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September 8, 2023

RECEIVED

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S.C. SUPREME COURT

supctfilings@sccourts.org

Patricia A. Howard, Clerk

South Carolina Supreme Court

1231 Gervais Street

Columbia, SC 29201

Re: Supreme Court Case No. 2023-000531

Applied Building Sciences, Inc. v. South Carolina Department of Commerce, a Division of Public Railways

C/A No. 2019-CP-10-04387

Our File No. 2019-0378C

Dear Ms. Howard:

I was in touch with your office this morning regarding the process and/or procedure for providing additional authorities for the argument in the above-captioned matter set for September 12, 2023 at 9:30 a.m. The United States Supreme Court issued an opinion on May 25, 2023 entitled *Tyler v. Hennepin County*, 598 U.S. 631 (2023). This case had not been decided prior to the briefing in the ABS case and Appellant wanted to apprise the Court that it is additional authority for the court to consider in this case. In *Tyler*, Chief Justice Roberts' opinion for the court states:

For that, the Court draws on “existing rules or understandings” about property rights. *Ibid.* (internal quotation marks omitted). State law is one important source. *Ibid.*; see also *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, 560 U. S. 702, 707 (2010). But state law cannot be the only source. Otherwise, a State could “sidestep the Takings Clause by disavowing traditional property interests” in assets it wishes to appropriate. *Phillips*, 524 U. S., at 167; see also *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U. S. 155, 164 (1980); *Hall v. Meisner*, 51 F. 4th 185, 190 (CA6 2022) (Kethledge, J., for the Court) (“[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take.”). So we also look to “traditional property law principles,” plus historical practice and this Court’s precedents. *Phillips*, 524 U. S., at 165–168; see, e.g., *United States v. Causby*, 328 U. S. 256, 260–267 (1946); *Ruckelshaus v. Monsanto Co.*, 467 U. S. 986, 1001–1004 (1984).

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Please add this letter to the record as per our conversation this morning.

Sincerely yours,

A handwritten signature in blue ink, appearing to be "GMC", written over a horizontal line.

Gene M. Connell, Jr.

GM CJr:sm

cc: Keith M. Babcock, Esquire
Joseph B. Berry, Esquire
Paul D. de Holczer, Esquire
B. Eric Shytle, Esquire