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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Hon. Donald B. Hocker, Circuit Court Judge

C.A. No.: 2020-CP-36-00093
Appellate Case No. 2020-001348

Jefferson Davis, Jr. .....Appellant,

v.

Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund .....Respondents.

RECORD ON APPEAL

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restore the income lost as a result of the transfer of Gift funds to its general fund. Reversing his position again, the Attorney General returned to his predecessor's contention that Mrs. Smithers has no standing to bring this suit, and asked this Court to modify the decision dismissing the complaint for lack of standing so as to hold only that plaintiff does not have standing ***135** as special administratrix of the donor's estate and affirm, as modified, on that narrow ground. He sought a remand of the matter, not for further proceedings on the merits, but for the court's approval and implementation of his settlement stipulation with the Hospital.

The sole issue before us is whether Mrs. Smithers, on behalf of Smithers's estate, has standing to bring this action. The Attorney General maintains that, with a few exceptions inapplicable here, standing to enforce the terms of a charitable gift is limited to the Attorney General. Most recently, the Attorney General has urged that, pursuant to the above-mentioned proposed settlement stipulation between himself and the Hospital, he has achieved all the relief that is appropriate in this case.

We begin by acknowledging that, pursuant to Article 8 of the Estates, Powers & Trusts Law governing the disposition of property for charitable purposes, "[t]he Attorney General shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes ****432** and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts" (EPTL 8–1.1[f]). By designating the Attorney General as the representative of undesignated beneficiaries, the Legislature provided a mechanism for enforcing charitable trusts, which for a time had been deemed invalid in New York State because they lacked certain beneficiaries who could claim their enforcement (*Lefkowitz v. Lebensfeld*, 51 N.Y.2d 442, 446, 434 N.Y.S.2d 929, 415 N.E.2d 919). However, while EPTL 8–1.1(f) expressly extended the Attorney General's enforcement powers to all charitable dispositions, including absolute gifts, case law had already recognized the Attorney General's power to insure that charities used absolute gifts in accordance with the donors' stated purposes (*id.*, citing *St. Joseph's Hosp. v. Bennett*, 281 N.Y. 115, 119, 22 N.E.2d 305). In *St. Joseph's*, a charitable corporation that operated a hospital had obtained a declaratory judgment, over the Attorney General's opposition, that the testator's bequest for an endowment fund did not create a trust but was an absolute gift and as such need not be maintained intact as an endowment fund. The Court of Appeals held that whether the clearly expressed direction of a testator must be obeyed did not depend upon whether the gift was absolute or created a trust.

> The authorities sustain the validity of the direction of the testator, and equity will afford protection to a donor to a charitable corporation in that the Attorney–General may maintain a suit to ***136** compel the property to be held for the charitable purpose for which it was given to the corporation.... Nothing in authority, statute or public policy has been brought to our attention which prevents a testator from leaving his money to a charitable corporation and having his clearly expressed intention enforced (281 N.Y. at 119, 22 N.E.2d 305).

The question of whether the donor who is living and can maintain his or her own action need rely on the protection of the Attorney General to enforce the terms of his gift was not before the Court in either *Lebensfeld* or *St. Joseph's*. This question was addressed in *Associate Alumni of the General Theological Seminary of the Protestant Episcopal Church in the United States of America v. The General Theological Seminary of the Protestant Episcopal Church in the United States*, 163 N.Y. 417, 57 N.E. 626. Alumni of a seminary had contributed money for the endowment of a professorship, on certain specified conditions, and retaining the right of nomination when the chair became vacant. When disputes arose concerning those conditions, the voluntary association of alumni formed a corporation and brought an action against the seminary. The matter was submitted upon an agreed statement of facts to the Appellate Division, which found that the corporation had standing to bring suit as successor in rights and interest of the voluntary association of alumni, the donor of the fund, and that the seminary had received the fund in trust and had breached the terms of the trust. The court directed the seminary to transfer the fund to the corporation.

The Court of Appeals affirmed the Appellate Division's determination of the rights of the respective parties, but modified the judgment to decree specific performance by the seminary of the terms of the trust, instead of directing the return of the fund to the corporation. In the event of failure

to comply with the judgment, the fund would be surrendered to the court or trustees appointed by the court, after which the corporation could apply to the court for disposition of the fund.

> ****433** The general rule is "If the trustees of a charity abuse the trust, misemploy the charity fund, or commit a breach of the trust, the property does not revert to the heir or legal representative of the donor unless there is an express condition of the gift that it shall revert to the donor or his heirs, in case the trust is abused, but the redress is by bill or information by the attorney-general *or other person having the right to sue.*" [2 Perry on Trusts, sec. 744; *Sanderson v. White*, 35 Mass. 328, 18 Pickering, 328; ***137** *Vidal v. Girard's Executors*, 2 Howard (U.S.), 191, 11 L.Ed. 205; *Mills v. Davison*, 54 N.J.Eq. 659, 35 A. 1072.] The judgment below practically abrogates the trust and restores the fund to the plaintiff. To such return the plaintiff was not entitled, though as donor and possessor of the right to nominate to the professorship, it had sufficient standing to maintain an action to enforce the trust. [*Mills v. Davison, supra.*] (163 N.Y. at 422, 57 N.E. 626; emphasis added.)

In dismissing Mrs. Smithers's complaint, Supreme Court relied on *Associate Alumni, supra*, and *Alco Gravure, Inc. v. Knapp Foundation*, 64 N.Y.2d 458, 490 N.Y.S.2d 116, 479 N.E.2d 752 to hold that, since the Gift instruments do not provide Mrs. Smithers with the right of oversight, that right is vested exclusively in the Attorney General and Mrs. Smithers has no standing to sue. However, neither *Associate Alumni* nor *Alco Gravure* mandates this result. The holding of the former that the donor alumni association had standing to enforce its gift explicitly forecloses the conclusion that the Attorney General's standing in these actions is exclusive. At the same time, the Court's characterization of the association as "donor and possessor of the right to nominate to the professorship" does not necessitate the conclusion that no donor has standing without having retained such a right. In the case on which the Court relied for its holding of donor standing, the donor had not retained any rights, but, "as the founder of the charity, has a standing to appear in court to restrain the diversion of the property donated from the charitable uses for which it was given" (*Mills v. Davison*, 54 N.J.Eq. 659, 35 A. 1072).

The dissent relies heavily on an observation of the Court in *Alco Gravure* that, "[n]ormally, standing to challenge actions by the trustees of a charitable trust or corporation is limited to the Attorney General" (64 N.Y.2d at 466, 490 N.Y.S.2d 116, 479 N.E.2d 752). However, this observation was only an incomplete recapitulation of the general rule cited in full earlier in the opinion, that "one who is merely a possible beneficiary of a charitable trust, or a member of a class of possible beneficiaries, is not entitled to sue for enforcement of the trust [citations omitted]. Instead, the Attorney General has the statutory power and duty to represent the beneficiaries of any disposition for charitable purposes (EPTL 8–1.1[f]; [additional citations omitted])" (64 N.Y.2d at 465, 490 N.Y.S.2d 116, 479 N.E.2d 752). The rule does not designate the Attorney General as the exclusive representative of donors of charitable dispositions, and the Court in *Alco Gravure* was not addressing the issue of ***138** donor standing. The issue was the standing of a certain group of beneficiaries. The Court held that the section of the Not–For–Profit Corporation Law that permits amendment of the certification of incorporation of a charitable corporation does not authorize an amendment inconsistent with the purposes for which the funds were given to the corporation without compliance with the quasi-cy pres principles incorporated in the law, and that this particular group of beneficiaries of the charitable corporation had ****434** standing to oppose the amendment. The Court found that the group, which was comprised of beneficiaries who were entitled to a preference in the distribution of the charitable funds, was sharply defined and limited in number and, as such, constituted an exception to the general rule. Moreover, the policy reason for limiting standing—"to prevent vexatious litigation and suits by irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations" (64 N.Y.2d at 466, 490 N.Y.S.2d 116, 479 N.E.2d 752)—was not applicable in this case. The plaintiffs' tangible stake in the matter derived from their status as preferred beneficiaries of the funds, which status would have been completely eliminated by the dissolution of the charitable corporation.

Supreme Court incorrectly characterized Mrs. Smithers as one who "positions herself as the champion and representative of the possible beneficiaries of the Gift," with no tangible stake because she has no position or property to lose if the Hospital alters its administration of the Gift. Mrs. Smithers did not bring this action on her own behalf or on behalf of beneficiaries of the Smithers Center. She brought it as the court-appointed special administratrix of the estate of her late husband to enforce his rights under his agreement with the Hospital through specific performance of that agreement. Therefore, the general rule barring beneficiaries from suing charitable corporations has no application to Mrs. Smithers. Moreover, the desire to prevent vexatious litigation by "irresponsible parties who do not have a tangible stake in

the matter and have not conducted appropriate investigations" has no application to Mrs. Smithers either. Without possibility of pecuniary gain for himself or herself, only a plaintiff with a genuine interest in enforcing the terms of a gift will trouble to investigate and bring this type of action. Indeed, it was Mrs. Smithers's accountants who discovered and informed the Attorney General of the Hospital's misdirection of Gift funds, and it was only after Mrs. Smithers brought her suit that the Attorney General acted to prevent the Hospital from diverting the entire proceeds ***139** of the sale of the building away from the Gift fund and into its general fund. The Attorney General, following his initial investigation of the Hospital's administration of the Gift, acquiesced in the Hospital's sale of the building, its diversion of the appreciation realized on the sale, and its relocation of the rehabilitation unit, even as he ostensibly was demanding that the Hospital continue to act "in accordance with the donor's gift" (*see* April 21, 1998 letter, *supra*). Absent Mrs. Smithers's vigilance, the Attorney General would have resolved the matter between himself and the Hospital in that manner and without seeking permission of any court.

