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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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.

AMICUS CURIAE BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Community Associations Institute ("CAI") is an international nonprofit research and education organization formed in 1973 by the Urban Land Institute and the National Association of Home Builders to provide for effective guidance for the creation and operation of community and homeowner associations. CAI is now an international organization with more than 33,000 members and 60 chapters across the United States. Its members include community associations and board members, other property owner leaders, community managers and affiliated professionals, and other service providers. CAI is an advocate for the nearly 65 million Americans who live in community associations such as condominium communities and other planned developments. CAI is the largest organization of its kind, serving more than 68 million homeowners who live in more than 380,000 community associations in the United States.

CAI regularly expresses its position on issues of potentially national concern, and advocates on behalf of community associations and their residents before legislatures, regulatory bodies and the courts. CAI also publishes a bimonthly magazine offering information on current issues affecting community associations, sponsors educational and training opportunities through seminars, workshops and conferences, and maintains a searchable research library with the largest collection of resources available on community association management and governance.

The Community Associations Institute, South Carolina Chapter ("SC-CAI") serves the 1,330,000 South Carolinians living in 480,000 homes in nearly 6,675 community associations. It serves the educational, business, and networking needs of the community association industry in five geographic regions of South Carolina. SC-CAI chapter members either own property in South Carolina community association or work with those communities, which include homeowners associations, condominiums, cooperatives and other planned communities. SC-CAI's members include condominium, cooperative and homeowner association volunteers, professional association managers,

management companies, and those who provide services and products to community associations. SC-CAI is comprised of approximately 600 members, with affiliations with hundreds of others in the industry who participate in programs and events.

Community associations are typically created as nonprofit corporations or similar entities, with all property owners in a community becoming members. The rights of the members of community associations are normally governed by covenants, conditions and restrictions that are recorded by a developer or declarant. In South Carolina, community associations are authorized by state law, including the South Carolina Nonprofit Corporation Act ("Act") and the South Carolina Horizontal Property Act ("Horizontal Property Act"). Community associations typically depend for their financial survival on members' assessments and fees. Every member of the community benefits from the availability of the services, infrastructure, and amenities that the community association provides. For these reasons, membership in a community association is normally mandatory during the time that a property owner owns property in the community. If members could freely abandon their membership in a community association while still owning property in the community and receiving benefits from that association, community associations would face an obvious crisis and a great inequity would be created in each such association.

CAI has learned of the South Carolina Court of Appeals' decision in *The Callawassie Island Members Club, Inc. v. Dennis*, Opin. No. 5434 (S.C. Ct. App. August 3, 2016) (the "Opinion") (App., at pp.1-8). In *Dennis*, the South Carolina Court of Appeals interpreted the Act, for the first time ever, to permit members of nonprofit corporations to resign their memberships, even if they have previously entered written, contracted agreements to remain members until CIMC reissues their memberships to new members. The Court of Appeals' *Dennis* Opinion disregards settled principles of statutory construction and contravenes sound public policy.

LEGAL ARGUMENTS

For the following reasons, CAI lends its voice in support of The Callawassie Island Members Club, Inc.'s ("CIMC") position and respectfully asks this Court to grant *certiorari* in this matter and reverse the Court of Appeals' Opinion. We concur with the arguments and the relevance of the citations made by CIMC with respect to the correct interpretation of the Act, with due consideration for the underlying -- and generally unchallenged -- facts of this case. Reversing the Opinion will ensure proper construction and implementation of the Act by community associations, their members, and the courts that are called upon to enforce members' obligations. Additionally, reversing the Opinion will support sound public policy and protect the interests of community associations and their members throughout the State by clarifying the law for associations that must financially support their operations based upon a known and reliable revenue source. These community associations represent the interests of tens of thousands of individual homeowners, who face the prospect of the loss of their property values and association assets because of the Court of Appeals *Dennis* Opinion.

