

RECEIVED

Nov 01 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb..... Respondent,

v.

City of North Augusta and Mayor and
City Council of North Augusta..... Appellants.

**AMICUS CURIAE BRIEF OF
MUNICIPAL ASSOCIATION OF SOUTH CAROLINA**

B. Eric Shytle, S.C. Bar No. 16930
General Counsel
Municipal Association of South Carolina
1411 Gervais Street
Columbia, SC 29201
(803) 933-1214
eshytle@masc.sc

TABLE OF CONTENTS

STATEMENT OF IDENTITY OF THE AMICUS 1

STATEMENT OF INTEREST OF THE AMICUS..... 1

STATEMENT OF THE CASE AND OF THE FACTS..... 2

SUMMARY OF ARGUMENT 3

ARGUMENT..... 4

 I. THE CIRCUIT COURT MADE NO MEANINGFUL ATTEMPT TO DEFINE
 “AGENDA” AND “ITEM” UNDER SC FOIA, AND INSTEAD
 ERRONEOUSLY APPLIED A PURELY SEMANTIC ANALYSIS. 4

 a. The Order bases its erroneous conclusion that a list of projects
 attached to a resolution was part of the agenda on the name and
 format of an electronic document posted to the City’s website.....4

 b. The Order makes no cogent argument that the New Savannah Bluff
 Lock and Dam Project is an “item” within the meaning of SC FOIA. ...7

 c. The Order’s semantic reading of SC FOIA would frustrate sound
 public policy and force public bodies to choose between minimal
 transparency or legislative paralysis.8

 II. THIS COURT SHOULD INSTEAD ADOPT COMMONSENSE, WORKABLE
 DEFINITIONS OF THE TERMS “AGENDA” AND “ITEM” IN
 CONSTRUING SC FOIA 9

 III. THE ORDER MISAPPREHENDS THE PURPOSE OF SC FOIA BY
 ASSUMING THAT RESPONDENT HAD A RIGHT TO COMMENT ON THE
 SAVANNAH BLUFF LOCK AND DAM PROJECT; SC FOIA PROVIDES
 ONLY FOR OPEN MEETINGS, NOT A RIGHT OF COMMENT.....12

CONCLUSION14

TABLE OF AUTHORITIES

Cases

<i>Brock v. Town of Mount Pleasant</i> , 415 S.C. 625, 785 S.E.2d 198 (2016).....	12-13
---	-------

Statutes

S.C. Code Ann. § 5-7-250	2
S.C. Code Ann. § 5-9-40	8
S.C. Code Ann. §§ 30-4-10 <i>et seq.</i>	1
S.C. Code Ann. § 30-4-15	12
S.C. Code Ann. § 30-4-80	4, 5, 6, 11

Other Authorities

2015 Act No. 70	5
-----------------------	---

Treatises

<i>Black's Law Dictionary</i> , AGENDA (11th ed. 2019).....	10
<i>Robert's Rules of Order</i> , § 4:10 (12 th Ed. 2020)	11
<i>Robert's Rules of Order</i> , § 4:45 (12 th Ed. 2020)	11
<i>Robert's Rules of Order</i> , § 9:13 (12 th Ed. 2020)	11
<i>Robert's Rules of Order</i> , § 22:16 (12 th Ed. 2020)	11
<i>Robert's Rules of Order</i> , § 41.2 (12 th Ed. 2020)	10
<i>Robert's Rules of Order</i> , § 41:64 (12 th Ed. 2020)	10

STATEMENT OF IDENTITY OF THE AMICUS

The Municipal Association of South Carolina (the “Association”) is a nonpartisan, nonprofit association of South Carolina’s incorporated cities and towns. All 271 municipalities in South Carolina are members of the Association. The Association provides services and programs directly to its member municipalities and represents the collective interests of municipalities throughout the State.

The Association offers regular training to municipal elected officials and prepares written resources for use by municipalities, including content on conducting meetings of council and complying with the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* (“SC FOIA”). For example, the Association released an SC FOIA Update in June 2015 addressing the procedure to add an item to an agenda under SC FOIA.

