

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2020-000523

Case No. 2014-CP-04-01426

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Carla Denis Garrison and Clint Garrison,..... Petitioners/Respondents,

v.

Target Corporation,.....Respondent/Petitioner,

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MOTION OF CHAMBERS OF COMMERCE AND INDUSTRY GROUPS  
FOR LEAVE TO FILE *AMICI CURIAE* BRIEF  
IN SUPPORT OF TARGET CORPORATION'S  
PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 213, SCACR, the South Carolina Chamber of Commerce, Anderson Area Chamber of Commerce, Charleston Metro Chamber of Commerce, Columbia Chamber of Commerce, Greenville Chamber, Kershaw County Chamber of Commerce, Greater Lexington Chamber and Visitors Center, Simpsonville Area Chamber of Commerce, Charlotte Regional Business Alliance, South Carolina Manufacturers Alliance, South Carolina Retail Association, South Carolina Trucking Association, Forestry Association of South Carolina, Palmetto AgriBusiness Council, Carolinas Association of General Contractors, and South Carolina Insurance Association respectfully move for leave to file an *amici curiae* brief in support of Target Corporation's petition for a writ of certiorari. As permitted by Rule 213, SCACR, the *amici curiae* brief is being conditionally filed with this motion.

#### **Interest of Amici Curiae**

Chambers of commerce serve as a unified voice for the business community to create and promote environments in which business can flourish. They provide networking and learning opportunities to build stronger and healthier communities. The South Carolina Chamber of Commerce does this for the State, and the Anderson Area, Charleston Metro, Columbia, Greenville, Kershaw County, Lexington, and Simpsonville Area Chambers of Commerce and the Charlotte Regional Business Alliance serve this role in their respective communities.

The South Carolina Manufacturers Alliance, established more than a century ago, represents all manufacturers to advance policies and provide services that help manufacturers create economic strength and jobs.

The South Carolina Retail Association represents retail entities as diverse as apparel, automotive, boutique, chain restaurant, convenience, department, electronics, grocery, hardware, and pharmacy stores. It works to improve the public image, effectiveness, and profitability of the retail industry across the State.

Representing small, family-owned businesses with only a few vehicles to large, national companies with major terminal facilities throughout South Carolina, the southeast, and the nation, the South Carolina Trucking Association has, since 1933, served as the voice of the State's trucking industry and worked to strengthen the industry and the economy for future generations.

The Forestry Association of South Carolina, founded in 1968, supports the landowners, professionals, and companies that make up the State's \$21 billion forest industry by promoting sustainable forestry, use of wood products, and working forests. The Association advocates for a business-friendly climate for landowners and the forest industry while promoting conservation and sustainability of South Carolina's forests.

The Palmetto AgriBusiness Council was formed in 1999 to create an environment in which agribusiness could grow, prosper, and compete in the marketplace of the future. Through legislative, regulatory, and economic-development initiatives, the Council represents forestry, row crops, finance, insurance, poultry, livestock, nursery and landscape, utilities, and more to bring a unified voice to address issues that impact all segments of agribusiness.

The Carolinas Association of General Contractors is a construction trade association made up of contractors and construction-related firms that perform work in South Carolina and North Carolina. Its members are both small and large general contractors, specialty contractors, material and equipment suppliers, and service providers. The Association works to ensure a fair and equitable work business environment for the construction industry.

The South Carolina Insurance Association provide insurance information to consumers, companies, and the media. It is primarily concerned with insurance issues affecting the people of South Carolina.

### **Desirability of *Amici Curiae* Brief**

Punitive damages are limited by both the U.S. Constitution's Due Process Clause and the South Carolina Fairness in Civil Justice Act of 2011. The Court of Appeals gave little or no attention to what these limitations mean, wrongly concluding that the statutory cap on punitive damages found in S.C. Code § 15-32-530 is an affirmative defense that is waived if a defendant does not plead it.

The Court of Appeals focused on the supposed unfair surprise to a plaintiff if the cap is not pled and how other statutory caps are waived if not pled. That reasoning, however, misses the mark. For one, it is wrong. It discounts that a plaintiff always has the incentive to determine what motivated a defendant's actions, and it improperly equates the cap on punitive damages with other statutory caps that lack a constitutional foundation.

For another, and more fundamentally, the Court of Appeals failed to engage in the important analysis of courts' power under the South Carolina Constitution and the statutory text. As the *amici curiae* brief explains, section 15-32-530's cap is a legislative abrogation of the common law of punitive damages, which took away any judicial power under the South Carolina Constitution for courts to award punitive damages in excess of the cap. Moreover, the plain language of section 15-32-530, as well as other tools of statutory construction, proves that the General Assembly did not intend for the cap to be an affirmative defense.

The *amici curiae* brief also explains the broad impact of the Court of Appeals' decision. The answer to whether section 15-32-530 is an affirmative defense will apply in every case—whether in this State or in another jurisdiction—to which South Carolina law applies. Given the number of plaintiffs who include a prayer for punitive damages in their complaint, the answer to this question will have a sweeping impact and should come from this Court.

Respectfully Submitted,

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