NO. 101PA24 FIRST JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

GERALD COSTANZO, BRYAN DAGGOT, JOHN DUMBLETON, PHILIP SCHNEIDER, CLARA SCHNEIDER, MARGARET BINNS, MOHAN NADKARNI, 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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DEFENDANT-APPELLANTS' BRIEF IN REPLY TO <u>AMICI CURIAE</u> BRIEF

* *

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Plaintiffs,	**<u>From Currituck County</u>**
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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.	

* *

DEFENDANT-APPELLANTS'
BRIEF IN REPLY
TO <u>AMICI CURIAE</u> BRIEF

* *

The Defendant-Appellants, by and through counsel, and pursuant to Rule 28.1(b)(6) of the North Carolina Rules of Appellate Procedure, file this brief in reply to the brief of the Amici Curiae.

ARGUMENT

Because Currituck County's occupancy-tax statute is unique, the Defendant-Appellants agree with the Amici Curiae that this case should not be used as a precedent for how other jurisdictions spend occupancy-tax revenue. Other jurisdictions are constrained by the statutes that authorize their occupancy taxes, and this case stands on its own merits. This also identifies the flaw in the Amici's arguments – because Currituck County's statute is different than other statutes, it cannot be compared to them and should be evaluated accordingly.

The Amici assert that the Legislature knows how to draft a statute that allows the use of occupancy-tax revenue for any public purpose, and that it did so in this case by stripping certain language from Currituck County's statute with the 2004 Amendment. (Amici Brf., p. 13.) But the Amici make the same mistake as the Plaintiff-Appellants in arguing that public safety services were general public services under the original version of the statute and not considered related to tourists and tourism. The 1987 statute specifically classified public safety services as "tourist related services" by providing: "Currituck County shall use . . . proceeds of the tax levied under this section only for tourist related purposes . . . including police protection, and emergency services." N.C. Sess. Law, Chap. 209, H.B. 555, § 1(e). Though the 2004 Amendment removed the language in that same section that allowed for spending on "any lawful purposes," public safety services were not considered to be under the "any lawful purpose" category in the 1987 statute. Thus, they continued to be considered as related to tourists and tourism.

To further emphasize this point, the Legislature, in the 2004 Amendment, deferred to the Currituck County Board of Commissioners' "judgment" about what a tourism-related expenditure was. The 2004 Amendment defined "tourism-related expenditures" as those that the commissioners, in their "judgment," believed would attract more tourists to the county. N.C. Sess. Law 2004-95, H.B. 1721, §§ 2(e) and 2(e)(4). If, as the Amici state, the Legislature knows how to draft a statute that accomplishes its goals, it would not have given the commissioners the authority to use their "judgment" about what best accomplishes this.

The Legislature also knows how to change the law, as the Amici note. (Amici Brf., pp. 12-13.) Last year, after the decision in this case in the North Carolina Court of Appeals, it amended the tourism statute for Durham County to gradually eliminate the use of occupancy-tax revenue in that county "for any public purpose." (Amici Brf., p. 13.) As Amici write, "the General Assembly is fully aware of how to adopt an occupancy tax statute that would allow all or a portion of such revenues . . . for spending on any lawful or public purpose." (Amici Brf., p. 13.) The Legislature has not changed Currituck County's statute, however.

Of course, Currituck County's statue does not contain language allowing for the use of occupancy-tax revenue for any public purpose – unless one adopts the reasoning of the Plaintiff-Appellees and Amici that public safety services that the statute previously considered to be related to tourism are now considered general public services. The county commissioners, to whom the Legislature gave the discretion to decide the issue, do not believe these are general public services since they are used to provide a safe, welcoming environment that will attract tourists.

The difference between Currituck County's statute and the other statutes cited by the Amici is apparent. The Amici cite no other statute in which the Legislature has given the county commissioners the authority to use their "judgment" about what best attracts tourists. This determination by the Legislature must be respected. If the commissioners are wrong, the Legislature knows that and can change the law. See Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981) (stating that the Legislature was aware of debate on a highly volatile political issue and could have changed the statute but chose not to do so, which indicated its position on the issue).

The Amici assert that Currituck County's statute is similar to those of other jurisdictions in some respects, "but not completely." (Amici Brf., p. 14.) This is correct. The Amici concede that Currituck County's statute is not exactly like the Occupancy Tax Guidelines, which were put forward by the travel and tourism industry and are used by the Legislature to draft occupancy-tax statutes. (Amici Brf., p. 14.) This further supports the argument that Currituck's statute must be evaluated on its own terms. The Guidelines have been in effect since at least 1993 (Amici Brf., p. 8), well before the Legislature enacted the 2004 Amendment for Currituck County. The Legislature was aware of the Guidelines when it amended Currituck County's law in 2004 and it chose not to apply them to the county. It must have had a reason for this, and that reason should be respected by this Court. Thus, this Court may disregard any attempt to shoehorn the meaning of Currituck County's statute into the strictures imposed by the Guidelines.

Contrary to Amici's argument (Amici Brf., p. 20), the Defendant-Appellants concede that the 2004 Amendment changed Currituck County's authority to spend occupancy-tax revenue. The 2004 Amendment barred the county from using occupancy-tax revenue for "any lawful purpose," and it required that a specific amount of revenue be spent on advertising and marketing to attract tourists. (Def.-App. Reply Brf., p. 6.) Of course, it also gave Board of Commissioners the discretion to use its "judgment" about what expenditures best attracted visitors to the county. Thus, the Amici's argument in this regard is without merit.