Community associations serve vital purposes for the benefit of property owners in South Carolina. For example, community associations typically own, control and administer roads, water services, sewage services, sidewalks, surface water drainage systems, security forces and other quasi-governmental services. As such, there is a great public interest in the proper and efficient operation of community associations, as they aid governmental agencies and allow individuals to collectively provide for certain necessary aspects of everyday living. All members of a community association benefit from the commitment of other members to their promises.

In addition to single-family dwelling community associations, the Opinion also poses a very real threat to the existence of nonprofit community associations created under the South Carolina Horizontal Property Act, S.C. Code §§ 27-31-10, *et seq.* The Horizontal Property Act governs the relationships of condominium/apartment owners and

authorizes the creation of horizontal property regimes and attendant nonprofit condominium associations. *See* S.C. Code § 27-31-30. Additionally, the Horizontal Property Act recognizes that all property owners in the community benefit from the mutual promises of their co-owners and, as a result, can enforce the by-laws, rules, regulations, covenants, conditions and restrictions as to their co-owners. *See* S.C. Code 27-31-170. Those regimes and their associations, like other community associations, depend upon the consistent participation of all condominium/apartment owners for their financial viability. Just as the Court of Appeals' Opinion threatens to upend single-family community associations in South Carolina (as discussed herein), it also threatens similar harm to horizontal property regimes.

CAI will discuss, herein, several reasons why this Court should grant *certiorari* and reverse the Court of Appeals' Opinion in *Dennis*. These reasons include:

- The Court of Appeals' Opinion disregards the meaning of the word "obligation" under the Act's, as well as the Official Comment's guidance as to its meaning. Thus, the Court of Appeals inaccurately used the Act to undermine parties' ability to contract with each other.

- The Opinion fails to consider the significant negative financial impact that its ruling will have on community associations in this State, as well as their members. Such associations represent approximately 30% of property owners in South Carolina.

- The Opinion undermines previous South Carolina caselaw, which confirms that declarations of covenants and master deeds are contractual in nature, in that it allows parties to those contracts to unilaterally breach them and avoid their promises.

- The Opinion is contrary to the Horizontal Property Act, which requires that owners must strictly comply with their contractual obligations and prohibits owners from avoiding those obligations by claiming non-use of common assets.

- The Opinion runs contrary to sound public policy because it erodes hundreds of years of hornbook contract law requiring that parties must honor their contractual obligations and cannot simply walk away from them.

- The Opinion is contrary to sound public policy because it undermines the ability of community associations to provide *quasi*-governmental functions to their members. This will increase the burden on state and local governments to provide those services.

- The Opinion deprives community associations and members of their property interests and interferes with the right to contract.

- The Opinion will have a negative impact on community associations' ability to obtain bank financing because banks will not be able to rely upon associations having a consistent source of income from a community. This will also threaten harm to the banking industry, since many existing and future loans will be at risk.

A. The Opinion Erroneously Construes the South Carolina Nonprofit Corporation Act

In its Opinion, the Court of Appeals construed provisions of the Act governing the resignation of members of nonprofit corporations:

> Section 33-31-620 obligates resigned members to pay any dues incurred before resignation. This section does not require resigned members to continue to pay any dues that accrue after resignation. To do so, we believe, would create an unreasonable situation in which clubs could refuse to allow a member to ever terminate their membership obligations. In essence, Appellants would be trapped like the proverbial guests in the Eagles' hit Hotel California, who are told "you can check-out anytime you like, but you can never leave."
>
> Appellants state in their brief it is undisputed that CIMC membership is no longer available to non-Callawassie property holders. With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership. We find section 33-31-620 protects club members from such continuing liability after resignation.

(*See* Ct. App. Opinion at p.7). CAI respectfully posits that the Court of Appeals misinterpreted the plain language of the Act in a way that denies the freedom to form community associations (or many other kinds of nonprofit organizations) whose financial viability depends upon regular, predictable financial contributions from a finite pool of members.

