IN 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

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S.C. SUPREME COURT

Appellate Case No. 2016-002187
South Carolina Court of Appeals Opinion 5434

The Callawassie Island Members Club, Inc. ....Petitioner,

v.

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

RESPONDENTS' RESPONSE TO AMICUS CURIAE BRIEF OF CALLAWASSIE ISLAND PROPERTY OWNERS ASSOCIATION, INC.

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ARGUMENT

Respondents Ronnie and Jeanette Dennis respectfully submit this response to the amicus curiae brief of the Callawassie Island Members Club, Inc. ("CIPOA").

A. CIPOA is very different from the Club.

This amicus brief's arguments are largely irrelevant to this appeal. There is no serious analogy between CIPOA and the Club under the facts of this case. The Petitioner Club is not a property owners' association (POA), and the Court of Appeals' ruling does not apply to POAs. Nobody has claimed that the Dennises, or any other property owner at Callawassie, do not need to be members of the POA. It is membership in the separate social club that is in dispute.

The difference is significant. CIPOA dues are roughly $1,850 per year. Those POA dues pay for the security, roads, docks, and other public amenities on the island. Again, membership in CIPOA is not challenged. In contrast, Club dues are roughly $8,820 annually, which go toward entertainment—social activities and games of members who wish to, and are physically able to, participate. *See* http://www.callawassieisland.com/membership.

The Dennises are elderly, are in poor health,[1] no longer live on Callawassie, and are on a fixed income. When they joined the Club years ago, Mr. and Mrs. Dennis were told they could resign their membership if they so wished, and they did so in November 2010. *See* App. p. 2. Under the Club's rules, Mr. and Mrs. Dennis have been barred from the Club ever since—they may not be admitted to the Club facilities "under any

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1 Mr. Dennis recently had quadruple bypass surgery.

circumstances." *See* App. p. 648 (Club Rules § 14.1.5 "Any Member of the Club who has been expelled shall not again be eligible for membership or admitted to Club Facilities under any circumstances."). Yet the Club demands that the Dennises must continue to pay $8,820 per year for a social club they have been barred from for more than six years. That is a very different situation from the CIPOA, which requires a much smaller fee, does not banish people from its amenities (roads, security, etc.), and which does not have provisions in its rules for resignation, expulsion, or termination of memberships. That difference is reflected in the Court of Appeals' ruling.

B. The Court of Appeals' decision does not apply to POAs.

The Court of Appeals' decision does not mention POAs. Instead, it focuses on this Club under these circumstances. Any other claim is a different case for a different day.

The Court of Appeals confined its decision to this particular social club, and held that "section 33-31-620 protects **club members** from such continuing liability after resignation." (App. p. 7 (emphasis added).) The Court of Appeals held that it is a violation of the Nonprofit Corporation statute if a **club** tries to assign liability for continuing obligations post-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." App. p. 7 (emphasis added)).

The distinct legal characteristics of a POA (versus this social Club) are discussed in previous briefing. *See* Respondents' Opposition to Petition for Certiorari, at pages 8-9. For example:

Club membership	POA membership
Purpose: entertainment—games, socializing.	Purpose: Quasi-governmental, maintains common elements—roads, security, docks.
Attaches to the person.	Attaches to the property.
Can follow a person when they leave Callawassie, according to the Club.	Automatically becomes the responsibility of the new owner of a property.
Many Callawassie property owners are not Club members.	All properties on Callawassie must pay POA dues.
Multiple avenues of exit under the documents, including termination, resignation, expulsion.	Binding so long as person owns the property on Callawassie. No provisions for termination, resignation, expulsion.
The Club represented to Mr. and Mrs. Dennis, and to others, that they could end their membership if they wished (termination, resignation, expulsion).	Clear that all property owners must pay POA dues. No provisions for termination, resignation, expulsion.
If a person stops paying, they are barred from Club Facilities.	If a person stops paying, they can still use the roads, etc.
No lien on property allowed (without a final court judgment, like any other judgment).	POA can lien property for dues.
Club believes it can let people out of their memberships if it so chooses.	POA has no discretion to allow property owners to not pay dues.

In sum, there are significant differences between POAs and this Club and its peculiar membership policies. Under the language of its ruling, the Court of Appeals' reasoning and holding applies only to this Club under these circumstances.

