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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph K. Anderson, III
Chief Administrative Law Judge

Appellate Case No. 2018-000137

Preservation Society of Charleston,
Historic Charleston Foundation, Historic
Ansonborough Neighborhood Association,
South Carolina Coastal Conservation
League, Charlestowne Neighborhood
Association, Charleston Chapter of the
Surfrider Foundation, and Charleston
Communities for Cruise Control, Petitioners,

v.

South Carolina Department of Health and
Environmental Control and South Carolina
State Ports Authority, Respondents.

Motion for Leave to File *Amicus Curiae* Brief in Support of Petition for Rehearing

Pursuant to Rules 213 and 240 of the South Carolina Appellate Court Rules, the South Carolina House of Representatives, by the Honorable James H. Lucas as Speaker, respectfully requests leave of this Court to file a brief as *amicus curiae* in support of the petition for rehearing currently pending in this matter.¹ Participation in rehearing by the South Carolina House of Representatives and Speaker Lucas will aid the Court in resolving

¹ The Speaker possesses the authority to makes this request on behalf of the House through Section 2-3-110 of the South Carolina Code of Laws and House Rule 1.13.

the issues framed by the parties to the appeal because they are uniquely positioned to address the issue of statutory construction analyzed in the opinion.

The *Amicus* has an identifiable interest in this matter because (1) the Court's opinion misapprehends or overlooks the plain language of the statutory scheme created by the General Assembly by conflating an affected person's ability to *request* a hearing with the standing necessary to maintain a contested case hearing in the Administrative Law Court ("ALC"), and (2) the opinion impermissibly expands the scope of Section 44-1-60(G) far past the limits of the plain language adopted by the General Assembly. Your *amicus* seeks to forestall the wholesale changes to practice and procedure before the ALC caused by the opinion as drafted.

When the statutes concerning a contested case hearing are read together as required by the settled rules of statutory construction, the conclusion is inescapable—the General Assembly did not intend to confer statutory standing on an affected person necessary to maintain a contested case before the ALC. Instead, the plain language establishes that Section 44-1-60(G) merely conferred the ability of an affected person to "request" a contested case hearing. Requesting a contested case hearing does not *ipso facto* mean the affected person would be entitled to a contested case hearing or even could maintain a contested case once requested. The determination of whether the person possesses the standing necessary to maintain the action would be determined by the ALC in the contested case.

The plain language of the contested case statutes confirms that the General Assembly did not intend to vest an affected person with the statutory standing necessary to maintain a contested case hearing. Absent an express grant of statutory standing, an

affected person must still prove it meets the elements of constitutional standing in order to maintain the contested case hearing.

However, the opinion overlooked this plain statutory intent and expanded the reach of Section 44-1-60(G) to impermissible lengths. This Court should grant this motion and use the brief² of *amicus* to correct the opinion to conform to the “rules of the road” in contested case hearings for permitting matters such as presented here.

Respectfully submitted,

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² The brief is conditionally filed with this motion.