The Court of Appeals concluded that CIMC's governing documents violated the following provision of the Act:

> (a) A member may resign at any time.
>
> (b) The resignation of a member *does not relieve the member* from any obligations the member may have to the corporation as a result of *obligations incurred or commitments made before resignation.*

See S.C. Code § 33-31-620(a) & (b) (emphasis added). The Court of Appeals concluded that Section 33-31-620 permits a nonprofit corporation's members to avoid their written, contractual commitments, made before resigning, to pay assessments and fees following resignation. However, the Court of Appeals did not consider that "[t]he resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of . . . *commitments made* before resignation." In other words, a member of a nonprofit should not be allowed to escape his existing, written contractual promises by simply resigning.

The applicable rules of statutory construction are well-settled in South Carolina and provide that:

> The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs,* 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).
>
> Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). "*A statute should be so construed that no word, clause, sentence, provision or part shall be rendered*

> *surplusage, or superfluous.*" *In re Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

See State v. Sweat, 386 S.C. 339, 350-51, 688 S.E.2d 569, 575 (2010) (emphasis added).

Although the Act permits members of nonprofit corporations to resign, Section 620*(b)* — which the Court of Appeals disregarded — qualifies that right: "The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of *obligations incurred or commitments made* before resignation." (emphasis added). A "commitment" means "a pledge or promise; obligation." (*See* http://www.dictionary.com/browse/commitment?s=t (accessed Aug. 4, 2016)). The Merriam-Webster Collegiate Dictionary (10th ed.) defines a "commitment" as "an agreement or pledge to do something in the future; especially: an engagement to assume a financial obligation at a future date." This definition accentuates that a "commitment" often involves a future *financial* obligation. Members' obligations under CIMC's governing documents are plainly "pledge[s] to do something in the future" and "engagement[s] to assume a financial obligation at a future date." Community associations throughout the State are dependent upon these commitments from their members for their continued existence.

The Act plainly contemplates that members of nonprofit corporation may make promises that bind them to financial obligations that continue after they resign their memberships. In other words, subsection (b) envisions precisely the sort of arrangement at issue at CIMC (and at community associations throughout South Carolina), where members expressly agreed that they would continue to fulfill the obligations of membership until CIMC reissues their membership to a replacement member.

The Act's Official Comment confirms that subsection (b) permits members to contractually bind themselves to commitments that continue beyond the time notice of resignation is provided:

> Under section 6.20(b) a person may be liable for obligations incurred or *commitments made* prior to the resignation. *These commitments may extend beyond the time the member resigns.*
>
> Resignation from membership will not allow a person to avoid liability for goods or service already provided or for ongoing obligations to which the member agreed prior to resignation. Section 6.20(b). This provision is particularly important to corporations that provide benefits or services to members' businesses. The member in joining the organization may promise to use its facilities or services for a specified period of time. *While section 6.20(a) allows a member to resign at any time, section 6.20(b) allows the corporation to enforce or obtain damages for violation of a member's agreement.*

See S.C. Code § 33-31-620, Official Comment (emphasis added). Again, this language envisions precisely the sort of agreement at issue in the Opinion.

The Court of Appeals did not even mention, and may not have considered, Section 620(b) or the Official Comment, both of which nonprofit corporations have relied upon for more than 20 years. The Court of Appeals' misinterpretation of the Act threatens to unintentionally cripple nonprofit corporations in South Carolina. *Nothing* in the Act requires that a notice of a "resignation" immediately ends all membership obligations upon the member's communication of such an intention or desire to resign. Contrary to the Court of Appeals' Opinion, a member's notice of resignation does not have to be the end of the membership; rather, depending on the parties' agreement, it can be the beginning of the process of ending the membership.

CAI does not seek to construe the Act to prevent community association members from resigning. Rather, CAI respectfully requests the Court to conclude that, under the Act, a community association or other nonprofit corporation can enforce written, contractual commitments that its members voluntarily made before resigning. Such commitments — combined with identical commitments that other community members have made — are the financial lifeblood of every nonprofit community association. No nonprofit club or association can survive unless it can enforce its members' voluntary, written contractual pre-resignation commitments.