STATEMENT OF INTEREST OF THE AMICUS

The Association promotes effective municipal government and advises its members on procedures to conduct efficient public meetings while complying with applicable law. The Circuit Court’s Order of October 8, 2019 (R. pp.10-19) (the “Order”) interprets the application of SC FOIA to meeting agenda differently than the Association does. Therefore, the Association has a substantial interest in presenting its interpretation of SC FOIA to this Court.

Moreover, the Order’s analysis would needlessly complicate municipal meeting administration and decrease transparency in local government. The Association has 271 members, all of whom are municipal governments. The smallest South Carolina

municipalities have fewer than 100 residents; well over half of them (157 of South Carolina's municipalities) have fewer than 2,000 residents. State law requires these municipalities to meet at least once in every month. *See* S.C. Code Ann. § 5-7-250(a). The elected officials conducting these meetings come from all occupations, socioeconomic situations, and educational backgrounds. Serving this diverse constituency, the Association seeks to educate and guide municipalities in clear, logical, and practical ways to conduct public meetings. As such, the Association has an equally substantial interest in demonstrating to this Court how the Order would frustrate effective local government and public transparency, particularly for the State's smaller municipalities.

STATEMENT OF THE CASE AND OF THE FACTS

The Association adopts the Statement of the Case and Statement of the Facts in the Final Brief of Appellants.

For convenience, however, the Association recites the facts it deems essential to the argument below. The City of North Augusta (the "City"), prior to its regular council meeting of May 7, 2018, timely posted an agenda. Appearing as item number 6 on the agenda, under the heading "New Business," was "FINANCE: Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV." (R. p.32). In the materials distributed prior to the meeting, the City Clerk included, among other things, a copy of the proposed capital project sales tax resolution (the "Resolution"). (R. pp.35-36). The Resolution provided that the City Council "wish[ed] to submit for consideration" to Aiken County a list of

capital project sales tax projects to be funded within the City. (R. p.35). The Resolution further contained, as an exhibit, a list of proposed projects to be submitted for consideration by the County. (R. p.36). At the meeting, following a motion and second to approve the Resolution, the Mayor made a subsidiary motion to amend the Resolution to add the New Savannah Bluff Lock and Dam project to the exhibit. (R. p.63). The city council duly seconded and unanimously approved the motion to amend, and then unanimously approved the Resolution as amended. (R. p.63).

SUMMARY OF ARGUMENT

The Order turns SC FOIA into a semantic trap for the unwary by failing to provide substantive definitions for the terms “agenda” and “item.” If affirmed, the Order would force public bodies to choose between minimal disclosure and hopelessly inefficient meeting administration. This Court should reverse the Order and adopt appropriate definitions of “agenda” and “item” within the context of SC FOIA. In common parliamentary usage, an “agenda” is a short list of the matters to be considered by the body in a meeting, and each matter to be considered is an “item.” These clear definitions serve the public purposes of SC FOIA while also allowing public bodies to efficiently conduct the business of the public.

ARGUMENT

I. THE CIRCUIT COURT MADE NO MEANINGFUL ATTEMPT TO DEFINE “AGENDA” AND “ITEM” UNDER SC FOIA, AND INSTEAD ERRONEOUSLY APPLIED A PURELY SEMANTIC ANALYSIS.

As relevant to this case, SC FOIA provides that “[o]nce an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting.” S.C. Code Ann. § 30-4-80(A) (emphasis added). SC FOIA defines neither the term “agenda” nor the term “item.” Rather than providing its own definitions, the Order turns a simple question – what is an agenda? – into a convoluted semantic dispute that involves the file name assigned to an electronic document and the text of an optional cover page. Further, the Order begs an equally fundamental question by using the word “item” in its broadest possible sense, with no reference to the context of SC FOIA. This approach serves neither good government nor the purposes of SC FOIA.

a. The Order bases its erroneous conclusion that a list of projects attached to a resolution was part of the agenda on the name and format of an electronic document posted to the City’s website.

