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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-001726

Sisters of Charity Providence Hospitals,Respondent,

v.

Palmetto Health,.....Appellant.

MOTION TO STAY ISSUANCE OF THE REMITTITUR
AND TO PUBLISH OPINION

On July 21, 2021, this Court issued Unpublished Opinion Number 2021-UP-276 in the above-captioned appeal. The Appellant respectfully requests that this Court publish its opinion for the reasons set forth herein. For the purposes of this motion to publish, the Appellant also respectfully requests that this Court stay the issuance of the remittitur for the limited purpose of addressing this motion and any matters related to the grant or denial of this motion.

GROUND FOR REQUEST TO PUBLISH

The Appellant (Palmetto Health) is a private hospital and, like most if not all private hospitals in South Carolina, it receives state and federal grant monies to provide a wide variety of healthcare goods and services to or for the benefit of the citizens of South Carolina. The existing case law on receiving public monies was not directly on point, but it showed that Palmetto Health's receipt of the grant funds did not make it subject to the South Carolina Freedom of Information Act (the FOIA). Nevertheless, the Respondent contended and the circuit court held that Palmetto Health's receipt of these funds rendered it a "public body" that was subject to the FOIA.

In its unpublished opinion, this Court fully addressed and resolved important issues on whether a private hospital or other private entity that receives state or federal grant monies in exchange for goods or services is subject to the FOIA. This Court's synthesis of the existing case law should be published, because numerous other types of private companies also receive state and federal grants to provide goods and services. The claims made in this case are therefore likely to recur absent a clear and on-point published opinion like this Court's opinion in this case.

This matter began in June 2015 when the Respondent sent its FOIA request to Palmetto Health. Seven years later, Palmetto Health has prevailed after losing in the lower court and incurring very significant expenses. Nevertheless, because the opinion is unpublished and there is no other published opinion directly on point, anyone else can make the identical meritless claims tomorrow, and there will be no on-point published opinion to prevent it.

This Court may have issued the opinion as unpublished, because it viewed this case as a simple and straightforward application of established law to noncontroversial or non-repetitive facts that did not indicate any need for a published opinion. Palmetto Health agrees that the law is clear and straightforward, and that the Respondent's attempted use of the FOIA in this case is

meritless. Absent publication of the opinion, however, Palmetto Health and all other private companies that similarly receive state or federal grants will remain subject to the same meritless claims made in this case and will have to expend time and resources to defend those claims, including exorbitant discovery costs like those incurred in this case.

The result in the circuit court, which this Court rightly reversed, demonstrates that these meritless claims are not and will not be resolved quickly, inexpensively, or correctly in the lower courts, primarily because there is no case on point. Publishing the opinion in this case will likely prevent such meritless claims from being made in the first instance and, at the very least, will provide the authority needed by the bench and bar to resolve such meritless claims quickly and inexpensively.

CONCLUSION

For the reasons set forth above, Palmetto Health respectfully moves this Court to publish its opinion in this matter and to stay the issuance of the remittitur for the limited purpose of considering this motion to publish and any matters related to the grant or denial of this motion.

Respectfully Submitted,

/s/Robert L. Widener

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