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**Nov 14 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

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Appellate Case No. 2020-000080

Herman Perry Holcomb.....Respondent,

v.

City of North Augusta and  
Mayor and City Council of North  
Augusta.....Appellants.

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**RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

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Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, Herman Perry Holcomb (“Holcomb”) responds and files this return in opposition to the Motion to File *Amicus Curiae* brief filed by the Municipal Association of South Carolina (the “Association”) in the above-captioned matter currently pending before this honorable Court and opposes filing of the *amicus*

*curiae* brief conditionally filed with this Court. In support, Holcomb assert as follows:

**I. THE ASSOCIATION HAS DELAYED FILING ANYTHING IN THIS MATTER FOR MORE THAN THREE (3) YEARS, MAKING IT CLEAR THAT THE ASSOCIATION HAS NO SIGNIFICANT SPECIAL INTERESTS IN THE MATTER, AND ITS BRIEF DOES NOT ADD ANYTHING OF MERIT TO AIDE THE COURT IN ITS CONSIDERATION.**

Holcomb filed the underlying matter on May 24, 2019, three and a half (3 and 1/2) years ago. On August 16, 2019, the matter was decided in Holcomb's favor and he was awarded his reasonable attorney's fees. Defendants appealed. Full and fair briefing was allowed both sides and promptly filed and served, without significant delay. Now, more than three (3) years later, the Association seeks to assert itself for the first time in the case and file an *amicus curiae* brief, likely causing yet more delay for Holcomb, for whom justice delayed is justice denied.

The filing, furthermore, represents a coordinated effort between Defendants and the Association that requires Holcomb, a private individual, to take even further measures and go to further expense to brief what has long ago been fully briefed, creating additional prejudice to Holcomb and burden to Holcomb and the Court. If the proposed *amicus curiae* brief fails to address only the matters raised by the parties, it violates this Court's rules. *See* Rule 213, SCRAP, (The

[*amicus curiae*] brief shall be limited to argument of the issues on appeal as presented by the parties . . . ). Holcomb believes the Association goes on a frolic, asserting matters beyond those raised by the parties. As such, the Association's motion should be denied.

If this honorable Court believes that the brief actually does limit its argument to the issues on appeal as present by the parties, the very tardy *amicus curiae* brief should still not be allowed. The significant issues that could be of importance to the Association have been fully and fairly briefed by Defendants. In this respect, Judge Posner's observations in *Ryan v. CFTC*, 125 F.3d 1062, 1064 (7<sup>th</sup> Cir. 1997) are applicable:

The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse. The term 'amicus curiae' means friend of the court, not friend of a party.

The Association, an organization of municipalities, is very obviously a friend of the City of North Augusta with no special interests beyond those asserted by the City of North Augusta, which is likely a member of the Association, and not a friend of Holcomb.<sup>1</sup> This effort to late file an *amicus*

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<sup>1</sup> This friendship with the City of North Augusta and adversity to Holcomb is confirmed by the close relationship between the Association and the City of North Augusta. B. Todd Glover is Executive Director of the Association. From approximately 2012 to 2019 he worked for the City of North Augusta as the City Administrator. Furthermore, City of North Augusta Councilperson McGhee is an Executive Committee member of the Association. He is also adverse to Holcomb who successfully made ethics claims against him.

*curiae* “merely extend[s] the length of the litigant’s [defendants’] brief” late in the proceedings. Nothing in its proposed *amicus curiae* brief is unique to the Association or aides the court in any relevant way that the parties have failed to already supply in the years since this matter was appealed. It is within the Court’s sound discretion to deny the Association’s request. *See Anderson v. S.C. Election Comm’n*, 2012 S.C. LEXIS 99 (May 3, 2012); *State v. Bellardino*, 429 S.C. 563, 841 S.E.2d 621 (2020). As such, the Association’s motion should be denied.

**II. THE ASSOCIATION WAIVED ITS OPPORTUNITY TO FILE AN *AMICUS CURIAE* BY WAITING MORE THAN THREE (3) YEARS TO FILE.**

Rule 213, SCRAP requires *amicus curiae* briefs to comply with the requirements of Rule 208(b) and Rule 211, SCRAP. Rule 211, SCRAP requires, in part that,

Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of his final brief(s) on every other party to the appeal, . . . .

More than three (3) years have passed since the service of the Record on Appeal in this case. The proposed *amicus curiae* brief is years out of time, and no relief from the time limitations of Rule 211 has been requested.

Furthermore, under principals of laches and waiver, the Association has waived its opportunity to participate in these proceedings. The Association's attempt to inject itself at this late date would be likely to further delay and add expense to the proceedings, thus effectuation substantial prejudice against Holcomb who has waited long enough for justice to be affirmed.

**WHEREFORE**, Holcomb respectfully requests that the Court deny leave for the Association to file and serve a very tardy *amicus curiae* brief, more than three (3) years late, reject the Association's conditionally filed brief and affirm the final order of the court below in this case.

Date: November 14, 2022

Respectfully submitted,

/s/ Dionè C. Carroll  
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**CERTIFICATE OF SERVICE**

I, Dionè C. Carroll, do hereby certify that I have caused the **RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF** in the above-referenced matter to be served on all known counsel of record and counsel for the movant by electronic mail as follows:

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Date: November 14, 2022

Respectfully submitted,

/s/ Dionè C. Carroll  
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