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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge
Case No. 13-ALJ-07-0056-CC

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

RESPONSE TO MOTION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF REHEARING

The Motion for Leave to File Amicus Brief ("Motion") and (Proposed) Brief submitted by the Speaker of House of Representatives ("Amicus") provide no basis for revisiting or rehearing this Court's Opinion, which considered the parties' arguments thoroughly and set forth its reasoning in exhaustive detail.

On the main issue of standing, the Court addressed the words as written in the statute and gave them their plain meaning, as binding precedent requires. S.C. Code Ann. § 44-1-60(G) directs that an "applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court ["ALC"] for a contested case" to review South Carolina Department of

Health and Environmental Control ("DHEC") decisions. Because "affected person" is not defined, the Court gave the words their ordinary meaning and concluded that the Petitioners—including neighbors who live within a stone's throw of a proposed new 28-acre shipping terminal and who already suffer respiratory harms from a smaller, more distant terminal—qualify as "affected persons."

Nearly half a year since this Court issued its Opinion and almost two years after merits briefing commenced, the Amicus has filed a motion seeking leave to file a brief in support of rehearing. The motion is inexcusably late. The question of how to interpret the statutory term "affected person" has been a live issue in this Court coming up on two years, with Petitioners contending that the undefined term "affected" must be given its ordinary and plain meaning under this Court's precedent, and providing a dictionary definition to that end. Pet. Br. 20.[1] Since the Amicus' arguments concern the supposed problems of giving "affected person" its plain meaning, there is no excuse for poking the legislative branch into the wheels of justice this late in the day. Beyond patent tardiness, the Amicus' timing is also remarkable in that the filing seeks to remove the rights of families and property owners to challenge government-authorized actions that harm

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[1] In fact, Petitioners raised their statutory argument *seven years ago* before the ALC in response to SPA's motion to dismiss for lack of standing. In denying SPA's motion, the ALC correctly found that § 44-1-60(G) does provide "affected persons" statutory standing, but then erroneously overlaid the Article III test. SPA then filed a summary judgment motion on standing, and in response Petitioners' showed that they satisfied all applicable standing tests including Article III (as an actual federal court had already found), but also argued for "affected person" statutory standing. See R. 2325-26; *id.* 2361 (Noting that Petitioners "made these [statutory standing] arguments in briefing on SPA's misguided motion to dismiss on standing, and *those arguments are incorporated herein in their entirety* as if set forth in full. . . . *[S]tatutory standing could be shown even if Article III redressability and causation are not, given the statutory scheme that provides administrative procedures for an "affected person."*) (emphasis added). Accordingly, the Amicus, like the rehearing petition, seeks to reopen matters that have been briefed and litigated *for years*.

their health and their property during a global health pandemic. Not only does the South Carolina Ports Authority's ("SPA") main cruise terminal tenant, Carnival Cruise Lines, have a troubling record of bypassing pollution controls and pleading guilty to criminal violations of federal environmental laws,[2] the Centers for Disease Control and Prevention ("CDC") recently found that "cruise ship travel markedly increases the risk and impact of the COVID-19 disease epidemic within the United States" and COVID-19 transmission "has not been controlled sufficiently by the cruise ship industry or individual State or local health authorities."[3] This increased risk and impact of disease, coupled with the failure of the industry and State authorities to protect families and businesses from it, make the Amicus' bid to reduce citizen protections inopportune.

Timing aside, the Amicus' filing presents baffling and erroneous arguments that provide no basis for rehearing. The statutory provisions that the Amicus contends this Court "overlooked," for example, only confirm that the words of § 44-1-60(G)—directing that an "applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case"—mean what they say, and provide statutory standing. The Amicus cites Administrative Procedure Act ("APA") provisions, but on closer inspection these show that a "request" for a contested case hearing *directly initiates* the administrative hearing procedure with legal consequences flowing immediately therefrom. Other statutes confirm this reality, as does this

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[2] *See, e.g.*, Order Accepting Proposed Settlement at 1, United States v. Princess Cruise Lines, LTD., No. 1:16-cr-20897-PAS (S.D. Fla. June 6, 2019), ECF No. 143. (Princess Cruise Lines is a division of Carnival Cruise Lines.)

