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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ex parte the South Carolina Press Association,
Movant

In re:

Faye P. Croft, et al.,
Appellants

v.

Town of Summerville, et al.

Appellate Case No. 2015-002199

RECEIVED

OCT 28 2019

SC Court of Appeals

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

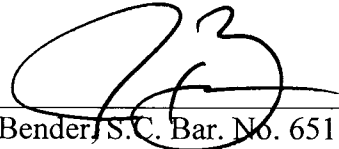
**MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
WITH RESPECT TO APPELLANTS' PETITION FOR REHEARING**

Movant, the South Carolina Press Association, is a not for profit corporation organized under the laws of the State of South Carolina, and having as its members the publishers of 98 newspapers published in South Carolina. The South Carolina Press Association and its members were instrumental generating public and legislative support for the adoption of the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et seq.*, (2007 & Supp. 2018), and have consistently participated in efforts to strengthen public access to meetings and records of public bodies in South Carolina through lobbying, educational seminars for public officials, and litigation. Movant seeks leave of this court to address Part II of the opinion 5687 on grounds that the court overlooked a provision in the law relating to committees of public

bodies, and misapprehended the significance of endorsing Respondents' scheme of appointing *de facto* committees to circumvent the law. This motion is supported by Memorandum of Points and Authorities filed contemporaneously herewith.

Columbia, South Carolina

October 24, 2019



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ATTORNEYS FOR SOUTH CAROLINA
PRESS ASSOCIATION

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
WITH RESPECT TO APPELLANTS' PETITION FOR REHEARING

BACKGROUND

The South Carolina Press Association (Association) is a not for profit corporation organized and existing under the laws of the State of South Carolina, having as its members publishers of 98 newspapers published in the State of South Carolina. The Association and its members were active in generating public and legislative support for adoption of the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10, *et seq.*, (2007 & Supp. 2018), and have continued to work to enhance the right of the public to secure access to the records and meetings of public bodies through lobbying, educational seminars for public

officials, and litigation. The Association's publication the *Public Official's Guide to Compliance with the South Carolina Freedom of Information Act* has been by cited as authority by this court in *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163, 169 (Ct. App. 2003), and the Association has participated as *amicus* in cases before the South Carolina Supreme Court, *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991), and this court, *Herald Pub. Co., Inc. v. Barnwell*, 291 S.C. 4, 351 S.E.2d 878 (Ct. App. 1986).

The Association is concerned that the language in section II of the opinion regarding Respondents' strategy for evading the open meetings requirement of the FOIA is incorrect as a matter of law, and will embolden public bodies to take steps to conduct public business outside of public view. As both this court and the South Carolina Supreme Court have explained, the purpose of the FOIA is to protect the public from secret government activity. See, e.g., *Quality Towing v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001); *Burton v. York County Sheriff's Dept.*, 358 S.C. 339; 594 S.E.2d 888 (2004). The court's opinion has endorsed appellants' evasion of the requirements of the FOIA by overlooking the portion of the definition of "public body" in the law that specifies that "public body" includes "committees, subcommittees, advisory committees, and the like of any such body by whatever name known." S.C. Code Ann. §30-4-20(a) (2007 & Supp. 2018).

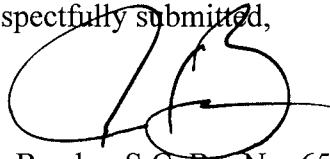
QUESTION PRESENTED

Did the trial court and this court err in disregarding the appointment of *de facto* committees, populated by two or three members of the Board of Architectural Review, and by limiting the definition of quorum to a majority of the entire Board of Architectural Review rather than the committees designated to attend secret "workshops"?

POSITION OF *AMICUS*

If the Association is granted leave to file a brief as *amicus curiae* it will address the application of the open meetings requirements to the groups identified by respondents to convene in such a fashion as to avoid the requirements of the FOIA. The Association will urge this court to grant reconsideration of Part II of the opinion to reverse the determination that the appointment of groups of members of a public body smaller than a quorum of the public body as a whole may evade the open meetings requirements of the FOIA on grounds that the convening of such groups does not constitute a quorum of the whole. The Association does not dispute the court's ruling that the "workshops" were not chance meetings or social gatherings, but such a determination does not address the fundamental nature of the selection of groups of two or three members to meet with a developer outside of public view to consider a controversial development proposal. It will be the position of the Association that each of these groups constituted a committee of the Board of Architectural Review, and as such, each was a public body with its own quorum arithmetic.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JB", with a large, stylized flourish extending from the bottom of the letters.

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PROOF OF SERVICE

I certify that I have on this 28th day of October, 2019, served a copy of South Carolina Press Association's Memorandum of Points and Authorities in Support of Motion for Leave to File Brief as *Amicus Curiae* with Respect to Appellants' Petition for Rehearing by causing a copy of same to be deposited in the United States Mail, proper postage prepaid, addressed as follows:

Michael T. Rose, Esquire
Mike Rose Law Firm
409 Central Ave.
Summerville, SC 29483

W. Andrew Gowder, Jr., Esquire
Austen & Gowder, L.L.C.
1629 Meeting St., Suite A
Charleston, SC 29405

G. Waring Parker, Esquire
G. Waring Parker Law Firm, L.L.C.
518 W. Carolina Ave.
Summerville, SC 29483

Timothy Alan Domin, Esquire
Clawson & Staubes, L.L.C.
126 Seven Farms Dr., Suite 200
Charleston, SC 29492

A handwritten signature in cursive script, appearing to read "Teresa Kowalewski". The signature is written in black ink and is positioned above a horizontal line.

Teresa Kowalewski

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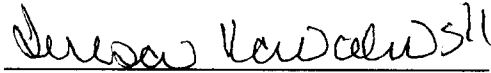
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Teresa Kowalewski



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

Jay Bender
jbender@brblegal.com

October 28, 2019

Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court - South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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RE: Ex parte the South Carolina Press Association, Movant
In re: Faye P. Croft, et al., Appellants v. Town of Summerville, et al.
Appellate Case No.: 2015-002199
Our File No.: 5858-0

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are an original and one (1) copy of Movant's Motion for Leave to File Brief as *Amicus Curiae* with Respect to Appellants' Petition for Rehearing and Proof of Service thereof. Also enclosed are the original and one (1) copy of the Memorandum of Points and Authorities in Support of Motion for Leave to File Brief as *Amicus Curiae* with Respect to Appellants' Petition for Rehearing and Proof of Service thereof. Please return a clocked copy of each document to me via courier delivering same. I have also enclosed our firm check in the amount of \$50.00 for the filing fee. By copy hereof, I am serving a copy of same to counsel of record.

Your assistance in this matter is greatly appreciated.

Yours very truly,

Teresa Kowalewski
Legal Assistant to Jay Bender

:sr

Enclosures

cc w/encl.: Michael T. Rose, Esquire
W. Andrew Gowder, Jr., Esquire
G. Waring Parker, Esquire
Timothy Alan Domin, Esquire