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S.C. Supreme Court

IN STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Case # 2014-002513

Richard Stogsdill,

Petitioner

v.

South Carolina Department of Health and Human Services,

Respondent

MOTION OF
PROTECTION AND ADVOCACY FOR
PEOPLE WITH DISABILITIES, INC.,
SOUTH CAROLINA CHAPTER OF THE NATIONAL ACADEMY
OF ELDER LAW ATTORNEYS, AND
SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER
FOR LEAVE TO FILE AN AMICI BRIEF
IN SUPPORT OF PETITIONER

Pursuant to Rule 213, SCACR, Protection and Advocacy for People with Disabilities, Inc., the South Carolina Chapter of the National Academy of Elder Law Attorneys, and South Carolina Appleseed Legal Justice Center move for permission to file an Amici Curiae brief in support of the Petitioner in the above-referenced matter. The brief addresses questions of law under the South Carolina Administrative Procedures Act, and state and federal case law, relevant the appeal. As permitted by Rule 213, SCACR, the Amici Curiae brief is being filed conditionally along with this motion.

According to Rule 213, SCACR, the motion for leave to file should identify the interest of the applicant and why an amicus curiae brief will be desirable.

Protection and Advocacy for People with Disabilities, Inc. (P&A) is a statewide, nonprofit advocacy organization whose purpose is to promote the legal, civil, and human rights of people with disabilities.¹ The State of South Carolina has designated P&A to serve as the federally-mandated Protection and Advocacy System for South Carolina. S.C. Code Ann. § 43-33-310 to 43-33-400 (2015). As such, P&A is authorized by federal and state law to enforce the civil rights of people with disabilities and is specifically charged with protecting and advocating for the rights of people with developmental disabilities. Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 to 15009. Under state law, P&A has the power and the duty to advocate for the rights of people with disabilities by "pursuing legal, administrative, and other appropriate remedies." S.C. Code Ann. § 43-33-350(1) (2015). P&A assists individuals with disabilities who experience discrimination as a result of a disability, or who are illegally denied needed services by a program or agency. The goals of P&A include increasing public knowledge about the rights of people with disabilities and participating in litigation affecting the legal rights and status of people with disabilities. P&A has participated as amicus curiae in cases before South Carolina appellate courts and the United States District Court for the District of South Carolina. *E.g.*, *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993); *Clemson Univ. v. Speth*, 344 S.C. 310, 543 S.E.2d 572 (Ct. App. 2001). More specifically, P&A has participated as amicus curiae in two cases addressing the 2010 cuts at issue in this case. *Peter B. v. Sanford*, 6:10-CV-767

¹ Additional information regarding the work of P&A is available at <http://pandasc.org/>.

(D.S.C. Feb 1, 2011)(order granting preliminary injunction preventing the implementation of the reductions in services; not reported); *Karen W. v. Sanford*, Petition in the Original Jurisdiction of the South Carolina Supreme Court (Petition Denied December 31, 2009).

Many P&A clients receive services through the Intellectual Disabilities/Related Disabilities (ID/RD) waiver. The ID/RD waiver is administered as part of the Medicaid program by the single state Medicaid agency, the South Carolina Department of Health and Human Services (SCDHHS). The South Carolina Department of Disabilities and Special Needs (SCDDSN) oversees the day to day operation of the waiver. *See generally Doe v. Kidd*, 501 F.3d 348 (4th Cir. 2007). Reductions to these waiver services are at issue in this case. P&A represents many individuals who need appropriate services to enable them to live in the community. P&A is committed to ensuring that the principles of the Americans with Disabilities Act (ADA), as interpreted in *Olmstead v. L.C.*, 527 U.S. 538 (1999), are followed in the state's implementation of Medicaid waivers. The Administrative Procedures Act is a vehicle for enforcing rights, including rights established by the ADA.

South Carolina Chapter of the National Academy of Elder Law Attorneys (SCNAELA) is a state chapter of the National Academy of Elder Law Attorneys (NAELA).² SCNAELA is an education and advocacy organization. Members of SCNAELA are South Carolina attorneys who practice in the area of elder law, which includes advocacy for people who are elderly and people who are disabled. The mission of SCNAELA is to educate and assist attorneys in providing advocacy, guidance and

² Additional information regarding the activities of the SCNAELA is available at <https://www.naela.org/>.

services to enhance the lives of people as they age as well as individuals with special needs. SCNAELA has, as the organization has evolved, an increasing emphasis on institutional, as well as individual, advocacy for people with disabilities, regardless of age, with particular emphasis on access to government benefits and services that are essential to achieving as much dignity and independence as possible.

South Carolina Appleseed Legal Justice Center (Appleseed) is a non-profit organization, based in Columbia, South Carolina, and loosely affiliated with 14 other public interest justice centers in the Appleseed network within the United States. The mission of Appleseed is to identify and examine social injustice, make recommendations, and advocate for effective solutions. Appleseed has served a wide range of needs for the low-income community in South Carolina for the past 25 years through legal work, economic development, social legislation, and public and legal education. As an advocate for low-income South Carolinians, Appleseed has an interest in the present case based on the methods employed by SCDDSN to cut Medicaid services, which could be employed to cut services to low-income South Carolinians as well as disabled individuals. Further SC Appleseed is concerned with any state agency circumventing the South Carolina Administrative Procedures Act by establishing binding norms without going through the proper regulatory process. SCDHHS has attempted to implement a hard and fast rule regarding a public benefit without following the rule making procedures required to promulgate regulations. Allowing state agencies to cut services in a manner inconsistent with state and federal law could have a very negative impact on the low income community in South Carolina.

THEREFORE, amici request that the Court grant amici leave to file an Amici Curiae brief in support of the Petitioner in the matter of Stogsdill v. South Carolina Department of Health and Human Services.

This the 10th day of November, 2015.

Respectfully submitted,

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PEOPLE WITH DISABILITIES, INC.

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November 10, 2015

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CERTIFICATE OF SERVICE

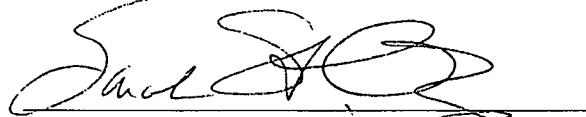
I certify that I have served the Motion for Leave to File and Amici Brief in Support of
Petitioner as follows:

1. Emailing a copy to the following:
 - a. Richard Hepfer at hepfer@scdhhs.gov
 - b. Patricia Harrison at plh.cola@gmail.com
2. Depositing a copy of these documents in the United States Mail, postage prepaid,
on the 10th day of November, 2015, addressed as follows:

Ms. Patricia L. Harrison
611 Holly Street
Columbia, SC 29205

Mr. Richard Hepfer
Deputy General Counsel
SCDHHS
P.O. Box 8206
Columbia, SC 29202-8206.

Dated this 10th day of November, 2015.

A handwritten signature in black ink, appearing to read 'Sarah St. Onge', written over a horizontal line.

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