THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2017-000984

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, d/b/a Fort Mill Medical Center .....Respondent,

v.

South Carolina Department of Health and Environmental Control and The Charlotte Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center-Fort Mill .....Respondents,

Of whom The Charlotte Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center-Fort Mill, is.....Appellant.

RESPONDENT AMISUB OF SOUTH CAROLINA, INC.'S RETURN TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

Stuart M. Andrews, Jr.
SC Bar No. 000400
E-Mail: stuart.andrews@nelsonmullins.com
Daniel J. Westbrook
SC Bar No. 012939
E-Mail: dan.westbrook@nelsonmullins.com
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000

Attorneys for Respondent, *Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, d/b/a Fort Mill Medical Center.*

INTRODUCTION

Respondent Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center ("Piedmont") submits this Return to the Petition for Writ of Certiorari filed by Appellant Charlotte-Mecklenberg Hospital Authority ("CHS"), in this Certificate of Need battle that has been waged since 2005. For the reasons set forth below, the Petition should be denied.

QUESTIONS PRESENTED

1. Should this Court grant CHS's Petition for Writ of Certiorari to determine whether CHS preserved its claim that the Administrative Law Court applied South Carolina CON law in violation of the dormant Commerce Clause, when CHS first raised the issue in a Rule 59(e) motion?

2. Should this Court grant CHS's Cert Petition to determine the substantive issue of whether the Administrative Law Court's Amended Order violates the dormant Commerce Clause when CHS failed to preserve the issue, the Court of Appeals has not ruled upon it, this Court has declined to accept it, and it is not a novel question of law?

3. Should this Court grant CHS's Cert Petition to determine whether South Carolina Code § 44-7-220(B) is unconstitutional?

STATEMENT OF THE CASE

The 2004-05 South Carolina Health Plan (the "State Health Plan" or "Plan") identified a need for 64 additional acute care hospital beds in York County. Based on the need identified in the Plan, in 2005 the South Carolina Department of Health and Environmental Control ("DHEC") received four competing applications for a Certificate of Need ("CON") to build a hospital near the town of Fort Mill. The four applicants were Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, d/b/a Fort Mill Medical Center ("Piedmont"), The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System ("CHS"), Presbyterian Healthcare System ("Presbyterian"), and Hospital Partners of America, Inc. ("HPA"). In March

2005, CHS, Presbyterian, and HPA each filed competing applications to build a 64-bed hospital. At first, Piedmont also applied to build a 64-bed hospital, but in October 2005 Piedmont submitted a new application for a hospital of 100 beds, to be called Fort Mill Medical Center ("FMMC").[1] In 2006, DHEC approved Piedmont's application and denied the other applications, in part because DHEC interpreted the South Carolina Health Plan to allow only Piedmont, as the county's only existing provider, to obtain a CON for additional hospital beds ("the State Health Plan Issue"). CHS and Presbyterian filed separate contested case actions in the South Carolina Administrative Law Court ("ALC"), which were later consolidated (R. at 75-76).

A final hearing was held before the Honorable Carolyn C. Matthews from September 9 to September 25, 2009 (the "First Trial"). During the litigation, Presbyterian twice moved for summary judgment on various grounds related to the State Health Plan, one of which was based on the dormant Commerce Clause. (App. at 775, 810). CHS filed separate summary judgment motions, adopting by general reference Presbyterian's positions. (App. at 610, 1072). At the close of their cases, Presbyterian and CHS again moved for summary judgment on grounds related to the State Health Plan Issue, though neither specified the dormant Commerce Clause as grounds. (App. at 1385-1422).

On December 9, 2009, Judge Matthews issued an Order granting summary judgment and ruling that DHEC had erroneously interpreted the Plan to allow only existing providers to obtain a CON. (R. at 26-27). Judge Matthews remanded the matter to DHEC to determine which, if any, of the applicants were entitled to the CON. (R. at 27).

