

NO. 391P15

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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CITY OF ASHEVILLE, a Municipal Corporation, )

Plaintiff, )

v. )

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

Defendants. )

From Wake County  
COA14-1255

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MOTION OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The International Municipal Lawyers Association requests leave pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure to file an *Amicus Curiae* brief in support of Plaintiff-Appellant, the City of Asheville.

**IDENTITY AND INTEREST OF AMICUS CURIAE**

The International Municipal Lawyers Association (“IMLA”) is a nonprofit, nonpartisan professional organization composed of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. Established in 1935 and consisting of more than 2,500 members, the IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

Since 1935, the IMLA has served as a national, and now international, clearinghouse of legal information and cooperation on municipal legal matters. The IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and state appellate courts.

The IMLA and its members have a compelling interest in this case. A chief concern of municipalities is providing the infrastructure and public services that

are essential to the health, safety, and welfare of local citizens. Among these essential services is the provision of clean, abundant, and affordable water. The IMLA believes that the statute at issue, Act of May 14, 2013, ch. 50, 2013 N.C. Sess. Laws 118 (the “Water/Sewer Act”), undermines efforts by local governments to provide adequate water service.

If allowed to file an amicus brief in this appeal, the IMLA will show how the decision of the Court of Appeals undermines these efforts. By rejecting constitutional challenges to the seizure of a local government’s water system, the Court of Appeals has set a disturbing precedent that will likely discourage local investment in water infrastructure.

In addition, the decision of the Court of Appeals overlooks local governments’ property rights in proprietary assets, such as the water system here. Specifically, a municipality is protected by the Fifth Amendment to the United States Constitution, as well as article I, section 19 of the North Carolina Constitution, from having property taken without just compensation. Neither *Hunter v. Pittsburgh*, 207 U.S. 161 (1907), nor *Trenton v. New Jersey*, 262 U.S. 182 (1923), cases upon which the Court of Appeals erroneously relied in direct conflict with *United States v. 50 Acres of Land*, 469 U.S. 24 (1984), provides that a state legislature can take property held by a government in a proprietary capacity without compensation and transfer that property to another government. *50 Acres*

*of Land* reinforces *Asbury v. Town of Albemarle*, 162 N.C. 247, 78 S.E. 146 (1913), in which this Court stressed property rights in proprietary assets. The decision below ignores how these property rights protect the infrastructure investments of municipal taxpayers.

**ISSUES TO BE ADDRESSED AND POSITION ON THOSE ISSUES**

*Amicus Curiae* will address whether the trial court correctly held that the Water/Sewer Act, by unilaterally transferring the City of Asheville's water system to another entity, violates the North Carolina Constitution because: it is a local law relating to health, sanitation, and/or non-navigable streams, in violation of Article II, Section 24; it violates the Law of the Land clause found in Article I, Section 19; and it effects an unconstitutional taking without just compensation under Article I, Sections 19 and 35.

On these issues, the IMLA will support the City of Asheville's position that the Court of Appeals should be reversed and that the Water/Sewer Act should be declared invalid.

**WHEREFORE**, *Amicus Curiae* IMLA respectfully moves this Court for leave to file an *Amicus Curiae* brief.

Respectfully submitted, this 1st day of December, 2015.

**ALLEGRA COLLINS LAW**

s/Electronically Submitted

Allegra Collins

NC State Bar No. 35448

allegracollins@hotmail.com

4441-106 Six Forks Rd. #108

Raleigh, NC 27609

(919) 880-9809

## **CERTIFICATE OF SERVICE**

This is to certify that the foregoing *MOTION FOR LEAVE TO FILE AMICUS BRIEF* was served by the undersigned on all parties by email addressed to counsel of record as follows:

I. Faison Hicks, Esq.  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629  
fhicks@ncdoj.gov

William Clarke, Esq.  
Roberts & Stevens, P.A.  
P.O. Box 7647  
Asheville, NC 28802  
bclarke@roberts-stevens.com

Stephen W. Petersen, Esq.  
Smith Moore Leatherwood, LLP  
434 Fayetteville Street, Suite 2800  
Raleigh, NC 27601  
steve.petersen@smithmoorelaw.com

Matthew W. Sawchak  
Ellis & Winters LLP  
P.O. Box 33550  
Raleigh, NC 27636  
matt.sawchak@elliswinters.com

Robert F. Orr  
Campbell Shatley, PLLC  
674 Merrimon Avenue, Suite 210  
Asheville, NC 28804  
bob@csedlaw.com

Robert B. Long, Jr.  
Long, Parker, Warren, Anderson & Payne, P.A.  
14 South Pack Square, Suite 600  
Asheville, NC 28802  
rkp@longparker.com

Robin T. Currin  
City of Asheville City Attorney's Office  
P.O. Box 7148  
Asheville, NC 28802  
rcurrin@ashevillenc.gov

This the 1st day of December, 2015.

**ALLEGRA COLLINS LAW**

s/Electronically Submitted

Allegra Collins