

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

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**APPEAL FROM RICHLAND COUNTY**  
**Court of Common Pleas**

**L. Casey Manning, Circuit Court Judge**

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**C.A. No.: 2011-CP-40-2926**

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MARGARET STROUD AND D5 CITIZENS ENSURING THE IMPLEMENTATION  
OF REFERENDUM, INC. .... Respondents,

v.

KIM MURPHY ..... Appellant.

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**BRIEF OF AMICUS CURIAE**  
**SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION**

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**I. STATEMENT OF ISSUES ON APPEAL**

Amicus Curiae adopt the Statement of Issues on Appeal of the Respondents.

**II. STATEMENT OF THE CASE**

Amicus Curiae adopt the Statement of the Case of the Respondents.

**III. STATEMENT OF FACTS**

Amicus Curiae adopt the Statement of Facts of the Respondents.

**IV. The Circuit Court Properly Enjoined Kim Murphy From Filing Any Further Appeals, Actions, Or Challenges.**

This Court should uphold the injunction against Murphy because a member of the governing board of a public body does not have standing to challenge a decision of the board. *Newman v. Richland County Historic Pres. Comm'n*, 325 S.C. 79, 480 S.E.2d 72 (1997). *See also Randolph v. Cantrell*, 707 P.2d 48 (Okla. Ct. App. 1985) (an individual board member does not have standing to appeal a district court decision which the board did not vote to appeal). In analyzing this issue, the Supreme Court of South Carolina explained the importance of the legislative process:

We have never concluded that individual commission members are aggrieved for the purpose of appealing the decision of the very agency upon which they sit. Inherent in such a state of the law is the notion that the legislation function of any agency, by its very nature, involves the interaction of competing ideas that eventually resolve themselves in a decision that may not satisfy all of the agency's members. This is the essence of the legislative process, a process that should not be compromised by ready access to a supplemental forum for those dissenting members who are disappointed in the outcome.

*Newman* at 74 (quoting *Munhall v. Inland Wetlands Comm'n*, 602 A.2d 566, 568-69 (Conn. 1992) (concluding that dissenting agency members do not have standing to challenge agency decision because they have no interests adverse to agency)). *See also Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 305 S.E.2d 229 (1983) (solicitor lacked standing to sue the State because such a suit would be tantamount to a solicitor suing himself)). As noted by several Courts, permitting such challenges would create judicial as well as political chaos. *Newman* at 74. *See also Munhall*, 602 A.2d at 569 ("[C]haos would result if any dissenting member of a state board or agency had standing to appeal from any board or agency decision") (quoting *McTaggart v. Pub. Serv.*

*Comm'n*, 541 P.2d 778 (Mont. 1975)). For these reasons, a board member does not have standing to challenge decisions of the board which he or she serves.<sup>1</sup>

Significantly, where a governmental employee cannot maintain a suit in her official capacity because the posture of the suit is such that she is suing herself, she also cannot proceed with the matter under the guise of appearing as a citizen and taxpayer. *Newman* at 74 (citing *Anders* at 211, 305 S.E.2d at 231). The denial of a board member's right to sue does not insulate review of the decision, which could be challenged by a non-board-member citizen affected by the decision. *Newman* at 74 (citing *Control Data Corp. v. Controlling Bd. of Ohio*, 474 N.E.2d 336, 341 (Ohio 1983)). For example, in the present case, a student at Chapin High School or an adjoining property owner, among others, may be able to challenge DHEC's issuance of permits. See S.C. Code Ann. Regs. 61-101(G) (discussing notice of DHEC's proposed decision and standing to contest the decision).

School boards carry out numerous important functions in ensuring the State fulfills its constitutional responsibility to provide a free system of public schools and education to the children of South Carolina. S.C. Const. art. XI, § 3. The authorities cited above reinforce the sanctity of the legislative process and the fundamental principal of majority rule, which all public school boards in this state use to make decisions and conduct business. Allowing individual board members a separate forum to challenge decisions of the board on which they serve would result in political chaos and would seriously jeopardize the ability of school boards statewide to carry out their constitutional purpose, to the detriment of the students, parents, staff, and citizens of our State. This

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<sup>1</sup> In a dissenting opinion, Justice Toal wrote that the board member in *Newman* would have standing to contest alleged particularized *ultra vires* actions by the board. *Newman* at 75-76. Even assuming that an exception to the standing rule exists for alleged *ultra vires* acts, such an exception is not applicable in the present case.

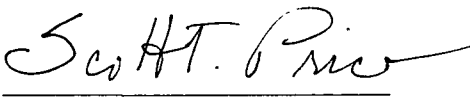
Court should affirm the rule that individual public school board members do not have standing to challenge decisions of the board on which they serve.

**V. CONCLUSION**

For the reasons set forth above, this Court should uphold the preliminary injunction against Murphy.

Respectfully submitted,

South Carolina School Boards Association

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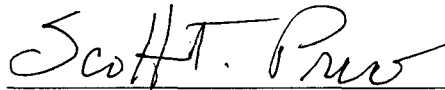
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PROOF OF SERVICE

I certify that I have served the Motion for Leave to File Amicus Curiae Brief by depositing a copy of it in the United States Mail, postage prepaid, on ~~March 14~~, 2012, addressed to the attorneys for Appellant, Jay Bender, Esq., Baker, Ravenel & Bender, LLP, 3710 Landmark Drive, Suite 400, P.O. Box 8057, Columbia, SC 29202, Katie R. Parham, Esq., The Parham Law Firm, P.O. Box 2904, Irmo, SC 29063, and Robert Guild, Esq., 314 Pall Mall Street, Columbia, SC 29201, and Todd Ellis, S.C. Bar No. 6488, The Law Office of Todd Ellis, P.A., 7911 Broad River Road, Suite 100, Irmo, SC 29063

*Sept. 18*



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