No. 326PA19 FIFTEEN-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

CHERYL LLOYD HUMPHREY LAND INVESTMENT COMPANY, LLC, Plaintiff-Appellee, v. RESCO PRODUCTS, INC. and PIEDMONT MINERALS COMPANY, INC., Defendants-Appellants.	)	From Orange County

****

DEFENDANTS-APPELLANTS' REPLY BRIEF

****

INDEX

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

No. 326PA19 FIFTEEN-B DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

CHERYL LLOYD HUMPHREY LAND INVESTMENT COMPANY, LLC, Plaintiff-Appellees, v. RESCO PRODUCTS, INC. and PIEDMONT MINERALS COMPANY, INC., Defendants-Appellants.	)	From Orange County

****

DEFENDANTS-APPELLANTS' REPLY BRIEF

****

INTRODUCTION

This Reply Brief will address both Plaintiff-Appellee Humphrey Land's Response Brief and the Solicitor General's Amicus Curiae Brief.

The parties and the Solicitor General all agree that the Petition Clause, and the *Noerr-Pennington* Doctrine, generally apply to state-law tort claims. They agree further that some, but not all, speech aimed at influencing government decision-making is immune from liability. Amicus Br. at 11, 17; Resp. Br. at 8-10. But Humphrey Land and the Solicitor General both fail to recognize that the unique setting of Resco's petitioning speech here – a public meeting where public officials convened to decide the public's business – must confer absolute immunity from tort

liability on the petitioning speaker. A public meeting conducted under North Carolina's Open Meetings Law, N.C.G.S. § 143-318.9 *et seq.,* is the paradigm setting where citizens' petitioning speech should be protected from civil liability. Only if citizens' speech is immune from retaliatory litigation can the vital First Amendment and Petition Clause interests at stake be vindicated.

The approaches suggested by Humphrey Land and the Solicitor General fail to satisfactorily address Petition Clause interests and would create an intolerable threat to citizens' petitioning speech. The Solicitor General proposes that this Court adopt a fact-intensive inquiry that would subject citizen speakers at public meetings to prolonged litigation with opponents of their speech. Humphrey Land asks this Court to mete out immunity based on the speaker's identity and viewpoint. Neither approach is workable in the context of petitioning speech at a public meeting before a public body, because they would be confusing to and impractical for speakers.

A case-by-case, multi-factor, fact-intensive inquiry may be satisfying for lawyers (and perhaps some judges), but it is opaque and daunting to citizen speakers. Those speakers simply want to express their views to public officials at a public meeting without risking liability. And a rule that metes out immunity differently depending on the speaker's identity or the viewpoint she expresses violates basic First Amendment principles. Therefore, Resco asks this Court to reverse the decision of the Court of Appeals, affirm the trial court's dismissal, and hold that Resco's statements – made at a public meeting before a public body – are protected by the Petition Clause and immune from "misrepresentation" tort liability.

ARGUMENT

Humphrey Land portrays Resco as unworthy of First Amendment and Petition Clause protection because, as a for-profit firm, it acts in its economic self-interest. Resp. Br. at 18 ("Defendants in this case do not represent any community interest group, or collection of individuals . . . Defendants' actions were not for some 'greater good' or higher purpose . . ."). But protection for petitioning speakers at a public meeting cannot depend on the speaker's identity or perceived self-interest. Individual citizens, community groups, grassroots organizations, and businesses are all entitled to express their views to the public officials who govern them about what they believe is in their individual or collective self-interest.[1] And Humphrey Land plainly had its own financial interest in mind when it sought Town approval to rezone its land. It

