

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM THE ADMINISTRATIVE LAW COURT ^{MAY 29 2015}
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.

**SOUTH CAROLINA COASTAL CONSERVATION LEAGUE'S
RESPONSE IN OPPOSITION TO
MOTION TO STRIKE AND EXCLUDE**

The South Carolina Coastal Conservation League (“League”) opposes the Respondent Ann Dreher’s motion for an Order striking and excluding material attached to the League’s amicus brief and asks that this Court deny Respondent’s motion. The basis of this request is that the documents contained in the League’s amicus brief are not new matters and, further, legislative history does not need to be included in the Record on Appeal to be considered by this Court.

The Respondent frames the documents attached to the League’s amicus brief as new “matters” that were not in the Record on Appeal. This is a mischaracterization, as the documents attached to the League’s amicus brief are not new materials relating to the Respondent’s permit. The documents are part of the legal authority, and specifically the legislative history, of the statutory language interpreted by this Court in its opinion.

Legislative history is defined as: “The proceedings leading to the enactment of a statute, including hearings, committee reports, and floor debates. Legislative history is sometimes recorded so that it can later be used to aid in or influence interpretations of the statute.” LEGISLATIVE HISTORY, Black's Law Dictionary (10th ed. 2014). This Court has relied upon legislative history in the interpretation of statutes concerning agency action on multiple occasions. See, e.g., Hodges v. Rainey, 341 S.C. 79, 92, 533 S.E.2d 578, 585 (2000); Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) (“[W]e think the legislative intent to repeal the scope of review provisions of Section 42-17-60 is explicitly implied from the provisions of the later general Administrative Procedures Act and that Act's legislative history.”); Whetstone v. S. Carolina Dep't of Highways & Pub. Transp., 272 S.C. 324, 327, 252 S.E.2d 35, 37 (1979).

Legislative history is publically available legal authority upon which this Court may rely in interpreting legislative intent. The documents included with the League's amicus brief were recorded and are maintained by the Department in its ordinary course of business. In this case, the “business” is the development and promulgation of regulations necessary to carry out the Department's obligations pursuant to the South Carolina Coastal Zone Management Act, S.C. Code Ann. § 48-39-10, et seq. The legislative history, like case law or the statute itself, is part of the basis for the legal arguments contained in the League's brief as well as the Petitioner DHEC's brief. The League attached the legislative history upon which it relied for its arguments as a convenience to the parties and the Court. These documents provide legal support for the arguments made throughout this case related to legislative intent, similar to the legal support from cases and statutes also cited in the brief, but not attached. This Court may read, consider, and cite to the legislative history in the same manner as it would any other legal authority.

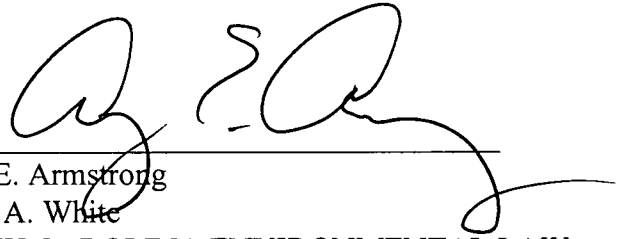
Some of the rules cited by the Respondent actually support the League's ability to bring legislative history to this Court's attention. Rule 213 limits an amicus brief "to argument on the issues on appeal as presented by the parties," and requires compliance with Rules 208(b) and 211. Legislative intent was the first topic argued by the Petitioner in its Petition for Rehearing and by the Respondent in her Return. Furthermore, this Court's Opinion centered around legislative intent and interpretation of statutory language. Legislative intent is determined by the language of the statute and its legislative history. See Lark, 276 S.C. at 134, 276 S.E.2d at 306 (relying on legislative history to determine legislative intent). Thus, the League's arguments and supporting authorities, including legislative history, are central to "argument on the issues on appeal as presented by the parties." Rule 213 SCACR.

Furthermore, Rule 208(b)(7) explicitly provides: "When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations." Thus, the Appellate Court Rules recognize that authorities should be brought to the court's attention, even if the parties did not recognize them on initial briefing (and thus even if such authorities were not brought to the attention of the lower court).

Finally, Rule 210, pertaining to the Record on Appeal, is inapposite. The League does not seek to expand the Record on Appeal or have this Court consider new "matter" that the lower court did not review. The matter before this Court is the same, the League simply argues that the law should be interpreted differently, and that interpretation may be appropriately informed by the legislative history of the statutory language at issue in this case.

The South Carolina Coastal Conservation League respectfully requests that this Court deny the Respondent's motion to Strike and Exclude.

Respectfully submitted,



Amy E. Armstrong
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May 27, 2015

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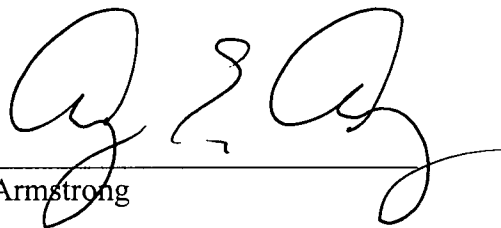
CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the South Carolina Coastal Conservation League's response to Respondent Dreher's Motion to Strike and Exclude upon all counsel by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

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Amy Armstrong

May 27, 2015

Georgetown, South Carolina



The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
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RE: Dreher v. SCDHEC;
Appellate Case No. 2010181586

Dear Mr. Shearouse:

I am enclosing for filing the South Carolina Coastal
Conservation League's Response to Respondent's Dreher's Motion to
Strike and Exclude, along with my certificate of service.

Very truly yours,


Amy Armstrong

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

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