

SUPREME COURT OF NORTH CAROLINA

EVERETTE E. KIRBY and Wife, MARTHA)
 KIRBY; HARRIS TRIAD HOMES, INC.;)
 MICHAEL HENDRIX, as Executor of the)
 Estate of Frances Hendrix; DARREN)
 ENGELKEMIER; IAN HUTAGALUNG;)
 SYLVIA MAENDL; STEVEN DAVID)
 STEPT; JAMES W. NELSON and wife;)
 PHYLISS NELSON; and)
 REPUBLIC PROPERTIES, LLC, a)
 North Carolina company, (Group 1)
 Plaintiffs),)

On Discretionary Review from
N.C. Court of Appeals
Case No. COA 14-184

From Forsyth County

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Defendant.

**MOTION TO FILE BRIEF AMICUS CURIAE OF
 PACIFIC LEGAL FOUNDATION AND
 CENTER FOR LAW AND FREEDOM
 IN SUPPORT OF PLAINTIFFS-APPELLEES**

RELIEF REQUESTED

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, Pacific Legal Foundation (PLF) and Center for Law and Freedom (CLF) move this Court for leave to file the accompanying Brief Amicus Curiae in support of Plaintiffs-Appellees in the above-captioned matter. The Plaintiffs-Appellees consent and the Defendant-Appellant does not oppose the filing of this motion.

IDENTITY AND INTEREST OF AMICI CURIAE

(1) PLF is a nonprofit, tax-exempt foundation incorporated under the laws of the State of California, and organized for the purpose of litigating important matters of public interest. PLF has numerous supporters and contributors nationwide, including in the State of North Carolina. Since 1973, Pacific Legal Foundation has litigated in support of property rights. PLF has participated, either through direct representation or as amicus curiae, in nearly every major property rights case heard by the United States Supreme Court in the past three decades, including *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Sackett v. U.S. Env'tl. Prot. Agency*, 132 S. Ct. 1367 (2012); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

(2) CLF is a conservative public interest law firm housed within the Civitas Institute. CLF provides free legal representation to North Carolinians in cases involving government overreach and constitutional freedoms. The Center also files

amicus curiae briefs in state and federal courts for the purpose of advancing the principles of limited, constitutional government.

REASONS WHY AN AMICUS CURIAE BRIEF IS DESIRABLE

The amici bring both a local and national perspective to the takings issue pending before the Court in the instant case. PLF has been involved with cases raising similar questions to those presented in this case, including an appearance as amicus curiae before the Florida Supreme Court in the case of *Tampa-Hillsborough Cnty. Expressway Auth. v. A.G.W.S. Corp.*, 640 So. 2d 54 (Fla. 1994), which expounded upon *Joint Ventures, Inc. v. Dep't of Transp.*, 563 So. 2d 622 (Fla. 1990), one of the cases the lower appellate court relied on as persuasive authority for its decision to find an unconstitutional taking in the instant case.

Meanwhile, CLF has a history of representing North Carolinians and seeks to protect the private property interests against the government's effort to usurp those interests without compensation.

PLF and CLF are familiar with the legal issues raised by this case. Amici supplement the arguments of the parties by offering guidance to this Court on background principles of takings law. In furtherance of their continuing mission to defend private property rights, amici urge this Court to affirm the lower court's well-reasoned decision.

ISSUES OF LAW TO BE ADDRESSED

PLF and CLF will address the following issue of law: Whether the North Carolina “Map Act,” N.C.G.S. § 136-44.50, *et seq.*, which set out and recorded a planned highway corridor for the Winston-Salem area on private property, amounted to an unconstitutional taking without compensation?

POSITION OF AMICI CURIAE

It is the position of the amici that the recording of the corridor maps amounted to a taking. Therefore, property owners within the ambit of the maps are entitled to compensation.

CONCLUSION

For the foregoing reasons, PLF and CLF respectfully request that the Court grant them leave to file an amicus curiae brief in support of Plaintiffs-Appellees.

DATED: November 6, 2015.

Respectfully submitted,

Electronically Submitted

ELLIOT ENGSTROM

N.C. Bar No. 46003

Civitas Institute

Center for Law and Freedom

100 South Harrington Street

Raleigh, NC 27603

Telephone: (919) 834-2099

Facsimile: (919) 834-2350

E-mail: elliott.engstrom@nccivitas.org

N.C. App. R. 33(b) Certification:
I certify that the attorney listed below has
authorized me to list his name on this
document as if he had personally signed.

MARK MILLER*

Fla. Bar No. 0094961

**Pro Hac Vice Pending*

Pacific Legal Foundation

8645 N. Military Trail, Suite 511

Palm Beach Gardens, FL 33410

Telephone: (561) 691-5000

Facsimile: (561) 691-5006

E-mail: mm@pacificlegal.org

Counsel for Amici Curiae

Pacific Legal Foundation and

Center for Law and Freedom

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO FILE BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CENTER FOR LAW AND FREEDOM IN SUPPORT OF PLAINTIFFS-APPELLEES was served on all parties by depositing true copies thereof with the U.S. Postal Service, first-class mail, postage prepaid, the 6th day of November, 2015, addressed to the following:

Matthew H. Bryant
Hendrick Bryant Nerhood Sanders
& Otis, L.L.P
723 Coliseum Drive Suite 101
Winston-Salem, NC 27106
Counsel for Plaintiffs

John F. Maddrey
Solicitor General
Dahr Joseph Tanoury
Special Deputy Attorney General
N.C. Department of Justice
Transportation Section
1505 Mail Service Center
Raleigh, NC 27699
Counsel for Defendant

Electronically Submitted
ELLIOT ENGSTROM
N.C. Bar No. 46003
Civitas Institute
Center for Law and Freedom
100 South Harrington Street
Raleigh, NC 27603
E-mail: elliott.engstrom@nccivitas.org
Counsel for Amici Curiae
Pacific Legal Foundation and
Center for Law and Freedom