[1] Humphrey Land repeatedly suggests that Resco's motivations for speaking up at the public meeting were "for the purpose of purchasing the Property at a discount and to avoid any higher costs associated with increased safety measures." Resp. Br. at 5, 7, 14, 18. But as Judge O'Foghludha correctly reasoned (R p 98), petitioning activity that is directed toward obtaining governmental action is protected activity, regardless of motive or intent. *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 59-60 (1993); *E. R.R. Presidents Conference et al. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 139 (1961) ("[D]isqualify[ing] people from taking a public position on matters in which they are financially interested would thus deprive the government of a valuable source of information and, at the same time, deprive the people of their right to petition in the very instances in which that right may be of the most importance to them. We reject such a construction . . ."). Moreover, a 5.5-acre parcel zoned for residential use sitting adjacent to a mine is of little use to Resco. (R p 95) ("But the Town of Hillsborough still rezoned it as residential. So what's the advantage to the blasting company to do that? . . . [W]hat they've got is they've got a five-acre residential piece of property beside a mine and, you know, what good is that?") (O'Foghludha, J.).

now improperly seeks to pursue that interest by imposing civil liability on Resco for its petitioning speech.[2]

On 16 January 2014, Resco appeared through a representative who spoke to the Hillsborough Town Board and Planning Board (together, the "Town Board") in opposition to Humphrey Land's rezoning petition. Humphrey Land was seeking to rezone a 45-acre parcel adjacent to Resco's mining operation for residential development. During the meeting, Resco informed the Town Board that it engaged in explosive blasting at the mine and cited the prospective risks of building a proposed residential development within 300 feet from those operations. Despite Resco's statements at the public meeting, Humphrey Land's petition was approved.

About a month later, on 28 February 2014, Humphrey Land sold that same 45-acre parcel to Braddock. Braddock bought the acreage at $85,000 per acre for a sale price of approximately $4 million dollars. On 9 October 2014 however, Braddock exercised its right under the Contract of Sale to exclude 5.5 acres adjacent to Resco's mine from the final purchase. Although it had consented to Braddock's exercise of its right to exclude the 5.5 acres, Humphrey Land then sued Resco for tortious interference with prospective economic advantage in retaliation for Resco's

---

[2] Both Humphrey Land and the Solicitor General repeatedly refer to "private parties." But in the context of a public meeting, *any* petitioning speaker who is not a government official is a "private party." An individual citizen, a neighborhood group, a nonprofit organization and a small business are all "private parties." The fundamental purpose of the Petition Clause is to protect *private* parties' petitioning of *public* officials for redress of grievances.

statements opposing the petition to rezone Humphrey Land's parcel at a public meeting of the Town Board.[3]

Humphrey Land has now succeeded in punishing Resco for publicly expressing its concern about the rezoning and its potential risks to residents of the proposed development. Resco has spent three years embroiled in this litigation initiated by Humphrey Land. Having been sued for comments made at a public meeting before a public body, Resco successfully won dismissal in the Superior Court only to see that decision reversed by the Court of Appeals, necessitating review by this Court.

This Court of Appeals' flawed ruling, if affirmed, will have ramifications well beyond Resco and its opposition to a rezoning petition in Hillsborough. Citizens who raise concerns and express views to their school board, city council, or county commission will risk civil liability and prolonged litigation for alleged "overstatement" or "misrepresentation." This risk will exist even if the public body does not take the action the speaker seeks. Any citizen seeking to speak up at a public meeting—even about potential safety and health concerns—will be reluctant to exercise the First Amendment right to petition government officials because a lawsuit

---

[3] Humphrey Land argues that it successfully pled claims for both tortious interference with contract and tortious interference with prospective economic advantage but Resco's statements to the Town Board were made *before* Humphrey Land and Braddock entered their contract. A valid contract did not exist at the time of the alleged conduct. Thus, the sole claim before this Court is an attenuated "tortious interference with prospective economic advantage" claim based on Resco's alleged "knowledge" of "negotiations" and non-actionable misrepresentations of future risks, rather than past or existing facts. *Keith v. Wilder*, 241 N.C. 672, 675, 86 S.E.2d 444, 446 (1955) (holding that to be actionable a misrepresentation must relate to a past or existing fact).

may follow. Before signing up to speak at a public meeting, citizens may be compelled to seek legal advice for an assessment of the threat of retaliatory litigation. And freedom to engage in petitioning speech may be limited to those who can afford to defend such litigation against allegations of "overstatement" or "misrepresentation."