The donor of a charitable gift is in a better position than the Attorney General to be vigilant and, if he or she is so inclined, to enforce his or her own intent. Smithers was the founding donor of the Smithers Center, which he established to carry out his vision of "first class alcoholism treatment and training." In his agreement with the Hospital he reserved to himself the right to veto the Hospital's project plans and staff appointments for the Smithers Center. He and Mrs. Smithers remained actively involved in the affairs of the Smithers Center until his death, and she thereafter. During his lifetime, when Smithers found that, as he wrote on July 31, 1978, "[c]ertain things that were definitely understood were not carried out" by the Hospital, he decided not to donate the balance of the Gift. It was only when the Hospital expressly agreed to the various restrictions imposed by Smithers that he completed the Gift. ****435** The Hospital's subsequent unauthorized deviation from the terms of the completed Gift commenced during Smithers's lifetime and was discovered shortly after he died. To hold that, in her capacity as her late husband's representative, Mrs. Smithers has no standing to institute an action to enforce the terms of the Gift is to contravene the well settled principle that a donor's expressed intent is entitled to protection (*see St. Joseph's, supra; Lefkowitz v. Lebensfeld, supra; Alco Gravure, supra*) and the longstanding recognition under New York law of standing for a donor such as Smithers (*see Associate Alumni, supra*). We have seen no New York case in which a donor attempting to enforce the terms of his charitable gift was denied standing to do so. Neither the donor nor his estate was before the court in any of the cases urged on us in opposition to donor standing (*see, e.g., Alco Gravure, supra; Stewart v. Franchetti*, 167 A.D. 541, 153 N.Y.S. 453; *Matter of DeLong*, 169 A.D.2d 1005, 565 N.Y.S.2d 569 *lv. denied* 77 N.Y.2d 809, 571 N.Y.S.2d 912, 575 N.E.2d 398; *Lefkowitz v. Lebensfeld*, 68 A.D.2d 488, 417 N.Y.S.2d 715, *aff'd* 51 N.Y.2d 442, 434 N.Y.S.2d 929, 415 N.E.2d 919). The courts in these cases were not addressing the ***140** situation in which the donor was still living or his estate still existed. *Cf.*, *Herzog Foundation v. University of Bridgeport*, 243 Conn. 1, 699 A.2d 995.

Moreover, the circumstances of this case demonstrate the need for co-existent standing for the Attorney General and the donor. The Attorney General's office was notified of the Hospital's misappropriation of funds by Mrs. Smithers, whose accountants performed the preliminary review of the Hospital's financial records, and it learned of the Hospital's closing of the detox unit—a breach, according to the Attorney General, of a specific representation—from Mrs. Smithers's papers in this action. Indeed, there is no substitute for a donor, who has a "special, personal interest in the enforcement of the gift restriction" (Note, *Protecting the Charitable Investor: A Rationale for Donor Enforcement of Restricted Gifts*, 8 B.U. Pub. Int. L.J. 361 [1999]). Mrs. Smithers herself, who the Supreme Court found had no position to lose if the Hospital altered its administration of the Gift, has her own special, personal interest in the enforcement of the Gift restrictions imposed by her husband, as is manifest from her own fundraising work on behalf of the Smithers Center and the fact that the gala that she organized and that the Hospital ultimately cancelled was to be in her honor as well as her husband's. In any event, the Attorney General's interest in enforcing gift terms is not necessarily congruent with that of the donor. The donor seeks to have his or her intent faithfully executed, which by definition will benefit the beneficiaries, and perhaps also to erect a tangible memorial to himself or herself. In the June 16, 1971 letter to the Hospital in which Smithers created the Gift, he wrote that it "is to be used to set up the Smithers Alcoholism Treatment and Training Center." As the Court of Appeals has observed, a donor's desire to perpetuate his name as a benefactor of a particular charitable institution and humankind is not a selfish one (*Matter of Scott*, 8 N.Y.2d 419, 427, 208 N.Y.S.2d 984, 171 N.E.2d 326). "These desires are deeply ingrained in human nature and are effective motivating forces in donations of this character" (*id.* at 428, 208 N.Y.S.2d 984, 171 N.E.2d 326). Perpetuating the

donor's good name is certainly also a profound concern of his or her estate. We conclude that the distinct but related interests of the donor and the Attorney General are best served by continuing to accord standing to donors to enforce the terms of their own gifts concurrent with **436 the Attorney General's standing to enforce such gifts on behalf of the beneficiaries thereof.

Mrs. Smithers, appointed the Special Administratrix of Smithers's estate for the purpose of pursuing claims by the *141 estate against the Hospital in connection with its administration of the Smithers Center, therefore has standing to sue the Hospital for enforcement of the Gift terms (EPTL 11–1.1 [b] [13]; *see, Estate of Rappaport*, 102 Misc.2d 910, 424 N.Y.S.2d 675).

Since we hold that the common law of the State of New York permits Mrs. Smithers to bring this action, we need not reach the issue of whether N–PCL 522 authorizes it.

Accordingly, the order of the Supreme Court, New York County (Beatrice Shainswit, J.), entered December 18, 1998, which, *inter alia*, denied plaintiff's motion for a preliminary injunction and granted the motions of defendants St. Luke's Roosevelt Hospital and the Attorney General to dismiss the complaint, should be modified, on the law, to grant plaintiff's motion for a preliminary injunction to the extent of staying disbursement of the proceeds of the sale of the East 93rd Street building, to deny defendants' motion to dismiss the complaint and to reinstate the complaint, and otherwise affirmed, without costs.

Order, Supreme Court, New York County (Beatrice Shainswit, J.), entered December 18, 1998, modified, on the law, to grant plaintiff's motion for a preliminary injunction to the extent of staying disbursement of the proceeds of the sale of the East 93rd Street building, to deny defendants' motion to dismiss the complaint and to reinstate the complaint, and otherwise affirmed, without costs.

All concur except FRIEDMAN, J., who dissents in an Opinion.

FRIEDMAN, J. (dissenting)

This appeal has its origins in a $10,000,000 gift made by R. Brinkley Smithers to defendant St. Luke's–Roosevelt Hospital Center for the creation of an alcoholism treatment program. Mr. Smithers began funding the gift in 1971 and, soon thereafter, in accordance with his desire to establish a free-standing alcohol treatment center, the hospital purchased a building at 56 East 93rd Street in Manhattan for $1,000,000. The building was to provide a non-hospital setting for the rehabilitation portion of the treatment program.

As the majority aptly notes, the relationship between Mr. Smithers and the Hospital was at times strained. Yet, like the loving parent of an errant child, Mr. Smithers resolved his disputes with the hospital and kept contributing over the course of a relationship spanning 23 years, notwithstanding the hospital's failure to honor some of his wishes and its use of funds for other than anticipated purposes.

Regardless of any disagreements between the hospital and Mr. Smithers, by 1981, Mr. Smithers agreed that changing conditions meant that the sale of the East 93rd Street building was warranted. Hence, in a letter dated November 5, 1981 to Gary Gambuti, president of the Hospital, Mr. Smithers approved of the sale of the building because he recognized that a free-standing alcoholism treatment center had become obsolete. Actually, Mr. Smithers did more than approve of the sale of *142 the building, he appears to have had a role in seeking a buyer, stating in his letter:

> ... I got a call today from [a broker] ... She claims that she ... will pay $3,000,000 cash for the building.
>
> **437 I know how hard up St. Luke's–Roosevelt Hospital is and I have no objection to the sale of the building.
>
> When the Smithers Rehabilitation was set up, there was practically no place to send an alcoholic after detoxification for rehabilitation in the New York area. There are now quite a few facilities and most of them have the advantage of being at least a few miles out of town-so there is more chance of outdoor recreation ...

Notwithstanding Mr. Smithers's agreement, the hospital decided not to sell at that time.

Mr. Smithers's understanding that the sale of the East 93rd Street building was inevitable is also evidenced by his letter dated October 24, 1983 to Gambuti. In that letter, Mr. Smithers set forth that he was completing the $10,000,000 pledge made in 1971 and that he wanted an endowment established. Significantly, and as the majority apparently recognizes, in discussing permitted uses of the endowment,

no mention is made of the East 93rd Street building but only of one on East 58th Street.

In 1994 Mr. Smithers passed away. About a year later, the hospital decided that it wished to do that which Mr. Smithers had previously agreed to in 1981, that is, to sell the East 93rd Street building, for which there was now a purchaser willing to pay approximately $15,000,000. The hospital planned to relocate the rehabilitation portion of the program to its main complex after the sale of the building.

Mr. Smithers's wife, Adele Smithers, the plaintiff in this action, learned of the proposed sale in March 1995, when the president of the hospital called her in order to cancel a fund raising event that she had been organizing for two years. The event, which was to be held in her honor as well as that of her deceased husband, aimed to raise funds to enhance the East 93rd Street building.

A complaint by Mrs. Smithers to the Attorney General soon followed, leading to an extensive investigation of the hospital's ***143** use of the Smithers gift. Ultimately the Attorney General determined that the proposed sale of the building would not violate the terms of the gift. Pursuant to an Assurance of Discontinuance issued by the Attorney General (*see,* Executive Law § 63[15]), the hospital could sell the building, provided it retained a portion of the proceeds for the exclusive use of the treatment program.

Dissatisfied with the results of the Attorney General's investigation, Adele Smithers obtained an order appointing her the special administratrix of her husband's estate and in that capacity commenced this action against the hospital and the Attorney General. The action sought, *inter alia,* an accounting of gift funds, an order directing the hospital to conform to the terms of the gift, and an order precluding it from selling the East 93rd Street building. In prosecuting the action, Mrs. Smithers candidly acknowledged that neither she nor the estate had any continuing financial interest in, or right to exercise any control over, the gift. Supreme Court dismissed the complaint, finding that plaintiff lacked standing to prosecute the action. This appeal followed.