[1] Piedmont Medical Center, located in Rock Hill, is the only acute care hospital in York County. It is not a legal entity, but a "d/b/a" of Amisub of South Carolina, Inc. FMMC would not be a separate legal entity, but simply another "d/b/a." (R. at 361, lines 10-23). Piedmont's application proposes to transfer 36 of its existing beds to FMMC, in addition to applying for the new 64 new beds authorized by the Plan, giving FMMC a total of 100 beds.

On September 9, 2011, following a second administrative review, DHEC issued a staff decision approving CHS's application and denying the applications of Piedmont and Presbyterian, both of whom sought DHEC Board review. The State Health Plan Issue was never raised during the administrative review and was not a grounds for the decision. After the Board declined review, Piedmont and Presbyterian filed contested case actions in the ALC. The cases were consolidated after being assigned to the Honorable S. Phillip Lenski. During the course of litigation, Presbyterian withdrew from the case. Judge Lenski presided over a final hearing with the remaining parties from April 8 to May 7, 2013 (the "Second Trial"). (R. at 74).

On March 31, 2014, Judge Lenski issued a Final Order awarding the CON to Piedmont. (R. at 34). The State Health Plan Issue was not a grounds for Judge Lenski's decision. Instead, the ALC adopted Piedmont's argument that approval of the CHS application would not comply with the regulatory criteria related to adverse impact, in part because it would further escalate potential outmigration from York County and result in decreased public access to local healthcare services. (R. at 86-99, 118, 120-22). On April 9, 2014 CHS filed a Motion for Reconsideration pursuant to SCRCP 59(e). (R. at 227). In the Rule 59(e) motion CHS raised, for the first time, the issue of whether the ALC had applied South Carolina CON law, particularly with respect to the issues of adverse impact and outmigration, in a manner that violated the dormant Commerce Clause. On May 2, 2014, the ALC vacated the Final Order. (R. at 73). On December 15, 2014 the ALC issued an Amended Final Order, again approving Piedmont's application and denying CHS's. (R. at 74). On January 14, 2015, CHS filed a Notice of Appeal. On April 15, 2015, the South Carolina Supreme Court declined to certify the appeal for review. On January 11, 2017, the Court of Appeals issued a Per Curiam Order denying the appeal. CHS timely filed a Petition for Rehearing and Motion to Supplement the

Record on Appeal, both of which the Court of Appeals denied on March 23, 2017. (App. at 368, 387, 1504).

ARGUMENT

I. CHS Failed to Preserve the Issue of Whether South Carolina CON Law, as Applied by the ALC, Violates the Dormant Commerce Clause.

In the Second Trial, Piedmont did not present evidence or argue that under the State Health Plan only Piedmont's application should be approved. Instead, Piedmont's signature theme was that approval of CHS's application would adversely impact Piedmont and the public, in large part by increasing patient outmigration from York County for hospital services. (R. at 296, lines 1-10). Piedmont's counsel emphasized the significance of this theme in his opening statement: "[W]hat this case is about . . . is adverse impact. The great distinguishing factor in this case between the applications is adverse impact. All the other criteria even out, what does not even out is adverse impact." (R. at 291-92, lines 24-25, 1-4).

As the ALC concluded, adverse impact was the most heavily disputed issue in the case. (R. at 120). Although CHS vigorously contested Piedmont's position, it never argued that it violated the dormant Commerce Clause. CHS did not raise that issue until it filed a Rule 59(e) motion.

In order to preserve an issue for appellate review, it must be fairly and properly raised in the lower court. *Hubbard v. Rowe,* 192 S.C. 12, 5 S.E.2d 197 (1939). "[A]ppellants have the responsibility to identify errors on appeal, not the Court. South Carolina cases clearly hold that one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal." *Kennedy v. S.C. Retirement Sys.,* 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001).

Issue preservation serves an important purpose in appellate law.

> Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

I'On, LLC. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000) (citations omitted). All preservation rules apply before the ALC with respect to an as applied constitutional challenge. *Travelscape, LLC v. S.C. Dept. of Revenue,* 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011).

This Court has specifically ruled on issue preservation in the context of a Rule 59(e) motion. In 2004, this Court adopted a Court of Appeals precedent and held that a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.,* 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (citing *Patterson v. Reid,* 318 S.C. 183, 456, S.E.2d 436 (Ct. App. 1995)); *Dixon v Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005).

