

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
G. Thomas Cooper, Jr., Circuit Court Judge

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Case No. 2007-CP-40-2187

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**RECEIVED**  
MAR 29 2016  
SC Court of Appeals

Protection and Advocacy for the People with Disabilities, Inc.;  
M.J.B. on behalf of and as next friend of J.B.; C.B.B. on behalf of  
and as guardian of P.B.; G.C. and L.C. on behalf of and as next  
friend of A.E.; J.H. on behalf of and as next friend of A.J.; G.M.  
on behalf of and as next friend of E.M.; N.M. on behalf of and as  
guardian of E.J.M.; R.P. on behalf of and as guardian of S.P.; R.R.  
and J.R. on behalf of and as guardians of K.D.R.; and J.K. on  
behalf of and as guardian of S.S., ..... Appellants,

v.

South Carolina Department of Disabilities and Special Needs; Dr.  
Beverly Buscemi, in her official capacity as Director of the South  
Carolina Department of Disabilities and Special Needs; and Nancy  
Banor, Deborah McPherson, Christine Sharp, Rick Huntress, Fred  
Lynn, Harvey Shiver and Kelly Hanson Floyd, as Commissioners  
of the South Carolina Department of Disabilities and Special  
Needs, ..... Respondents.

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**REPLY MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING**

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The Respondents South Carolina Department of Disabilities and Special  
Needs, et. al, (that is, all Respondents, referenced herein at times as “DDSN”)

submit the following Reply to Appellants' Return to Respondents' Petition for Rehearing.

Virtually everything argued in the Return has already been addressed by Respondents in their Petition for Rehearing. Respondents would note that Appellants' Return does not address a number of the points made by the Petition for Rehearing. For these reasons, Respondents would note only the following by way of reply:

1. Respondents in their Petition for Rehearing suggested that if the case is remanded, the circuit court should also be permitted to consider the issue of P&A's standing, given that much has changed since this action was filed in 2007. Petition for Rehearing, Point 5, pp. 9-12. Specifically, since P&A originally claimed injury to itself as a result of having to make allegedly-laborious searches for DDSN's Directives, that assertion should be re-examined in view of the present ease of finding those Directives in their current online form. Appellants' Return is completely silent with respect to this request by Respondents.

2. Appellants' Return cites *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40, (2012), a case never cited by this Court or either party, as holding that when standing is conferred by statute, it is unnecessary to consider the existence of constitutional standing. Return at 6. That may be true in the case of some statutes, but the statute creating P&A falls far short of conferring standing in the specific

manner of the Freedom of Information Act, the statute under review in *Freemantle*. The FOIA statute, S. C. Code Ann. § 30–4–100(a), provides that “Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases. . . .”. On the other hand, the P&A statute, S.C. Code Ann. § 43-33-350(1), contains no language specifically permitting P&A to file an action in circuit court on its own behalf when there has been no showing of harm to itself. As a result, *Freemantle* does not apply to this case.

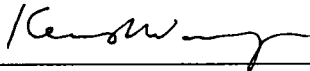
3. The remainder of Appellants’ Return either makes arguments that have already been addressed in the Petition for Rehearing, or argues that public importance standing exists in this case, Return at 5, a rationale this Court did not adopt.

### **CONCLUSION**

For the foregoing reasons, Respondents respectfully request that the Court rehear its decision and issue an opinion affirming the decision of the circuit court on one or more of the bases set forth above, or in the alternative, remand for further consideration of issue of standing. If standing is established, the circuit court could then consider the issue of whether the applicable statutes require a regulation in that context.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:   
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Columbia, South Carolina

March 24, 2016

THE STATE OF SOUTH CAROLINA  
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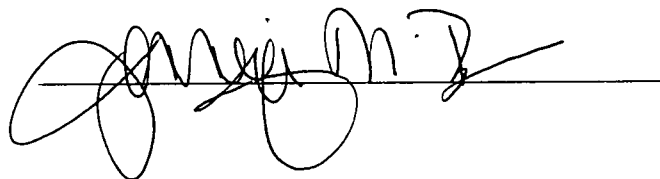
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Lynn, Harvey Shiver and Kelly Hanson Floyd, as Commissioners  
of the South Carolina Department of Disabilities and Special  
Needs, ..... Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the  
Respondents, does hereby certify that service of the **Reply Memorandum in  
Support of Petition for Rehearing** in the above-captioned matter was made upon all  
counsel of record by placing a copy in the United States Mail, first class postage

prepaid, at the below listed address clearly indicated on said envelope this the 24th day of March 2016:

Steven W. Hamm, Esquire  
C. Jo Anne Wessinger Hill, Esquire  
Richardson, Plowden & Robinson, P.A.  
Post Office Drawer 7788  
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "Steven W. Hamm", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

DAVIDSON & LINDEMANN, P.A.

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\*Also Admitted In North Carolina  
†Certified Mediator

March 24, 2016

Of Counsel  
Kenneth P. Woodington

RECEIVED  
Writer's Email: kwoodington@dml-law.com

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

MAR 29 2016  
SC Court of Appeals

RE: Protection and Advocacy for the People with Disabilities, Inc.; *et al.* v. South Carolina Department of Disabilities and Special Needs; *et al.*  
Appellate Case Number: 2014-000244  
Civil Action Number: 2007-CP-40-2187  
Our File Number: 79.7400

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Reply Memorandum in Support of Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P.A.



Kenneth P. Woodington

KPW/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
March 24, 2016  
Page Two

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cc: (w/ Enclosure)

Steven W. Hamm, Esquire  
C. Jo Anne Wessinger Hill, Esquire  
Richardson, Plowden & Robinson, P.A.  
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