Contrary to the Act's plain language, the Court of Appeals determined that the Act only "obligates resigned members to pay any dues incurred before resignation." (*See* Ct. App. Opinion at p.7). This renders subsection (b) essentially meaningless. It is not reasonable to read subsection (b) to only prevent resigning members from walking away from debts already incurred. No statute is required to confirm that people must pay for goods or services that they have already purchased and used. To give the Act this reading deprives its provisions of any effect.

The Court of Appeals appears to have equated the term "obligations incurred" with assessments incurred before resignation, ignoring the term "commitments made" in subsection (b). The General Assembly chose to use two terms to describe the sort of liabilities that could survive a resignation: (1) "obligations incurred" and (2) "commitments made." Presuming that the legislature did not intend to use superfluous language, those two terms must have different meanings. A commitment includes an agreement or contract, so if the "commitments made" language of subsection (b) means anything, it must mean that pre-resignation executory contracts remain enforceable after resignation.

It is well-settled in South Carolina that the proper recording of a master deed or declaration creates a binding, contractually-enforceable promise by the purchasers of such property:

> A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed.

See Harbison Cmty. Ass'n, Inc. v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995). Thus, the provisions of the governing master deed or declarations of a community association —including requirements of membership in the association during the entire time of property ownership — are contractually binding on members of community associations. The *Dennis* Opinion undermines this well-accepted concept that is the bedrock upon which all community associations are based. If the Opinion stands, it potentially undermines the enforceability of the documents controlling community associations (master deeds, declarations, ...), the effects of which will be wide-ranging, and overwhelmingly negative.

Nonprofit corporations, including community associations, have relied upon the enforceability of their members' commitments under the Act for over 20 years. CIMC's members have agreed to remain members until the reissuance of their membership to a substitute member in accordance with its governing documents. CIMC's survival depends on the enforceability of that promise, a promise that South Carolina law has respected for decades and upon which many other community associations also rely.

Additionally, the Court of Appeals' Opinion is inconsistent with certain provisions of the Horizontal Property Act. For example, S.C. Code Section 27-31-170 requires that all owners in a horizontal property regime "strictly comply" with by-laws, as well as "the covenants, conditions and restrictions set forth in the master deed." Moreover, all property owners in a horizontal property regime are obligated to contribute their *pro rata* share of expenses. *See* S.C. Code § 27-31-190. The Horizontal Property Act expressly prohibits owners from exempting themselves from this obligation by waiving their use or enjoyment of the property or amenities. *See id.* The Opinion is directly antagonistic toward these provisions of the Horizontal Property Act. The Horizontal Property Act makes clear that — consistent with the policies embodied in that statute — owners are bound by their agreements. The Opinion, on the other hand, grants owners the right to

unilaterally "opt out" of their agreements. Such precedent is fatally injurious to horizontal property regimes.

Like CIMC, CAI's constituent community associations rely on a constant membership for their existence and financial stability. In fact, most community associations require that their members remain members in good standing *until they sell their property.* The Court of Appeals' misinterpretation of the Act will result in broad and ruinous financial impact to community associations operating as nonprofit corporations in South Carolina. No nonprofit club or association can survive without the ability to enforce voluntary, written, contractual pre-resignation commitments. A proper construction of the Act is consistent with this need to enforce voluntary membership requirements.

Moreover, the Opinion threatens the rights of members of community associations and other nonprofits under the Contract Clause. "Section 4 of Article 1 of the South Carolina Constitution states: 'No ... law impairing the obligation of contracts, ... shall be passed....' Similarly, the United States Constitution provides: 'No state shall ... pass any ... law impairing the obligation of contracts....'" *Alston v. City of Camden*, 322 S.C. 38, 43, 471 S.E.2d 174, 176 (1996).

