

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APR 14 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson III, Administrative Law Judge

**S.C. Supreme Court**

Appellate Case No. 2013-000364

Ann Dreher ..... Respondent,

v.

South Carolina Department of Health and Environmental Control ..... Petitioner.

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE  
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE**

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TO: THE SUPREME COURT OF SOUTH CAROLINA AND ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that the South Carolina Coastal Conservation League (“the League”) hereby moves the Supreme Court for an order allowing it to file a Brief of Amicus Curiae in support of the Department of Health and Environmental Control’s Petition for Rehearing in this case. In support of this motion, the League submits the following:

This case involves the interpretation of a key definition in the State’s Critical Area Regulations, S.C. Code Ann. Reg. 30-1, et seq., the definition of a “coastal island.” The interpretation of this term determines the fate of thousands of small islands along the coast of South Carolina. See An Ecological Characterization of Coastal Hammock Islands in South

Carolina: Final Report To Ocean and Coastal Resources Management, South Carolina

Department of Health and Environmental Control, 2004, at 1 (“There are approximately 3,467 coastal islands, not including the larger ‘Sea Islands’ such as Hilton Head. Of these islands, 53.7% are less than one acre, 81.5% are less than five acres, and 88.0% are less than ten acres”).<sup>1</sup> “The vast majority of these small hammocks (87.0%) are in the central and southern coastal zones (40.9% in Beaufort County, 8.1% in Colleton County, and 38.0% in Charleston County).”<sup>2</sup> Id. at 2. The fate of the State’s small hammock islands will be greatly influenced by the Court’s March 18, 2015 Opinion. Dreher v. SCDHEC, Op. No. 27507, March 18, 2015. The Opinion also undermines the authority of the South Carolina Department of Health and Environmental Control to interpret its own regulations, and to protect public resources and these coastal landscape features, in particular.

The League is a non-profit, membership-based organization existing under the laws of the State of South Carolina. The League represents the interests of over 4000 members who are vitally interested in the protection of the state’s coastal resources and the integrity of small marsh islands. The League’s members use and enjoy the waters, wetlands and other natural resources of the South Carolina coastal zone which are impacted by the Supreme Court’s decision in this case. The League has a history of involvement in the permitting of bridges to small marsh islands on the coast South Carolina. See, e.g., Risher v. S. Carolina Dep’t of Health & Env’tl. Control, 393 S.C. 198, 712 S.E.2d 428 (2011); S.C. Coastal Conservation League v. S. Carolina Dep’t of

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<sup>1</sup> *Available at* [http://mobile.dc.statelibrary.sc.gov/bitstream/handle/10827/11160/DNR\\_An\\_Ecological\\_Characterization\\_Coastal\\_2004-12.pdf?sequence=1](http://mobile.dc.statelibrary.sc.gov/bitstream/handle/10827/11160/DNR_An_Ecological_Characterization_Coastal_2004-12.pdf?sequence=1).

<sup>2</sup> See Exhibits A & B, google earth images identifying the location of the “exempt islands” in the Charleston and Beaufort County areas, respectively.

Health & Env'tl. Control & LandTech, 363 S.C. 67, 610 S.E.2d 482 (2005).

This case involves significant issues related to the interpretation of regulations with which the League has familiarity. In the LandTech case, the League challenged the Department's issuance of a bridge permit. As a result of that challenge, this Court struck down the Department's access to small islands regulations for vagueness. 363 S.C. 67, 610 S.E.2d 482 (2005). After the regulations were declared invalid, the Department embarked on a path to develop clear regulatory guidelines for permitting bridges to small marsh islands that would ensure due protection of public resources. See S.C. Code Ann. Regs. 30-12(N)(2). The League played an integral role in the development of these bridge regulations, which are now at issue in this case. Specifically, the League attended hearings and actively participated in the process of developing the regulations, which gives it perspective on how the regulations at issue in this case were formed. Thus, the League has a unique view of the regulations' procedural history to contribute to this case.

The League respectfully submits that its brief of amicus curiae is desirable to provide the Court with additional information as to the negative impacts on other parties arising from the Supreme Court's recent decision in this case. The League will argue that the bridge regulations at issue in this case were developed with the purpose of protecting public resources by limiting construction of bridges to undeveloped small marsh hammocks. The Court's opinion undermines this important objective through a misinterpretation of Regulation 30-1(D)(11) and a misapprehension of the legislative intent.

Folly Island "shall not be deemed a coastal island subject to this section" because it is "essentially mainland" with "publically accessible bridges and/or causeways." S.C. Code. Ann.

Regs. 30-1(D)(11). That is not, however, the case with Tract D. Tract D does not currently have a publicly accessible bridge or causeway. The regulatory definition does not hinge on whether an island is “on and within the boundaries of” an island that is not deemed a coastal island. In fact, the regulatory definition explains that these “exempt” islands are not subject to the regulation because of their “large size and developed nature.” S.C. Code Ann. Regs. 30-1(D)(11). The ALJ made findings and conclusions on these points, which were summarily rejected in favor of another finding and conclusion. Instead of squarely addressing the ALC’s findings that led him to conclude that Tract D does not qualify for an exemption, the majority Opinion relies solely on the ALC’s finding that Tract D was “geologically, geographically and by legal description . . . on and within the boundaries of Folly Island.” The Court simply concludes that the exemption provision is more specific than the general definition of a “coastal island,” and essentially rejects the remaining relevant findings.

