

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Nos. 519-522 MAL 2021

**CHESTER WATER AUTHORITY,
Petitioner**

v.

**AQUA PENNSYLVANIA, INC., CITY OF CHESTER, WELLS FARGO BANK,
NA, DELAWARE COUNTY, CHESTER COUNTY, SUSQUEHANNA RIVER
BASIN COMMISSION, DELAWARE RIVER BASIN COMMISSION,
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
TRUSTEES OF CHESTER WATER AUTHORITY, NICOLE WHITAKER,
WANDA MANN, MICHELLE CONTE, TYLER THERRIAULT, KATHRYN A.
TOWNSEND, VICTOR S. MANTEGNA, AND WOLF EQUITY L.P.,
Respondents**

**ANSWER OF THE CITY OF CHESTER IN OPPOSITION TO THE
UNTIMELY APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF OF TWO MEMBERS OF THE LEGISLATURE IN
SUPPORT OF THE CHESTER WATER AUTHORITY'S
PETITION FOR ALLOWANCE OF APPEAL**

*Petition for Allowance of Appeal from the September 16, 2021 Order of the
Commonwealth Court of Pennsylvania; Nos. 489, 504, 514, and 685 CD, 2020
(Consolidated) Reversing the orders of the Court of Common Pleas of Delaware
County, Orphans 'and Civil Divisions, Nos. 0-217-2019 & CV-2019-5976*

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Pursuant to Rule 123(b) of the Pennsylvania Rules of Appellate Procedure, Respondent City of Chester (the “City”) respectfully submits this answer in opposition to the **untimely** application for leave to file *amicus curiae* brief submitted by two members of the Legislature in support of the petition for allowance of appeal filed by the Chester Water Authority (the “CWA”). In support of its answer:

1. The City respectfully submits that there are two independent reasons for denying the application filed by Speaker of the House of Representatives Bryan Cutler (“Cutler”) and Pennsylvania State Representative John Lawrence (“Lawrence”).

2. **Reason One.** The narrow issue certified and decided by the five Judge majority in the Commonwealth Court and sought to be reviewed by the CWA in this Court was “whether section 5622(a) of the Municipality Authorities Act (MAA), 53 Pa. C.S. § 5622(a), authorizes (or, more appropriately, continues to authorize) a municipality to obtain the assets of a water authority that it created – a water authority that eventually expanded to provide water services outside the borders of the municipality and into other counties – in light of section 1 of Act 73 of 2012, which added section 5610 (a.1) to the MAA, 53 Pa. C.S. § 5610 (a.1), and transformed the governance structure of such an authority.” *See* the City’s Answer to the CWA’s Petition for Allowance of Appeal at 4, quoting Judge McCullough’s Opinion at 2 (footnotes omitted).

3. All section 5610(a.1) did was expand the CWA's board to include representatives not just from the City but, in addition, from Delaware County and Chester County. See the City's Answer to the CWA's Petition for Allowance of Appeal at 5.

4. In briefing this issue in the Commonwealth Court and this Court, none of the parties has found or cited to any legislative history explaining the intent behind the enactment of section 5610(a.1) in 2012.

5. The only legislative history Cutler and Lawrence have found, if it can be called that, is a reference to the "Pa. House Journal, 2012, Reg. Sess. No. 43 (confirming that the additional board members 'would represent authority customers on rates, service problems and other issues.')." Proposed Amicus Curiae Brief at 9. Needless to say, this reference hardly discloses any legislative intent to eviscerate the City's rights under Section 5622(a) of the MAA.

6. It is for this reason that Cutler's and Lawrence's application readily admits that their proposed *amicus curiae* brief is intended "to contribute to an accurate judicial assessment of the **General Assembly's legislative intent** with respect to the 2012 amendment of Section 1 of Act 73." Application at ¶ 6 (emphasis added).

7. However, it is patently improper for any member or members of the Legislature to provide their so-called version of the "legislative intent" behind a

statutory enactment in the absence of any record of such “legislative intent.” For this reason alone, the application should be denied.

8. **Reason Two.** There are at least three defects in the application given the requirements of the Pennsylvania Rules of Appellate Procedure governing attempts to file *amicus curiae* briefs.

9. **Defect One.** Pa.R.A.P. 531(b)(4) requires that “[a]n *amicus curiae* brief must be filed on or before the date of the filing of the party whose position as to affirmance or reversal the *amicus curiae* will support.”

10. Cutler’s and Lawrence’s proposed *amicus curiae* brief is intended to support the CWA’s petition for allowance of appeal. Application at 1.

11. The CWA filed its petition for allowance of appeal on September 17, 2021. Cutler and Lawrence filed their application and proposed *amicus curiae* brief on October 8, 2021 – **21 days later**. Their application is clearly untimely.

12. **Defect Two.** Pa. R.A.P. 531(b)(2)(i) requires that a proposed *amicus curiae* brief must have a statement “disclos[ing] the identity of any person or entity other than the *amicus curiae*, its members or counsel who (i) paid in whole or in part for the preparation of the *amicus curiae* brief.” This is a very important requirement in order to disclose to the court and the parties all of the persons and entities behind the *amicus curiae* filing.

13. Cutler and Lawrence have not complied with this requirement. Instead, they have merely stated that “[n]o person or entity other than the Proposed Amici or the undersigned counsel have aided in whole or in part in the preparation or authorship of the proposed *amicus curiae* brief.” Application at ¶ 11; proposed *Amicus Curiae* Brief at 2. Their statement only complies with Pa. R.A.P. 531(b)(2)(ii).

14. **Defect Three.** Pa. R.A.P. 531(b)(1)(ii) requires, absent leave of court, that a party seeking to file an *amicus curiae* brief “in support of or against a petition for allowance of appeal” must have “participated in the underlying proceeding as to which the petition for allowance of appeal seeks review.”

15. Neither Cutler nor Lawrence participated in the proceedings before the Commonwealth Court.

16. Accordingly, for each of the foregoing three reasons alone, the untimely application should be denied.

WHEREFORE, the City respectfully requests that this Court deny the application filed by Cutler and Lawrence. In the event this Court grants their application, the City respectfully requests 14 days to file a brief in response to their proposed *amicus curiae* brief.

Respectfully submitted,

Dated: October 19, 2021


BALLARD SPAHR LLP

/s/ David H. Pittinsky

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PUBLIC ACCESS POLICY CERTIFICATION

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 19, 2021

/s/ David H. Pittinsky
David H. Pittinsky (I.D. No. 4552)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused the foregoing to be served via the Court's electronic filing system on all counsel of record.

Dated: October 19, 2021

/s/ David H. Pittinsky
David H. Pittinsky (I.D. No. 4552)