

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

S.C. SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-002187

The Callawassie Island Members Club, Inc. Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis Respondents.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
OF THE COMMUNITY ASSOCIATIONS INSTITUTE

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REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rule 213, SCACR, the Community Associations Institute ("CAI") files the following Reply in Support of Motion for Leave to File *Amicus Curiae* Brief:

ARGUMENTS

As it has previously noted in its Motion for Leave to File *Amicus Curiae* Brief ("Motion"), CAI represents the interests of thousands of homeowners, community associations and related entities in South Carolina. In that capacity (and having considered the ramifications of the Court of Appeals' Opinion), CAI seeks to express to this Court how important this case is and how far-reaching its implications might be. In their opposition, Respondents Ronnie D. Dennis and Jeanette Dennis ("Defendants") use highly emotional language and dramatics to depict CAI's request as being tainted because CAI has collaborated with Petitioner in drafting its proposed *Amicus Curiae* Brief. Notably, Defendants *do not* address the substance of CAI's Motion and do not set forth any legitimate reason why this Court should deny CAI's request. For the reasons that follow, the Court should disregard Defendants' *ad hominem* arguments and consider the important issues raised in CAI's proposed brief.

A. Contrary to Defendants' Suggestion, CIMC's Assistance of CAI Does Not Support Denial of This Motion

Defendants devote much of their Opposition to attacks upon CAI and upon CIMC's counsel, suggesting that they have engaged in improper conduct in working together to prepare and file CAI's proposed *Amicus Curiae* Brief. Defendants go so far as to accuse them of engaging in a "deception on this Court." (*See* Resp. Opp. to Mot. for Leave to File *Amicus Curiae* Brief, at 5). This suggestion is inaccurate and unfairly implies that CAI and CIMC have sinister motives. Defendants have not cited to any governing rule, case, or other authority that would prohibit CIMC's counsel from assisting CAI in preparing to serve as a "friend of the Court."¹ Given the nature of the role of an *amicus*, it is the rule rather than the exception that

¹ It should be noted that the American Bar Association — even in the extreme circumstance of a *pro se* party — permits actual undisclosed ghostwriting of filings (which did not happen here).

parties often recruit and assist potential *amici*. In fact, the Rules of the United States Supreme Court implicitly recognize that a party's counsel may assist in the preparation of an *amicus* brief and set forth requirements for the disclosure of the involvement of a party or its counsel:

[A] brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution.

See U.S.S. Ct. R. 37.6. The South Carolina Rules of Appellate Procedure contain no such disclosure requirement and, as discussed above, do not prohibit assistance of *amicus* parties.

CAI readily acknowledges that CIMC solicited its support in this appeal and that its counsel collaborated with it in the drafting of its proposed Brief and Motion. CAI worked closely with CIMC and its counsel to ensure that CAI understood and could support CIMC's argumenta in this appeal. Additionally, considering the expense and the technical requirements of appellate practice, CAI accepted CIMC's offer for its counsel to handle the logistics of printing and filing of its motion and proposed brief. However, it is unfair and inaccurate to suggest that CIMC's counsel "ghostwrote" CAI's brief, implying that the brief does not reflect CAI's views. CAI is represented by its own counsel. CAI exercised its full and independent judgment and filed a proposed *Amicus Curiae* Brief that accurately reflects its strongly-held belief that that Court of Appeals' Opinion is potentially harmful to its members (and to all nonprofit corporations). CAI had complete editorial freedom in deciding what to include in its brief and how to say it. To the extent that it is now necessary, CAI expressly reaffirms the statements and arguments made in its proposed brief.

See ABA Formal Opin. 07-446 (May 5, 2007) ("In our opinion, the fact that a litigant submitting papers to a tribunal on a pro se basis has received legal assistance behind the scenes is not material to the merits of the litigation. . . . [W]e do not believe that nondisclosure of the fact of legal assistance is dishonest"); *accord In re Liu*, 664 F.3d 367, 372 (2d Cir. 2011) ("In light of this Court's lack of any rule or precedent governing attorney ghostwriting, and the various authorities that permit that practice, we conclude that Liu could not have been aware of any general obligation to disclose her participation to this Court.")

For the foregoing reasons, despite Defendants' personal attacks and strong language, they have not shown that CAI or CIMC (or their counsel) engaged in any improper conduct relating to CAI's efforts to file an *amicus* brief. Therefore, this Court should grant CAI's Motion for Leave to File *Amicus Curiae* Brief.

B. The Interests of CAI and Its Members Are Potentially Impacted by the Court of Appeals' Opinion

Defendants devote much of their opposition to arguing that CAI has no legitimate interest in this case because, unlike CIMC, CAI is not a private amenities club. Defendants' suggestion that the Court of Appeals' Opinion is of interest only to amenities clubs misses the scope and potential impact of that Opinion. First, CAI notes that its member community associations are not entirely unlike CIMC. Community association-affiliated clubs like CIMC do more than simply offer members a venue to play games and engage in gossip, as Defendants characterize them. They are community associations, and they are an integral and indispensable part of their communities, even where they are legally separate from their property owners' associations.

CAI seeks to file an *amicus curiae* brief precisely because it fears that its members will be impacted by the Opinion even though CIMC is not a property owners' association. The Court of Appeals' Opinion in this case concluded that the South Carolina Nonprofit Corporations Act precludes certain contracts between a nonprofit and its members. Contrary to Defendants' insinuation, the South Carolina Nonprofit Corporations Act is not the South Carolina *Private Clubs* Act. There is nothing in the Court of Appeals' Opinion that would suggest that its interpretation of the Act only applies to clubs. To the contrary, the Opinion would apply to any and all nonprofit corporations and to any agreement between a nonprofit and its membership. Thus, the Court of Appeals' Opinion threatens *all* nonprofit community associations that rely on their members' agreement to meet their membership obligations for as long as they own property. Defendants' attempt to minimize the scope of the Court of Appeals' Opinion is without merit.

CONCLUSION

For the foregoing reasons and for the reasons set forth in CAI's other filings in this matter, CAI respectfully requests that the Court grant it leave to file its proposed *Amicus Curiae* Brief in the interests of its members.

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Beaufort, South Carolina
December 22, 2016

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APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

S.C. SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524
South Carolina Court of Appeals Opinion No. 5434

The Callawassie Island Members Club, Inc.Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis..... Respondents.

PROOF OF SERVICE

I certify that I have served the Reply in Support of Motion for Leave to File *Amicus Curiae* Brief of the Community Associations Institute on the above-referenced Petitioner and Respondents by depositing a copy of it in the United States Mail, postage prepaid, on December 22, 2016, addressed to their attorneys of record:

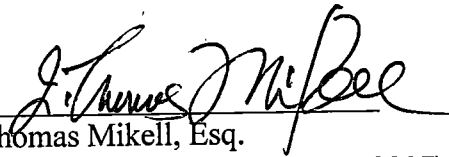
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