It's easy to understand how the Court of Appeals' decision impacts Petition Clause rights if we recast the parties below a bit. Suppose the rezoning applicant wants to locate a solid waste container (think "dumpster") transfer yard in an aging residential neighborhood. Two doors down from the lot to be rezoned lives a retired teacher. The teacher envisions a stream of noisy diesel trucks coming and going at all hours to drop containers at the transfer yard during their daily runs throughout the town. Overnight, the containers get picked up and hauled to the landfill. The aroma of solid waste will waft through the neighborhood.

But when our retired teacher signs up to speak in opposition to the rezoning before the city council, the applicant's representative sidles over and tells the teacher that any "overstatement" or "misrepresentation" made to the council could subject the teacher to civil liability if the rezoning is denied. Even if everything the teacher says about feared disruption, noise, and odor is true, the teacher will need to be prepared to prove that in court. Who can afford that risk?

Resco asks this Court to end Humphrey Land's retaliatory action, reverse the decision of the Court of Appeals, and hold that Resco's statements made at a public meeting before a public body are immune from civil liability. In that setting, the balance between Petition Clause rights and the risk that a citizen's speech might

"overstate" or "misrepresent" the consequences of government action must be struck in favor of the First Amendment and the right to petition.

I. A PUBLIC MEETING CONVENED BY A PUBLIC BODY IS A UNIQUE SETTING FOR PETITIONING SPEECH.

The Solicitor General and Humphrey Land misconstrue Resco's argument regarding the scope of absolute First Amendment immunity for petitioning speech. They suggest that Resco is arguing that the *Noerr-Pennington* Doctrine and the First Amendment "automatically confer immunity in *any* given case." Amicus Br. at 11 (emphasis added). Not so.

Resco's specific claim of immunity derives from the unique function of public meetings, which are expressly governed by North Carolina's Open Meetings Law, N.C.G.S. § 143-318.9 *et seq*. The State's declared public policy is that the "public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions" of government "exist solely to conduct the people's business," and that meetings of these bodies be "conducted openly." N.C.G.S. § 143-318.9. Public bodies must keep minutes that are public records. N.C.G.S. § 143-318.10. They must provide notice to the public of the schedule of their regular meetings, and any emergency meetings. N.C.G.S. § 143-318.12. The meetings may be broadcast, photographed, and recorded. N.C.G.S. § 143-318.14. This public policy and these statutory requirements signal the unique role that public meetings play in local self-government. They also create structural safeguards to ensure that speakers can provide their views to public bodies in public meetings, where other speakers can challenge, correct, and oppose those views and the news media can report them.

Petitioning speech in the public meeting setting should be immune from civil liability, even when that speech is passionate or imperfect.

Other types of petitioning speech in different contexts can present problems. The Solicitor General cites *McDonald v. Smith*, a United States Supreme Court decision, and *State ex rel. Cooper v. McClure*, a North Carolina Superior Court decision, to support its argument to constrain Petition Clause immunity. *McDonald* dealt with a defamatory letter written to elected officials to influence a federal appointment. *McClure* involved firms that allegedly colluded to inflate government contract pricing by submitting false billing information in a government survey. *McDonald*, 472 U.S. 479 (1985); *McClure*, No. 03-CVS-5617, 2004 WL 2965983, at *1 (N.C. Super. Ct. Dec. 14, 2004), *amended on reconsideration on other grounds,* 2005 WL 3018635 (N.C. Super. Ct. Oct. 28, 2005). Neither case addresses statements made to a public body during an open meeting attended by members of the public, including those potentially impacted by the decisions the public body makes.

