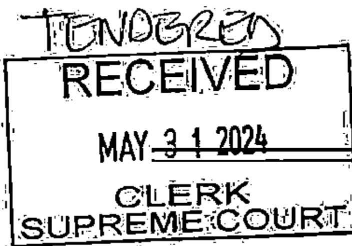
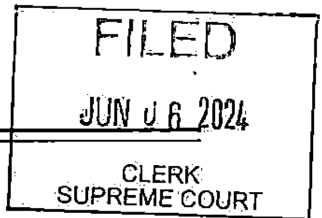

TENDERED
RECEIVED
MAY 3 1 2024
CLERK
SUPREME COURT


FILED
JUN 0 6 2024
CLERK
SUPREME COURT

Supreme Court of Kentucky

No. 2024-SC-0215

NIRUPAMA KULKARNI, **APPELLANT**

v.

DENNIS HORLANDER, ET AL., **APPELLEES**

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS, CASE NO. 2024-CA-0495
ON APPEAL FROM JEFFERSON CIRCUIT COURT, CASE NO. 24-CI-1903, HON. MITCH PERRY

AMICUS BRIEF OF DAVID OSBORNE, SPEAKER OF THE KENTUCKY HOUSE OF REPRESENTATIVES, AND ROBERT STIVERS, PRESIDENT OF THE KENTUCKY SENATE

D. ERIC LYCAN
JOSEPH A. BILBY
Office of the Speaker
702 Capitol Avenue, Room 332
Frankfort, Kentucky 40601

DAVID E. FLEENOR
Office of the Senate President
702 Capital Avenue, Room 236
Frankfort, Kentucky 40601

CERTIFICATE OF SERVICE

On May 31, 2024, I served this brief via U.S. mail on: the Honorable Mitchell Perry, 700 West Jefferson Street, Louisville, Kentucky 40202; Clerk, Kentucky Court of Appeals, 669 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, Natalie Johnson and Kathryn Meador, 200 South Fifth Street, Suite 200 N, Louisville, Kentucky 40202; James Craig and Tyler Larson, 401 West Main Street, Suite 1900, Louisville, Kentucky 40202; Steven J. Megerle, P.O. Box 2613, Covington, Kentucky 41012; Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, Frankfort, Kentucky 40601; and Taylor Brown, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. The undersigned did not remove the record on appeal.

INTERESTS OF AMICUS CURIAE, PURPOSE OF BRIEF, AND PARTICULAR ISSUES TO WHICH IT IS DIRECTED

The Speaker of the Kentucky House of Representatives and President of the Kentucky Senate have an interest in ensuring that the courts of the Commonwealth employ appropriate methods when they interpret and enforce laws enacted by the Kentucky General Assembly. The Movants likewise have an interest in ensuring that the courts of the Commonwealth refrain from employing methods of statutory interpretation that are unreliable, unproven, and unconducive to the effectuation of the policies enacted by the Legislative Branch.

In this appeal, the Court will review a dispute where the circuit court relied upon a recently written statement from a legislator which purported to explain what the Kentucky General Assembly had in mind when it enacted a statute in 1990. On review, the Court of Appeals correctly determined that the legislator's written statement could not be credited, but it did so for the wrong reasons.

For more than 90 years, this Court and its predecessor have held that when a judge is called upon to interpret a statute enacted by the General Assembly, he or she must not give credence to an after-the-fact statement from an individual legislator about what the General Assembly intended by enacting it.

The circuit court, and the Court of Appeals, failed to adhere to this longstanding rule. The purpose of this brief is to urge the Court to reiterate this time-tested rule for the benefit of the bench and bar.

STATEMENT OF POINTS & AUTHORITIES

INTERESTS OF AMICUS CURIAE, PURPOSE OF BRIEF, AND PARTICULAR ISSUES TO WHICH IT IS DIRECTED i

STATEMENT OF POINTS & AUTHORITIES ii

I. It was error to rely upon an individual legislator's statement.................................1

Exantus v. Commonwealth, 612 S.W.3d 871 (Ky. 2020)...1

Bd. of Trustees of Jud. Form Ret. Sys. v. Att'y General., 132 S.W.3d 770 (Ky. 2003)........1

Decker v. Russell, 357 S.W.2d 886 (Ky. 1962) 1

Wheeler v. Bd. of Comm'rs of City of Hopkinsville, 53 S.W.2d 740 (1932).......................1

II. The Court of Appeals correctly discounted the individual legislator's statement, but it did so for the wrong reasons...2

CONCLUSION 3

ARGUMENT

I. It was error to rely upon an individual legislator's statement.

The General Assembly speaks through the statutes it enacts. *Exantus v. Commonwealth*, 612 S.W.3d 871, 886 (Ky. 2020). It does not speak through the words of individual legislators.