[3] U.S. Department of Human Health Services and Centers for Disease Control and Prevention, Order Under Section 651 & 655 of the Public Health Services Act, at 41 (July 16, 2020). Aavailable at https://www.cdc.gov/quarantine/pdf/No-Sail-Order-Cruise-Ships-Second-Extension_07_16_2020-p.pdf.

Court's precedent on statutory standing. By specifying that an applicant, permittee, licensee, or affected person can invoke the contested case procedure, the General Assembly could not have been plainer in providing statutory standing, and there is no basis in any legislative text to agree with the Amicus' notion that the provided right is meaninglessly inchoate. The Opinion's straightforward application of statutory text as the General Assembly enacted it demonstrates fidelity to separation of powers and the Amicus brief offers no reason to depart from that approach.

Nevertheless, despite the Amicus' late and unfortunate timing and its failure to show any basis for rehearing, Petitioners do not oppose the filing of the amicus brief provided we are allowed to respond.[4] In the interest of prompt resolution of the rehearing request, we have attached our response brief to this pleading, and are filing it herewith. It shows that the amicus brief offers no grounds to doubt the Opinion's conclusion, founded on plain statutory text and guided by binding precedent, that § 44-1-60(G) provides statutory standing for an "applicant, permittee, licensee, or affected person" to lodge a contested case in the ALC.

The Opinion got the law right, and rehearing should be denied.

[4] Given the tardiness of the Amicus' current filing, we request the opportunity to respond to any further tardy filings the Amicus might attempt to make.

Respectfully submitted,

s/ J. Blanding Holman IV

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RESPONSE TO AMICUS CURIAE BRIEF

INTRODUCTION

The Amicus Brief filed by the Speaker of the House of Representatives ("Amicus") offers no grounds for reconsidering this Court's Opinion.

On standing, the Opinion addresses the words as written in the statute and gives them their plain and customary meaning, just as binding precedent requires. S.C. Code Ann. § 44-1-60(G) directs that an "applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court ["ALC"] for a contested case" to review South Carolina Department of Health and Environmental Control ("DHEC") decisions. Because "affected person" is not defined, the Court gave the words their ordinary meaning and concluded that the Petitioners—including neighbors who live within a stone's throw of a proposed new 28-acre shipping terminal and who

already suffer respiratory harms from a smaller, more distant terminal—qualify as "affected persons."

The Amicus asks the Court to grant the petition for rehearing filed by the Respondent South Carolina Port's Authority ("SPA"), which at oral argument told this Court that standing could be shown only if a proposed terminal would shatter the windows of neighboring property owners. Oral Argument at 23:28, *Pres. Soc. of Charleston v. S.C. Dep't of Health & Envtl. Control*, Op. No. 27949 (S.C. Sup. Ct. filed Feb 19, 2020). In furtherance of that outcome, the Amicus submits a number of arguments said to justify rehearing. All of them are mistaken and show that the Opinion should not be disturbed.

First, the Amicus' notion that contested case hearing "requests" are inchoate prerequisites that do not implicate standing is contrary to multiple statutes and this Court's precedent. In fact, numerous elements of the law cited by the Amicus recognize that a contested case request directly triggers contested case proceedings and other legal consequences, as do dozens of other statutes that use identical language to grant access to contested case hearings. The General Assembly has consistently authorized categories of persons to maintain contested case hearings to challenge agency action using the term "request," and this Court has squarely found statutory standing based on similar terms.

