

NORTH CAROLINA COURT OF APPEALS

CITY OF ASHEVILLE,)
a municipal corporation,)

Plaintiff,)

v.)

From Wake County

STATE OF NORTH CAROLINA)
and the METROPOLITAN)
SEWERAGE DISTRICT OF)
BUNCOMBE COUNTY,)

Defendants.)

MOTION BY THE CITY OF WILSON
FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

The City of Wilson (“Wilson”) respectfully moves this Honorable Court for leave to file brief *amicus curiae* in support of Plaintiff-Appellee City of Asheville. Pursuant to North Carolina Rule of Appellate Procedure 28(i), Wilson sets forth below the nature of its interest, the issues of law to be addressed in its brief, its position on those issues, and the reasons why Wilson believes that an *amicus curiae* brief is desirable.

NATURE OF WILSON'S INTEREST

Like Plaintiff-Appellant City of Asheville, Wilson is a municipal corporation organized and existing under the laws of North Carolina. Wilson is located in Wilson County, North Carolina.

Over the course of several years in the late 1990s and at a cost of in excess of \$50,000,000 to the citizens and ratepayers of Wilson, the City of Wilson expanded its primary water supply reservoir from an initial capacity of 800 million gallons to almost 7 billion gallons after the expansion. Despite the great cost, obstacles and criticism at the time, the foresight and wisdom of the expansion became readily apparent during a severe drought that affected the eastern part of the State in 2007, when, despite widespread drought conditions and water restrictions, Wilson maintained a plentiful supply of water.

Wilson is gravely troubled, however, by the General Assembly's recent efforts to seize the City of Asheville's water system, and the potential precedential effects of such action if allowed to stand. In particular, Wilson is concerned that similar legislation—purportedly for the public good and relying upon the precedent of North Carolina Session Law 2013-50 (“the Water Act”)—could be proposed by the General Assembly to seize, reallocate, or redistribute other municipalities' water resources, potentially even including Wilson's. Although mismanagement is cited by the State as the reason for the Water Act, it is certainly

plausible that, in the name of the greater public good, the General Assembly might act similarly to reallocate what may be perceived as excess resources. Although Wilson's water system presents a somewhat less likely subject of such legislation because it already voluntarily interconnects with neighboring units of local government, the fact that Wilson has made substantial investment to achieve an abundant water supply to the point that it maintains a level of excess capacity could cut against it.

ISSUES OF LAW

The issue of law to be addressed in Wilson's brief is whether the State has the authority without limitation to enact laws that deprive municipalities of private property used for proprietary purposes. Wilson's position is that the State's authority with respect to private property used by local governments for proprietary purposes is comparable to the State's authority over private property owned by private corporations—that, is, it has none except in limited cases for public purposes, with just compensation, and only to the extent necessary to accomplish such purpose.

WHY *AMICUS* BRIEF IS DESIRABLE

Rather than spend an inordinate amount of time arguing each of the issues presented by this appeal and countering each of the arguments presented by Appellant State of North Carolina, the intended purpose of Wilson's *amicus curiae*

brief is to focus in particular on the relationship between the State and its municipalities, vis-à-vis the authority of the former to direct the affairs of the latter—issues that may not become fully developed by the parties in chief. Moreover, this brief also serves the interest of justice by exploring the potentially grievous consequences that a decision in favor of Appellant could cause, both at the statewide level and also more particularly with respect to Wilson’s own substantial water system investment.

Wilson’s proposed *amicus curiae* brief is attached hereto as Exhibit A and is being conditionally filed with this motion for leave.

This the 24th day of April, 2015.

CAULEY PRIDGEN, P.A.

Electronically Submitted

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this day he has served the foregoing MOTION BY THE CITY OF WILSON FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* on all parties to this action by depositing a copy of the same in the exclusive care and custody of the United States Postal Service, first class mail, postage prepaid addressed to:

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This the 24th day of April, 2015.

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