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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-000794

Case No. 2016-CP-40-02875

RECEIVED
MAR 29 2019
SC Court of Appeals

South Carolina Public Interest Foundation, Edward D. Sloan, Jr.,
and William B. DePass, Jr., individually and on behalf of all others
similarly situated, Appellants,

v.

Richland County, Respondent,

And

Central Midlands Regional Transit Authority, ...Intervenor/Respondent.

TRANSPORTATION ASSOCIATION OF SOUTH CAROLINA'S
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

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Pursuant to Rule 213, SCACR, the Transportation Association of South Carolina respectfully moves for leave to file an *amicus curiae* brief in support of Respondent Richland County and Intervenor/Respondent Central Midlands Regional Transit Authority. As permitted by Rule 213, SCACR, the Association's *amicus curiae* brief is being conditionally filed with this motion.

Interest of Amicus Curiae

The Association is an organization comprised of numerous entities involved in the business of providing quality transportation services. Its members include regional transportation authorities, municipal transit systems, the South Carolina Department of Education, Councils on Aging, Disabilities and Special Needs Boards, the South Carolina Department of Transportation, state universities, private transportation services companies, and a variety of businesses that supply products and services to these organizations.

Given the breadth of its membership and its mission to promote quality transportation services in this State, the Association has a strong interest in this case, which challenges how Penny Tax revenues may be used for transportation-related projects and raises the question of who may bring these challenges. The Association can provide a useful voice as the Court considers this question of standing.

Desirability of Amicus Curiae Brief

In addition to questions about the Penny Tax, this case also raises the essential antecedent question of the ability of a taxpayer to sue public entities that the taxpayer


claims have acted improperly. *See, e.g., Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007) (“Standing to sue is a fundamental requirement in instituting an action.”).

Here, the Appellants asserted that they had taxpayer standing and that the public-importance exception to standing applied, and the circuit court denied motions to dismiss based on standing. The circuit court’s decision, however, never discussed the Supreme Court’s most recent decisions on either of these subjects. On taxpayer standing, the circuit court did not focus on *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008), *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012), and *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 366 (2013), all of which narrowed taxpayer standing from the older, more relaxed rules set forth in the cases on which the circuit court relied. These newer decisions make clear that when a taxpayer’s alleged injury is common to all taxpayers (as is the case here), that taxpayer lacks standing to sue.

And on the public-importance exception, the circuit court’s order did not consider the Supreme Court’s instruction in *ATC South* that the “key” to determining whether the exception applies is the need for “future guidance.” *ATC S., Inc.*, 380 S.C. at 199, 669 S.E.2d at 341. In light of the pending litigation between Richland County, CMRTA, and the S.C. Department of Revenue on the same Penny Tax questions raised in this lawsuit, *see Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 811 S.E.2d 758 (2018), this case is not needed for future guidance.

Without applying these standing rules properly, courts are apt to face duplicative litigation, like this lawsuit. That burdens both courts and public entities (like some of the Association's members) with the time and cost of litigating cases that should not be in court at all. As the Court decides this appeal, the proposed *amicus curiae* brief offers an in-depth analysis of the standing issues in this case.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This Motion for Leave to File *Amicus Curiae* Brief was served on all counsel
of record via first class U.S. Mail, postage prepaid, on March 29, 2019:

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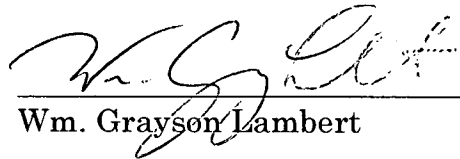
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