The Order does not attempt to substantively define the term “agenda.” Instead, its argument depends on isolated word choices and formatting decisions by the City. As explained in the Order, “[s]ince Defendants told the public on the City website there was a complete agenda, by calling the document agenda 050718 complete, it was only reasonable for the public to rely on that document in preparing for a meeting.” (R. p.17) (emphasis added). Likewise, Respondent’s Brief turns on a naming

question: “If the City calls it an agenda, it simply has to treat it like an agenda.” (Respondent’s Final Brief, p.22). Respondent offers two facts to argue that the City “called” the entire document the agenda. First, the City scanned a collection of separate documents to electronic form, named the combined electronic file “agenda 050718 complete,” and posted a link to this electronic file on its website. Second, the scanned collection of documents included a cover page reading, “REGULAR AGENDA OF MAY 7, 2018.” (R. p.30).

Even under the Order’s framework, strong counterarguments exist. For example, SC FOIA’s primary notice requirement is that the agenda “must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body ...” S.C. Code Ann. § 30-4-80(A). In 2015, the General Assembly amended SC FOIA to require that the agenda be posted “on a public website maintained by the body, if any ...” 2015 Act No. 70, codified at S.C. Code Ann. § 30-4-80(A) (emphasis added). Given its recognition that many public bodies do not have public websites (i.e., by including the language “if any”), SC FOIA continues to consider the bulletin board notice to be primary. Here, the City Clerk testified that she posted only the single-page agenda to the bulletin board, without the additional documentation included in the scanned document. (R. p.236). This fact is relevant to, and perhaps determinative of, the question of what the City “called” its agenda. Likewise, in the combined document, the City Administrator’s interoffice memorandum describes the resolution as “ATTACHMENT NO. 6.” (R. p.34). By its own terms, the combined

electronic document indicates that the resolution is an attachment to, and not part of, the agenda.

Nevertheless, the Court should reject this framework. As noted, Respondent argues that identification of the agenda rests on semantic choices of the public body. This argument errs in several ways. First, it turns a substantive question of law into a formulaic trap for the unwary or the unsophisticated. In Respondent's approach, the City could have mooted the question by simply naming the electronic file "agenda 050718 with attachments" and deleting the cover page. Larger and more sophisticated public bodies would routinely avoid this trap, on advice of counsel, but smaller public bodies might not be so fortunate.

Second, Respondent's argument serves no public policy. SC FOIA itself requires only notice of "the dates, times, and places of [public] meetings" and posting of "[a]n agenda." S.C. Code Ann. § 30-4-80(A). Respondent would penalize public bodies for making available anything beyond this statutory minimum. Nothing in SC FOIA requires the City to make public any supporting documentation other than the agenda itself. It is no answer to avoid the question by asserting, as Respondent does here, that whatever the City produced was *ipso facto* the agenda. This reading would merely incentivize public bodies to produce less and less information, until the courts were forced to define a legal minimum standard to qualify as an agenda under the statute.

b. The Order makes no cogent argument that the New Savannah Bluff Lock and Dam Project is an “item” within the meaning of SC FOIA.

Determining the scope of the agenda does not fully answer the question. SC FOIA provides that the City could not “add an item” to the agenda without following the statutory procedures. Neither the Order nor Respondent’s Brief makes any meaningful argument that the New Savannah Bluff Lock and Dam Project is an “item.” Instead they assume that any discrete language, concept, or idea in the combined electronic document is an “item.” In other words, they use the broadest possible meaning of the term. The approach is unhelpful. What if, on advice of counsel at the meeting, the City had added an additional substantive section to the Resolution, for example an effective date or signature authorization? To take another example, the combined electronic document contains a form water tank site lease agreement as an attachment to Resolution 2018-12. (R. pp.37-58). Section 8 of this lease specifies insurance requirements for T-Mobile South, the lessee. (R. p.42). What if, on advice of counsel at the meeting, the City had added an additional requirement to carry performance and payment bonds? In Respondent’s framework, these changes might well constitute “adding an item,” for the same reason that adding a project to the Resolution would.