The Amicus is also mistaken in arguing that the Opinion runs afoul of S.C. Constitution Article I, § 22 because Petitioners' rights are not constitutionally-protected. This Court's precedent refutes the notion that the right to notice, an opportunity to be heard, and judicial review as recognized in Article I, § 2 do not extent to parties whose health, welfare, and property would be harmed by a DHEC permitting decision. It also refutes the Amicus' notion that the test for

whether one has a "constitutionally-protected" interest under Article I, § 2 must be answered by the federal Article III standing test.

Finally, there is simply no merit to the Amicus' suggestion that the Opinion offends separation of powers principles. Indeed, the complete opposite is true. The Court was tasked with interpreting a statute that, on its face, provides specified parties with the right to administrative review. Since the question of whether a statute confers standing on a party is an exercise in statutory interpretation, the Court followed precedent and gave the statute's undefined words their usual and customary meaning. It is the province and duty of this Court to say what the law is, and in carrying out that task pursuant to established interpretive canons and *stare decisis*, the Opinion scrupulously carried out its constitutional charge. The petition for rehearing should be denied.

ARGUMENT

I. S.C. Code Ann. § 44-1-60 Provides Statutory Standing to Contest DHEC Permits in the ALC, and the APA Does Not Alter That Reality.

The Amicus contends that because the statute establishing a uniform procedure for administrative review of DHEC permits is post-dated by the Administrative Procedure Act ("APA"),[1] the DHEC statute's provision of statutory standing for review of DHEC decisions in the ALC is illusory. Under the Amicus' theory, because the APA speaks only of "parties" to a permit participating in contested case hearings, S.C. Code Ann. § 1-23-505(3), the DHEC statute's directive that an "applicant, permittee, licensee, or affected person may file a request with the [ALC] for a contested case," *id.* § 44-1-60(G), means merely that such entities may *ask* for a contested case, but need not receive one—unless they show federal Article III standing, which is mentioned in neither the DHEC statute nor the APA. Amicus Br. 3.

[1] The "APA" for purposes of this response refers to S.C. Code Ann. §§ 1-23-10 to -680.

The Amicus' novel theory is unsupportable under the APA, various other statutes, and this Court's precedent, all of which support the conclusion that being given the right to "request" a contested case hearing provides statutory standing to lodge and pursue such proceeding.

First, starting with the APA itself, numerous elements of that law recognize that a contested case request *directly triggers* contested case proceedings (and other legal consequences): Upon the "filing of the request," the ALC "*must*" issue "[n]otice of the contested case *hearing*," S.C. Code Ann. § 1-23-600(B) (emphasis added), and the "request" for "a contested case hearing for an order stays the order," *id.* § 1-23-600(H)(2). Where a request has been lodged, the statute recognizes that a contested case has been "initiated before the [ALC]," *id.* § 1-23-600(H)(4)(a), and the ALC must issue an opinion within a year of the case having been thus "filed," *id.* § 1-23-600(H)(4)(b).[2] Nowhere does the APA provide for responses to requests for contested case hearings, nor is there any provision for the issuance of orders denying (or granting) such requests. Instead, a properly filed request triggers a contested case, which the APA defines as a "proceeding" in which the "legal rights, duties, or privileges of a party are required by law" to be "determined by an agency or the [ALC] after an opportunity for hearing." *id.* § 1-23-505(5). Since § 44-1-60(G) is "the law" that requires determination of the "legal rights, duties, or privileges of a party" in the ALC after a permitting decision by DHEC, and that law defines the parties—an "applicant, permittee, licensee, or affected person"—who can invoke that determination, the APA is entirely *consistent* with § 44-

[2] The APA uses "request" to mean a formal demand with immediate legal effect elsewhere as well. The statute directs that "*upon request* of a party" the ALC "*shall file*" a certified copy of its final order with an appellate court. S.C. Code Ann. § 1-23-600(D) (emphasis added). Under this language, the ALC has no discretion to deny such a "request"—just as it has no ability to "deny" the request for a contested case by a statutorily designated party.

