also artificially lowering the general county taxes by subsidizing them with occupancy tax funds. Because the County Commissioners and the TDA are effectively the same entity, no counterbalance exists to ensure that the County complies with the General Assembly's direction to reinvest the occupancy taxes in maintaining and growing the tourism industry. (*See* R p 178 ¶ 12).

The County has turned a blind eye to the General Assembly's directions and continually spent the occupancy funds on expenses that have nothing to do with promoting the tourism industry. Left with no other recourse, Plaintiffs—business owners and members of Corolla's tourism industry—sued to force the County to comply with the plain language of the local act.

REASONS WHY THE PETITION SHOULD BE DENIED

I. A Straightforward Statutory Interpretation Decision with Minimal Outside Impact Is Not Significant to this State's Jurisprudence.

The Court of Appeals correctly interpreted a uniquely worded local act that applies only to Currituck County. In its analysis, the Court of Appeals relied on well-settled principles of statutory construction and applied them to the undisputed facts before it. This decision does not implicate any legal principles of major significance to the jurisprudence of this state.

A. The Court of Appeals' textual interpretation will not affect any counties besides Currituck.

The General Assembly has enacted individual local acts that allow most counties to charge an occupancy tax. The structure of that tax is unique to each county. Given the distinctive language in each act, the Court of Appeals' correct interpretation of the plain text of Currituck's occupancy tax act will reach no further.

North Carolina counties can only charge taxes if they receive explicit authority from the General Assembly. *Appeal of Martin*, 286 N.C. 66, 74, 209 S.E.2d 766, 772 (1974). The General Assembly can also limit counties' spending of that money, as counties "can exercise only that power which the legislature has conferred upon them." *Bowers v. City of High Point*, 339 N.C. 413, 417, 451 S.E.2d 284, 287 (1994).

Here, the General Assembly removed the County's ability to put occupancy tax revenues in the general fund to be spent on whatever the County wanted. § 2, 2004 N.C. Sess. Laws at 115. Instead, the General Assembly directed the County to spend the funds exclusively on "tourism-related expenditures," such as "beach nourishment." *Id.* The Court of Appeals correctly recognized that this "change in the language of a prior statute presumably connote[d] a change in meaning." *Costanzo v. Currituck County.*, No. COA22-699, 2024 WL 1171799, at *4 (N.C. Ct. App. Mar. 19, 2024) (publication forthcoming) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012)). That holding is consistent with longstanding precedent in this state. *See Childers v. Parker's, Inc.*, 274 N.C. 256, 260, 162 S.E.2d 481, 484 (1968) ("[I]t is logical to conclude that an amendment to an unambiguous statute indicates the intent to change the law . . . ."); *Wells Fargo Bank, N.A. v. Am. Nat'l Bank & Tr. Co.*, 250 N.C. App. 280, 285, 791 S.E.2d 906, 910 (2016) (Dietz, J.) ("We must presume that by changing the law . . . the

General Assembly intended for the new law to have a different meaning." (citing *Childers*, 274 N.C. at 260, 162 S.E.2d at 484)).

The plain reading of the 2004 amendment to Currituck's occupancy tax act is that the General Assembly changed the act to prevent the County from continuing to spend the revenue on such general county services as the "construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services," even if they might provide some incidental benefit to tourists. *See* § 2, 2004 N.C. Sess. Laws at 115 (removing that language). The Court of Appeals recognized that plain meaning, applying straightforward canons of statutory construction. *Costanzo*, 2024 WL 1171799, at *4. This analysis—applied to one solitary local act and affecting only a single county—did not implicate legal principles of major significance to the rest of the state.

This decision will not affect other counties' occupancy tax acts. Defendants identify no other acts that contain identical language to Currituck's. The only source Defendants do provide—a blog post—incorrectly asserts that there are "at least a handful" of occupancy tax acts "that reflect legislative histories similar to that of Currituck County." Chris McLaughlin, *Occupancy Taxes and "Tourism-Related Expenditures"*, Coates' Canons NC Loc. Gov't L. (Apr. 4, 2024), https://canons.sog.unc.edu/2024/04/occupancy-taxes-and-tourism-related-expenditures/. First of all, legislative history and statutory language are

not the same thing. *See* Scalia & Garner, *supra*, at 256 (explaining that *statutory* history—looking to changes to a statute's text caused by amendments—is different and more probative of meaning than *legislative* history—looking to legislators' individual comments). Second, the "handful" of counties identified in the blog post are Alleghany County, Caswell Beach, Holden Beach, and Sunset Beach. Mclaughlin, *supra*. Their occupancy tax acts contain language materially different from Currituck's:

- Alleghany County: The local act directs "one hundred percent (100%) of the net proceeds of the occupancy tax to the Alleghany County Chamber of Commerce. The chamber of commerce shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Alleghany County and shall use the remainder for tourism-related expenditures." Act of June 17, 2011, ch. 170 § 1, 2011 N.C. Sess. Laws 661.
- Sunset Beach, Holden Beach, and Caswell Beach: Each municipality's occupancy tax act explicitly permits the entirety of the occupancy tax to be spent on "criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion." Act of August 6, 1997, ch. 364 §§ 8-9, 12, 1997 N.C. Sess. Laws 933, 935, 938.