During the pendency of this appeal, it is uncontroverted that the hospital and the Attorney General entered into a stipulation superceding the previously issued Assurance of Discontinuance. This new stipulation provided for the hospital to dedicate the entire net proceeds arising from the $15,000,000 sale of the building to the Smithers Endowment Fund for the treatment of substance abuse, and addressed virtually all of the concerns initially voiced ****438** by plaintiff. Notwithstanding this, plaintiff continued to voice objection to the settlement apparently because it permitted the East 93rd Street building to be sold and allowed the hospital to use the funds not just for the treatment of alcohol addiction but also for the treatment of other addictions.

On this appeal, both the hospital and the Attorney General assert that Adele Smithers's complaint must be dismissed because she lacks standing. The emergent issue, therefore, is whether Adele Smithers, as the representative of her husband's estate, has standing to bring this action seeking to enforce the terms of a charitable gift given by her husband, the funding of which was completed approximately 12 years before this action was commenced. Because I believe that plaintiff does not have standing, I respectfully dissent.

In considering the subject of standing, I begin with the observation that, when a charitable gift is made, without any ***144** provision for a reversion of the gift to the donor or his heirs, the interest of the donor and his heirs is permanently excluded (*see, Associate Alumni v. General Theological Seminary,* 163 N.Y. 417, 422, 57 N.E. 626; *Stewart v. Franchetti,* 167 A.D. 541, 547, 153 N.Y.S. 453). Accordingly, in the absence of a right of reverter, the right to seek enforcement of the terms of a charitable gift is restricted to the Attorney General (*see, Alco Gravure Inc. v. Knapp Found.,* 64 N.Y.2d 458, 466, 490 N.Y.S.2d 116, 479 N.E.2d 752; *Matter of DeLong,* 169 A.D.2d 1005, 1006, 565 N.Y.S.2d 569, *lv. denied* 77 N.Y.2d 809, 571 N.Y.S.2d 912, 575 N.E.2d 398; *Lefkowitz v. Lebensfeld,* 68 A.D.2d 488, 495, 417 N.Y.S.2d 715, *affd.* 51 N.Y.2d 442, 434 N.Y.S.2d 929, 415 N.E.2d 919; *Stewart v. Franchetti, supra; see also, Herzog Foundation v. University of Bridgeport,* 243 Conn. 1, 699 A.2d 995 [Sup.Ct., Conn.1997]). As unequivocally stated by the Court of Appeals in *Alco Gravure Inc. v. Knapp Found., supra,* the general rule is that "standing to challenge actions by the trustees of a charitable trust or corporation is limited to the Attorney General."

The majority seeks to avoid the impact of this general rule, pointing out that the issue the Court was addressing in *Alco Gravure* was not whether a donor had standing but whether a certain group of beneficiaries had standing. While that may be an accurate observation concerning the facts in *Alco Gravure,* it does not diminish or affect the general rule that the Court enunciated, that standing is limited to the Attorney General

(*see, Developments in the Law—Nonprofit Corporations*, 105 Harv. L. Rev. 1578, 1597).

The New York general rule on standing is not only consistent with the common-law approach (*see, Herzog Foundation v. University of Bridgeport, supra* [after conducting nationwide analysis that included New York case law and secondary authority, concluded that donors do not have standing at common law]; *see also,* Charitable Trusts, 21 New Eng. L. Rev. 131, 137), but also with the approach taken by the Restatement of Trusts [Second](*see,* §§ 391[e] & [f]). With regard to this rule, one commentator has noted that, where funds are given for a charitable purpose, without a reservation of rights:

> [t]here is no property interest left in the settlor or his heirs, devises, next of kin, or legatees. The settlor or his successors may have a sentimental interest in seeing that his wishes are respected, but no financial [interest] ... which the law recognizes ... and hence neither he nor they are as a general ***145** rule permitted to sue the trustees to compel them to carry out the trust ... The better reasoned cases refuse to permit the settlor during his lifetime, or his successors after his ****439** death, to sue merely as settlor or successors to compel the execution of the charitable trust ... (Bogert, Trusts and Trustees, 2nd ed., rev., chap. 21, § 415 at 53).

In holding that standing is generally restricted to the Attorney General, our courts have pointed out that a limited standing rule is necessary to protect charitable institutions from "vexatious litigation" by parties who do not have a tangible stake in the outcome of the litigation (*Alco Gravure Inc. v. Knapp Found., supra* at 466, 490 N.Y.S.2d 116, 479 N.E.2d 752; *Matter of DeLong, supra* at 1006, 565 N.Y.S.2d 569). While the majority believes that this concern does not apply to Mrs. Smithers because her motives are altruistic (and I agree that they are), the limited standing rule enunciated by our Court of Appeals is a prophylactic one that does not permit a case-by-case inquiry into the subjective motivations of the party commencing the action. Rather, it focuses on the actual interest of the party and here Mrs. Smithers has herself conceded "that [she] ha[s] absolutely nothing to gain personally as a result of this lawsuit."

Notwithstanding the foregoing, plaintiff argues that donor standing, qua donor, is statutorily authorized by Not–For–Profit Corporation Law (N–PCL) § 522. Plaintiff's position is without merit. Section 522 of the N–PCL sets forth the procedure a donee institution must follow when it seeks to have gift restrictions released. Specifically, subdivision (a) provides:

> With the consent of the donor in a writing acknowledged by him, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

Plaintiff contends that, since the consent of the donor is required when an institution seeks to release gift restrictions, by necessary implication the statute grants the donor and his estate the right to take the initiative and commence an action to enforce the terms of the gift. Further consideration of the matter, however, shows otherwise.

Section 522 of the Not–For–Profit Corporation Law was modeled after section 7 of the Uniform Management of Institutional Funds Act (UMIFA) (*see,* Wyckoff, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 37, N–PCL C522 at 190). In ***146** the comment to section 7, the drafters of UMIFA expressly provided that the donor of a completed gift would not have standing to seek enforcement of its terms, stating:

> The donor has no right to enforce the [gift] restriction, no interest in the fund and no power to change the eleemosynary beneficiary of the fund. He may only acquiesce in a lessening of a restriction already in effect (UMIFA, § 7, comment, 7A U.L.A. 504 [1999]).

When viewed against this backdrop it becomes apparent that, although section 522 may require the institution to obtain a donor's consent when it seeks to release gift restrictions, it does not confer standing upon a donor, and certainly not upon his estate, to affirmatively seek enforcement of those restrictions, a right that is the Attorney General's (*see, Herzog Foundation v. University of Bridgeport*, 243 Conn. 1, 699 A.2d 995, *supra*). [1]

The majority nevertheless asserts that donor standing, qua donor, was recognized ****440** by our Court of Appeals in *Associate Alumni v. General Theological Seminary*, 163 N.Y. 417, 57 N.E. 626. It then goes one very significant step further, and asserts that, not only did Mr. Smithers have standing merely by virtue of his status as the donor of the gift, but that his standing somehow devolved to plaintiff as the representative of his estate. The majority's reliance upon *Associate Alumni* for these views is misplaced.

Examination of *Associate Alumni* shows that the alumni of a seminary contributed money for the endowment of a professorship on certain specified conditions. In doing so, however, the alumni retained significant rights, including the right of nomination on the expiration of the term of the professor and the right to assign the income from the endowment to an acting professor if the office became vacant. The alumni were also entitled to be furnished with an annual statement concerning the endowment funds and could alter the conditions of the endowment by joint action of the trustees of the seminary and themselves (*see*, 26 App.Div. 144, 49 N.Y.S. 745). When a dispute arose concerning the term of the professorship, the alumni, via a corporation they had formed, commenced suit.

Initially, although the Court of Appeals permitted the action to proceed, it did not, as the majority claims, hold that a donor ***147** has standing to seek enforcement of the terms of a gift merely because of its status as donor. Rather, the Court held that the alumni association had sufficient standing "as donor *and* possessor of the right to nominate to the professorship ... [emphasis added]" (163 N.Y. 417, *supra* at 422, 57 N.E. 626). Therefore, properly read, *Associate Alumni* held only that, where a donor has retained significant rights to control the charitable gift, it has standing to seek enforcement of the terms of the gift. Significantly, others who have considered *Associate Alumni* have similarly concluded that it represents an exception to the general rule restricting standing to the Attorney General (*see, Smith v. Thompson*, 266 Ill.App. 165, 180; Charities, N.Y. Jur.2d § 41 at 236). Thus, contrary to the majority's position, *Associate Alumni* does not establish donor standing qua donor.

Any question as to this interpretation is resolved by the Court of Appeals' citation to section 744 of *2 Perry on Trusts* (*see, Associate Alumni v. General Theological Seminary, supra* at 422, 57 N.E. 626). The 1899 version of that treatise (published one year before the Court's decision), restates the common-law rule that, once a charitable gift is given, the "[h]eirs and personal representatives of a donor have no beneficial interest reverting or accruing to themselves from the breach or non-execution of a trust for a charitable use." A fortiori, persons having no beneficial interest in a completed gift fail to have a basis for a grant of standing. [2]

Distilled to their essentials, what emerges from the foregoing authorities is that there are three rules governing standing in this genre of litigation. First, a donor does not have standing to seek enforcement of a gift merely because he is the ****441** donor. Second, a donor who has retained certain rights to control the gift, i.e., a right to make staff appointments or exercise other decision-making authority concerning the use of the gift, may very well have standing. Third, the donor or his heirs may also have standing if the gift reverts to the donor or his heirs upon the failure to use the gift for its intended purpose. The corollary ***148** to these rules is that the estate will lack standing if it has no interest in the gift after the donor's death, i.e., there is no provision for the gift, upon misuse, to revert to the estate. Bearing these rules in mind, the fundamental flaw in the majority's grant of standing in this case becomes evident.

