

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Ex parte the South Carolina Press Association,
Movant

In re:

Faye P. Croft, et al.,
Appellants

v.

Town of Summerville, et al.
Respondents

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FEB 21 2020

S.C. SUPREME COURT

Appellate Case No. 2015-002199

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 WRIT OF CERTIORARI**

Movant, the South Carolina Press Association (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 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 file a brief as *amicus curiae* to

address Part II of the opinion 5687 of the Court of Appeals 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

February 20, 2020



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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 WRIT OF CERTORARI
FOR REVIEW OF OPINION NO. 5687 OF THE COURT OF APPEALS

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 the early 1970s 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 the Court of Appeals 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* before the South Carolina Supreme Court in cases interpreting the FOIA for almost 30 years, including *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991); *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996); *Evening Post Pub. Co. v. Berkeley County School Dist.*, 392 S.C. 76, 708 S.E.2d 745 (2011); *Disabato v. South Carolina Ass'n of School Adm'rs.* 404 S.C. 433, 746 S.E.2d 329 (2013); *Domainsnewmedia.com, L.L.C. v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 814 S.E.2d 513 (2018).

The Association is concerned that language in section II of the opinion of the Court of Appeals 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 Court of Appeals 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). Respondents' workshops clearly constituted secret government activity related to a controversial public project. Particularly relevant to evaluation of the scheme followed by respondents, instigated by emails the Court of Appeals found to be "problematic," Opinion No. 5687, p. 13, is this court's discussion of the important governmental and societal interests served by the FOIA:

The FOIA serves the important governmental interests of providing transparency in governmental decision-making, preventing fraud and corruption, and fostering trust in government.

Finally, regardless of whether governmental activity conducted in secrecy actually is nefarious or corrupt, the public cannot be expected to possess a high level of trust in that which is hidden from its view.

Disabato, supra, 746 S.E.2d 329, 338.

The opinion of the Court of Appeals has endorsed respondents' evasion of the requirements of the FOIA by overlooking or misapprehending the portion of the definition of "public body" 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 the Court of Appeals err in disregarding the appointment of *de facto* committees, populated by two or three members of the Board of Architectural Review, to conclude that the only public body to which the FOIA applied was 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 by the convening of separate groups that do 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. Respondents' strategy was to divide and hide, and the Court of Appeals erred by overlooking or misapprehending the reality that each of these groups designated to attend a specific workshop constituted a committee of the Board of Architectural Review with each having its own, individual quorum arithmetic, and each committee was subject to the meetings requirements of the FOIA. *Quality Towing v. City of Myrtle Beach*, 343 S.C. 156, 547 S.E.2d 862 (2001).

Respectfully submitted,

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PROOF OF SERVICE

I, Chrystal D. Carter of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 20th^h day of February, 2020, served counsel below with **Motion for Leave to File Brief as Amicus Curiae and Supporting Memorandum of Points and Authorities** by mailing a copy of same via United States Mail, postage pre-paid, with the return address clearly indicated on the envelope, to counsel as shown below:

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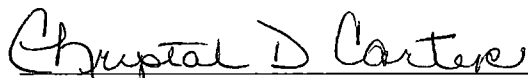
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