The analytical dead-end arises because Respondent does not or cannot provide objective content to SC FOIA’s use of the term “item.” In oral argument at the circuit court, Respondent suggested that the New Savannah Bluff Lock and Dam Project was an item because of the monetary amount involved. For example, Respondent’s

counsel argued, “So it is substantial in a monetary aspect. Without that support, I don't know that – what would be – you know, how it would affect that project, but it’s hundreds of thousands of dollars of impact.” (R. p.175). The judge below asked Respondent’s counsel for support: “Well, it's just unappointed authority of this amended versus adding versus how big the – how significant the amendment is, \$500 worth versus \$200, or \$500,000, versus \$5,000. Are there cases that address this specific issue?” (R. p.197). As admitted by Respondent’s counsel, there are no such cases. (R. p.197). Why not? Because SC FOIA does not even suggest that there is a monetary threshold to qualify as an item. Indeed, as explained in Section II below, in parliamentary procedure the term “item” has a definite meaning, and many matters that are items for agenda purposes have no monetary value at all. For example, in the Mayor-Council form of government (as in the City), the council has the authority to hire or fire an administrator. *See* S.C. Code Ann. § 5-9-40. By Respondent’s reasoning, the City could fire its administrator by council action without prior notice, because doing so would impose no direct monetary costs on the City.

c. The Order’s semantic reading of SC FOIA would frustrate sound public policy and force public bodies to choose between minimal transparency or legislative paralysis.

The Order’s semantic reading of “agenda” and failure to define “item” would force public bodies into a double bind. On one hand, public bodies might provide the statutory minimum public notice required by law. Respondent does not claim that the single-page agenda provided by the City would be inadequate under SC FOIA. Instead, Respondent argues that by voluntarily providing additional supporting

information, the City has turned this information into the agenda itself. One obvious solution for public bodies would be to decline to provide any supporting documentation at all. This solution, while legal, would frustrate the purposes of SC FOIA. As it stands, most of the Association's members do provide supporting documentation for their agendas, both on advice of the Association and in a genuine commitment to open government under SC FOIA. The Order, if affirmed, could well disturb this historical practice.

On the other hand, public bodies might continue to provide supporting documentation for agendas. If they did so, however, the Order's failure to define "item" would leave the public body in constant uncertainty about permissible actions. Any change to a supporting document might well be an "adding an item" under the Order's reading. Endless litigation and intractable council inefficiency would result. Worse, municipal councils would be denied the ability to make any changes to supporting documents provided in advance of a meeting – even in response to citizen comment at the meeting. Surely the term "item" in SC FOIA has some discernable meaning beyond this unworkable obscurity.

II. THIS COURT SHOULD INSTEAD ADOPT COMMONSENSE, WORKABLE DEFINITIONS OF THE TERMS "AGENDA" AND "ITEM" IN CONSTRUING SC FOIA

As noted above, SC FOIA defines neither "agenda" nor "item." The reason that SC FOIA defines neither term is because both are well understood by anyone who has ever attended an organized meeting. But for clarity and to avoid future semantic disputes, this Court should substantively define "agenda" and "item."

The term “agenda” has clear meaning when applied to deliberative meetings. An agenda is “[a] list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration.” *Black's Law Dictionary*, AGENDA (11th ed. 2019). Under Robert’s Rules of Order, an order of business – a term closely associated with agenda – is “any established sequence in which it may be prescribed that business shall be taken up at a session of a given assembly.”¹ *Robert’s Rules of Order*, § 41.2 (12th Ed. 2020). An agenda, in turn, is “an order of business adopted for a particular session [that] frequently assigns positions, and even times, to specific subjects or items of business.” *Id.* In short, an agenda is no more than a list of matters to be considered by the body, together with the order in which these matters will be considered.