Unlike a defamatory letter to an elected official or a pricing survey submitted during a government contract bid process, public meetings before public bodies are appropriate forums for absolute First Amendment immunity because of their unique characteristics and the safeguards put in place by North Carolina's Open Meetings Law. While valid concerns exist about the possibility of untruthful speech in certain regulatory or adjudicative settings, those settings lack the safeguards that are present at a public meeting convened by a public body. These structural safeguards provide protection against misinformation in the public meeting setting, so that any

tension between Petition Clause rights and the government's interest in accurate information can be resolved in favor of petitioning speech. The alternative – allowing an opponent to leverage civil tort liability and the litigation process to deter or punish a speaker's petitioning speech at a public meeting – would intolerably violate Petition Clause rights.

A. The Unique Characteristics Of A Public Meeting Before A Public Body Make It An Appropriate Forum For Absolute Immunity.

Public meetings are an essential function of North Carolina local government whose unique characteristics provide safeguards that protect against misinformation. *See Mercatus Grp v. Lake Forest Hosp.*, 641 F.3d 834, 844 (7th Cir. 2011) (reasoning that debate in a political setting can accommodate fraud because there are specific safeguards which could reveal the statements' falsity). In North Carolina, there are four such structural safeguards:

- Public bodies – town and school boards, city councils, county commissions – are composed of multiple members whose collective knowledge of their communities is greater than any individual member's. Voters elect these officials to scrutinize and evaluate the information they hear at public meetings.

- At a public meeting, proponents *and* opponents of any given proposal can be heard and provide their different perspectives to the officials making the decision. This allows inaccurate information to be challenged in real time, during the meeting itself.

- Virtually every such public body has professional staff who can fact-check and validate information presented in the public meeting context.

- Interested citizens and news media attend and monitor public meetings. The Open Meetings Law ensures notice so that no action can be taken without citizen attendance. The public nature of the meeting provides an additional safeguard against false or misleading information.

These safeguards are mandated by North Carolina statutory and case law, and comprehensively mitigate the risk that misinformation from a petitioning speaker at a public meeting could impact a public body's decision-making.

B. North Carolina's Open Meetings Law Safeguards Against Untruthful Speech in Public Meetings Before Public Bodies.

North Carolina's Open Meetings Law imposes an array of protections and statutory requirements that make such meetings a unique forum for petitioning speech. They are closely regulated to ensure public notice because the purpose of the Open Meetings Law is to "promote openness in the daily workings of public bodies." *Boney Publishers, Inc. v. Burlington City Council*, 151 N.C. App. 651, 658, 566 S.E.2d 701, 706 (2002) (*citing H.B.S. Contractors, Inc. v. Cumberland Cty. Bd. of Educ.*, 122 N.C. App. 49, 54, 468 S.E.2d 517, 521 (1996)). Even closed meeting minutes are subject to disclosure once the need for closure expires. N.C.G.S. § 143-318.10 (minutes of all official meetings, including closed sessions, are public records under the Public Records Law). The Open Meetings Law also requires that all official meetings of a public body be open to the public, and any person is entitled to attend. N.C.G.S. § 143-318.9. Given the required public access to a public meeting before a public body, both the press and the public are present to point out if there were any misrepresentations in the petitioning speech.[4] These statutory protections exist to

---

[4] And the press' eventual report about that public meeting or other government action is protected by the fair report privilege. *Reuber v. Food Chemical News*, 925 F.2d 703, 712 (4th Cir. 1991) ("The fair report privilege also shields news organizations from defamation claims when publishing information based upon government reports or actions."); *Desmond v. News and Observer Pub. Co.*, 241 N.C. App. 10, 25-28, 772 S.E.2d 128, 140-41 (2015); *LaComb v. Jacksonville Daily News Co.*, 142 N.C. App. 511, 512, 543 S.E.2d 219, 220 (2001).

protect the procedural integrity of public meetings before public bodies. It is unnecessary to create civil liability for petitioning speech in that unique setting – that could, for example, allow a developer seeking rezoning to leverage litigation threats to silence critics.