The principal focus of the majority's analysis centers upon the question of whether Mr. Smithers had standing to commence an action. As to this question, I agree with the majority that *Associate Alumni* supports the view that he did since he seems to have retained the right to make appointments to key staff positions. This observation, however, is irrelevant to the question presented on this appeal. Here, we are not required to determine whether Mr. Smithers would have had standing, but whether his estate has standing.

With regard to this issue, and applying the rules of standing noted above, it is uncontroverted that the estate was not the donor of the gift. Thus, even if pure donor standing were recognized (as the majority concludes), this could not be a basis for granting standing to Mr. Smithers's estate. Next, to the extent that Mr. Smithers may have had standing based

upon his right to exercise discretionary control over the gift, i.e., via the right to appoint key staffing positions (*see, Associate Alumni v. General Theological Seminary, supra*), that right was personal to him, abated upon his death, and did not devolve to his estate (*cf.*, EPTL 7–2.3[a]; *see, Wier v. Howard Hughes Medical Institute*, 407 A.2d 1051 [Delaware Ch.]). Hence, as plaintiff concedes that the estate has no right to exercise control over the gift, this may not be a basis of standing. Finally, since it is uncontroverted that the estate does not have a right of reverter in the gift or, in fact, any right to control the gift by way of appointment to staff positions or otherwise, it follows that there is no retained interest that could support a claim of standing. In view of this, I fail to perceive the legal basis for the majority's grant of standing to plaintiff.

To all of this, the majority responds: "We have seen no New York case in which a donor attempting to enforce the terms of his charitable gift was denied standing to do so." It seems to me that this is hardly a basis upon which to grant standing to a decedent's estate, especially in view of all of the countervailing authority.

If there were any doubt as to the foregoing analysis, it seems to me that such doubt is resolved by N–PCL 522(b). As indicated, subdivision (a) of N–PCL 522 requires an institution to obtain the consent of the donor in order to release gift ***149** restrictions. Where, however, the donor's consent cannot be obtained by reason of his death, subdivision (b) merely requires the institution to apply to either the Supreme Court or Surrogate's Court (depending on the circumstances) for a release, and to notify the Attorney General of the application (*see*, N–PCL 522[b]).

Significantly, the statute does not require the estate of a deceased donor to be made a party to the application. Nor does the statute even require that the estate be given notice of the application. If the estate's consent to the application is not required (and, as noted, there is not even a notification requirement), it is self-evident that the estate does not have standing to ****442** interpose itself, via an independent action, in what is, statutorily, a matter between the court, the Attorney General, and the charitable institution (*cf., Matter of Swan*, 237 A.D. 454, 261 N.Y.S. 428, *affd. sub nom. Matter of St. John's Church of Mt. Morris*, 263 N.Y. 638, 189 N.E. 734 [in an action to release gift restrictions, heirs of donor were not necessary parties since there was no right of reverter]; *see also, Wier v. Howard Hughes Medical Institute, supra* [administrator of estate does not have standing to enforce the terms of a gift made by his decedent]).

The inappropriateness of permitting plaintiff to interpose herself in these circumstances is also highlighted by Executive Law § 63(15). This section provides that:

> In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of a law of this state, in lieu thereof he may accept an assurance of discontinuance of any act or practice in violation of such law from any person engaged or who has engaged in such act or practice.

Exercising their statutorily-granted authority, two successive Attorney Generals have entered into agreements with St. Luke's Roosevelt Hospital Center concerning the direction of the charitable gift at issue. This action, no matter how viewed, seeks to set aside those agreements. The second of those agreements, via an assurance of discontinuance, addresses all of the issues concerning Mr. Smithers's gift, including a return of all monies that were diverted from their intended uses. The agreement further requires that it be submitted to Supreme Court for approval. What is evident is that the Attorney General and the hospital are following the precise statutory mandates found in Executive Law § 63(15) and N–PCL 522(b). By determining that plaintiff may pursue the instant action, ***150** the majority necessarily concludes that a decedent's estate, which has no interest in a gift, may prevent the New York State Attorney General from exercising his discretion in determining how to prosecute alleged violations of law. This, it seems to me, is incongruous with the aforementioned statutes (*see, People v. Bunge Corporation*, 25 N.Y.2d 91, 302 N.Y.S.2d 785, 250 N.E.2d 204).

In the end, the majority holds that a donor's estate has standing to commence an enforcement action against a charitable institution to which the donor contributed. The authorities I have cited establish that primary responsibility in this area is reposed in the Attorney General, and there is no authority supporting the majority's position that a donor's estate, in the absence of some continuing right in relation to the gift, has standing to enforce the terms of the gift.

Accordingly, I vote to affirm the order dismissing the complaint.

All Citations

281 A.D.2d 127, 723 N.Y.S.2d 426, 2001 N.Y. Slip Op. 02953

Footnotes

1 The reason that the drafters of UMIFA sought to preclude any affirmative right of enforcement was to avoid the potential negative tax implications that would befall a donor if the rule were otherwise (*see, Herzog Foundation v. University of Bridgeport, supra* at 14, 699 A.2d 995).

2 Although the majority believes that *Associate Alumni's* citation to *Mills v. Davison*, 54 N.J.Eq. 659, 35 A. 1072 [New Jersey] supports the conclusion that our Court of Appeals adopted a pure donor standing rule, it does not. The rule in New Jersey both before and after *Mills* has been that a donor generally lacks standing (*see, Ludlam v. Higbee*, 11 N.J.Eq. 342; *Leeds v. Harrison*, 7 N.J.Super. 558, 72 A.2d 371). In fact, in *Leeds, supra* at 380, the court specifically noted that there was standing in *Mills* not because plaintiffs were the donors but because they were *cestui que trust,* which means: "he for whose benefit the trust was created" (*see,* Black's Law Dictionary, 7th ed.).

End of Document

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 2. Constitutional Officers (Refs & Annos)
Chapter 6. Attorney General (Refs & Annos)
Article 7. Uniform Supervision of Trustees for Charitable Purposes Act (Refs & Annos)

West's Ann.Cal.Gov.Code § 12591

§ 12591. Proceedings to secure compliance with article; powers of Attorney General; jurisdiction of court

Effective: January 1, 2018
Currentness

The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in this article are in addition to the Attorney General's existing powers and duties. This article does not impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that a court shall not have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

Credits

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959. Amended by Stats.2017, c. 561 (A.B.1516), § 81, eff. Jan. 1, 2018.)

Notes of Decisions (8)

West's Ann. Cal. Gov. Code § 12591, CA GOVT § 12591
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

End of Document

West's Annotated California Codes
Government Code (Refs & Annos)
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Chapter 6. Attorney General (Refs & Annos)
Article 7. Uniform Supervision of Trustees for Charitable Purposes Act (Refs & Annos)

West's Ann.Cal.Gov.Code § 12598

§ 12598. Supervision of charitable trusts; enforcement

Effective: January 1, 2005
Currentness

(a) The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) Title 8 (commencing with Section 2223) of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 8111, 11703, 15004, 15409, 15680 to 15685, inclusive, 16060 to 16062, inclusive, 16064, and 17200 to 17210, inclusive, of the Probate Code.

(5) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all reasonable attorney's fees and actual costs incurred in conducting that action, including, but not limited to, the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Attorney's fees and costs shall be recovered by the Attorney General pursuant to court order. When awarding attorneys' fees and costs, the court shall order that the attorney's fees and costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair.

(d) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

(e)(1) The Attorney General may refuse to register or may revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of this article.

(2) All actions of the Attorney General shall be taken subject to the rights authorized pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2.

Credits

(Added by Stats.1987, c. 892, § 2. Amended by Stats.1988, c. 1199, § 15, operative July 1, 1989; Stats.2000, c. 475 (S.B.2015), § 5; Stats.2003, c. 159 (A.B.1759), § 6, eff. Aug. 2, 2003; Stats.2004, c. 183 (A.B.3082), § 144.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1988 Amendment

Section 12598 is amended to correct section references [19 Cal.L.Rev.Comm. Reports 1037 (1988)].

Notes of Decisions (16)

West's Ann. Cal. Gov. Code § 12598, CA GOVT § 12598
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

End of Document

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by County of Solano v. Handlery, Cal.App. 1 Dist., September 21, 2007

70 Cal.App.4th 613
Court of Appeal, Fourth District, Division 2, California.

CITY OF PALM SPRINGS, Plaintiff and Respondent,
v.
LIVING DESERT RESERVE,
Defendant and Appellant.

No. E018472.
|
March 3, 1999.
|
Review Denied June 3, 1999.

Synopsis

City, which had accepted 30 acres of donated property on the express condition that it be used in perpetuity as a desert wildlife preserve, filed complaint in eminent domain by which it sought to acquire condemnee's reversionary interest in the land for purpose of expanding municipal golf course, and it obtained an order for immediate possession. Condemnee recorded a notice of breach of condition subsequent and cross-complained against city to quiet title to the land. City moved for judgment on the pleadings. The Superior Court, Riverside County, Robert Gregory Taylor, J., No. I69605, granted motion as to the cross-complaint and, following an evidentiary bench trial, ruled that condemnee's reversionary interest was not a compensable interest and entered judgment in favor of city. Condemnee appealed. The Court of Appeal, McKinster, J., held that: (1) deed granted city a fee simple subject to a condition subsequent; (2) because deed did not create a charitable trust, attorney general was not a necessary party to the action; (3) violation of the condition subsequent was reasonably imminent and, thus, condemnee's future interest was compensable; (4) requirement that city pay compensation was not an improper limitation on its power of eminent domain; and (5) measure of compensation payable to condemnee for its reversionary interest was 100% of the value of the unrestricted fee in the land.