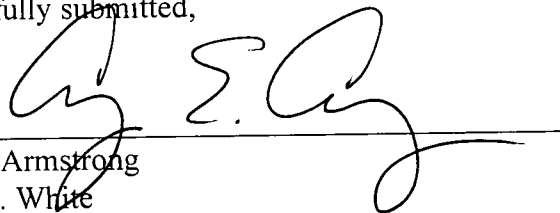
In fact, the ALC’s findings and conclusions that Tract D is not “essentially mainland” and that it is not of a “large size and developed nature” relate to the “specific regulatory exemption for Folly Island,” which the majority acknowledges “controls.” To reject findings and conclusions that are determinative of whether Tract D falls within the exemption is a misconstruction of the regulatory definition and the exemption, specifically.

Finding otherwise, as the Court did in this case, puts at jeopardy thousands of other coastal islands because of their proximity to the listed “exempt” islands in Regulation 30-1(D)(11) and ignores the portions of the definition expressing the intent that the exempt island be those that are “essentially mainland” and are of a “large size and developed nature.”

WHEREFORE, the League requests that this Court grant it leave to file a brief of amicus

curiae in support of the Petition for Rehearing in this case.

Respectfully submitted,



Amy E. Armstrong

Jessie A. White

SOUTH CAROLINA ENVIRONMENTAL LAW  
PROJECT

Mailing address: Post Office Box 1380  
Pawleys Island, SC 29585

Office address: 430 Highmarket Street  
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorney for Coastal Conservation League

Georgetown, South Carolina

April 10, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson III, Administrative Law Judge

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Appellate Case No. 2013-000364

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Ann Dreher ..... Respondent,

v.

South Carolina Department of Health and Environmental Control ..... Petitioner.

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**CERTIFICATE OF SERVICE**

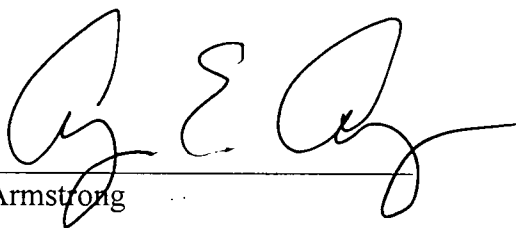
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I hereby certify that on this date I served copies of the Motion for Leave to File Amicus Brief of the South Carolina Coastal Conservation League upon all counsel by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

Bradley Churdar  
SCDHEC/OCRM  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Leslie Riley  
McNair Law Firm  
P.O. Box 1341  
Charleston, SC 29402

Christopher McG. Holmes  
222 West Coleman Blvd, Suite #124  
Mt. Pleasant, SC 29464

  
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Amy Armstrong

April 10, 2015



**The South Carolina Environmental Law Project**  
*Lawyers for the Wild Side of South Carolina*

April 10, 2015

a 501c3  
non-profit organization

**Amy E. Armstrong**  
*Executive Director*  
**Michael G. Corley**  
*Staff Attorney*  
**Jessie A. White**  
*Staff Attorney*

**OFFICE ADDRESS**  
430 Highmarket Street  
Georgetown, SC 29440

**MAILING ADDRESS**  
P. O. Box 1380  
Pawleys Island, SC 29585

(843) 527-0078  
Fax (843) 527-0540  
E-mail: amy@scelp.org  
michael@scelp.org  
jessie@scelp.org

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Clerk, South Carolina Supreme Court  
P. O. Box 11330  
1231 Gervais Street  
Columbia, SC 29211

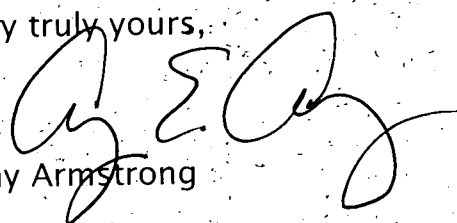
RE: Dreher v. SCDHEC;  
Appellate Case No. 2010181586

Dear Mr. Shearouse:

I am enclosing for filing the South Carolina Coastal Conservation League's Motion for Leave to File an Amicus Brief in the above-referenced case, along with my certificate of service and filing fee.

Kindly return a clocked-in copy in the self-addressed, postage-paid envelope provided.

Very truly yours,

  
Amy Armstrong

cc: Christopher McG. Holmes  
Bradley Churdar  
Leslie S. Lenhardt

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APR 14 2015

**S.C. Supreme Court**



# The Supreme Court of South Carolina

South Carolina Environmental Law

04/14/2015

## RECEIPT #75670

**Case No:** 2013-000364  
**Case Short Title:** Ann Dreher v. SCDHEC  
**Event:** Motion - Appear as Amicus Curiae  
**Fee Type:** Motion Fee  
**Amount:** \$25.00  
**Payment Type:** Check  
**Reference No:** 8101  
**Check/Money Order Date:** 04/08/2015  
**Comments:**