

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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NOV 16 2016

APPEAL FROM BARNWELL COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2016-000428

JAMES JEFFERSON JOWERS, SR., ANDREW J. ANASTOS,
BEN WILLIAMSON, MELANIE RUHLMAN AND
ANTHONY RUHLMAN, APPELLANTS,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, RESPONDENT.

**REPLY OF CONGAREE RIVERKEEPER, INC. TO
RESPONDENT'S RETURN TO MOTION FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF**

On November 14, 2016, Congaree Riverkeeper, Inc. ("CRK") filed its Motion for Leave to File an Amicus Curiae Brief ("Motion") and conditionally filed its *Amicus Curiae* Brief. On November 16, 2016, Respondent filed a Return expressing concern about the timeliness of CRK's Motion. Respondent also suggests that CRK's Brief inappropriately argues the merits of the issues in this case and inappropriately cites to public documents outside of the record. Respectfully, Respondent's concerns and possible objections are unfounded. This Court should grant CRK's Motion.

There is nothing untimely about CRK's Motion and conditionally filed *Amicus Curiae* Brief. By history and in practice this Court accepts briefs of *amicus curiae* at any stage of the appellate process. For example, this Court has accepted an *amicus* brief from the United States Chamber of Commerce filed three days before oral argument in *Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 747 S.E.2d 468 (2013). See <http://ctrack.sccourts.org/public/caseView.do?csIID=51822>. In *Kiawah Development v. SCDHEC*, 411 S.C. 16, 766 S.E.2d 707 (2014), the Savannah River Maritime Commission filed a Motion for Leave to File an *Amicus Curiae* Brief less than a week before oral argument, and this Court granted the motion the day before oral argument. See <http://ctrack.sccourts.org/public/caseView.do?csIID=48029>. This Court has accepted *amicus* briefs even after the Court has filed a decision but granted rehearing. See, e.g. *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011) (Court received "numerous *amici* briefs" following its initial decision in the case).

CRK has filed its Motion and *Amicus Curiae* Brief, not two or three days before oral argument, but sixteen days before oral argument. Further, to avoid surprise, CRK verbally communicated with both parties in advance of filing the Motion and Brief to alert them to the positions CRK planned to take in the *Amicus Curiae* Brief. Respondent's concerns about having sufficient time to reply to CRK's *Amicus Curiae* Brief may be addressed by an order of this Court setting a deadline for response after the currently scheduled oral argument date, as this Court did in *Babb* and *Kiawah Development*.

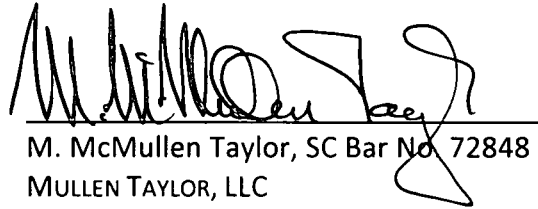
To the extent Respondent may believe that CRK's *Amicus Curiae* Brief inappropriately argues the merits, Briefs of *Amicus Curiae* are not required to be impartial to or disinterested in the merits of the Parties' claims. *Amicus Curiae* Briefs routinely argue the merits of the issues

raised by the parties. See e.g. *Wolper v. City Council of Charleston*, 287 S.C. 209, 215, 336 S.E.2d 871, 875 (1985) (stating that the *amicus curiae* and the parties “have strenuously argued” whether the statute at issue was unconstitutional).

Lastly, any objection Respondent may have about CRK’s citation to publicly available documents of various government agencies, including DHEC, is unfounded. It is entirely appropriate to cite to these types of documents within an *Amicus Curiae* Brief to provide context, background, or for any other purpose of illuminating the issues raised by the parties, because it is in keeping with the *Amici’s* role of assisting and educating the Court concerning complex issues raised in a case. For instance, in *Columbia Venture v. Richland County*, this Court accepted an *amicus curiae* brief of the Association of State Floodplain Managers, which contained extensive references to public documents in order to explain the National Flood Insurance Act. 413 S.C. 423, 776 S.E.2d 900 (2015). This Court’s opinion in *Columbia Venture* even cited to a source found within the *Amicus Curiae* Brief. See *id.* at 453, 916 (“County taxpayers and residents by reducing the County’s potential liability incurred in emergency response, rescue, evacuation, and other actions taken during a flood. See, e.g., Roger A. Pielke, Jr., et al., *Flood Damage in the United States, 1926-2003: A Reanalysis of National Weather Service Estimates* 55 (National Oceanic & Atmospheric Administration, June 2002) (estimating that between 1929 and 2003, urban floods in the United States caused approximately \$171 billion in property damage ...”)”).

CRK respectfully requests that this Court grant its Motion for Leave to File an *Amicus Curiae* Brief.

Respectfully Submitted,



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Nov. 16, 2016.

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CERTIFICATE OF SERVICE

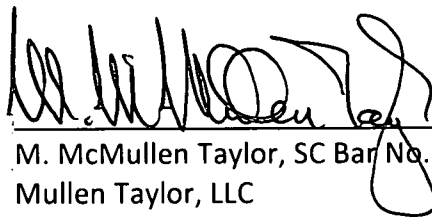
I certify that I have served upon the Parties' counsel Congaree Riverkeeper's Reply to Respondent's Return to Congaree Riverkeeper's Motion for Leave to File an Amicus Curiae Brief, by depositing a copy of it in the United States Mail, postage prepaid, and by electronic mail, on this the 16th day of November, 2016, addressed to counsel of record, as follows:

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