1-60(G)'s plain provision of statutory standing for a contested case hearing to an "applicant, permittee, licensee, or affected person."[3]

Second, the Amicus' novel interpretation of the term "request" is also incompatible dozens of *other* statutes that use identical language to grant access to contested case hearings. The General Assembly has consistently authorized categories of persons to maintain contested case hearings to challenge agency action using the term "request." *See, e.g.*, S.C. Code Ann. § 12-60-2130 (a "property taxpayer or the local governing body" may "request" a contested case hearing to appeal a property value determination); § 41-15-310 ("any aggrieved employer, employee, or employee representative" may "request" a contested case hearing to challenge a Division of Labor decision); § 56-6-2941 (a person whose driver's license is suspended for ignition interlock device violations may "request" a contested case hearing to challenge the suspension); § 40-58-90 (a "person aggrieved" may "request" a contested case hearing to challenge a mortgage broker licensing decision); § 56-1-286 (a person under the age of 21 who drives intoxicated may "request" a contested case hearing to challenge a driver's license suspension); §12-60-920 (a "taxpayer" may "request" a contested case hearing to challenge a jeopardy assessment); § 44-7-210 (an "affected person" may "request[]" a contested case hearing to challenge a Certificate of Need); § 44-1-65(B) (an "affected person" may "request" a contested case hearing to challenge a permitting decision for an animal facility).

These statutes demonstrate that persons statutorily allowed to file a contested case hearing "request" are automatically *parties* to that hearing, without any separate obligation to prove federal

[3] The definition of "party" in the APA is not to the contrary. The statute defines party as being "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party." S.C. Code Ann. § 1-23-505(5). Section 44-1-60(G) names the parties who may request a contested case hearing ("applicant, permittee, licensee, or affected person") and makes these entities "entitled as of right to be admitted as a party."

Article III standing. *See* S.C. Code Ann. § 41-15-310 ("*The parties to the contested case* are the Division of Labor and any aggrieved employer, employee, or employee representative who *requests* a contested case hearing.") (emphasis added); § 12-60-3310 ("*A party permitted to request a contested case hearing* with the [ALC] shall make his *request* and serve it on opposing parties in accordance with rules established by the [ALC].") (emphasis added). Additionally, as with the APA, a "request" for a contested case hearing triggers non-discretionary duties, including the duty to hold a contested hearing within a specified time. *See, e.g.*, S.C. Code Ann. § 12-60-920(C) (requiring the administrative law judge to hold a contested case hearing within twenty day of receiving a "request"). The Amicus' theory would scramble these statutes, disrupt settled law in South Carolina, and thwart plain statutory intent.

Third, the Amicus' novel view of a contested case "request" contravenes this Court's precedent, which has recognized statutory standing based on similar terms. For example, in *Youngblood v. South Carolina Department of Social Services*, the Court found that § 63-9-60, which authorizes "[a]ny South Carolina resident [to] *petition* the court to adopt a child," "broadly grants standing to 'any South Carolina resident'" to bring such an action. 402 S.C. 311, 318, 741 S.E.2d 515, 518 (2013) (emphasis added). Interpreting similar language, the Court in *Freemantle v. Preston* held that § 30-4-100(A), which authorizes "[a]ny citizen of the State" to "*apply* to the circuit court . . . to enforce" the Freedom of Information Act, likewise creates statutory standing. 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012). The terms "petition" and "apply" are analogous to "request," and carry no special legal meaning with respect to standing that "request" does not. Yet applying the Amicus' logic, *Youngblood* and *Freemantle* were wrongly decided because they conflated the ability to *petition* or *apply* to the state court for relief with the standing necessary to maintain an action there. That argument is ludicrous. *Youngblood* and *Freemantle*

correctly held that statutes which permit people to "petition" or "apply" to a court confer statutory standing, and the same holds for multiple statutory provisions directing that categories of persons can "request" a contested case hearing to challenge various administrative decisions.

