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STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Tanya A. Gee, Circuit Court Judge

Case No. 2015-CP-40-03357

Christ Central Ministries, Respondent

vs.

City of Columbia Board of Zoning Appeals Appellant

**MOTION BY THE LAMAR COMPANIES
TO RECONSIDER ORDER DENYING LEAVE
TO FILE AN AMICUS CURIAE BRIEF
PURSUANT TO RULE 213 SCACR**

The Lamar Companies ("Lamar") hereby respectfully moves this court to reconsider its order dated November 18, 2016 and received on November 21, 2016 denying Lamar's motion for leave to file an *amicus curiae* ("amicus") brief pursuant to Rule 213 of the South Carolina Appellate Court rules. Lamar conditionally filed the proposed amicus brief along with its motion.

There are a several reasons this court should reconsider its order denying leave to file an amicus brief.

First, neither the Appellant nor Respondent had any objection to Lamar's filing an amicus brief. While Lamar understands the decision is not up to the parties, but is discretionary with this court, it should be considered by this court in exercising its discretion.

Second, the order references part of Rule 213 SCACR which provides, "The [amicus] brief shall be limited to argument of the issues on appeal as presented by the parties..." With respect, Lamar believes it has fully complied with this requirement.

The statement of the issue on appeal as presented by the Respondent Christ Central Ministries was as follows:

"Was the court below correct in ruling that the City of Columbia Zoning Administrator's interpretation of a provision in the City's code of ordinances, as affirmed by the Board of Zoning Appeals, regarding the replacement of certain billboards was erroneous as a matter of law, the error being the Administrator's interpretation that once the original billboard was removed, a replacement board could not be constructed- in its place?"

The issue as framed by Lamar was as follows:

"Did the trial court err in interpreting Section 17-404(e) of the City of Columbia's zoning ordinances to allow a property owner with no existing rights in the non-conforming sign to apply for a permit to erect a new digital display sign after the existing nonconforming sign was removed by the sign owner?"

Both Lamar and the Respondent frame the issue as the proper interpretation of the City of Columbia's zoning ordinance as it pertains to the erection of a billboard sign after the original sign was removed. Lamar's arguments in the amicus brief are limited to this

issue as presented by the parties. Lamar's understanding of Rule 213 and the purpose of the amicus brief is that the limiting factor which should be in common with the parties is the *issue* being argued and not necessarily the *arguments*. It would not make much sense for an appellate court to allow and consider an amicus brief which contains identical arguments to those already presented by the parties in their respective briefs.

As previously noted, the common issue briefed and argued by the parties is the proper interpretation of Section 17-404(e) of the City of Columbia's zoning ordinance in the factual context of an existing sign owner removing its original non-conforming sign and a third party applying under the ordinance to "replace" the sign after the removal. Lamar's three arguments address this common issue as presented by the parties.

Lamar first argues the court erred by interpreting the ordinance to allow a person other than the existing non-conforming sign's owner to erect a totally new digital display sign after the existing non-conforming sign was removed by the owner of the sign. This is consistent with the argument by the City of Columbia on this issue. "Essentially, if the sign owner obtains a permit to convert a sign to digital under 404(e), obtains the proper permit, removes the nonconforming sign, and fails to erect the new sign within the confines of the permit, they are done. They, or anyone, cannot be granted a permit under 404(e), because at the time of application, the sign is not existing. To issue a new sign permit for that site, after the sign has been removed, is to erect a new sign, which is clearly in violation of § 17 -404(e)(1) and (3)." (Reply Brief, p.6)

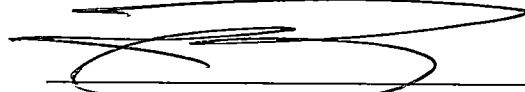
Second, Lamar argues that the interpretation of the ordinance set forth in its first argument is consistent with state and federal law. Finally, Lamar argues that case law from other jurisdictions support the interpretation that a new nonconforming sign cannot be erected after the old, nonconforming sign is removed. Again this is consistent with the arguments by the City of Columbia, although they did not cite these specific cases.

Finally, this court should reconsider its order and allow the filing of the amicus brief to fully consider the proper interpretation of the City of Columbia Ordinance before making a decision. As stated by Justice Kittredge in his dissent in *Savannah Riverkeeper v. SCDHEC* 400 S.C. 196, 733 S.E.2d 903 (2012), "In hindsight, I believe it was error to deviate from our standard practice of accepting amici briefs. I do not know whether the amicus brief raised a meritorious issue. But I do believe we have an obligation to consider an issue fully before making a decision." *Id. at*

For all these reasons and the reasons set forth in the original motion, Lamar respectfully asks this court to reconsider its order and allow the filing of its *amicus curiae* brief in this case.

Respectfully Submitted,

TOBIAS G. WARD, JR., PA



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November 29, 2016

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

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Christ Central Ministries, Respondent

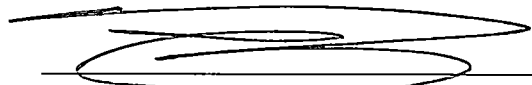
vs.

City of Columbia Board of Zoning Appeals Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Motion by The Lamar Companies to reconsider order denying the filing of an Amicus Curiae Brief Pursuant to Rule 213 SCACR by depositing a copy of it in the United States Mail, postage prepaid, on November 29, 2016, on the Appellant addressed to its attorney of record, Natalie Armstrong Ham, Post Office Box 667, Columbia, South Carolina 29202 and on the Respondent addressed to its attorney of record Jay Bender, Post Office Box 8057, Columbia, South Carolina 29202.

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ATTORNEYS FOR AMICUS FILER

The Lamar Companies

Date: Nov. 29, 2016

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J. DERRICK JACKSON
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SC Court of Appeals

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

RE: Christ Central Ministries, Respondent, v. City of Columbia Board of
Zoning Appeals, Appellant, Case No. 2015-CP-40-03357

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of a Motion By The
Lamar Companies To Reconsider Order Denying Leave To File An Amicus
Curiae Brief pursuant To Rule 213 SCACR and Proof of Service along with
our check for \$25.00 for the filing fee.

Please return a file stamped copy of each in the provided envelope.

Respectfully submitted

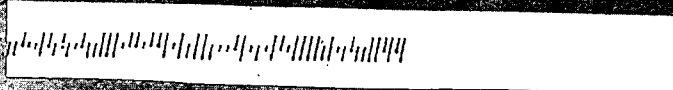
TOBIAS G. WARD, JR., PA

J. Derrick Jackson

Enclosures

JDJ/wrc

cc: Natalie Armstrong Ham, Esquire (w/ enclosures)
Jay Bender, Esquire (w/ enclosures)



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