Likewise, the term “item” has specific content in the parliamentary context. Under Robert’s Rules, as noted above, an “order of business” is a list of matters that the assembly may consider. Each such matter is called an “item of business.” For example, “[i]n reference to an order of business specially adopted for a given session, the term *program* is often used instead of *agenda*; but while the latter technically includes only items of business, the former may include also the times for speakers, meals, and other nonbusiness matters.” *Robert’s Rules of Order*, § 41:64 (12th Ed. 2020) (emphasis added). Likewise, Robert’s Rules defines “special meeting” to be a separate session “convened only to consider one or more items of business specified

¹ The City, unlike many municipalities in South Carolina, has not adopted Robert’s Rules of Order for its parliamentary procedures. But the question is *not* to pass on the parliamentary procedures of the City, but instead to define terms used in an act of the General Assembly. Given the widespread adoption of Robert’s Rules, its definitions are relevant.

in the call of the meeting.” *Robert’s Rules of Order*, § 9:13 (12th Ed. 2020) (emphasis added). Finally, in providing the format for meetings, Robert’s Rules frequently instructs the chair, upon conclusion of a matter during a meeting, to say, “the next item of business is ...” *See, e.g., Robert’s Rules of Order*, §§ 4:10 (“Then he immediately says, “The next item of business is....”), 4:45 (“they are immediately followed without pause by announcement of the next item of business”), 22:16 (“The ayes have it and the resolution is postponed to the adjourned meeting. The next item of business is....”) (12th Ed. 2020). In short, an “item” is a specific topic or matter that the body may consider, and possibly take action on, during a meeting.

Taking these meanings together, an agenda is a list of the matters to be considered by the body, and each matter on the list is an item. SC FOIA is consistent with this reading. It provides that “an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting.” S.C. Code Ann. § 30-4-80(A). Some matters that appear on an agenda do not involve action by the body, for example reports or presentations. But if a matter does implicate possible action by the body, it cannot be added to the agenda without complying with the statutory process. Therefore, the “item” is the matter upon which council may act. If the matter is already included on the agenda (i.e., it is an item), then any decisions about the content of the action taken with respect to that item – whether to approve, deny, or amend – cannot be considered “adding an item.” The item already exists; the question is simply what action will be taken with respect to it.

Here, the agenda is the single-page document entitled “Agenda: Regular City Council Meeting.” (R. p.32). As defined above, this document is a list of the matters to be considered by the body, presented in the order in which they will be considered. “Attachment No. 6,” identified in the City Manager’s interoffice memorandum as “a copy of the proposed resolution,” is not part of this list but is instead supplementary information. (R. p.34). And the “item upon which action can be taken” is Item 6 on the agenda, “Resolution No. 2018-11 – A Resolution Identifying North Augusta Projects for the Aiken County Capital Project Sales Tax IV.” By amending the contents of Attachment No. 6, the City did not “add an item to the agenda.” Instead, the City took appropriate action with respect to an item that was already included on the agenda. The fact that the action taken was nominally to add a project in no way changed the agenda’s description of the matter to be considered – the item remained the City’s consideration of the capital project sales tax resolution.

III. THE ORDER MISAPPREHENDS THE PURPOSE OF SC FOIA BY ASSUMING THAT RESPONDENT HAD A RIGHT TO COMMENT ON THE SAVANNAH BLUFF LOCK AND DAM PROJECT; SC FOIA PROVIDES ONLY FOR OPEN MEETINGS, NOT A RIGHT OF COMMENT.

The purpose of SC FOIA is to ensure “that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.” S.C. Code Ann. § 30-4-15 (emphasis added). As explained by the South Carolina Supreme Court, “The essential purpose of FOIA is to protect the public from secret government activity.” *Brock v. Town of Mount Pleasant*, 415 S.C.

625, 628, 785 S.E.2d 198, 200 (2016) (quotations omitted) (emphasis added). SC FOIA provides no right whatsoever to public comment; instead, the act requires that the business of the public must occur in open meetings.

Respondent's argument on this point lacks clarity, as Respondent's Brief first asserts that Respondent did not attend the meeting: "He decided not to attend because he was satisfied with the projects being considered." (Respondent's Final Br. at 6). Later, Respondent's Brief contradicts this claim: "He decided he was satisfied with the projects being considered and did not need to prepare or comment, although he did attend." (Respondent's Final Br. at 16) (emphasis added). The record makes clear, however, that the harm of which Respondent complains is that, although he knew the City would be discussing capital project sales tax projects, he was not prepared to comment on the New Savannah Bluff Lock and Dam project: "Because I was not prepared to speak on that particular item. I did not know from the material in Document Central in the agenda complete that it would even be discussed. So I had no means of preparing to address that particular item at the council meeting." (R. p.219).