C. **The Court of Appeals did not disregard subsection (b) of S.C. Code § 33-31-620.**

The Court of Appeals did not disregard subsection (b) of S.C. Code § 33-31-620, as argued in the amicus brief (at pp. 4–6). Subsection (b) was discussed at length in the initial briefs, at oral argument, and in the Club's motion for reconsideration. Subsection (b) is quoted in the Court of Appeals' decision. App. p. 7. Instead, the Court of Appeals followed the interpretation articulated in the *South Carolina Nonprofit Corporate Practice Manual*:

> A member can quit at any time. However, if the member has personally assumed any of the organization's liabilities, he will not be relieved of these liabilities merely by quitting.

Burnett R. Maybank, III, Professor James R. Burkhard, Jeanne M. Born, Melissa Wheeler Dunlap, Professor Jaclyn A. Cherry, *South Carolina Nonprofit Corporate Practice Manual* 61 (S.C. Bar, 2nd ed. 2015). Here, in 2010 the Dennises ended their membership and stopped using Club facilities. They did not assume the organization's liabilities (such as guaranteeing a Club loan, etc.) and therefore, under South Carolina law, had the right to "resign at any time." S.C. Code § 33-31-620. The amicus brief urges this Court to read unwritten volumes into subsection (b), which would effectively gut subsection (a). That invitation should be declined.

D. **The amicus brief's bank loan argument is vague, not relevant, and not preserved.**

CIPOA argues (at pp. 5–7) that it might be difficult for some people to get financing if financial institutions cannot count on property owners being members of the POA. There are a lot of steps in that argument, none of which are supported by CIPOA's brief

or by the record on appeal here. For example, the lending financial institutions, borrowing parties, properties, collaterals, and other loan terms are not identified or analyzed. Moreover, the Court of Appeals' ruling applies to this social club, not to this POA or any other POA (as discussed above). CIPOA provides no evidence that any lender to an owner on Callawassie is remotely interested in that owner's membership in the Club, or in the POA. And CIPOA provides no explanation as to why a lender would not issue a loan commensurate with the appraised value of a property on Callawassie, as lenders do in neighborhoods across the country that have no POA or social club (or have optional ones). The amicus brief also does not address the self-evident fact that residents of other communities, which do not have mandatory social clubs, or mandatory POAs, or which have social clubs with more reasonable membership policies, are able to get financing. In sum, this argument is hypothetical and unsupported, and should be disregarded.

E. CIPOA's "too big to fail" argument fails.

On pages 8–11, the amicus brief swerves among a number of social and economic topics, none of which were argued to, or preserved in, the courts below. First, CIPOA cites (at pp. 8–9) to some law review articles written during (or about) the height of the Great Recession that say, summarized, that in 2010 the economic recession and foreclosures were harming POAs generally. Second, CIPOA cites (at pp. 9–11) to news articles reporting that, at this moment, golf is less popular than in the past. From this, CIPOA concludes, this Court should interpret the S.C. Nonprofit Corporation Act to

protect the Club, so that the fewer members who still want to play golf can do so at the same price.

The opposite is true. The S.C. Nonprofit Corporation Act was written to protect members—"A member may resign at any time.". Or, in the words of the *South Carolina Nonprofit Corporate Practice Manual*, "A member can quit at any time." There is no evidence that the statute was written to prop up certain social clubs because golf is less popular at this moment. And it would be disturbing precedent for this Court to re-interpret clear statutory language to support one social club's current business model.

CONCLUSION

The Court of Appeals was correct that the South Carolina Legislature meant what it wrote: "[a] member may resign at any time." Subsection (b) cannot legitimately be interpreted to gut that mandate. The Club's Petition should be denied.

Respectfully submitted,

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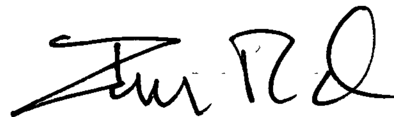

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PROOF OF SERVICE

I certify that I have served the RESPONDENTS' RESPONSE TO AMICUS CURIAE BRIEF OF CALLAWASSIE ISLAND PROPERTY OWNERS ASSOCIATION, INC. on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on March 9, 2017, addressed to their attorneys of record:

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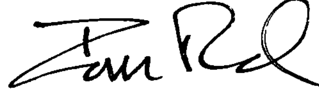

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