

SUPREME COURT OF NORTH CAROLINA

CITY OF ASHEVILLE,)
a municipal corporation,)

Plaintiff,)

v.)

From Wake County
No. COA14-1255

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

Defendants.)

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

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The City of Wilson (“Wilson”) respectfully moves this Honorable Court for leave to file an *amicus curiae* brief in support of Petitioner-Appellant 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 Petitioner-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 North Carolina Court of Appeals decision in this case ratifying the General Assembly's efforts to seize the City of Asheville's water system, and the potential precedential effects of such decision if allowed to stand. In particular, Wilson is concerned that similar legislation—purportedly for the public good and relying upon the precedent created by the Court of Appeals' decision—could be proposed by the General Assembly to seize, reallocate, or redistribute other municipalities' water resources, potentially even including Wilson's. Although the impetus for S.L. 2013-50 ("the

Water Act”)—the legislation at issue in this proceeding—is purportedly mismanagement of the Asheville water system, 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 believes it is less likely to be the target of such legislation because Wilson already voluntarily interconnects its water system with neighboring units of local government, the fact that Wilson has achieved and maintains excess water supply capacity due to the foresight of its elected officials and the substantial investment of its citizens and customers makes it an attractive resource nonetheless.

ISSUES OF LAW

Wilson’s *amicus curiae* brief will address the nature of the limitations on the State’s authority to enact laws that deprive municipalities of private property used for proprietary purposes; which, as set forth in the seminal North Carolina Supreme Court case *Asbury v. Albemarle*, 162 N.C. 247, 78 S.E. 146 (1913), 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. Wilson’s position is that the Court of Appeals’ decision seriously misconstrues this Court’s previous holding in *Asbury*,

leading the Court of Appeals to establish a dangerous precedent that would upend settled expectations regarding municipal ownership and property interests in proprietary undertakings.

WHY *AMICUS* BRIEF IS DESIRABLE

In contrast to Petitioner-Appellant's brief which will, out of necessity, devote equal time to each legal issue presented, the intended purpose of Wilson's *amicus curiae* brief would be to illuminate in particular the relationship between the State and its municipalities, vis-à-vis the authority of the former to seize for its own use the private property of the latter—issues that may not become fully developed by the parties in chief. Moreover, Wilson's brief would also serve the interests of justice by exploring the grievous consequences that the Court of Appeals' decision in this case could cause if left to stand, both at the statewide level and also more particularly with respect to a local government's own substantial water system investments.

This the 4th day of December, 2015.

CAULEY PRIDGEN, P.A.

Electronically Submitted

s/ Gabriel Du Sablon

Gabriel Du Sablon

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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 *AMICUS CURIAE* BRIEF 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 4th day of December, 2015.

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