For these reasons, this Court should reverse the decision of the Court of Appeals. It should uphold the trial court's Order dismissing Humphrey Land's Complaint, because Resco's petitioning activity occurred during a public meeting before a public body, and is therefore, absolutely protected by the First Amendment.

II. THE FRAUD EXCEPTION TO NOERR-PENNINGTON IS IMPRACTICAL AND INSUFFICIENT TO PROTECT PETITIONING SPEECH IN THE PUBLIC MEETING CONTEXT.

The Solicitor General suggests that this Court, and the law protecting Petition Clause speech at public meetings, should differentiate between "legislative" and "adjudicatory" settings and "political" and "non-political" speech when deciding whether false statements are immunized from civil liability."[5] However satisfying such categorical, nuanced distinctions may be to lawyers, they are confusing to citizen speakers. The Seventh Circuit Court of Appeals described the chilling effect such a

---

[5] Under North Carolina law, a misrepresentation must be of a past or existing fact, not some future possibility. *See, e.g. Keith v. Wilder*, 241 N.C. at 675, 86 S.E.2d at 446; *Harton v. Harton*, 81 N.C. App. 295, 298-99, 344 S.E.2d 117, 119-20 (1986). While Section II of Resco's Reply Brief repeatedly refers to "fraudulent" statements and "misrepresentations," Humphrey Land's Complaint makes no allegation that Resco misrepresented a past or existing fact that would constitute a misrepresentation. Rather, all the "misrepresentations" Humphrey Land alleges concerned the *future, prospective* risk that explosive blasting *could have* on the *proposed* residential community located next to Resco's blasting operations. Humphrey Land argues in its Response Brief that "facts and calculations" were misrepresented, but no such allegations appear in the Complaint. Resp. Br. at 7.

rule would have on petitioning speech when a law is unclear as to whether protections will or will not be applied:

> Before applying these factors to the case now before us, however, we must note the significant constitutional concerns implicated by the fraud exception's application to petitioning activity. *Noerr-Pennington* was crafted to protect the freedom to petition guaranteed under the First Amendment. . . Accordingly, we have recognized that the application of the sham exception might inadvertently stifle the legitimate exercise of this core right. That risk grows when, as may often be the case, a layperson is uncertain whether the governmental action at issue is adjudicatory or legislative. Such uncertainty may stem either from an unfamiliarity with the relevant legal principles due to a lack of legal counsel, or from a more basic unfamiliarity with the specific proceedings at issue . . . Regardless of its source, the greater the uncertainty, the more likely that laypeople will hesitate to seek redress, out of fear that their petitioning activity will subject them to legal liability.

Mercatus Grp, 641 F.3d at 846-47 (internal citations omitted).

Mercatus implicitly acknowledges that no lay citizen or small business owner should be required to consult an attorney who would then gauge what level of protection her speech might be entitled to before addressing her publicly elected officials at a public meeting. And, to that citizen speaker, the idea that speech to government officials about a topic of local controversy might be protected differently based on whether it was later deemed "political" or "non-political" by a judge is unhelpful. The Petition Clause entitles citizens to speak freely and without fear of liability or prolonged litigation to public officials at public meetings that are convened for that very purpose.

Humphrey Land (and the Solicitor General) express valid concerns about the possibility of untruthful speech in certain adjudicative or regulatory settings. But

requirements already exist for certain kinds of petitioning speech to be made under oath. Perjury remains subject to criminal prosecution by the appropriate authorities. N.C.G.S. § 14-209. That is the proper, time-honored mechanism to ensure that testimonial petitioning speech is truthful.

This balance already exists in court proceedings. Speech in the courtroom, and in court filings, is absolutely immune from civil liability even when made with express malice. *Scott v. Statesville Plywood & Veneer Co.*, 240 N.C. 73, 76, 81 S.E.2d 146, 148 (1954); *see also Harris v. NCNB Nat'l Bank of N.C.*, 85 N.C. App. 669, 672, 355 S.E.2d 838, 841 (1987) (" . . . [D]efamatory statements made in the course of a judicial proceeding are absolutely privileged and will not support a civil action for defamation, even if made with malice." (internal citations omitted)). At the same time, courtroom testimony under oath remains subject to prosecution for perjury. N.C.G.S. § 14-209.