Affirmed in part, reversed in part, and remanded with directions.

West Headnotes (36)

[1] **Charities** Nature of charities

"Charitable trust" is a fiduciary relationship with respect to property arising as result of manifestation of intention to create it, and subjecting person by whom property is held to equitable duties to deal with property for a charitable purpose. Restatement (Second) of Trusts § 348.

2 Cases that cite this headnote

[2] **Charities** Nature of charities

Elements essential to creation of a charitable trust are proper manifestation by settlor of intention to create trust, trust res, and charitable purpose promoting the welfare of mankind or the public at large, of a community, or of some other class of persons which is indefinite as to numbers and individual identities. West's Ann.Cal.Prob.Code §§ 15201–15203, 15205(a).

3 Cases that cite this headnote

[3] **Charities** Purposes of Gift

For purposes of creating a charitable trust, charitable purposes include fulfillment of general municipal or other governmental purposes, such as creation or maintenance of public parks. West's Ann.Cal.Prob.Code § 15203; Restatement (Second) of Trusts § 373 comment.

[4] **Charities** Nature of charities

Gifts may be made to third parties or directly to governmental entity, to satisfy requirement that charitable trust have a charitable purpose. West's Ann.Cal.Prob.Code § 15203.

[5] **Trusts** Extent of Estate or Interest of Trustee

Trusts Extent of Estate or Interest of Cestui Que Trust

Legal title of res or corpus of any trust is held by trustee, but beneficiaries own the equitable estate or beneficial interest.

1 Cases that cite this headnote

[6] **Trusts** Scope and extent of relief

In event of a breach of duty by trustee of a private trust, beneficiaries may sue trustee for damages and for an equitable decree enforcing the trust. West's Ann.Cal.Prob.Code § 16420.

[7] **Charities** Actions for administration or enforcement

Because charitable trust has an indefinite class of beneficiaries, standing to enforce such trust is generally limited to the Attorney General, as representative of the public.

[8] **Charities** Form of gift

Charities Purposes of Gift

Gift may have a charitable purpose and yet not constitute a charitable trust.

1 Cases that cite this headnote

[9] **Deeds** Nature and Creation of Conditions

Rather than create a trust, owner of property may transfer it to another on condition that, if the latter should fail to perform specified act, transferee's interest shall be forfeited either to transferor or to a designated third party; in such case, interest of transferee is subject to condition subsequent and is not held in trust.

[10] **Deeds** Nature and Creation of Conditions

Gift of property in fee subject to condition subsequent differs from gift of that same property in trust in at least two ways: first, transferee of conditional gift receives both legal and equitable title to the property and, second, transferee has no enforceable duties.

2 Cases that cite this headnote

[11] **Deeds** Nature and Creation of Conditions

Unless and until transferee of a conditional gift breaches conditions imposed by transferor, he or she is in the same position as an owner in fee simple absolute.

[12] **Deeds** Effect of breach

Breach of condition subsequent may result in termination of transferee's interest, but it does not subject transferee to actions for damages or to enforce the condition. Restatement (Second) of Trusts § 11 comment.

[13] **Deeds** Nature and Creation of Conditions

Trusts Nature and requisites in general

Trusts Reservations, conditions, and other limitations in conveyances

Whether a trust or a condition is created by a gift depends upon manifested intention of transferor; mere fact that word "condition" is used does not necessarily indicate that a condition and not a trust is intended.

1 Cases that cite this headnote

[14] **Trusts** Reservations, conditions, and other limitations in conveyances

Trusts can be created by words of condition.

[15] **Charities** Form of gift

Deeds Nature and Creation of Conditions

In determining whether gift is a charitable trust or a condition subsequent, question in each case is whether: (1) donor intended to provide that, if property were not used for designated charitable purposes, it should revert either to donor's estate or to a contingent donee, or (2) donor intended to impose an enforceable obligation on trustees to devote it to those purposes.

3 Cases that cite this headnote

[16] **Deeds** Nature and Creation of Conditions

Because forfeiture is a harsh remedy, any ambiguity as to whether transfer is a charitable trust or a conditional gift is resolved against forfeiture. West's Ann.Cal.Civ.Code § 1442.

[17] **Deeds** Nature and Creation of Conditions

If donor clearly manifests an intention to make a conditional gift, as opposed to a charitable trust, that intention will be honored.

[18] **Deeds** Nature and Creation of Conditions

Gift will be construed as one of a fee simple subject to a condition subsequent, and not as a charitable trust, if it is expressly provided in the instrument that transferee shall forfeit it or that transferor or his or her heir or a third person may enter for breach of the condition.

1 Cases that cite this headnote

[19] **Deeds** Nature and Creation of Conditions

Where deed transferring tract of land to city for use as a desert wildlife preserve expressly stated grantor's intent that, in event of breach of the condition, city would forfeit its interest in favor of a third party, deed had to be construed as granting to the city a fee simple subject to a condition subsequent, and assigning to third party a power of termination.

2 Cases that cite this headnote

[20] **Eminent Domain** Defendants

Where deed by which city received land donated for use as a desert wildlife preserve created a fee simple subject to a condition subsequent, not a charitable trust, state Attorney General was not a necessary party to city's subsequent eminent domain action. West's Ann.Cal.Gov.Code §§ 12580–12599.5.

[21] **Eminent Domain** Persons Entitled

When condemnor takes property the ownership of which is split into an estate in fee simple subject to a condition subsequent and a power of termination, owner of future interest generally is not entitled to any compensation unless condition has been breached as of date of valuation; if no such breach has yet occurred, then the possibility of a reversion is too remote and speculative to be valued, and reversionary interest is deemed to be valueless for purposes of condemnation.

2 Cases that cite this headnote

[22] **Eminent Domain** Persons Entitled

When condemnor takes property the ownership of which is split into an estate in fee simple subject to a condition subsequent and a power of termination, general rule denying compensation to holder of reversionary interest applies only in the absence of exceptional circumstances.

[23] **Eminent Domain** Persons Entitled

When condemnor takes property the ownership of which is split into an estate in fee simple subject to a condition subsequent and a power of termination, reversionary interest is compensable if reversion would have been likely to occur within a reasonably short time. Restatement of Property § 53 comment.

2 Cases that cite this headnote

[24] **Eminent Domain** Persons Entitled

In determining whether violation of use restriction was reasonably imminent, for purpose of awarding compensation to holder of future interest in an eminent domain proceeding, reasonableness is an objective test, and relevant inquiry is not whether defendant regards action as reasonable, but whether reasonably prudent persons generally, looking at the circumstances impartially and objectively, would consider it to be reasonable. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[25] **Eminent Domain** ⇐ Persons Entitled

Whether violation of use restriction was reasonably imminent, for purpose of awarding compensation to holder of future interest in an eminent domain proceeding, is determined objectively, not by condemnor's subjective understanding of the legal consequences of its actions. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[26] **Eminent Domain** ⇐ Persons Entitled

For purposes of statute providing that, in condemnation proceeding, future interest is compensable only if violation of use restriction is otherwise reasonably imminent, term "otherwise" refers to exclusion of any consideration of the eminent domain proceedings; instead, imminence of violation is to be evaluated from time of commencement of an eminent domain proceeding, and without taking into account any changes in use of the land sought to be condemned which may result as a consequence of such proceeding. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[27] **Deeds** ⇐ Discharge by impossibility of performance

Where performance of a condition in a deed is made impossible by operation of law, compliance therewith is excused, and no forfeiture results.

[28] **Eminent Domain** ⇐ Persons Entitled

If further use of property by grantee in conformance with use restriction is prevented by divestiture of grantee's title through eminent domain, failure to perform is excused as being involuntary on the part of grantee, and the future interest is not compensated. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[29] **Eminent Domain** ⇐ Persons Entitled

Portion of statute that precluded consideration of the condemnation proceedings to determine whether violation of use restriction was reasonably imminent, for purposes of awarding compensation to holder of future interest in eminent domain proceeding, was inapplicable where grantee of the present interest and the condemnor were one and the same, the city, and condemnation of the future interest did not divest city of its present interest in the land, and thus did not prevent city from continuing to use land in conformance with the use restriction. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[30] **Appeal and Error** ⇐ Directing New Trial or Other Further Proceedings in Lower Court; Remand

Trials are reserved for disputed factual issues and, thus, remand for trial is not necessary when factual issue cannot be disputed.

[31] **Eminent Domain** ⇐ Persons Entitled

Violation of condition subsequent was reasonably imminent and, thus, condemnee's future interest was compensable where city had accepted 30 acres of donated property on the express condition that it be used in perpetuity as a desert wildlife preserve, city subsequently sought to purchase condemnee's reversionary interest in the land for purpose of expanding municipal golf course, when attempts to purchase the interest failed city adopted resolution declaring necessity of acquiring condemnee's reversionary interest in the land, city implemented resolution by filing eminent domain action and obtaining an order for immediate possession, and city's actions demonstrated its belief that golf course would violate use conditions. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[32] **Gifts** ⇐ Qualified or conditional gifts

Donee of a conditional gift may not keep the gift unless donee complies with the conditions.

[33] **Public Employment** Ethics and conflicts of interest in general

As trustees for and representatives of the public, local public officials are required to discharge their responsibilities with the utmost fidelity and integrity.