CHS argues that until the ALC actually issued its final order, CHS had no way of foreseeing what findings and conclusions the ALC would make. To have raised the dormant Commerce Clause issue before the final order was issued, CHS contends it would have had to anticipate a hypothetical ruling. CHS borrows a concept from the law of standing, arguing that until issuance of the ALC's decision the dormant Commerce Clause issue was not ripe for CHS to raise.

Piedmont's position, however, was no secret. As noted above, adverse impact and outmigration were Piedmont's main theme at the Second Trial, "what this case is about." (R. at

291, line 24). It was certainly forseeable that the ALC might adopt Piedmont's position. The issue was more than ripe, it was teed up for a CHS response. CHS did respond with vigorous arguments against Piedmont's position, but did not raise a dormant Commerce Clause argument until its Rule 59(e) motion, which was too late.

In its Petition, CHS cites *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), for the principle that Rule 59(e) is not too late to raise an issue and have it preserved for appeal. *Elam*, however, dealt with the issue of when a Rule 59(e) motion tolls the time for appeal. *Id.* at 18-19, 602 S.E.2d at 777-78. *Elam* acknowledged that to preserve an issue, a party must raise it before a 59(e) motion is filed. *Id.* at 24, 602 S.E.2d at 780 (noting a Rule 59(e) motion is appropriate "when an issue or argument has been raised, but not ruled on").

In the First Trial, CHS adopted Presbyterian's 2007 summary judgment position that the State Health Plan Issue violated the dormant Commerce Clause. That, argues CHS in its Petition, is sufficient to preserve the issue of whether the ALC in the Second Trial misapplied CON law in violation of the dormant Commerce Clause. Petition at 11 n.5, *citing Yee v. City of Escondido,* 503 U.S. 519, 534-35 (1992). In *Yee,* the Supreme Court held that once a party properly presents a federal claim, that party can make any argument in support of the same claim. The Petitioners in *Yee* had consistently argued that a particular ordinance was an unconstitutional taking, but in two different ways: by physical occupation and by regulation. *Id.* The Court found these were separate arguments supporting the same claim. *Id.* CHS's new dormant Commerce Clause claim, however, is a separate claim from that involving the State Health Plan Issue. In the First Trial, CHS claimed that DHEC's interpretation of the State Health Plan (that only an existing hospital's CON could be approved) violated the dormant Commerce Clause. CHS's new claim is that the ALC applied state CON law—particularly the regulatory

criteria related to adverse impact and outmigration—in a manner that violated the dormant Commerce Clause. These are two different claims entirely.

Finally, CHS argues that it raised its new dormant Commerce Clause claim in a proffer made at the Second Trial. The proffer is not, however, included in the Record on Appeal. Even it were, it would be of no help to CHS, since it relates entirely to the State Health Plan Issue. Although the proffer is over 1,000 pages, the dormant Commerce Clause is referenced only in Presbyterian's May 2007 summary judgment motion and supporting memorandum.[2] (App. at 775, 809-812). Presbyterian's argument is based solely on the State Health Plan Issue—DHEC's interpretation of the Plan that allowed approval of Piedmont's CON application. *Id.* Nothing in the proffer suggests that the ALC's adoption of Piedmont's position on adverse impact and outmigration would violate the dormant Commerce Clause.

II. Appellant Failed to Preserve Its Dormant Commerce Clause Argument, the Court of Appeals Has Not Ruled Upon It. This Court Declined to Accept It, and It is Not a Novel Question of Law.

CHS contends that this Court should grant its Petition because the substantive dormant Commerce Clause issue it raised to the Court of Appeals is a novel question of law. First, as held by the Court of Appeals, CHS failed to preserve the issue and cannot raise it now. Second, the Court of Appeals has never ruled on the substantive issue. Third, this Court has already declined to certify this appeal for review. Finally, an as-applied challenge to state CON laws on grounds of incumbency bias is not a novel question of law.