> [T]o determine whether the Contract Clause limits application of certain laws, the following framework applies:
>
> > A three-step analysis applies to a Contract Clause claim. First, the Court must determine whether the State law has in fact operated as a substantial impairment of a contractual relationship. If the State regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of contractual rights is based upon reasonable conditions and is of a character appropriate to the public purpose.
>
> *Mibbs, Inc. v. S.C. Dep't of Rev.*, 337 S.C. 601, 607, 524 S.E.2d 626, 629 (1999) (citations omitted). For purposes of determining whether there was a substantial impairment of contract, the Court considers whether the law

> in question altered the reasonable expectations of the parties. *Id.* at 608, 524 S.E.2d at 629 (*citing Ken Moorhead Oil Co. v. Federated Mut. Ins. Co.*, 323 S.C. 532, 542, 476 S.E.2d 481, 486–87 (1996)).

See Kirven v. Cent. States Health & Life Co., of Omaha, 409 S.C. 30, 40–41, 760 S.E.2d 794, 799-800 (2014). The Court of Appeals construction of the Act deprives parties of their right to freely contract with each other and to rely upon the certainty of their contracts.

B. <u>The Court of Appeals' Opinion Is Contrary to Sound Public Policy</u>

The Court of Appeals' conclusion that the CIMC membership agreement violates the Act is based on its erroneous belief that its members have no opportunity to ever end their membership:

> With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership.

(*See* Ct. App. Opinion at p.7.). CAI joins in CIMC's argument in its Petition for *Certiorari* that the Court of Appeals completely misunderstood the parties' agreement and its status under the law. The Record on Appeal clearly shows that, aside from the resale lists, members may end membership obligations by selling their property and transferring their membership to the purchaser. In other words, another method of resigning is the sale of a member's property and membership. CIMC's members agreed to this arrangement and purchased memberships in the Club with actual or constructive knowledge of the terms under which a membership could be resigned. Indeed, sale of their property is the most common way for members of community associations to resign; they resign their memberships when they no longer own a property in the community. While not all communities have separate property owners' associations and amenity clubs such as Callawassie Island, this is not an uncommon arrangement; in fact, there are hundreds of similarly-organized community associations in South Carolina. Because Callawassie is an island community, Club membership has, since its inception,

been intimately connected to property ownership. Since 2001, when the members of the Callawassie Island Property Owners Association, Inc. amended its covenants, Club membership has been mandatory for people acquiring property on Callawassie. CIMC's members — like members of community associations throughout the State — have agreed to a carefully-planned membership system designed to ensure CIMC's ongoing financial health.

Such a voluntary arrangement is not a trap. It is the agreement that members freely make when they join certain associations, such as amenity clubs or property owners' associations. It is the bedrock principle upon which every community association survives. Most community associations in South Carolina require that owners in the community remain members while they own their property. Members cannot simply "resign" by giving notice and unilaterally stopping the payment of their assessments. Instead, the parties agree in advance that the proper method for resignation (aside from sale through CIMC's official resale list) is the sale of the underlying property — and the replacement of the selling member with a new member, the purchaser. This maintains a constant level of membership and protects the interests of all members from the fluctuations of the economy and other factors that can create financial crises for community associations. This agreement protects the interests in the benefits of the association of *all* members of that association. Community associations provide a means for people to come together and pool their resources to provide collective benefits that they could certainly not afford individually.

All community associations face constant pressure to maintain the benefits to their members while controlling costs and keeping assessments and fees predictable. Meeting these obligations is only possible by maintaining a consistent, predictable revenue stream. To achieve the necessary level of financial stability, under the terms of most community associations' governing documents all property owners in a community are automatically designated "members" and must remain members while they own

property in the community. Under this arrangement, the number of properties in the community limits the community association to a finite number of potential members. Consequently, the financial viability of the community association is dependent upon the members honoring their voluntary, written, contractual financial commitment. Moreover, the community association must insist that all members remain members until they sell their property (and a new member replaces them). If owners are permitted to freely resign their membership and avoid financial obligations, while still enjoying the benefits of the association, the stability of the community association is undermined.

Additional external pressures exacerbate the financial challenges confronting community associations. With the burst of the housing bubble and the economic downturn of 2009, community associations and golfing communities have suffered tremendously. The increasing number of foreclosures that accompanied the economic downturn has increased the stress on community associations.

