

NO. 391P15

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

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

Defendants.

From Wake County
No. COA14-1255

FILED
2015 DEC -7 P 3:31
IN THE OFFICE OF
CLERK SUPREME COURT
OF NORTH CAROLINA

NORTH CAROLINA LEAGUE OF MUNICIPALITIES'
CONDITIONAL MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, and conditioned upon this honorable Court's exercising jurisdiction over Plaintiff-Appellant's constitutional appeal, or in the alternative, allowing its petition for discretionary review, the North Carolina League of Municipalities ("movant League") hereby moves for leave to file an *amicus curiae* brief in this matter. In support thereof, movant League shows this honorable Court the following:

INTEREST OF
THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES
AS AMICUS CURIAE

The North Carolina League of Municipalities, founded over a century ago in 1908, is a voluntary nonpartisan federation of approximately 540 cities, towns, and villages, collectively representing nearly 100% of the municipal population. Movant League represents and advocates the common interests of its member municipalities before all branches of state and federal government. The mission of movant League is to enhance the quality of life by promoting excellence in municipal government. Movant League carries out this mission by: providing member services that strengthen and support the effectiveness of municipal government; engaging members, staff, and stakeholders in representing municipal issues and interests; developing municipal leaders who can address the needs and interests of their citizens; and providing a unified, nonpartisan voice for municipal issues at the state and federal level.

The members of movant League have a compelling interest in legal issues affecting the powers, responsibilities, and duties of local governments as key providers of public services that are essential to the health, safety, and welfare of the citizenry. Among the most crucial of such fundamental municipal services is the provision of clean, abundant, and affordable water, and movant League's members have a highly significant stake in maintaining authority over the public

water infrastructure they have developed on behalf of their citizens. Indeed, the North Carolina Legislature has declared that, "It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law." N.C. Gen. Stat. § 160A-4.

REASONS WHY AN *AMICUS CURIAE* BRIEF IS DESIRABLE

Accordingly, it is respectfully submitted that this case is of the utmost significance to municipal governments throughout the state. Given that municipalities are the primary providers of water systems for the benefit of the local citizenry, movant League respectfully submits that this honorable Court's consideration of the broader municipal perspective would be desirable for a full and complete understanding of the complex issues and applicable law. Movant League is uniquely positioned to present the concerns of its members, who ultimately represent the interests of all municipal citizens, in this regard. Movant League's Core Municipal Principles and advocacy goals have long emphasized the need to protect local elected officials' decision-making authority over municipal public enterprise systems in order to support orderly growth and economic development, as well as the need to support measures that maximize the ability of local governments to provide and manage high-quality utility services to meet the needs of the community and protect the health, safety, and welfare of citizens. To

that end, movant League has opposed proposals that seek to weaken or remove local control over public utility assets, measures which ultimately provide disincentives for local investment in infrastructure. It is respectfully submitted that movant League is uniquely suited to brief this Court on the extremely harmful impact that affirmance of the Court of Appeals' decision (No. COA14-1255) would have on cities, towns, and villages.

ISSUES OF LAW TO BE ADDRESSED

Movant League contends that the Court of Appeals erred in reversing the trial court's order and in rejecting the arguments brought forth by the City of Asheville pertaining to the three constitutional restrictions on the General Assembly's power in enacting the 2013 Water/Sewer Act ("Transfer Provision"). Further, the Court of Appeals erred in holding that the City waived its impairment of contract claims. Movant League seeks to address the merits of the Court of Appeals' holdings and contends that the trial court's order should be affirmed in its entirety. The primary questions of law to be addressed in the brief are whether the superior court correctly held that the Transfer Provision constitutes a "local law" relating to "health" "sanitation" and "non-navigable streams" in violation of N.C. Const. Article II, § 24, and violates the North Carolina Constitution's Law of the Land clause, N.C. Const. Article I, § 19, by unilaterally transferring the City of Asheville's water system to another entity.

POSITION OF *AMICUS CURIAE*

The Court of Appeals erred in its decision reversing the trial court's order. It is the position of movant League that the superior court was correct in holding the Transfer Provision void and unenforceable, as the City, when acting in a proprietary capacity with respect to the water system, is entitled to the same protections afforded private individuals or corporations engaged in a similar business enterprise, and when the compulsory transfer in question bore no rational relationship to the Water/Sewer Act's stated purpose. The decision of the Court of Appeals should be reversed, and the trial court's order should be affirmed in all respects.

CONCLUSION

Movant League respectfully requests that this honorable Court grant movant League leave to file an *amicus curiae* brief should this honorable Court exercise jurisdiction over Plaintiff-Appellant's constitutional appeal, or in the alternative, allow discretionary review.

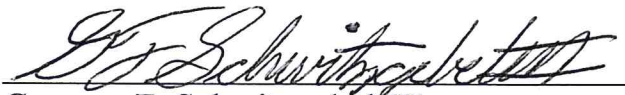
Respectfully submitted, this 7th day of December, 2015.

North Carolina League of Municipalities



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A handwritten signature in cursive script, reading "Gregory F. Schwitzgebel III". The signature is written in dark ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NORTH CAROLINA LEAGUE OF MUNICIPALITIES' CONDITIONAL MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF has been duly served on this date upon counsel for the parties by mailing a copy thereof via United States mail, first-class postage prepaid, addressed to the following:

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This is the 7th day of December, 2015.

A handwritten signature in cursive script, reading "G. F. Schwitzgebel III", written over a horizontal line.

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