In *Colon Health Centers of America v. Hazel,* 813 F.3d 145 (4th Cir. 2016), the Fourth Circuit upheld Virginia's CON law against a dormant Commerce Clause challenge, both to the law's purpose and as it was applied. The appellant argued, as CHS does in this appeal, that

[2] CHS adopted Presbyterian's position by general reference. (App. at 610).

the Virginia law, as applied, discriminated "in favor of incumbent health care providers at the expense of new, predominantly out-of-state firms." *Id.* at 154. The court rejected this argument as a matter of law, quoting from its 2013 decision involving the same parties and issue: "[I]ncumbency bias in this context is not a surrogate for the 'negative [ ] impact [on] interstate commerce' with which the dormant Commerce Clause is concerned." *Id.* (quoting *Colon Health Ctrs. of Am., LLC v. Hazel,* 733 F.3d 535 (4th Cir. 2013)); *see also Yakima Valley Mem. Hosp. v. Washington State Dept. of Health,* 2012 WL 2720874 (E.D. Wash. 2012) (granting summary judgment for defendants in an as-applied challenge to state CON law).

III. The CON Appeal Bond Required by Section 44-7-220(B) Complies with the United States and South Carolina Constitutions.

Section 44-7-220(B) of the South Carolina Code requires that a bond be posted by a party who wishes to appeal an ALC decision approving a CON. If the ALC decision is affirmed or if the appeal is dismissed, the bond is awarded to the respondent whose CON project is the subject of the appeal. In this appeal, CHS posted a bond of $1.5 million, which is approximately one percent of the cost of the hospital for which Piedmont obtained a CON.[3] CHS argues that the bond requirement is unconstitutional, but CHS bears a heavy burden in proving its argument. Courts must uphold a statute against a constitutional challenge "if there is any reasonable hypothesis to support it." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004). "[E]very presumption will be made in favor of [a statute's] validity...." *Gold v. S.C. Bd. of Chiropractic Exam'rs*, 271 S.C. 74, 78, 25 S.E.2d 117, 119-120 (1978). Courts will uphold a statute "unless its repugnance to the constitution is

[3] Section 44-7-220(B) requires a bond in an amount of five percent of the total cost of the project being delayed or $100,000, whichever is greater, but with a maximum of $1.5 million, which is the amount of the bond posted by CHS. Piedmont's project cost for its proposed hospital is approximately $119 million to $147 million. (R. at 39).

clear and beyond a reasonable doubt." *Joytime Distribs. & Amusement Co. v. State,* 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

A. Equal Protection

To satisfy the equal protection clause, a statutory classification must:

a) bear a reasonable relation to the legislative purpose sought to be achieved;

b) treat class members alike under similar circumstances; and

c) rest on a rational basis.[4]

Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). Section 44-7-220(B) divides appellants into two classifications: 1) those appealing an ALC approval of a CON project; and 2) all other appellants. CHS does not argue that the section 44-7-220(B) treats class members differently, but it does argue that the statute is unrelated to a legitimate state purpose and has no rational basis.

The legislative purpose of the appeal bond is to hold funds to compensate a party for the costs of delay in constructing and operating a healthcare facility for which it has been awarded a CON. The appeal bond imposes some risk on an appellant, but respondents bear risks, as well. A respondent with a CON, but facing an appeal, has a difficult choice. It may either delay initiating its project until the appeals process is concluded, or it may go ahead and construct a multimillion dollar facility, knowing that a reversal on appeal could render the facility unusable. The appeal bond therefore helps in spreading the risks associated with a CON appeal. *See Foster v. S.C. Dep't. of Highways and Public Transp.*, 306 S.C. 519, 526, 413 S.E. 2d 31, 36 (1992) ("[T]he classification does not need to accomplish the legislative purpose with delicate precision in order to survive a constitutional challenge.") As the Court

[4] The rational basis test, not strict scrutiny, applies in this case, since the classification at issue does not affect a fundamental right and does not implicate a suspect class. *See Bodman*, 403 S.C. at 69, 742 S.E.2d at 367.

of Appeals noted, the appeal bond "provides some balance" between "potentially unfair outcomes." (App. at 359). As the Court of Appeals also recognized, the classification is reasonably related to the broader purposes of the CON Act in "providing for the efficient regulation and construction of healthcare facilities." (App. at 358). *See* S.C. Code Ann. § 44-7-120 (2002) (the purposes of the CON Act include guiding "the establishment of health facilities and services which will best serve public needs"). For these reasons, Section 44-7-220(B) rests on a rational basis.