But the uncontradicted testimony below proves that the City timely posted the agenda, which contained an item indicating that the City would consider a resolution recommending projects for the capital project sales tax. Once the City reached this item on the agenda, there was a proper motion and second to amend the resolution to add the New Savannah Bluff Lock and Dam project. (R. p.79). The City unanimously approved the amendment, and then unanimously approved the

amended resolution. All of these actions were taken in open meeting, with appropriate notice and consistently with the posted agenda item. There was no “secret” government action here. Indeed, the only harm that Respondent asserts is that he was not prepared to comment on the New Savannah Bluff Lock and Dam project – a right which is nowhere granted in SC FOIA.

CONCLUSION

The Association views its primary mission to be the support of effective and efficient municipal government in South Carolina. The Order, however, would impede effective and efficient government without in any way advancing the purposes of SC FOIA. Specifically, the Order would force municipalities to choose between reducing public disclosure prior to a meeting or risking legislative paralysis at the meeting. Neither municipal governments nor the citizens they serve would benefit from this approach.

This Court should therefore reject the circuit court’s semantic analysis in favor of clear, workable definitions. As used in SC FOIA, an agenda is a list of the matters to be considered by a public body in a meeting, and each matter to be considered is an item. SC FOIA further provides that, once an agenda is posted, the public body may not “add an item” to the agenda without additional notice. Here, the original agenda contained an item indicating that the City would consider capital project sales tax projects. There is no need to resort to artful semantic sleights-of-hand to distort these requirements and expand the common meanings of “agenda” and “item.”

Respectfully Submitted,

/s/ Bryan Eric Shytle

B. Eric Shytle, S.C. Bar No. 16930
General Counsel
Municipal Association of South Carolina
1411 Gervais Street
Columbia, SC 29201
(803) 933-1214
eshytle@masc.sc

*Attorney for Amicus Curiae Municipal
Association of South Carolina*

November 1, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb.....Respondent,

v.

City of North Augusta and
Mayor and City Council of North
Augusta.....Appellants.

**RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS*
CURIAE BRIEF**

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, Herman Perry Holcomb (“Holcomb”) responds and files this return in opposition to the Motion to File *Amicus Curiae* brief filed by the Municipal Association of South Carolina (the “Association”) in the above-captioned matter currently pending before this honorable Court and opposes filing of the *amicus*

curiae brief conditionally filed with this Court. In support, Holcomb assert as follows:

I. THE ASSOCIATION HAS DELAYED FILING ANYTHING IN THIS MATTER FOR MORE THAN THREE (3) YEARS, MAKING IT CLEAR THAT THE ASSOCIATION HAS NO SIGNIFICANT SPECIAL INTERESTS IN THE MATTER, AND ITS BRIEF DOES NOT ADD ANYTHING OF MERIT TO AIDE THE COURT IN ITS CONSIDERATION.

Holcomb filed the underlying matter on May 24, 2019, three and a half (3 and 1/2) years ago. On August 16, 2019, the matter was decided in Holcomb's favor and he was awarded his reasonable attorney's fees. Defendants appealed. Full and fair briefing was allowed both sides and promptly filed and served, without significant delay. Now, more than three (3) years later, the Association seeks to assert itself for the first time in the case and file an *amicus curiae* brief, likely causing yet more delay for Holcomb, for whom justice delayed is justice denied.

The filing, furthermore, represents a coordinated effort between Defendants and the Association that requires Holcomb, a private individual, to take even further measures and go to further expense to brief what has long ago been fully briefed, creating additional prejudice to Holcomb and burden to Holcomb and the Court. If the proposed *amicus curiae* brief fails to address only the matters raised by the parties, it violates this Court's rules. *See* Rule 213, SCRAP, (The

[*amicus curiae*] brief shall be limited to argument of the issues on appeal as presented by the parties . . .). Holcomb believes the Association goes on a frolic, asserting matters beyond those raised by the parties. As such, the Association's motion should be denied.