But what would be improper, and unacceptably chilling and prohibitive of protected petitioning speech, would be to allow that speaker's opponent to weaponize civil tort liability and the civil litigation process to deter and punish petitioning speech at a public meeting. That ultimately defeats the purpose of public meetings, as defined in the Open Meetings Law. It deprives government officials of the benefit of the information and opinions that citizen speakers provide. And it would deprive those speakers of the right that the Petition Clause of the First Amendment was intended to protect.

Even if this Court were to adopt the Seventh Circuit Court of Appeals' "legislative/adjudicatory" and "political/non-political" fact-intensive tests, Resco's

petitioning speech is still immune. If a proceeding is determined to be legislative and political, even false misrepresentations are immune. *Mercatus Grp*, 641 F.3d at 844 ("[T]he fraud exception contains, in addition to its substantive components, a threshold procedural component: the exception does not apply at all outside of adjudicative proceedings.") When a proceeding is found to be adjudicatory and non-political, a fraudulent misrepresentation is subject to civil liability if the alleged misrepresentation "was material, in the sense that it actually altered the outcome of the proceeding." *Baltimore Scrap Corp. v. David J. Joseph Co.*, 237 F.3d 394, 401-02 (4th Cir. 2001) (concluding that any fraud exception to *Noerr-Pennington* "extends only to the type of fraud that deprives litigation of its legitimacy"); *Good Hope Hosp., Inc. et al. v. N.C. Dept. of Health and Human Servs.*, 174 N.C. App. 266, 275-76, 620 S.E.2d 873, 881 (2005) ("In order for plaintiffs to prevail . . . they must allege facts indicating that defendant made misrepresentations . . . that deprived the entire CON proceeding of its legitimacy."). So even if the rezoning hearing before the Town Board had been non-political and adjudicatory, the Town Board approved Humphrey Land's Petition *despite* Resco's statements. Humphrey Land alleged that in its Complaint, (R p 17, ¶ 40) and the Court of Appeals specifically noted that the Town approved the rezoning that Humphrey Land and the developer sought. 2019 N.C. App. LEXIS 595, *17, 831 S.E.2d 395, 402 n. 1 ("We also note that the Town apparently did not credit Defendants' alleged misrepresentations, approving the Braddock Park Homes development project despite their vocal opposition to approval of the project.").

Resco's petitioning speech did not alter the outcome of the proceeding. It therefore is immune under *Mercatus.*

This Court should hold that petitioning speech at a public meeting before a public body is absolutely immune from civil liability. Even if the Court adopts the Solicitor General's proposed rule, this Court must affirm the Trial Court's Order and dismiss Humphrey Land's Complaint because Resco's petitioning speech did not alter the outcome of the proceeding before the Town Board.

III. THE COURT OF APPEALS DECIDED THIS CASE ON THE MERITS, AND THIS COURT SHOULD DECIDE THIS CASE OF FIRST IMPRESSION.

The Solicitor General suggests that this Court remand this case to the Court of Appeals to apply the proper analytical framework because the Court of Appeals "did not have the occasion to analyze the source, context, and nature of [Resco's] petitioning activity." Amicus Br. at 3. Resco emphatically disagrees. This case is properly before the Court under N.C.G.S. § 7A-31, presents a case of first impression under the Petition Clause, and this Court should address and rule on the merits.