1 Cases that cite this headnote

[34] **Eminent Domain** Persons Entitled

If public entity accepts gift of property by the terms of which public entity receives a fee simple subject to a condition subsequent restricting use of the property to a particular charitable use, and if that same public entity thereafter seeks to eliminate burden of complying with the condition by using its power of eminent domain to take the power of termination reserved by donor or given by donor to a third party, in order to allow it to use the property in a manner which would violate the condition, then violation of the condition is reasonably imminent and, accordingly, public entity must pay compensation to holder of the power of termination. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

2 Cases that cite this headnote

[35] **Eminent Domain** Persons Entitled

Where city exercised its power of eminent domain to take condemnee's future interest in property, requirement that city pay compensation was not an improper limitation on the power of eminent domain. U.S.C.A. Const.Amend. 5; West's Ann.Cal. Const. Art. 1, § 19; West's Ann.Cal.C.C.P. § 1265.410(a)(1).

[36] **Eminent Domain** Limited estates or interests in property

Where city accepted donated land on express condition that it be used in perpetuity as a desert wildlife preserve but subsequently sought, through use of its power of eminent domain, to acquire condemnee's reversionary interest so property could be used as golf course, so that violation of the condition subsequent was reasonably imminent and likely to occur within a matter of months, measure of compensation payable to condemnee was 100% of the value of the unrestricted fee in the land. West's Ann.Cal.C.C.P. § 1265.410(a)(1).

1 Cases that cite this headnote

Attorneys and Law Firms

****863** ***617** Redwine & Sherrill, Justin M. McCarthy and Steven B. Abbott, Riverside, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, Roderick E. Walston, Chief Assistant Attorney General, and Peter K. Shack, Deputy Attorney General, as Amicus Curiae on behalf of Defendant and Appellant.

Rutan & Tucker, LLP, David J. Aleshire and David B. Cosgrove, Costa Mesa, for Plaintiff and Respondent.

OPINION

McKINSTER, J.

Not infrequently, wealthy individuals, intending both to promote the common weal and to memorialize themselves, give property to a city on the condition that it be used in perpetuity for some specified purpose. With disturbing regularity, however, the city soon tires of using the donated property for the purpose to which it agreed when it accepted the gift, and instead seeks to convert the property to some other use.

****864** In this case, for instance, the City of Palm Springs ("City") built a golf course on 30 acres of donated property which it had accepted in 1986 on the express condition that it be used in perpetuity as a desert wildlife preserve. The trial court reluctantly approved. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In June of 1986, the Bank of America, as trustee of the McCallum Desert Foundation ("Foundation") under the will of Pearl M. McManus, deceased, ***618** executed a grant deed

("Deed"), conveying 30 acres of land ("Land") to the City. [1] The Deed provides:

"THIS DEED IS MADE AND ACCEPTED ON THE EXPRESS CONDITION that the land hereby conveyed be used solely as the site of the McCALLUM DESERT PRESERVE AND EQUESTRIAN CENTER, and that grantee, its successors or assigns shall forever use the land and premises for the purpose of maintaining a public park for the exposition of desert fauna and flora, named as the McCALLUM DESERT PRESERVE AND EQUESTRIAN CENTER.

"In the event that the property is not used solely and perpetually as the site of the McCALLUM DESERT PRESERVE AND EQUESTRIAN CENTER, then the interest in the land and premises herein conveyed shall pass to the Living Desert Reserve, Palm Desert, California, and grantee shall forfeit all rights thereto."

The City expressly accepted the grant in October of 1986. Less than three years later, however, the City decided that it would rather build a golf course on the Land. Believing that the golf course would be inconsistent with the condition in the Deed, the City asked the Living Desert for permission to buy other property for use as a preserve instead of the Land. Those negotiations continued periodically without success. The City's final offer was made in November of 1992, when it offered to buy the Living Desert's reversionary interest in the Land for $200,000 and threatened to take the interest by eminent domain if the Living Desert did not agree.

After the Living Desert declined that offer, the City adopted a resolution of necessity (Code Civ. Proc., § 1245.210, et seq.) by which it found that the public health, safety and welfare required the acquisition of the Living Desert's reversionary interest in the Land for the purpose of expanding the City's municipal golf course. In March of 1993, the City filed a complaint in eminent domain (*id.*, § 1250.310) by which it sought to do so. Simultaneously, the City applied for an order for immediate possession of the reversionary interest within 30 days, relying on an appraisal valuing that interest at $200,000 and on a deposit in an equal amount. (*Id.*, § 1255.010, et seq.) The trial court granted the application and issued the order for immediate possession.

In October of 1993, the Living Desert recorded a notice of breach of condition subsequent. (Civ.Code, § 885.050.) The notice alleges that the ***619** City breached the conditions of the Deed by (1) adopting the resolution by which it declared the necessity of acquiring the reversionary interest to permit the golf course expansion and (2) implementing that resolution by filing its eminent domain action and obtaining an order for immediate possession. In the same month, the Living Desert cross-complained against the City to quiet title to the Land. It alleged that, as a result of the City's breach of the conditions and the notice of that breach, the fee-simple interest of the City in the Land had reverted to the Living Desert.

****865** The parties stipulated that the issues of whether (1) the reversionary interest held by the Living Desert is a compensable interest and (2) the City had breached the conditions of the Deed would be bifurcated from and tried before the issue of the amount of any compensation due for the reversionary interest.

At the beginning of trial, the City moved for judgment on the pleadings. The trial court granted the motion as to the cross-complaint, finding that the interest of the Living Desert is measured as of the date the complaint in eminent domain was filed, that as of that date the City had not yet changed the use of the Land or otherwise violated the Deed, and that the Living Desert therefore owned only a reversionary interest, not the fee title to the Land. However, it denied the motion on the issue of whether the reversionary interest was compensable. Following an evidentiary bench trial, the trial court issued a statement of decision in which it ruled that the reversionary interest was not a compensable interest and hence no payment was due to the Living Desert, and entered judgment in favor of the City.

The Living Desert appeals. The Attorney General of the State of California appears as an amicus curiae.

CONTENTIONS

In its opening brief, the Living Desert does not challenge the trial court's adverse ruling on its cross-complaint. However, on the complaint, it contends that the trial court erred by relying on Code of Civil Procedure section 1265.410, subdivision (a)(1) ["section 1265.410(a)(1)"], to determine that the reversionary interest was not compensable. Specifically, it argues that the statute does not apply to efforts by a condemnor to relieve itself of the obligation to comply with conditions accompanying a gift of property, and that if it does, the statute permits the taking of property

without just compensation, in violation of the federal and state constitutions.

Challenging the assumptions under which the case was tried below, the Attorney General contends that the Foundation gave the Land to the City in ***620** a charitable trust, not in fee simple subject to a condition subsequent, that the effect of the judgment was to terminate that trust, and that therefore the judgment must be reversed because the trial court lacked subject matter jurisdiction to terminate a charitable trust.

In its reply brief, the Living Desert adopts the Attorney General's argument as an alternative analysis.

DISCUSSION

A. *THE DEED GRANTED A FEE SIMPLE SUBJECT TO A CONDITION SUBSEQUENT.*

The Attorney General raises a fundamental issue: What is the nature of the interests created by the Deed? The Deed obviously does not convey the Land to the City in fee simple absolute. But was the Land given to the City in trust, or in fee simple subject to a condition subsequent? [2]

No extrinsic evidence having been introduced to aid in the construction of the Deed, the issue is purely one of law, which we determine independently. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238, 52 Cal.Rptr.2d 82, 914 P.2d 160.)

[1] **[2]** **[3]** **[4]** "A charitable trust is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose." (Rest.2d, Trusts, § 348, p. 210; *Hardman v. Feinstein* (1987) 195 Cal.App.3d 157, 161, 240 Cal.Rptr. 483.) The elements essential to its creation are a proper manifestation by the settlor of an intention to create a trust (Prob.Code, § 15201), a trust res (*id.*, ****866** § 15202), and a charitable purpose [3] (*id.*, § 15203) promoting the welfare of mankind or the public at large, of a community, or of some other class of persons which is indefinite as to numbers and individual identities (*id.*, § 15205, subd. (a); *Estate of Schloss* (1961) 56 Cal.2d 248, 256, 14 Cal.Rptr. 643, 363 P.2d 875; *Estate of Dol* (1920) 182 Cal. 159, 163–164, 187 P. 428). (Prob.Code, § 15004; *Estate of Heil* (1989) 210 Cal.App.3d 1503, 1510, 259 Cal.Rptr. 28.)

[5] **[6]** **[7]** The legal title of the res or corpus of any trust is held by the trustee, but the beneficiaries own the equitable estate or beneficial interest. (*Title Ins. & Trust Co. v. Duffill* (1923) 191 Cal. 629, 647–649, 218 P. 14; *Reagh v. Kelley* (1970) 10 Cal.App.3d 1082, 1097, 89 Cal.Rptr. 425.) In the event of a breach of duty by the trustee of a private trust, the beneficiaries may sue the trustee for damages and for an equitable decree enforcing the trust. (Prob.Code, § 16420.) But because a charitable trust has an indefinite class of beneficiaries, standing to enforce the trust is generally limited to the Attorney General as the representative of the public. (*Hardman v. Feinstein, supra,* 195 Cal.App.3d at pp. 161–162, 240 Cal.Rptr. 483.)

[8] **[9]** "However, a gift may have a charitable purpose and yet not constitute a charitable trust." (*Schaeffer v. Newberry, supra,* 235 Minn. at p. 286 [50 N.W.2d 477, 480].) Rather than create a trust, the owner of property may transfer it to another on the condition that if the latter should fail to perform a specified act the transferee's interest shall be forfeited either to the transferor or to a designated third party. (Rest.2d, Trusts, § 11, com. a, p. 32.) "In such a case the interest of the transferee is subject to a condition subsequent [4] and is not held in trust." (Rest.2d Trusts, *supra,* § 11, com. a, p. 32; *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 125, 3 Cal.Rptr.2d 275.)