In the end, the Amicus' reading of § 44-1-60(G) as concerning only "requests" for review rather than review itself is unconvincing, and if accepted would contradict and disrupt multiple statutes and this Court's established precedent. Even SPA has agreed that statutes which allow a party to "request" a contested hearing establish statutory standing. SPA Pet. for Reh'g 14 (citing §§ 44-7-130(1) and 44-1-65, which give "affected persons" rights to "request" a contested case hearing, as providing statutory standing). And even the ALC, which the Amicus says analyzed the issue "correctly," Amicus Br. 7, did not adopt the Amicus' specious reading of the term "request," but instead recognized that § 44-1-60(G) provides statutory standing (before erroneously superimposing federal constitutional requirements on top of it). R.81. *But see Freemantle*, 398 S.C. at 194, 728 S.E.2d at 44 ("The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.").

II. The Opinion Is Consistent with S.C. Constitution Article I, § 22.

The Amicus next contends that federal Article III standing must control the statutory standing question here because of *South Carolina Ambulatory Surgery Center Ass'n v. South Carolina Workers' Compensation Commission*, 389 S.C. 380, 393, 699 S.E.2d 146, 153 (2010). But the Court in that case went out of its way to *limit* its opinion: Responding to concerns that the holding could be applied to delimit accountability of other agencies (e.g., DHEC), the Court "emphasize[d]" that its "decision is controlled by specific statutory and regulatory provisions at issue in the instant case." *Id.* In particular, *Ambulatory Surgery* involved a Workers' Compensation Commission regulatory revision that reduced anticipated revenue streams for an association of

medical providers. The Court found that the Commission's decision did not fall within the definition of a "contested case" set forth in § 1–23–310(3)[4] because there was "no such statute in the instant case that clearly creates a requirement for a hearing." *Ambulatory Surgery*, 389 S.C. at 388, 699 S.E.2d at 151. Here, DHEC's statute *specifically provides* that applicants, permittees and affected persons are entitled to initiate a contested case "hearing." S.C. Code Ann. § 44-1-60(G). While no statute provided standing to initiate a contested case hearing in *Ambulatory Surgery*, § 44-1-60(G) explicitly does so here, and the case does not control.

Even if *Ambulatory Surgery* were relevant, the Amicus is mistaken in reading the case to remove Petitioners beyond the scope of S.C. Constitution Article I, § 22 because their interests lie beyond the "constitutionally-protected interests [of liberty or property]" Amicus Br. 5 (alterations in original). In *Stono River Environmental Protection Ass'n v. South Carolina Department of Health & Environmental Control*, this Court found that regardless of whether environmental parties were entitled to an administrative hearing regarding issuance of a 401 Water Quality Certification, Article I, § 22 and other provisions "apart from the APA, are sufficient to confer the rights to notice and for an opportunity to be heard" for environmental parties. 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991).[5] In a subsequent case, the Court recognized *Stono* as comporting "with recent South Carolina legislative enactments which provide that parties with an interest in certification are entitled to notice, an opportunity to be heard, and judicial review." *League of*

[4] This is essentially the same definition of contested case hearing found in S.C. Code Ann. § 1-23-500.

[5] Because the General Assembly later approved regulations requiring a hearing in 401 certification cases, "401 certification cases are now deemed 'contested cases,' and adjudicatory hearings are required." *Stono River Envtl. Prot. Ass'n*, 305 S.C. at 94 n.3, 406 S.E.2d at 342 n.3 (citing S.C. Code Reg. 61–101 (1990)). There is no question that the DHEC approvals in this case give rise to contested cases under §§ 44-1-60 and 1-23-500. The only question is whether "affected persons" are able to pursue them, as the statute says they are.