Rather than demonstrating that the Court of Appeals decision will have a broad impact, these counties' individual local acts show the opposite. The General Assembly has customized each local occupancy tax act to best address the needs of that individual municipality or county. The material differences between other local acts' language and Currituck's means that the Court of Appeals' interpretation of Currituck's occupancy tax act will not control the meaning of other local acts. *See* 27 Strong's N.C. Index 4th *Statutes* § 25, Westlaw (database updated Feb. 2024) ("A negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions . . . ." (citing *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006))).

Further review only affirms that the General Assembly enacted individualized occupancy tax acts for each county, and sometimes even for individual cities within counties, personalizing the tax structure to reflect the unique economic, geographic, and demographic realities of each municipality or county. *See* Magellan Strategy Group, *Profile of North Carolina Occupancy Taxes and Their Allocation* 3 (2018), available at https://www.magellanstrategy.com/research/. In Buncombe County, for example the General Assembly recently directed that two-thirds of occupancy tax funds be used "only (i) to further the development of travel, tourism, meetings and events in the county through marketing, advertising, sales, and promotion and (ii) for the administrative expenses," while the remaining third "be split evenly between" the Tourism

Product Development and the Legacy Investment from Tourism Fund. Act of July 1, 2022, ch. 40, § 3.1(a), 2022 N.C. Sess. Laws 191. But in Caldwell County, the tax is remitted to the Chamber of Commerce for 50% to be spent "to promote travel and tourism" and "to sponsor tourist-oriented events and activities," and the other 50% to be spent "to promote industrial and economic growth in Caldwell County." Act of June 25, 1987, ch. 472 § 1, 1987 N.C. Sess. Laws 643-44. And in next-door Dare County, 75% of occupancy tax is spent on "cost of administration and to promote tourism" while 25% "shall be used to services or programs needed due to the impact of tourism on the county." Act of May 30, 1991, ch. 177 § 1, 1991 N.C. Sess. Laws 315.

In short, each of these local acts uses different language to communicate the unique occupancy tax structure that the General Assembly designed for that particular county or municipality. When interpreting those local acts, courts should look to their specific language and give them their plain meaning. *In re Exec. Off. Park of Durham Ass'n, Inc.*, 382 N.C. 360, 363, 879 S.E.2d 169, 171 (2022). The Court of Appeals did just that. Its interpretation was limited to the unique language in Currituck's local act. The Petitioner has identified no other occupancy tax act that contains operative language identical to Currituck's.

The Court of Appeals' interpretation of Currituck's occupancy tax act, therefore, has no broader effect. Defendants cannot show that the decision implicated legal principles of major significance to the rest of the state.

B. The Court of Appeals' decision simply applied long standing precedent on legislative discretion.

"Legislative discretion" does not include the discretion to disregard the law itself. The Court of Appeals decision, requiring the County to exercise its discretion within the statutory boundaries set by the General Assembly, broke no new ground. It did not implicate legal principles of major significance to the state.

Fundamentally, Defendants misunderstand how legislative discretion works in the municipal context. When the General Assembly grants a municipality legislative discretion, that discretion "is subject to the limitations of the enabling act." *State v. Joyner*, 286 N.C. 366, 369, 211 S.E.2d 320, 322 (1975) (cleaned up). In "determining the extent of legislative power conferred upon a municipality, the plain language of the enabling statute governs." *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 19, 789 S.E.2d 454, 457 (2016). Therefore, "counties must exercise their legislative powers within the confines of the enabling statutes enacted by the General Assembly." *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 156-57, 731 S.E.2d 800, 811 (2012).

Provided that a county is acting within the boundaries set by plain language of the enabling statute, it has discretion. But, as this Court has long recognized, when a county exceeds those boundaries, it abuses that discretion. *Lanvale*, 366 N.C. at 156-57, 731 S.E.2d at 811. In *Lanvale*, for instance, this Court rejected the county's proposed rule which would "give counties virtual carte blanche to enact an unlimited range of ordinances . . . no matter how tenuous the connection between the ordinance" and the enabling statute. *Id.*

Below, the Court of Appeals simply reaffirmed that long-settled principle. While the County has some discretion in spending its occupancy tax, there is an outer boundary around that discretion set by "the plain language of the enabling statute." *Quality Built Homes*, 369 N.C. at 19, 789 S.E.2d at 457. Under the enabling statute in this case—Currituck's occupancy tax act—the County can only spend occupancy tax revenues on "tourism-related expenditures," which the General Assembly made clear no longer includes general county services such as police protection, solid waste collection, maintenance of public buildings, etc. § 2, 2004 Sess. Laws at 115. The Court of Appeals did not institute a sea change in this state's jurisprudence when it recognized that the County's spending of the occupancy tax on items unrelated to tourism, such as general "public safety services and equipment," the "construction of a water treatment facility," the "funding of special service districts," and "non-promotional operations and activities of the County's Economic Development

Department," fell outside the boundaries erected by the plain text of Currituck's occupancy tax act. *Costanzo*, 2024 WL 1171799, at *4.