[10] **[11]** **[12]** A gift of property in fee subject to a condition subsequent differs from a gift of that same property in trust in at least two ways. First, the transferee of a conditional gift receives both legal and equitable title to the property. Unless and until the transferee breaches the conditions imposed by the transferor, he or she is in the same position as an owner in fee simple absolute. (*Parry v. Berkeley etc. Foundation* (1937) 10 Cal.2d 422, 426, 74 P.2d 738.) Second, the transferee has no enforceable duties. The breach of condition may result in the termination of the transferee's interest, but it does not subject the transferee to actions for damages or to enforce the condition. (Rest.2d, Trusts, § 11, com. b, p. 32.)

[13] **[14]** **[15]** ***622** "Whether a trust or a condition is created depends upon the manifested intention of the transferor; the mere fact that the word 'condition' is used does not necessarily indicate that a condition and not a trust is intended." (Rest.2d, Trusts, § 11, com. c, pp. 32–33.) Trusts can be created by words of condition. (IVA, Scott & Fratcher, ****867** Law of Trusts (4th ed. 1989) § 351, p. 52.) Property given "upon condition" that it be applied to certain charitable

purposes is especially likely to be construed as having been given in a charitable trust. (*Ibid.*) The question in each case is whether (1) the donor intended to provide that if the property were not used for the designated charitable purposes it should revert either to the donor's estate or to a contingent donee, or (2) the donor intended to impose an enforceable obligation on the donees to devote it to those purposes. (*Id.*, p. 53.)

[16] Courts favor the construction of a gift as a trust over a conditional gift for several reasons. Because forfeiture is a harsh remedy (IVA Scott & Fratcher, *supra*, § 351, p. 53), any ambiguity is resolved against it (Civ.Code, § 1442). Moreover, the transferor's objective is to use the transferee to confer a benefit upon the public. To ensure that the benefit is conferred as intended, the transferor ordinarily wants the intended beneficiary to be able to enforce that intent. Because the only remedy for the breach of a condition is a forfeiture, a condition is not a very effective method of accomplishing those goals. For both of those reasons, courts will generally construe a conveyance as one upon trust rather than upon condition. (I Scott & Fratcher, *supra*, § 11, p. 116.)

[17] **[18]** However, if the donor clearly manifests an intention to make a conditional gift, that intention will be honored. (*Rosecrans v. Pacific Elec. Ry. Co.* (1943) 21 Cal.2d 602, 605, 134 P.2d 245.) The gift will be construed as one of a fee simple subject to a condition subsequent if "it is expressly provided in the instrument that the transferee shall forfeit it or that the transferor or his heir or a third person may enter for breach of the condition." (I Scott & Fratcher, *supra*, § 11, p. 116; accord, Rest.2d, Trusts, § 11, com. f, p. 34; see, e.g., *Rosecrans*, p. 605, 134 P.2d 245.)

[19] The Deed expressly states the Foundation's intent that, in the event of a breach of the condition, the transferee (City) shall forfeit its interest in favor of a third party (the Living Desert). Accordingly, the Deed must be construed as granting to the City a fee simple subject to a condition subsequent, and assigning to the Living Desert a power of termination.

In arguing that the Deed created a charitable trust, the Attorney General cites a series of cases involving a testamentary gift by William S. Hart. Hart ***623** gave certain real property to the County of Los Angeles subject to the condition that it "shall be forever used and maintained by the County and its successors in interest and estate, exclusively as a public park...." (*Estate of Hart* (1957) 151 Cal.App.2d 271, 274, 311 P.2d 605.) The will also provided that if the county either refused or failed to comply with those conditions, the property would "immediately upon the happening of either or any of said events, revert, and shall go and be distributed, to the State of California for the same uses and purposes and upon the same conditions...." (*Id.*, p. 276, 311 P.2d 605.) The court held that the will created a charitable trust, stating that "a public trust arises by operation of law where a municipal corporation accepts a grant of real property for park purposes...." (*Id.*, p. 284, 311 P.2d 605). In that event, the municipality holds the property "as trustee of a charitable trust for the benefit of the public in general." (*Hart v. County of Los Angeles* (1968) 260 Cal.App.2d 512, 516, 67 Cal.Rptr. 242.)

However, in neither of those two opinions did the appellate court address the issue of whether the forfeiture language manifested an intention to grant a fee simple subject to a condition subsequent rather than to create a charitable trust. "Obviously, cases are not authority for propositions not considered therein." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372, 20 Cal.Rptr.2d 330, 853 P.2d 496.) Therefore, they do not support the argument that the Deed conveyed the Land to the City as the trustee of a charitable trust rather than in fee simple subject to a condition subsequent.

B. *BECAUSE THE DEED DID NOT CREATE A CHARITABLE TRUST, THE ATTORNEY GENERAL IS NOT A NECESSARY PARTY TO THE ACTION.*

Under the Uniform Supervision of Trustees for Charitable Purposes Act (***868** Gov.Code, §§ 12580–12599.5), "[t]he primary responsibility for supervising charitable trusts in California, for insuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General" (*id.*, § 12598, subd. (a)). Accordingly, "no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings." (*Id.*, § 12591.) Noting that he has never been made a party to the City's action, the Attorney General asserts that the trial court lacked subject matter jurisdiction over that action.

[20] As explained above, the Deed created a fee simple subject to a condition subsequent, not a charitable trust. Therefore, the Attorney General is not a necessary party to the action, and the trial court did not lack subject matter jurisdiction.

*624 C. *THE LIVING DESERT'S FUTURE INTEREST IS COMPENSABLE.*

[21] The general rule in California is that, when a condemnor takes property the ownership of which is split into an estate in fee simple subject to a condition subsequent and a power of termination, the owner of the future interest is not entitled to any compensation unless the condition has been breached as of the date of valuation. If no such breach has yet occurred, then the possibility of a reversion is too remote and speculative to be valued, and the reversionary interest is deemed to be valueless for purposes of condemnation. (*Romero v. Department of Public Works* (1941) 17 Cal.2d 189, 194–195, 109 P.2d 662; *People ex rel. Dept. of Public Works v. City of Fresno* (1962) 210 Cal.App.2d 500, 510–517, 26 Cal.Rptr. 853; *People v. City of Los Angeles* (1960) 179 Cal.App.2d 558, 574–575, 4 Cal.Rptr. 531; *City of Santa Monica v. Jones* (1951) 104 Cal.App.2d 463, 472–473, 232 P.2d 55.)

[22] [23] However, the general rule denying compensation to the holder of the reversionary interest applies only "in the absence of exceptional circumstances...." (*People ex rel. Dept. of Public Works v. City of Fresno, supra,* 210 Cal.App.2d at p. 515, 26 Cal.Rptr. 853.) One of the exceptions is that the reversionary interest is compensable if the reversion would have been likely to occur within a reasonably short time. That exception is described in the Restatement of Property, section 53, comment c, [5] and has been recognized in California since at least 1951 (*People ex rel. Dept. of Public Works v. City of Fresno, supra,* at p. 517, 26 Cal.Rptr. 853; *People v. City of Los Angeles, supra,* 179 Cal.App.2d at p. 574, 4 Cal.Rptr. 531; *City of Santa Monica v. Jones, supra,* 104 Cal.App.2d at p. 474, 232 P.2d 55). That exception was codified in 1975 as section 1265.410(a)(1), which provides: "Where the acquisition of property for public use violates a use restriction coupled with a contingent future interest granting a right to possession of the property upon violation of the use restriction: [¶] (1) If violation of the use restriction was otherwise reasonably imminent, the owner of the contingent future interest is entitled to compensation for its value, if any."

The trial court found that this exception did not apply because a violation of the restriction by the City was not reasonably imminent. It *625 reasoned (1) that the City did not intend to violate the condition until it was relieved from the obligation of complying with it, either by agreement with Living Desert or by eminent domain, and (2) that **869 the City's preparation to exercise its power of eminent domain could not be considered in determining whether a violation was reasonably imminent. As will be explained below, both its reasoning and its conclusion are mistaken. To the contrary, the undisputed evidence demonstrates that the violation was imminent. Therefore, the exception to the general rule did apply, and the Living Desert's interest was compensable.

1. *The Trial Court Applied the Wrong Standard When Deciding Whether a Violation Was Reasonably Imminent.*

On the facts of this case, both parts of the trial court's analysis were incorrect.

(a) *That the City Did Not Intend to Violate the Condition Is Irrelevant.*

The trial court relied upon its factual finding that "the last thing the City wanted to do was 'violate' the restriction and lose its fee." Obviously, the City did not want to suffer the consequences of violating the restriction while it was still in effect. But that fact, although undeniable, is irrelevant to the question of whether a violation of the condition was reasonably imminent.

[24] [25] Reasonableness is an objective test. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938, 55 Cal.Rptr.2d 724, 920 P.2d 669.) Hence, the relevant inquiry is not whether the defendant regards the action as reasonable, but whether reasonably prudent persons generally, looking at the circumstances impartially and objectively, would consider it to be reasonable. (*Ibid.*) Therefore, the reasonable imminence of a violation is also to be determined objectively. It is not determined by the City's subjective understanding of the legal consequences of its actions. To the extent that the trial court relied on the City's subjective understanding, it erred.