For more than ninety years, this Court and its predecessor consistently adhered to the rule that when a judge is called upon to interpret a statute enacted by the General Assembly, he or she must not give credence to an after-the-fact statement from an individual legislator about what the General Assembly intended by enacting it. *See, e.g.*, *Bd. of Trustees of Jud. Form Ret. Sys. v. Att'y General.*, 132 S.W.3d 770, 786 (Ky. 2003) ("It is a basic principle of statutory construction that legislative intent may not be garnered from parol evidence, especially parol evidence furnished by a member of the legislature, itself."); *Decker v. Russell*, 357 S.W.2d 886, 888 (Ky. 1962) ("On the hearing of this habeas corpus proceeding the trial court indulged the petitioners' introduction of two members of the 1950 Legislature who testified that it was the intention of the Act of that year, which became KRS 431.075, that it should embrace all misdemeanors, including that described in KRS 437.110(1). This is, indeed, a novel resort for construing a statute. Of course, the testimony was disregarded by the trial court, as it is by this appellate court."); *Wheeler v. Bd. of Comm'rs of City of Hopkinsville*, 53 S.W.2d 740, 742 (1932) ("Of course, the purpose and intention above referred to may not be established by parol testimony or other evidence de hors the journals containing the proceedings of the body that brought into existence the particular law under consideration.").

Contrary to this categorical bar against after-the-fact statement from an individual legislator, the circuit court admitted into evidence, and explicitly relied upon in its legal analysis, "an Affidavit from Senator Gerald Neal who co-sponsored Senate Bill 47 that made this change, indicating that this change was made deliberately by the General Assembly and as a result of the Supreme Court's decision in *Morris*." 4/25/2024 Opinion and Order, at *3. This was error because it violated the categorical bar that was set forth in *Wheeler* in 1932, reiterated in *Decker* in 1962, and adhered to again in *Board of Trustees* in 2003.

II. The Court of Appeals correctly discounted the individual legislator's statement, but it did so for the wrong reasons.

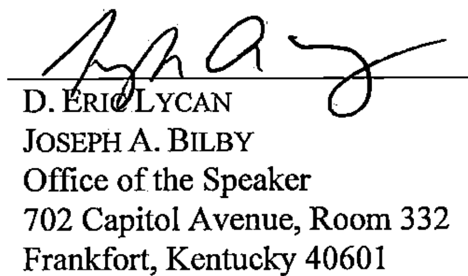
The Court of Appeals declined to credit Senator Neal's written statement, but not as a threshold matter as required by the rule in *Wheeler*, *Decker*, and *Board of Trustees*. Instead, the Court of Appeals scrutinized his written statement long enough to conclude that "nothing in the statement definitively demonstrates the General Assembly amended KRS 118.125 as a result of the Kentucky Supreme Court's decision in *Morris*." In other words, the Court of Appeals' primary basis for rejecting Senator Neal's written statement was the Court's conclusion that its substance did not support the meaning attributed to it by the litigant who tendered it. But this was error, because the *Wheeler-Decker-Board of Trustees* rule does not turn on whether the court concludes that the legislator's statement properly supports the meaning attributed to it by the party tendering it. The *Wheeler-Decker-Board of Trustees* rule categorically prohibits the consideration of such evidence in the first place.

The Court of Appeals' secondary basis for rejecting Senator Neal's written statement also was erroneous: "Furthermore, Senator Gerald Neal's statement is not

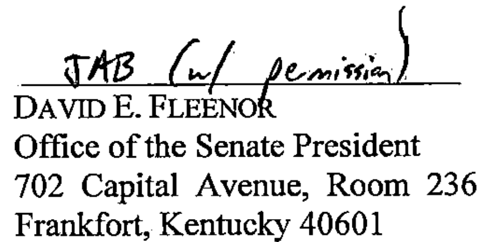
notarized, and therefore, was not sworn." *See* 5/15/2024 Opinion and Order at *8. This secondary basis suggested that the legislator's written unsworn written statement might have been admissible if only he had taken the time to have it notarized. But again, the prohibition against evidence from an individual legislator does not hinge on whether his testimony is sworn or unsworn; it must not be considered in the first place.

CONCLUSION

For the benefit of the bench and bar, the Court should emphasize again that a statement from an individual legislator about what a statute means, or what the General Assembly's intent was in enacting it, is not admissible.



D. ERIC LYCAN
JOSEPH A. BILBY
Office of the Speaker
702 Capitol Avenue, Room 332
Frankfort, Kentucky 40601



DAVID E. FLEENOR
Office of the Senate President
702 Capital Avenue, Room 236
Frankfort, Kentucky 40601

WORD COUNT CERTIFICATE

This brief complies with the limitation in RAP 35(B) because, excluding the parts of the document exempted by RAP 15(D), it contains 933 words.