Indeed, as the concurrence pointed out, even if these items somehow fell within the definition of a tourism-related expenditure, the County nevertheless abused its discretion by failing to exercise any discretion in the first place. *Id.* at *6-7 (Hampson, J., concurring). Specifically, the uncontradicted evidence showed that the TDA apparently never deliberated whether a particular expenditure had a tourism-related purpose. (White Dep. at 26:20-27:1 (unable to recall any deliberation on something "questionable" within the past three or four years); Jarvis Dep. 42:9-17 (unable to recall a single time the commissioners deliberated whether an expenditure met the definition of "tourist related expenditures")). Instead, the TDA (aka the County Commissioners) simply spent the money on whatever general service they wanted, without any consideration given to whether that expenditure fell within the act's boundaries. Even if Defendant's interpretation of the act were to be adopted—and the TDA could spend occupancy tax revenue on general services—the Commissioners still needed, at the very least, to determine how those general services were "tourism-related." § 2, 2004 Sess. Laws at 115. After all, an abuse of discretion is a decision that is "manifestly unsupported by reason." *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998) (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 832 (1985)). By not giving or even having any reason

for their expenditures in the first place, the Commission's spending was, by definition, an abuse of discretion.

The Court of Appeals, following well-established precedent, interpreted a local act's plain text and then determined that the County had exercised its discretion beyond the outer limit set by the text. That straightforward decision created no impact of major significance to this state's jurisprudence. There is no need for further review.

II. The County Fails to Show Significant Public Interest in this Case.

In support of the claim that there is significant public interest in this case, Defendants cite a single blogpost. (*See* PDR at 12-13 (citing McLaughlin, *supra*)). That's it. Other than that lonely blogpost, Defendants offer nothing else to indicate public interest in this case. Their claim that the Court of Appeals' decision will affect numerous other counties is entirely unsupported. Neither reason is persuasive.

First, a single legal blogpost does not demonstrate significant public interest. As has been noted, "It is difficult to get lawyers to write articles for a Bar Journal, but it is more difficult to get other lawyers to read the articles." Joseph P. Haller, *History of the Bar Journal 1936-1966*, Nev. Law., Jan. 11, 2003, at 26, 28. Moreover, unlike law review articles, blog entries are rarely factchecked or peer reviewed, as indicated by the inaccuracies in this one. As

detailed above, while the blogpost claimed that the Court's decision would affect the interpretation of other counties' occupancy tax acts, the examples it cited contradicted that assertion.

Second, given that each county has a differently worded occupancy tax act, the Court of Appeals' decision is extremely limited in scope. Defendants have not identified a single county that has an occupancy tax act with materially similar language to the one at issue in this case. Nor have any amici chimed in, worried about how this case might affect their own counties' local acts. Accordingly, Defendant's claims of significant public interest are unconvincing and unsupported.

Further undercutting the County's public interest argument is the fact that they have oversold the supposed consequences of this decision to the County itself. Currituck will not suddenly find itself unable to provide for its citizens because it has to follow the plain text of its occupancy tax act. The General Assembly instituted Currituck's occupancy tax as an optional and additional source of revenue that the County could use to try and increase tourism within its borders. (R p 178 ¶ 12). Not all counties are authorized to charge occupancy taxes, and some counties choose not to charge them despite receiving authorization. Magellan, *supra*, at 5. The County has an obligation to "provide essential services to [its] citizens" regardless of whether it is authorized to charge an occupancy tax. *Stephenson v. Bartlett*, 355 N.C. 354, 365, 562

S.E.2d 377, 385 (2002). Those services should already be fully funded using property, sales, and other taxes, without also needing to resort to the bonus income that comes from occupancy taxes, which are charged on top of normal sales taxes. True, the County Commissioners may have been able to keep other taxes artificially lower by subsidizing general expenses using the tourist-paid occupancy tax. But that plan blatantly disregarded the General Assembly's instructions. Forcing the County to comply with the act's plain language will change the Defendants' habits of governance, but it will not generate significant public interest or have the broad impact that the County claims.

CONCLUSION

The Petition for Discretionary Review fails to meet the statutory standards and should be denied.

Respectfully submitted this the 6th day of May, 2024.

FOX ROTHSCHILD LLP

Electronically submitted

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' Response to Petition for Discretionary Review was electronically filed and served this 6th day of May 2024, by email, addressed as follows:

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