Women Voters of Georgetown Cty. v. Litchfield-by-the-Sea, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), *overruled on other grounds by Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002).[6]

This line of precedent refutes the notion that the rights to notice, an opportunity to be heard, and judicial review as recognized in Article I, § 2 do not extent to parties whose health, welfare, and property would be harmed by a DHEC permitting decision. It also refutes the Amicus' notion that the test for whether one has a "constitutionally-protected" interest under Article I, § 2 must be answered by the federal Article III standing test. Amicus Br. 5 n.8. Nothing in *Ambulatory Surgery* requires that result, and the existence of a South Carolina Constitutional provision separate and distinct from *other* federal (and even State) Constitutional due process protections cuts against application of federal case law to ascertain the existence of State-only rights. *See Ambulatory Surgery*, 389 S.C. at 398, 699 S.E.2d at 156 (Hearn, J., dissenting, joined by Kittredge, J.) (contending that S.C. Const. art. 1, § 22 was specifically intended to address unaccountable agency decision-making distinct from traditional due process analysis).

Finally, even if federal Article III case law were relevant to standing under S.C. Constitution Article I, § 2, the South Carolina Constitution does not set a *ceiling* on government accountability such that the General Assembly cannot provide access to administrative review beyond it. The General Assembly can by statute create an administrative right and a remedy even where not required by the Constitution, and "vest in some board or person power to adjudicate all

[6] *Brown* overruled only *League of Women Voters'* holding that Coastal Zone Management certifications did *not* give rise to contested cases. Intervening statutory provisions similar to § 44-1-60(G) clarified that such DHEC decisions *do* give rise to contested cases. *See Brown*, 348 S.C. at 522 n.14, 560 S.E.2d at 418 n.14 (overruling *League of Women Voters* "[t]o the extent [it] hold[s] CMP certification pursuant to § 48–39–80 is *not* reviewable under provisions of the APA") (emphasis added).

matters arising under the statute." *State v. Moorer*, 152 S.C. 455, __ 150 S.E. 269, 274 (1929). In any event, the lower court's rulings in this case—by setting forth numerous baseless barriers to citizen standing—violated *both* Article I, § 2 *and* S.C. Code Ann. § 44-1-60(G). Petitioners have standing under either standard.

III. S.C. Code Regulation 30-6 Is Consistent with S.C. Code Ann. § 44-1-60.

The Amicus brief, after providing the text of Regulation 30-6 with no citation, contends that it was "promulgated by the ALC," and says it supports the view that § 44-1-60(G) provides no statutory standing. Amicus Br. 6. The Amicus is mistaken on all counts.

Chapter 30 of the South Carolina regulatory code, which implements the S.C. Coastal Zone Management Act ("CZMA"), S.C. Code Ann. § 48-39-10 *et seq*., and Beachfront Management Act, *id.* § 48-39-250 *et seq.*, was promulgated by DHEC, not the ALC. The chapter has been modified numerous times through the years to reflect, for example, removal of the Office of Coastal Resources Management Coastal Appellate Panel and the enactment of unified DHEC-wide administrative review procedures in § 44-1-60, *see, e.g.*, State Register Vol. 32, No. 4 (April 25, 2008). Yet even to this day it confusingly contains vestiges of procedural regimes and administrative bodies that were obviated by § 44-1-60's unified DHEC administrative procedure established. *See, e.g.*, S.C. Code Reg. 30-1(D)(14) (defining no-longer extant "Coastal Zone Appellate Panel" as "the appellate body which conducts a quasi-judicial review of decisions from the Division pursuant to SC Code of Laws, Section 1–23–610 (1993 amend.) and 48–39–150(D) (1993 amend.)"); 30-21(C)(2)(D) (requiring no-longer extant South Carolina Coastal Council to implement Beachfront Act through its "permitting and certification processes").

The Amicus' contention that Regulation 30-6(A) obviates § 44-1-60(G)'s provision of statutory standing to an "applicant, permittee, licensee, or affected person" to pursue a contested case at the ALC is mistaken. In enacting § 44-1-60, the General Assembly "intended to provide a *uniform procedure for contested cases and appeals* from" DHEC and specified that the law's provisions, to the extent they conflict with existing statutes and regulations "*are controlling*." 2006 Act No. 387, § 53 (emphasis added). Rather than conform to this "uniform procedure," the Amicus argues that Regulation 30-6(A) establishes distinct standing standards for a subset of DHEC certification decisions under the CZMA.