In its 25-page opinion, the Court of Appeals addressed the merits, including (1) the application of the *Noerr-Pennington* doctrine; (2) the application of the sham exception to *Noerr-Pennington*, 2019 N.C. App. LEXIS at 595, 831 S.E.2d at 401 ("The absence of allegations in Plaintiff's complaint pleading the cause of action for tortious interference with prospective economic advantage into the 'sham' exception to the *Noerr-Pennington* doctrine is not a defect of the complaint . . ."); (3) whether the alleged misrepresentations were actionable and whether the content of the alleged misrepresentations barred Humphrey Land's action, *id.* at 401-02 ("[W]hether

misrepresentations about the dangers of an activity North Carolina Law regards as ultrahazardous can be overstated and, in their overstatement, become actionable misrepresentations upon which a cause of action for tortious interference with prospective economic advantage can be predicated. We hold that they can."); (5) whether a tortious interference with prospective economic advantage claim can lie when a valid contract existed, *id.* at 403; and (6) whether the ultrahazardous classification of explosive blasting precluded Humphrey Land's action, *id.* at 402-03 ([S]uccess on Plaintiff's claim . . . thus is not precluded by the content of Defendants' representations to the Town, notwithstanding the rule of strict liability."). The Court of Appeals thus heard, but wrongly decided, this case on the merits. Remand is unneeded, because in addressing Resco's immunity claim and setting out the correct Petition Clause analysis for petitioning speech in the public meeting setting, this Court can and should resolve the case.

In any event, this Court should address this case on its merits in the interest of judicial and adjudicative economy. *State v. T.D.R.*, 347 N.C. 489, 496-97, 495 S.E.2d 700, 704 (1998) (holding that issue properly raised by party but not addressed by Court of Appeals could be properly remanded but avoiding remand in the interest of judicial economy). The parties have already expended resources at the Superior Court and Court of Appeals levels. Resco has pointed out that the cost of litigation (and threat of future litigation) itself infringes on Petition Clause rights because it makes the exercise of those rights contingent on the petitioning speaker's ability and willingness to litigate. Remand would disserve those rights and the parties' interests.

CONCLUSION

The Court of Appeals decision jeopardizes North Carolinians' protections for petitioning speech. If it stands, the decision will allow attenuated tort liability to be pursued against any citizen whose speech to a zoning board or other public body thwarts a proposed development. This threat will inevitably discourage and chill public debate and petitioning speech at public meetings. This Court should reverse the decision of the Court of Appeals, affirm the trial court's dismissal of Humphrey Land's Complaint, and hold that Resco's statements at a public meeting before a public body are protected by the First Amendment regardless of the truth or falsity of the statements, Resco's corporate status, or the viewpoint Resco expressed.

Electronically submitted
Abbey M. Krysak
NC State Bar No. 46281
Weaver, Bennett & Bland, P.A.
196 N. Trade Street
Matthews, North Carolina 28105
Telephone: (704) 844-1402
Email: akrysak@wbbatty.com

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Bradley R. Kutrow
NC State Bar No. 13851
McGuireWoods, LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2049
Email: bkutrow@mcguirewoods.com

Attorneys for Resco Products, Inc. and Piedmont Minerals Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the undersigned counsel has this day served the foregoing **DEFENDANTS-APPELLANTS' REPLY BRIEF** in the above-captioned action on all parties to this cause by depositing the original and/or copy hereof, postage prepaid, in the United States Mail, addressed to the following:

Charles L. Steel, IV
J Whitfield Gibson
Manning Fulton & Skinner, P.A.
3605 Glenwood Avenue, Suite 500
Post Office Box 20389
Raleigh, North Carolina 27619-0389

Attorneys for Plaintiff-Respondent Cheryl Lloyd Humphrey Land Investment Co., LLC

Joshua H. Stein
Nicholas S. Brod
Ryan Y. Park
K. D. Sturgis
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919) 716-6400

Counsel for the State of North Carolina

This is the 13th day of August, 2020.

Electronically submitted
Abbey M. Krysak
NC State Bar No. 46281
Weaver, Bennett & Bland, P.A.
196 N. Trade Street
Matthews, North Carolina 28105
Telephone: (704) 844-1402
Facsimile: (704) 845-1503
Email: akrysak@wbbatty.com

Attorney for Resco Products, Inc. and Piedmont Minerals Company, Inc.