If this honorable Court believes that the brief actually does limit its argument to the issues on appeal as present by the parties, the very tardy *amicus curiae* brief should still not be allowed. The significant issues that could be of importance to the Association have been fully and fairly briefed by Defendants. In this respect, Judge Posner's observations in *Ryan v. CFTC*, 125 F.3d 1062, 1064 (7th Cir. 1997) are applicable:

The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse. The term 'amicus curiae' means friend of the court, not friend of a party.

The Association, an organization of municipalities, is very obviously a friend of the City of North Augusta with no special interests beyond those asserted by the City of North Augusta, which is likely a member of the Association, and not a friend of Holcomb.¹ This effort to late file an *amicus*

¹ This friendship with the City of North Augusta and adversity to Holcomb is confirmed by the close relationship between the Association and the City of North Augusta. B. Todd Glover is Executive Director of the Association. From approximately 2012 to 2019 he worked for the City of North Augusta as the City Administrator. Furthermore, City of North Augusta Councilperson McGhee is an Executive Committee member of the Association. He is also adverse to Holcomb who successfully made ethics claims against him.

curiae “merely extend[s] the length of the litigant’s [defendants’] brief” late in the proceedings. Nothing in its proposed *amicus curiae* brief is unique to the Association or aides the court in any relevant way that the parties have failed to already supply in the years since this matter was appealed. It is within the Court’s sound discretion to deny the Association’s request. *See Anderson v. S.C. Election Comm’n*, 2012 S.C. LEXIS 99 (May 3, 2012); *State v. Bellardino*, 429 S.C. 563, 841 S.E.2d 621 (2020). As such, the Association’s motion should be denied.

II. THE ASSOCIATION WAIVED ITS OPPORTUNITY TO FILE AN *AMICUS CURIAE* BY WAITING MORE THAN THREE (3) YEARS TO FILE.

Rule 213, SCRAP requires *amicus curiae* briefs to comply with the requirements of Rule 208(b) and Rule 211, SCRAP. Rule 211, SCRAP requires, in part that,

Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of his final brief(s) on every other party to the appeal,

More than three (3) years have passed since the service of the Record on Appeal in this case. The proposed *amicus curiae* brief is years out of time, and no relief from the time limitations of Rule 211 has been requested.

Furthermore, under principals of laches and waiver, the Association has waived its opportunity to participate in these proceedings. The Association's attempt to inject itself at this late date would be likely to further delay and add expense to the proceedings, thus effectuation substantial prejudice against Holcomb who has waited long enough for justice to be affirmed.

WHEREFORE, Holcomb respectfully requests that the Court deny leave for the Association to file and serve a very tardy *amicus curiae* brief, more than three (3) years late, reject the Association's conditionally filed brief and affirm the final order of the court below in this case.

Date: November 14, 2022

Respectfully submitted,

/s/ Dionè C. Carroll
Dionè C. Carroll, Esq.
S.C. Bar 78185
Attorney for Respondent Herman
Perry Holcomb

Carroll Law Offices, P.A.
107 Pendleton St. N.W.
Aiken. SC 29801
Phone: 803-514-2557
Fax: 866-954-0184
Email: dione@carroll-law-offices.com

CERTIFICATE OF SERVICE

I, Dionè C. Carroll, do hereby certify that I have caused the **RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF** in the above-referenced matter to be served on all known counsel of record and counsel for the movant by electronic mail as follows:

Danny Calvert Crowe, Esquire
Crowe LaFave, LLC
2019 Park Street
Columbia, SC 29201
danny@crowelafave.com

Bryan Eric Shytle, Esquire
General Counsel
Municipal Association of S.C.
1411 Gervais Street
PO Box 12109
Columbia, SC 29211
eshytle@masc.sc

Date: November 14, 2022

Respectfully submitted,

/s/ Dionè C. Carroll
Dionè C. Carroll, Esq.
S.C. Bar 78185
Attorney for Respondent Herman
Perry Holcomb

Carroll Law Offices, P.A.
107 Pendleton St. N.W.
Aiken. SC 29801
Phone: 803-514-2557
Fax: 866-954-0184
Email: dione@carroll-law-offices.com