CHS relies on *Lindsey v. Normet*, 405 U.S. 56 (1971), in which the Court held that an Oregon statute violated equal protection. The statute required tenants who appealed a forceful entry and detainer ("FED") to post a double appeal bond – an amount twice the rental value of the home from which they were being evicted, in addition to the ordinary bond required of all civil appellants. *See id.* at 74-77. If the tenant lost the appeal, the landlord was entitled to double the accrued rent without proof of actual damages. *Id.* at 63-64. In striking down the statute, the Court found "nothing in the special purposes of the FED statute or in the special characteristics of the landlord tenant relationship to warrant" treating FED appellants different from other appellants by exposing them to severe penalties. *Id.* at 77.

By contrast, one purpose of the CON Act, as discussed above, is to guide the establishment of healthcare facilities which will "best serve public needs." S.C. Code Ann. § 44-7-120. Consistent with that purpose is the goal of discouraging unnecessary delays in the establishment of or additions to healthcare facilities. Moreover, the relationship between two competitors in the healthcare field, such as CHS and Piedmont, is very different in nature from a landlord-tenant relationship. Finally, the core of the problem with the FED statute in *Lindsey* was the exorbitant penalty it imposed, a penalty that bore no reasonable relationship to the

amount of rent at issue, much less to any legitimate state purpose. Section 44-7-220(B) imposes no penalty. Rather than a double bond, section 44-7-220(B) requires an amount equal only to five percent of the cost of the project delayed by the appeal or $100,000, if greater, up to a maximum of $1.5 million.

Section 44-7-220(B)'s classifications bear a reasonable relation to the legitimate state purpose of compensating CON respondents for the costs of delay, as well as to the larger purposes of the CON Act. The classifications treat class members the same and rest on a rational basis. The statute therefore does not violate equal protection.

B. Separation of Powers

The separation of powers doctrine does not require complete separation. "Grey areas" exist that require "some overlap of authority." *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 313, 295, S.E.2d 633, 636 (1982); *see* 16A Am. Jur.2d *Constitutional Law* § 244 ("Separation of Powers does not require that the branches of government be hermetically sealed."). "At its core, the doctrine therefore 'is directed only to those powers which belong ***exclusively*** to a single branch of government.'" *State v. Langford,* 400 S.C. 421, 434-35, 735 S.E.2d 471, 478 (2012) (quoting 16A Am. Jur.2d *Constitutional Law* § 246) (emphasis added).

CHS's argument rests on its mistaken assumption that judicial rulemaking is a power that belongs exclusively to the courts. Petition at 17 (arguing that the CON bond violates the separation of powers doctrine "by encroaching upon the judicial department's exclusive authority to promulgate rules of appellate practice and procedure"). In South Carolina, however, judicial rulemaking is not an exclusively judicial power. Although Article V, section 4 of the South Carolina Constitution gives the Supreme Court power to make rules governing the practice and procedure in state courts, such power is "[s]ubject to the statutory law."

Article V, section 4 "establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure." *Stokes v. Denmark Emergency Med. Serv.*, 315 S.C. 263, 267, 433 S.E.2d 850, 852 (1993).

CHS relies primarily on two decisions, one from Kentucky and one from Illinois. *See Elk Horn Coal Corp.v. Cheyenne Res. Inc.*, 163 S.W.3d 408 (Ky. 2005); *Consumers Gas Co. v. Illinois Commerce Com.*, 144 Il. App.3d 229, 493 N.E.2d 1148 (1986). In each of these cases the court ruled that a state statute violated the separation of powers doctrine by encroaching on the judiciary's exclusive rulemaking authority. In neither of these cases, however, did the state constitutions have a provision comparable to Article V, section 4, subordinating the judiciary's rulemaking authority to the legislature. *See* KY. Const. § 116; IL. Const. Art. 6, § 16.