Nothing in Regulation 30-6(A) requires that conclusion. The regulation provides that DHEC permitting and certification decisions under the CZMA "may be appealed by an affected person *with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1*; Title 1, Chapter 23; and Title 48, Chapter 39." S.C. Code Reg. 30-6(A) (emphasis added). By providing that an "affected person with standing pursuant to applicable law" can file an appeal and explicitly referencing § 44-1-60 *as an applicable law*, Regulation 30-6(A) recognizes, as the Opinion recognizes, that § 44-1-60(G) provides statutory standing for an "applicant, permittee, licensee, or affected person" to pursue a contested case hearing. This reading, in addition to being the most obvious, advances the General Assembly's stated intent to establish a "uniform procedure for contested cases and appeals" in § 44-1-60, and harmonizes the various provisions to provide a single, unified result. *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001) ("It is well-settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.").[7]

[7] This reading also harmonizes Regulation 30-6 with the CZMA, which the rule was promulgated to implement. Under the CZMA, "an applicant having a permit denied or a person adversely affected" by the granting of a permit has a "right" to appeal the decision. S.C. Code Ann. § 48-39-

IV. The Opinion Respects Separation of Powers, While the Amicus Would Undermine It.

Finally, there is simply no merit to the Amicus' suggestion that the Opinion runs afoul of separation of powers principles. Indeed, the complete opposite is true. The Court was tasked with interpreting a statute that on its face provides specified parties with the right to administrative review. The question of "whether a statute confers standing [on a party] is an exercise in statutory interpretation." *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518. Because the General Assembly did not define the term "affected person" in this context, the Court followed precedent and gave the words their "usual and customary meaning." *Travelscape, LLC v. S.C. Dep't of Rev.*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011). The Court also thoroughly investigated its own prior decisions to ensure that its statutory interpretation cohered with precedent and *stare decisis*. *See* Op. 8-10.

These are all the hallmarks of careful judicial deliberation, and denote a fidelity to separation of powers and a respect for the coordinate branches of government, including the legislature that enacted § 44-1-60. It is important to recall that the Court has its own distinct obligations under the South Carolina Constitution, which provides that the "legislative, executive, and judicial powers of the government *shall be forever separate and distinct* from each other," with "no person" exercising the functions of one branch permitted to "discharge the duties of any other." S.C. Const. art. I, § 8 (emphasis added). The judicial power is vested in this Court, *id.* art. V, § 1, and "it is emphatically the province and duty of the judicial department to say what the law

150(D). That grant accords with the Opinion's understanding that § 44-1-60(G) provides standing to an "applicant, permittee, licensee, or affected person" as construed by the Opinion, furthering the legislative directive to establish "uniform" procedure. However, under the Amicus' theory, the CZMA's "right" to "appeal" would be thrown into confusion, demarking only inchoate access to administrative review contingent on federal Article III case law nowhere referenced in the CZMA (or in any other statute or regulation).

is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). The Court not only had the authority to construe the statute before it, it was bound to do so.

If there are any separation of powers concerns here, they arise from the positions advanced by the Amicus and by the executive agencies that are parties to this case, SPA and DHEC. Their unifying goal appears to be strict limits on review of government actions that "affect" citizens. In the present case they seek to curtail administrative review of executive agency actions—review that bolsters accountability and protects the rights of families and property owners across the State of South Carolina from unlawful government action. But administrative review in this context is often a prerequisite for judicial review. Accordingly, the positions taken by the executive and legislative arms of the government could ultimately curtail this Court's power to say what the law is, and undermine its duty to uphold that law to protect the rights of the people of South Carolina—in and from whom "[a]ll political power is vested and derived." S.C. Const. Art.I, § 1.

CONCLUSION

For the reasons stated above, the petition for rehearing should be denied.

Respectfully submitted,

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