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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.

**Reply to Petitioners’ Return to the Motion for Leave to File
Amicus Curiae Brief in Support of Petition for Rehearing**

The *amicus* files this reply to the Petitioners’ return to the motion for leave to file an *amicus* brief. As set forth in the return, Petitioners consent to the motion. *See* Return p. 4. The Court should grant the motion and allow *amicus* participation in the rehearing process.¹

¹ The Petitioners request the ability to file a brief in response to the proposed *amicus* brief. *See* Return p. 4. *Amicus* of course consents to that request. The *amicus* will file its reply to the Petitioners’ response brief within the time limits imposed by Rule 208(a)(3), SCACR, unless the Court prefers a different timeline.

Despite consenting to the motion, the Petitioners take issue with the timing of the request, calling the request “inexcusably late.” *See* Return p. 2-3. This argument lacks merit. The South Carolina Appellate Court Rules contain no time limit for *amicus* participation. *See* Rules 213 and 240, SCACR. It is also common practice for the Court to entertain *amicus* arguments at the rehearing stage. Second, *amicus* had no reason to seek to participate in this matter until this stage of the proceedings. Until the issuance of the opinion, Section 44-1-60(G) had been construed in the manner consistent with the plain language of the statute in order to harmonize Section 44-1-60(G) and the general statutory law applicable to a contested case hearing elsewhere in the Code of Laws, *i.e.*, Section 1-23-505 of the South Carolina Code of Laws. The opinion overlooked this interplay and resulted in an improper expansion of the scope of Section 44-1-60(G) far past the limits of the plain language adopted by the General Assembly. Thus, the need for *amicus* participation did not arise until issuance of the opinion.

Second, Petitioners claim the *amicus* is not needed to resolve the rehearing by misconstruing the argument advanced in the *amicus* brief. *See* Return p. 3-4. To the contrary, *amicus* participation is necessary to allow proper construction of Section 44-1-60(G) by the Court. The opinion overlooked the fact that the General Assembly did not need to grant standing in Section 44-1-60(G) because the existing law, *see* S.C. Code Ann. § 1-23-505, already provided the method for an affected person to prove the constitutional standing necessary to maintain the contested case. Rehearing is needed to recognize that this interplay with the Administrative Procedures Act provided Petitioners with an avenue for an affected person to seek party status and prove that it had constitutional standing necessary to do so.

With the consent of the Petitioners, this Court should grant the motion for leave to file an *amicus* brief. Rehearing should be granted to conform the opinion with the process established by the General Assembly—allow the ALC to continue to adjudicate the rights of the parties and determine whether the affected person possesses the standing necessary to maintain the requested contested case hearing.

Respectfully submitted,

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