

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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DEC 12 2019

S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5636 (S.C. Ct. App. filed April 3, 2019)

Win Myat..... Petitioner,

v.

Tuomey Healthcare System..... Respondent.

**PETITIONER’S RETURN TO MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF**

Petitioner Win Myat submits this Return to Prisma Health, Prisma Health Tuomey and the S.C. Hospital Association’s Motion for Leave to File an *Amicus Curiae* Brief. The Movants’ Motion to submit the *Amicus* brief should be denied because certain of the Movants, namely Prisma Health and Prisma Health Tuomey, have a *direct* interest in the outcome of this litigation. This interest is not that of a “friend of the court” but rather that of an interested litigant seeking to file additional briefing beyond that permitted to the parties under the rules.

Rule 213 provides:

A brief of an *amicus curiae* may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief

of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties *and shall comply with the requirements of Rules 208(b) and 211*. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

Rule 213, SCACR (2019)(emphasis added).

Prisma Health and Prisma Health Tuomey's interest¹ in this litigation is beyond that of a "friend of the court," rather they have a direct interest in the outcome. Prisma Health Tuomey, formerly known as Palmetto Heath Tuomey, is the successor in interest to assets of Respondent Tuomey Healthcare System. As testified to by Respondent's Rule 30(B)(6) witness, Palmetto Health Tuomey is the residual beneficiary of the assets of Respondent Tuomey Healthcare System. R. p. 1660-61 (Transcript of the March 6, 2016 Hearing Testimony of Tom Moran, Esquire - Rule 30(b)(6) Designee of Respondent). Prisma Health is an affiliate company of Prisma Health Tuomey. In short, Respondent Tuomey Healthcare System has become a part of Prisma, who now seeks to file an additional briefing under the guise of "amicus curiae." Because Prisma Health and Prisma Health Tuomey's interests are truly that of litigants, the Court should not permit their attempt to submit additional briefing on the application of the Solicitation of Charitable Funds Act ("SCFA") issue.

In the alternative, in the event the Court permits the Movant's leave to file the *Amicus Curiae* brief, Petitioner requests the opportunity to address the Movants' arguments relating to the application of the SCFA. Petitioner contends that the SCFA's language and

¹ Petitioner's objection is solely directed to Movants Prisma Health and Prisma Health Tuomey, not at the S.C. Hospital Association. However, S.C. Hospital Association's desire to participate in this action highlights the importance of the novel questions presented by this case and weighs heavily in favor of granting certiorari.

public policy do *not* support a bright line rule that permits unscrupulous entities that operate outside the bounds of the requirements of 26 U.S.C. § 501(c)(3), and which are guilty of massive taxpayer fraud,² to hide behind the liability protections of the SCFA.

For these reasons Petitioner respectfully requests the Court collectively deny the Movants' Motion for leave to file an *Amici Curiae* brief, and in the alternative, requests leave under Rule 213 to file a responsive brief to address the arguments made by the Movants.

December 12, 2019

Respectfully submitted,



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² The Fourth Circuit opinion in the Drakeford case expressly addresses the enormity of the frauds committed by Respondent stating that “while the penalty is certainly severe, it is meant to reflect the sheer breadth of the fraud Tuomey perpetrated upon the federal government.” U.S. ex rel. Drakeford v. Tuomey, 792 F.3d 364, 389 (4th Cir. 2015).

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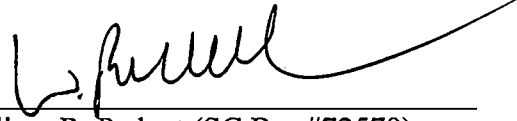
I certify that I have served the *Petitioner's Return to Motion For Leave To File Amici Curiae Brief* on the following counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2019:

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