> Associations fund their budgets primarily through collection of assessments from the community's homeowners. These assessments, unlike membership fees or dues, represent a share of the common expenses associated with operating the community. When homeowners pay their assessments as scheduled, the association can function and provide required facilities and services. However, collection of these assessments depends on the financial strength of the individual owners as well as overall economic conditions. As a result, with overall foreclosure rates at record highs and the country in recession, HOAs are at great risk of experiencing future revenue shortfalls.

See Casey Perkins, *Note: Privatopia in Distress: The Impact of the Foreclosure Crisis on Homeowners' Associations*, 10 Nev. L.J. 561, 570 (2010).

Interpreting the Nonprofit Corporation Act to nullify existing long-term membership agreements, such as that at issue here, will deprive ordinary people of the ability to pool their resources to form community associations that allow them to enjoy amenities that they could never afford on their own. The Court of Appeals' interpretation of the Act threatens community associations, as well as amenity clubs like CIMC; the

South Carolina Attorney General has noted that the Act's provisions governing resignation are applicable to homeowners' associations. *See* 2014 WL 1398587, at *1 (S.C.A.G. Feb. 3, 2014) ("S.C. Code § 33-31-620 and § 33-31-621 regarding resignation and termination apply to a South Carolina nonprofit corporation such as a homeowner's association . . . .").

The consequences of the Court of Appeals' decision will be devastating to community associations, clubs, golfing communities, and other similar interests throughout the state. It is a real possibility that many community associations will fail, with unknown consequences to property values in those communities. The decision is harmful to property owners' associations and clubs, who lose the ability to rely on funding sources that will ensure ongoing financial viability. Following through, it is harmful to the many businesses that these groups hire to maintain and improve property and to the employees of those businesses. It is harmful to property owners and club members who honor their promises, but find their assessments must be increased to cover operating costs, while resigned members continue to enjoy the association's benefits for free. It is harmful to lenders holding mortgages within these communities. It is harmful to *any* nonprofit corporation that relies on the reasonable enforcement of its members' voluntary, written, contractual commitments. CAI joins CIMC to urge the Supreme Court to grant *certiorari* and reverse the Court of Appeals' construction of the Act to preserve the clear language and purpose of the Act and to prevent significant negative consequences and financial crises from befalling community associations and their members throughout South Carolina.

The *Dennis* Opinion also threatens the financial health of community associations, insofar as it will negatively impact the ability of community associations to obtain bank financing or loans. Lenders have made thousands of loans to community associations to finance association services, capital improvements, asset repairs, asset purchases and other large expenditures vital the health of such associations. Those loans

are often based entirely on the fact that the borrower community association has a reliable revenue stream generated by assessments paid by a consistent base of members. In reliance on this revenue stream, lenders secure those loans by an assignment of that the assessment payable to the association. After the Court of Appeals Opinion in *Dennis*, the ability of South Carolina community associations to borrow money will be hampered, if not outright eliminated, as those entities will be unable to present a stable revenue stream for repayment to the lender. It is likely that, unable to confirm an ability to repay, banks will stop lending to community associations and nonprofits, leading to repercussions in South Carolina and nationwide.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* Community Associations Institute hereby supports the arguments made by Petitioner The Callawassie Island Members Club, Inc. and respectfully requests that this Honorable Court grant the Petition for Writ of *Certiorari,* vacate the Court of Appeals' opinion and affirm the trial court's grant of summary judgment to Petitioner.

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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 *Amicus Curia* 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 7, 2016, addressed to their attorneys of record:

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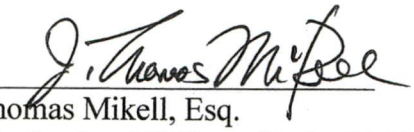
By: 
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CERTIFICATE OF COUNSEL

Counsel for Community Associations Institute certifies that the Amicus Curiae Brief fully complies with Rule 211, SCRAP, to his best knowledge and belief, and that three copies have been served on each of the other Counsel in the Appeal.

December 7, 2016

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