Like *Lindsey, Elk Horn* addressed the constitutionality of a penalty bond statute. Section 44-7-220(B) does not impose a penalty bond. *Consumers Gas* involved a statute that established an appellate procedure in "direct contravention" of the procedure set forth in Illinois Supreme Court Rule 335. 144 Ill. App.3d at 130, 493 N.E.2d at 1151. The statute required an intermediate appellate court to hold an evidentiary hearing on a motion for stay, in contrast to Rule 335, which required no hearing. *Id.* at 132, 493 N.E.2d at 1153.

Finally, CHS relies on *Rutherford v. Rutherford*, 307 S.C. 199, 414 S.E.2d. 157 (1992), which invalidated a state statute that established an appellate scope of review directly in conflict with the scope of review set forth in Article V, section 5 of the South Carolina Constitution. Unlike the statutes at issue in *Rutherford* and *Consumers Gas*, Section 44-7-220(B) does not directly conflict with any constitutional provisions or court rules.

C. Due Process

Article I, section 22 of the South Carolina Constitution assures the right of judicial review to persons bound by a judicial or quasi-judicial decision of an administrative agency that affects private rights. CHS argues that the appeal bond requirement of section 44-7-210(B) raises unconstitutional barriers to the right of judicial review, in violation of due process. CHS has not cited to any case holding that a reasonable appeal bond, not a penalty, was unconstitutional. CHS has not attempted to argue that it cannot afford the appeal bond or is substantially prejudiced by it.[5] The one case CHS does cite involved statutory fees and costs that effectively barred indigent appellants from the right of judicial review. *See Boddie v. Connecticut*, 401 U.S. 371 (1972). CHS has made no such showing in this case. As discussed above, a rational basis supports Section 44-7-220(B). For these reasons, it does not violate due process.

CONCLUSION

CHS failed to preserve its claim that the ALC applied CON Law in a manner that violated the dormant Commerce Clause. Despite adverse impact being Piedmont's lead issue in the Second Trial, CHS failed to raise its dormant Commerce Clause argument until its Rule 59(e) motion. CHS cannot raise the substantive issue of whether the ALC's Amended Order violates the dormant Commerce Clause because CHS failed to preserve the issue, the Court of Appeals has not ruled upon it, this Court has declined to accept it, and it is not a novel question of law. Finally, the appeal bond requirement of Section 44-7-220(B) violates neither equal protection nor due process and clearly falls within proper legislative powers under the South Carolina

[5] As discussed in Judge Lenski's Amended Order, CHS is "a highly successful business."(R. at 89). Two of the 42 hospitals owned or managed by CHS, CMC-Pineville and CMC-Mercy, reported over $1 billion in gross revenue for 2009. (R. at 107).

Constitution. For these and the other reasons set forth above, Piedmont respectfully requests that this Court decline to grant CHS's Petition for a Writ of Certiorari.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Stuart M. Andrews, Jr.
SC Bar No. 000400
E-Mail: stuart.andrews@nelsonmullins.com
Daniel J. Westbrook
SC Bar No. 012939
E-Mail: dan.westbrook@nelsonmullins.com
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000

Attorneys for Respondent, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, d/b/a Fort Mill Medical Center

Columbia, South Carolina

May 22, 2017

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, d/b/a Fort Mill Medical Center do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by placing same in the United States mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENT AMISUB OF SOUTH CAROLINA, INC.'S RETURN TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI**

Counsel Served:

Douglas M. Muller, Esq.
Trudy H. Robertson, Esq.
E. Brendon Gaskins, Esq.
Moore & Van Allen PLLC
78 Wentworth Street (29401-1428)
Post Office Box 22828
Charleston, SC 29413-2828

Ashley C. Biggers, Esq.
Vito M. Wicevic, Esq.
Bureau of Health Facilities & Services Development
South Carolina Department of Health & Environment Control
2600 Bull Street
Columbia, SC 29201

Myriam Brown
Administrative Assistant

May 22, 2017