The dispute between the parties here has mostly focused on whether certain public safety services – such as police, fire, emergency medical services, and ocean rescue teams and beach lifeguards – are general public services or whether they are services related to tourism because their need exists from the influx of tourists to the county. (Amici Brf., p. 21.) The Currituck County Commissioners believe that they are the latter; the Plaintiff-Appellants and Amici believe that they are the former. But if the original statute enacted in 1987 classified them as the latter, and the 2004 Amendment did not say otherwise, this Court can easily conclude that the Currituck County Commissioners are correct. Without the influx of tourists, there would be no need for increased public safety services; and without such services, it is reasonable to expect that fewer tourists would come to the county, or the commissioners could so conclude. In any case, under the 2004 Amendment, it is their "judgment" that defines what a tourism-related expenditure is.

The Amici's case rests principally on the purported intent of the Occupancy Tax Guidelines. But, as the Amici admit, the Legislature "has amended those statutes when it deems fit to adopt definitions in accordance with the Guidelines." (Amici Brf., p. 22.) The Legislature has not done so in this case. It has exercised its own judgment, and this Court may defer to that judgment. Whatever "restrictions" exist in the Guidelines and in other occupancy-tax statutes, they do not apply in this case. The most important restriction is whether the Currituck County Board of Commissioners has judged that an expenditure is related to tourism in that it will help attract visitors to the county.

Though spending on public safety services has been the focal point of this lawsuit, it is not the only disagreement between the Plaintiff-Appellants and the commissioners. When they filed this lawsuit, they alleged that certain expenditures not involving public safety services were also unrelated to tourism. These included improvements to the county airport, redeveloping the Old Jail as a tourist attraction, and creating the Veterans' Park on the Intracoastal Waterway. (R. 19, 21-23.) The Complaint alleged that the Old Jail, which is on the mainland, was "unlikely to attract any appreciable number of tourists." (R. 22.) But the commissioners have judged otherwise. (R. 194.) And they are entitled under the statute to do so.

This disagreement points to the underlying tension between the plaintiffs, who live on the Corolla Outer Banks, and the rest of the county. The other sites on which occupancy-tax revenues are spent are also on the mainland, as are baseball and softball fields that attract visitors most weekends each year and the Historic Jarvisburg Colored School Museum, which is on the National Register of Historic Places. (R. 194.) Spending on the mainland drove many of the objections lodged in the Complaint – even though 80 percent of occupancy-tax revenue is spent on Corolla, where the plaintiffs reside. (R. 192-94.) The plaintiffs objected to spending on the ball fields (R. 30-31) even though the 2004 Amendment says that tourism-related expenditures "are designed to increase the use of . . . recreational facilities." N.C. Sess. Law 2004-95, H.B. 1721, § 2(e)(4).

As the Defendant-Appellants have noted, the commissioners have tried to diversify the county's tourism attractions and bring more people to the mainland. (Def.-App. Brf., pp. 7-8.) And they are entitled to do this because Section 2(e)(4) of the 2004 Amendment requires them to spend occupancy-tax revenues on things that attract visitors "to the county" (emphasis added), not just to the Corolla Outer Banks. This has caused friction between the commissioners and the Corolla plaintiffs. The plaintiffs want to substitute their judgment for that of the commissioners, but the statute gives the commissioners the duty to make these determinations. Unless the statute is changed, it is the commissioners' judgment that matters.

CONCLUSION

For the reasons and authorities cited herein and in their principal and reply briefs, the Defendant-Appellants respectfully request that the decision of the North Carolina Court of Appeals be reversed.

Respectfully submitted, this 13th day of October, 2025.

/s/ Christopher J. Geis
CHRISTOPHER J. GEIS
WOMBLE BOND DICKINSON (US) LLP
One West Fourth Street
Winston-Salem, NC 27101
Telephone: (336) 721-3600
Facsimile: (336)721-3660
Email: Chris.Geis@wbd-us.com
Attorneys for Defendants-Appellants
Currituck County, et al.

CERTIFICATE OF COMPLIANCE

I certify that this brief has been prepared using Century Schoolbook typeface, a proportionally-spaced typeface, in 12-point type, and complies with North Carolina Rules of Appellate Procedure.

/s/ Christopher J. Geis
CHRISTOPHER J. GEIS
WOMBLE BOND DICKINSON (US) LLP
Attorney for Defendants-Appellants
Currituck County, et al.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for Defendants-Appellants Currituck County, et al. in this matter, and is a person of such age and discretion as to be competent to serve process.

I hereby certify that, on October 13, 2025, I electronically filed the foregoing **DEFENDANTS-APPELLANTS' BRIEF IN REPLY TO AMICI CURIAE BRIEF** with the Clerk of the Court using the e-filing system, which will send notification of such to the following participant, and a copy also will be mailed to the following:

ADDRESSEE:

J. Mitchell Armbruster
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL &
JERNIGAN,L.L.P.
Post Office Box 2611
Raleigh, NC 27602-2611
marmbruster@smithlaw.com
Attorney for Amici Curiae

Troy D. Shelton
DOWLING PLLC
3801 Lake Boone Trail
Suite 260
Raleigh, NC 27607
tshelton@dowlingfirm.com
Attorney for Plaintiffs-Appellees

/s/ Christopher J. Geis
CHRISTOPHER J. GEIS
WOMBLE BOND DICKINSON (US) LLP
One West Fourth Street
Winston-Salem, NC 27101
Telephone: (336) 721-3600
Facsimile: (336)721-3660
Email: Chris.Geis@wbd-us.com
Attorney for Defendants-Appellants
Currituck County, et al.