

THE SUPREME COURT OF NORTH CAROLINA

GREGORY P. NIES and DIANE S. NIES,)	
)	
Plaintiffs,)	
)	
v.)	<u>From Carteret County</u>
)	COA 15-169
TOWN OF EMERALD ISLE, a North)	
Carolina Municipality,)	
)	
Defendant.)	

MOTION TO FILE BRIEF AMICUS CURIAE OF CIVITAS INSTITUTE CENTER FOR LAW AND FREEDOM IN SUPPORT OF PLAINTIFFS-APPELLANTS

RELIEF REQUESTED

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the Civitas Institute Center for Law and Freedom (CLF) moves this Court for leave to file the accompanying Brief Amicus Curiae in support of Plaintiffs-Appellants in the above-captioned matter. The Plaintiffs-Appellants consent and the Defendants-Appellees take no position on the filing of this motion.

IDENTITY AND INTEREST OF AMICUS CURIAE

CLF is a Raleigh-based public interest law firm housed within the Civitas Institute, a nonprofit corporation formed pursuant to 26 U.S.C. § 501(c)(3). It provides free legal representation to North Carolinians in compliance with N.C.G.S. § 84-5.1. These cases involve the protection and enforcement of the rights of North Carolinians, particularly under state law. This case is therefore of particular interest to CLF, as it implicates the very common law foundations of our state's legal system.

Amicus further advocates for coastal private property rights as a matter of policy. CLF has represented the interests of coastal North Carolinians as wind turbines arrive in the state, both in administrative courts and before county commissions. However, none of this litigation has yet reached the appellate level.

CLF also considers its amicus practice to be near the core of its mission, as appellate courts have the duty and authority to interpret and make the laws by which North Carolinians live their lives. CLF therefore has previously filed amicus briefs at the North Carolina Supreme Court and the United States Supreme Court in cases involving the proper scope of government power.

REASONS WHY THE AMICUS BRIEF IS DESIRABLE

CLF brings an additional historical perspective to the public trust issue pending before the Court in this case. It proposes to brief this Court on how the Plaintiffs' situation fits into the broader context of North Carolina's history as a

common law state. In particular, CLF seeks to help the Court distinguish between the civil law and common law public trust doctrines. Such a brief would supplement the arguments of the parties by offering the Court a broader lens through which to view this particular case.

ISSUES OF LAW TO BE ADDRESSED

CLF seeks to brief the Court on three issues. *First*, it proposes to inform the Court about North Carolina's Anglo-American common law tradition of protecting private property rights. The State of North Carolina protects the right to own, maintain, and exclude others from private property. These protections are rooted in the Anglo-American common law, and they survive in North Carolina's modern constitution and laws.

Second, CLF seeks to inform the Court as to how this common law tradition shapes North Carolina's public trust doctrine. Amicus proposes to do so by distinguishing the common law public trust doctrine from its civil law counterpart. It then seeks to explain how the differences between the two are relevant and dispositive in this case.

Third, amicus seeks to argue that the Court of Appeals' finding that North Carolina's public trust doctrine applies to private, dry sand beaches is inconsistent with the common law tradition. It seeks to do so by showing that the Defendant has physically occupied the Plaintiffs' property, and that this physical invasion goes

beyond the scope of public trust rights in North Carolina, making the Defendants' actions a taking requiring compensation.

POSITION OF AMICUS CURIAE

It is the position of CLF that the public trust doctrine in North Carolina does not extend to private, dry sand beaches. Therefore, the Defendant's physical occupation of the Plaintiffs' private, dry sand beach property constitutes a taking.

CONCLUSION

For the reasons stated above, CLF respectfully requests that the Court grant it leave to file the accompanying amicus curiae brief in support of Plaintiffs-Appellants

DATED: The 23rd day of May, 2016.

ELECTRONICALLY SUBMITTED

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*N.C. R. App. P. 33(b) Certification:

I certify that the certified law student listed below has authorized me to list his name on this document as if he had personally signed.

Korey Kiger
Certified Law Student

Counsel for Amicus Curiae Civitas Institute Center for Law and Freedom

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO FILE BRIEF AMICUS CURIAE OF CIVITAS INSTITUTE CENTER FOR LAW IN SUPPORT OF PLAINTIFFS-APPELLANTS was served on all parties by depositing true copies thereof with the United States Postal Service, first-class mail, postage prepaid, the 23rd day of May, 2016, addressed to the following:

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