

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

**Nos. 519 MAL 2021, 520 MAL 2021, 521 MAL 2021, 522 MAL 2021
(Consolidated)**

**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**

**REPLY TO THE CITY OF CHESTER IN FURTHER SUPPORT OF
APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

**ON CONSIDERATION FROM THE COMMONWEALTH COURT OF PENNSYLVANIA,
DATED SEPTEMBER 16, 2021
CASE NOS. 489 CD 2020, 504 CD 2020, 514 CD 2020, 685 CD 2020**

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Proposed Amici, Speaker of the Pennsylvania House of Representatives Bryan Cutler and Pennsylvania State Representative John Lawrence, through undersigned counsel, hereby submit this Reply in further support of their Application for Leave (“Application”) to file their Proposed Amicus Curiae Brief (“Proposed Amicus Brief”) for the Court’s consideration in addressing the Petition for Permission to Appeal filed in the above-captioned appeal.

In Response to the Application, the City of Chester has proffered two reasons why it believes this Court should deny leave to file the Proposed Amicus Brief. As set forth below, none of the arguments advanced by the City warrant denial of the Application.

The City of Chester first notes that there is sparse legislative history surrounding the enactment of 53 Pa. C.S. § 5610(a.1). Because of this, the City argues that 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.’” (Resp., at ¶ 7). However, the City is flatly wrong in its contention that the Proposed Amicus Brief is based solely on what it terms a “sparse” legislative history, as well as in its assertion that there is an “absence” of evidence of legislative intent.

Contrary to the City’s position, “legislative intent” is not gleaned solely from legislative history, which is why the Proposed Amicus Brief *references legislative*

history only twice. Instead, Proposed Amici base their Application almost entirely upon: (1) the plain language of the statutes at issue and (2) the incongruous practical consequences that would flow from acceptance of the Commonwealth Court’s interpretation of those provisions. (*See Proposed Br.*, at 8-19). The City is simply wrong as a matter of law in arguing that it is “patently improper” to base legislative intent on these grounds. *See Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 647 (Pa. 2021) (“The best indication of legislative intent is the plain language of the statute.”); 1 Pa. C.S. § 1921(c)(6) (providing that the practical consequences of an interpretation can be considered when evaluating “the intention of the General Assembly.”).

Next, the City identifies three supposed procedural “defects” that warrant denial of the Application, each equally unpersuasive than the other.

The City first argues that the Application was untimely because Rule 531(b)(4) provides that an amicus *brief* (not an Application for Leave, which was the actual filing made by Proposed Amici) 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.” (Resp., ¶ 9.) The argument is of no moment for two reasons.

First, the City, like its co-Appellee Aqua, apparently misunderstands what is pending before this Court. There has been no amicus brief filed by Proposed Amici (that’s why they are called “Proposed” Amici). Instead, in compliance with Rule

531(b)(1), Proposed Amici have appropriately filed an Application for Leave seeking to file the Proposed Amicus Brief. This is precisely what Rule 531(b)(1) requires, as an amicus brief can only be filed (1) during merits briefing, which is not applicable here; (2) in support of or against a petition for allowance of appeal, if the amicus curiae participated in the underlying proceeding as to which the petition for allowance of appeal seeks review, which is also not applicable here as Proposed Amici did not participate in the underlying proceeding in Commonwealth Court; or (3) by leave of court, which is the procedure properly invoked by Proposed Amici in filing the pending Application. *See* Pa. R.A.P. 531(b)(1)(i)-(iii).

Second, the City, also unconvincingly like its co-Appellee Aqua, cites Rule 531(b)(4) governing the timing of the filing of amicus briefs as somehow applicable to a different filing – one expressly authorized by Rule 531(b)(1) – specifically Proposed Amici’s Application for Leave. Of course, Rule 531(b)(4) has no application to the timing of the submission of an *Application for Leave*, which is what Proposed Amici filed. There is no explicit timeframe for filing an Application for Leave in the Appellate Rules and to suggest that an Application for Leave need be filed within the same time frame as the Rule applicable to amicus briefs filed without the need for leave of court, *see* Pa.R.A.P. 531(b)(1)(i)-(ii), is illogical.

The City compounds its error by incorrectly assuming that in this case, the “filing of the party” referenced in Rule 531(b)(4) is the Chester Water Authority’s

Petition for Allowance of Appeal, filed September 17, 2021. (*Id.*) However, the “filing of the party” referred to in the Rule is obviously a reference to a party’s *merits brief and* cannot possibly mean a Petition for Allowance of Appeal, as the City claims. Curiously, under the reading posited by the City, the Rule would require parties to file an Application for Leave *before* any party even files a Petition for Allowance of Appeal, *i.e., before the case even exists*. It would be patently absurd to interpret Rule 531(b)(4) in this manner, as it would not be possible to file an Application for Leave to file an amicus brief in a case that does not exist and for which there is no assigned docket. *See* 1 Pa. C.S. § 1922(1) (courts should not interpret in a manner that leads to an absurd result).

In sum, Proposed Amici’s Application for Leave is perfectly timely, having been filed in accordance with Rule 531(b)(1)(iii), and no timeframes outlined in Rule 531(b)(4) having relevance to the Application. There is no timeframe for the filing of an Application seeking leave of court to file an amicus brief under Rule 531(b)(1)(iii), and the City’s arguments to the contrary should be disregarded by this Court.

Next, the City argues that the Proposed Amicus Brief does not contain the statement required by Rule 531(b)(2)(i) because Proposed Amici’s statement that “No person or entity other than the Amici Curiae or their counsel have aided in whole or in part in the preparation or authorship of this brief” does not use the verbatim

language used in Rule 531(b)(2)(i). (Resp., ¶ 12). Again, the City misinterprets the governing procedural rules. The cited Rule only requires disclosure if an individual or entity (other than Amici or their counsel) paid for the preparation of the brief or authored the brief. Obviously, if no individual or entity did so – which they did not in this case – there is no disclosure required. Thus, the averment included by Proposed Amici on page 2 of the Proposed Amicus Brief is certainly compliant with the cited Rule.

Finally, the City contends that the Application for Leave should be denied because Rule 531(b)(1)(ii) provides that “absent leave of court,” a proposed amicus must have participated in the underlying proceedings. (Resp., ¶¶ 14-16). Again, it is as if the City misunderstands what filing is pending before this Court. This is precisely what Proposed Amici have done – sought leave of this Court to file the Proposed Amicus Brief by the pending Application. Should leave be granted, the Proposed Amicus Brief will be filed. Any suggestion by the City that such a filing, made after the grant of leave by this Court, is untimely is unworthy of this Court’s consideration or Proposed Amici’s response.

CONCLUSION

For all the foregoing reasons, the Court should grant Proposed Amici’s Application For Leave, authorize the filing of the Proposed Amicus Brief, and grant

review of the Order and decision of the Commonwealth Court issued on September 16, 2021, with the benefit of Proposed Amici's participation.

Respectfully submitted,

ELLIOTT GREENLEAF, P.C.

Dated: October 29, 2021

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

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

Dated: October 29, 2021

/s/ Jarad W. Handelman
Jarad W. Handelman, Esquire

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

Date: October 29, 2021

/s/ Jarad W. Handelman
Jarad W. Handelman, Esquire