

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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

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

v.

KIM MURPHY Appellant

BRIEF OF AMICUS CURIAE
SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES

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STATEMENT OF ISSUES ON APPEAL

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

I. STATEMENT OF THE CASE

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

II. STATEMENT OF FACTS

Amicus Curiae adopt the Statement of Facts of the Respondents.

III. The Circuit Court Properly Enjoined Kim Murphy From Filing Any Further Appeals, Actions, or Challenges.

As a member of the District Five Board, Murphy breached her fiduciary duties to the District by filing legal challenges to decisions of the Board in support of her own personal and political interests, and in opposition to the interests of the District as expressed by the Board. Murphy's breach of her fiduciary duties to the District has cost the District in excess of \$12,000,000.00 in legal fees, architectural fees, staff time, and construction costs.

"A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) (fiduciary relationship between school district and its employees). As a member of the District Five Board, Murphy has a fiduciary relationship with the school district she serves. *See Anderson County v. Griffin*, 164 S.C. 75, 161 S.E. 875, 876 (1932) ("A public officer is a trustee and acts in a fiduciary as well as an official capacity."); *Chicago Park Dist. v. Kenroy, Inc.*, 402 N.E.2d 181, 186 (Ill. 1980) ("It is well established that a public officer occupies a fiduciary relationship to the political entity of whose behalf [s]he serves."); *Consol. Sch. Dist. No. 42 of Scott County v. Powell*, 221 S.W.2d 508, 510 (Mo. 1949) ("Appellants as members of the school board occupied a fiduciary relationship to the said school district."); 63C Am. Jur. 2d Public Officers & Employees § 241 (2011) ("[A] public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves."). Accordingly, Murphy is required to act in good faith and with due regard to the interests of the District. *Davis* at 635, 620 S.E.2d. at 68.

Obviously, it is in the District's interests that the Board fulfills its statutory duties and that Board members comply with Board policies. Under South Carolina law, the

Board has a statutory duty to manage and control the District. S.C. Code Ann. § 59-19-10. The Board's statutory duties include providing schoolhouses and controlling school property of the District. S.C. Code Ann. § 59-19-90. These statutory duties are given explicitly to the Board as a whole, as opposed to any individual member of the Board. S.C. Code Ann. §§ 59-19-10 & § 59-19-90. *See also* Board Policy BB, *available at* <http://www.lexrich5.org/about.cfm?subpage=28337> ("All powers of the board lie in its action as a body. Board members acting as individuals have no authority over personnel or school affairs.").

Further, to ensure that Board members act ethically and in the best interests of the District in fulfilling their duties, the Board's Code of Ethics requires its members to (1) represent, at all times, the entire school district, (2) refuse to play politics in either the traditional partisan or any petty sense, (3) recognize that authority rests only with the board in official meetings and that the individual has no legal status to bind the board outside of such meetings, and (4) respect the opinion of others and graciously conform to the principal of majority rule. Board Policy BCA, *available at* <http://www.lexrich5.org/about.cfm?subpage=28337>. Moreover, the Board is responsible to the community it serves and represents, and it is "the duty of the board to carry out the will of the community in matters of public education." Board Policy BB.

In this case, Murphy violated her fiduciary duties to the District by placing her own personal and political interests above the interests of the District. In 2008, the citizens of District Five approved a bond referendum authorizing the District to complete renovation and expansion projects at various schools, including Chapin High School. The Board, as a whole and on behalf of the District, pursued the necessary construction permits with the South Carolina Department of Health and Environmental Control ("DHEC"). Murphy filed legal challenges against DHEC's issuance of the necessary

permits based on her personal political beliefs and in direct opposition to the desire of the Board, as a whole. By intentionally acting against the will of the Board and the community, and thereby costing the District more than \$12,000,000.00 over the course of numerous appeals, Murphy breached her fiduciary duties to the District.

Additionally, Murphy lacked standing to challenge Board decisions through legal process. *Newman v. Richland County Historic Pres. Comm'n*, 325 S.C. 79, 480 S.E.2d 72 (1997). One of the fundamental reasons for prohibiting public board members from challenging decisions of their boards through legal process is avoiding the type of political and judicial chaos that Murphy has sought to create. *Newman* at 74. Obviously, it is not desirable for public officers to initiate multiple legal proceedings against the public entities they represent for personal and political reasons, and thereby cost those public entities millions of dollars. Accordingly, Murphy lacked standing to challenge board decisions, both as a board member and individual citizen. *Newman* at 74.

Under these circumstances, the Circuit Court properly enjoined Murphy from filing any further appeals, actions, or challenges. The preliminary injunction granted by the Circuit Court is reasonably necessary to avoid further harm to the District and its students, whom the District's building program is intended to benefit. Additionally, the preliminary injunction protects the proper functioning of the Board, consistent with its obligations under S.C. Code Ann. § 59-19-90 and its policies. For the reasons set forth above, the preliminary injunction issued by the Circuit Court is supported by the applicable laws, sound public policy, and equity.

IV. CONCLUSION

Accordingly, this Court should affirm the preliminary injunction prohibiting Murphy from pursuing any further appeals, actions, or challenges.

Respectfully submitted,

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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~~ ^{Sept. 18}, 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.

Respectfully submitted,

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