(b) *When the Condemnor Already Owns the Present Interest, Actions Taken by the Condemnor to Condemn the Future Interest Must Be Considered to Determine Whether a Violation of the Condition Is Reasonably Imminent.*

[26] As noted above, section 1265.410(a)(1) provides that a future interest is compensable only if the violation of the use restriction is "otherwise reasonably imminent...." "[O]therwise" refers to the exclusion of any consideration of the eminent domain proceedings. Instead, the imminence of the *626 violation is to be evaluated "from the time of the commencement of an eminent domain proceeding,

and [without] taking into account any changes in the use of the land sought to be condemned which may result as a consequence of such proceeding...." (Rest., Property, § 53, com. c, p. 188; accord, *People* ex rel. *Dept. of Public Works v. City of Fresno, supra,* 210 Cal.App.2d at p. 517, 26 Cal.Rptr. 853 [as "if condemnation had not occurred."].)

[27] **[28]** Consideration of the effect of the condemnation is excluded because it would generally cause the owner of the present interest to suffer an unfair forfeiture. "Where the performance of a condition in a deed is made impossible by operation of law, compliance therewith is excused, and no forfeiture results." (*Woodville v. United States* (10th Cir.1946) 152 F.2d 735, 737–738.) Accordingly, if further use of the property by the grantee in conformance with the use restriction is prevented by the divestiture of the grantee's title through eminent domain, the failure to perform is excused as being involuntary on the part of the grantee, and the future interest is not compensated. (*Romero v. Department of Public Works, supra,* 17 Cal.2d at p. 194, 109 P.2d 662; *Woodville,* p. 738; *United States v. 2,086 Acres of Land* (W.D.S.C.1942) 46 F.Supp. 411, 413.)

In short, section 1265.410(a)(1) contemplates a situation in which the grantee of the conditional deed intends to continue to comply with the condition indefinitely, but is prevented from doing so because a paramount authority seizes title to the property through the power of eminent domain. And because it is designed to apply in situations in which the intentions and desires of the grantee of the present interest are contrary to and frustrated by the condemnor, it necessarily assumes that the grantee and the condemnor ****870** are separate entities dealing at arm's length.

[29] The circumstances before us are radically different from those assumed by the statutory rule, in two respects.

First, the grantee of the present interest and the condemner of the power of termination are one and the same entity: the City. Given that identity, we cannot ignore the actions of the City as condemnor when considering whether a voluntary violation of the use restriction by the City as grantee was reasonably imminent. Instead, we must evaluate the conduct of the grantee regardless of what other hats it may be wearing. When one of those hats is that of a condemnor, the actions of the condemnor are, and must be recognized to be, those of the grantee.

Second, the condemnation of the future interest did not divest the City of its present interest in the Land, and thus did not prevent the City from continuing to use the Land in conformance with the use restriction. That it ***627** did not plan to do so was not a decision forced upon it by the condemnation, but rather was its own voluntary choice, for which it should be held accountable.

For both of these reasons, that portion of section 1265.410(a)(1) which precludes the consideration of the condemnation proceedings to determine whether a violation of the use restriction is reasonably imminent, does not apply here.

2. *The Violation of the Conditions of the Gift Was Imminent.*

When the condemnation proceedings are considered, the undisputed evidence proves that a violation of the use restriction was reasonably imminent.

In its resolution of necessity, the City expressly found that the public welfare required the construction of a golf course on the Land, and that the acquisition of the future interest was necessary to do so. Similarly, in its application for an order for immediate possession (Code Civ. Proc., § 1255.410), the City stated that it "must acquire the reversionary interest in order to devote the property to the public recreational uses" specified in the resolution of necessity.

Moreover, the City believed that the use of the Land as a golf course would violate the conditions of the gift. In one of its letters to the Living Desert, it offered to exchange adjacent property for the Land, explaining that "a golf course does not appear to be consistent with the intent of this grant...."

[30] Even in the absence of that express statement, the City's actions demonstrate its belief that the golf course would violate the use restriction: If a golf course was consistent with the conditions, then there would have been no need to buy the future interest. It is beyond belief that the City would have offered to pay $200,000 to purchase the future interest, and thereafter incurred the attorney's fees necessary to initiate the condemnation action, unless it believed that the planned golf course would violate the conditions. The only reason to do so was to attempt to eliminate the conditions by merging the present and future interest. [6]

[31] Those circumstances establish that the violation of the conditions was reasonably imminent. Although we have

found no California case involving *628 similar facts, the Supreme Court of Texas has addressed that precise issue on a substantially identical factual record. (*Leeco Gas & Oil Co. v. Nueces County* (Tex.1987) 736 S.W.2d 629.) In 1960, Leeco granted 50 acres of land to the county to be used as a park, retaining a reversionary interest. (*Id.*, p. 630.) Pleading that its plans for the future development of the property included uses which may violate the **871 grantor's conditions (*id.*, p. 631), in 1983 the county commenced condemnation proceedings to purchase Leeco's reversionary interest (*id.*, p. 630). The trial court awarded Leeco nominal damages of $10. (*Ibid.*)

The Supreme Court reversed. Although noting that a future interest is generally not compensable unless the reversion is imminent (Rest., Property, § 53, coms. b & c), and that there was no evidence that the county intended to violate the condition so long as Leeco held the reversionary interest, the court explained that that evidence was not determinative of the issue. (*Leeco Gas & Oil Co. v. Nueces County, supra*, 736 S.W.2d at pp. 630–631.) The evidence was undisputed that the county sought to purchase the reversionary interest in order to permit uses of the property which were inconsistent with the restrictive condition. (*Id.*, p. 631.) "Thus, this is not a case of condemning a 'remote' possibility of reverter, but rather an attempt by the County to remove the 'burden' of the reversionary interest by condemning the interest and paying nominal damages." (*Ibid.*)

In short, the Texas Supreme Court held that when the purpose of taking the future interest was to permit the holder of the present interest to use the property in a manner which violates the conditions under which the present interest was given to the condemner, the violation of those conditions is imminent and the taking is compensable. The court explained that any other result would be contrary to public policy. "To allow a governmental entity, as grantee in a gift deed, to condemn the grantor's reversionary interest by paying only nominal damages would have a negative impact on gifts of real property to charities and governmental entities. It would discourage these types of gifts in the future. This is not in the best interests of the citizens of this State." (*Leeco Gas & Oil Co. v. Nueces County, supra*, 736 S.W.2d at p. 631.)

That analysis is persuasive, for several reasons. First, it is consistent with the concerns, voiced by this court and others, that if a public entity which had accepted a gift of property subject to a condition limiting the use of that property were permitted to avoid the force of the donor's restriction, donors would be discouraged from making such gifts in the future. (*Save the* *629 *Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1014, 263 Cal.Rptr. 896 [gift of land for library]; *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 105, 132 Cal.Rptr. 835 [gift of land for park].)

Second, denying compensation under these facts would frustrate the public policy in favor of the enforcement of existing charitable gifts. The importance of that policy is demonstrated by the Uniform Supervision of Trustees for Charitable Purposes Act which, as discussed above, provides that the primary responsibility for ensuring compliance with the instructions of the settlors of charitable trusts and of other charitable donors is vested, not in the beneficiaries of those charities, but in the Attorney General, a public officer. (Gov.Code, § 12598, subd. (a).)

The Eminent Domain Law promotes that policy by specifically requiring a donor's charitable intent to be continued even when the actual gift has been taken for a different public use. If a condemnor takes property subject to a use restriction which requires the property to "be devoted to a particular charitable or public use, the compensation for the property shall be devoted to the same or similar use coupled with the same contingent future interest." (Code Civ. Proc., § 1265.410, subd. (b).) Thus, the happenstance that a public entity finds it necessary to take the physical property, thereby converting the gift into cash, does not relieve the donee of its obligation to continue to use the gift for charitable purposes. That policy of enforcing the donor's charitable intent, even when the original gift has been taken by eminent domain, is totally inconsistent with a rule which would permit a public entity receiving a conditional gift to destroy the condition through condemnation without compensation **872 to the holder of the reversionary interest.[7]

Finally, this analysis ensures that the City does not profit from its unfair and unseemly tactics. When offered 30 acres of valuable property on the condition that it be used exclusively and perpetually as a public park devoted to the display of desert plants and animals, the City eagerly accepted, apparently without voicing any objection to the condition imposed by the donor. In reliance upon the City's agreement to that condition, the Foundation conveyed the Land. But only a few years later, the City unilaterally renounced its agreement to devote the Land to the charitable use specified by the Foundation and hatched a plan not only to terminate that restrictive condition but to do so in a manner which

would deprive the Living Desert of the means of carrying on the Foundation's charitable intent. Whether the *630 City's refusal to comply with the condition is the result of promissory fraud or a subsequent change of heart, the unfairness to the donor is palpable.

[32] [33] One of the maxims of equity is that "[h]e who takes the benefit must bear the burden." (Civ.Code, § 3521.) In this context, that means that the donee of a conditional gift may not keep the gift unless the donee complies with the donor's conditions. That the donee in this case is a public entity, endowed with the power of eminent domain, does not exempt it from that rule. To the contrary, public entities should exemplify equitable conduct. "A public office is a public trust created in the interest and for the benefit of the people." (*Terry v. Bender* (1956) 143 Cal.App.2d 198, 206, 300 P.2d 119.) As trustees for and representatives of the public, local public officials are required to discharge their responsibilities with the utmost fidelity and integrity. (*Ibid.*) They should be " 'standard-bearers of public virtue.' " (*People ex rel. Mosk v. Barenfeld* (1962) 203 Cal.App.2d 166, 173, 21 Cal.Rptr. 501, quoting *People v. Harby* (1942) 51 Cal.App.2d 759, 773, 125 P.2d 874.)

The City, by contrast, has been unfaithful both to the Foundation's intent and to the spirit of the conditions under which it accepted the Foundation's gift. And whether the City's policymakers genuinely believed that the law might permit it to keep the Land without either complying with the Foundation's wishes or paying fair compensation—indeed, without paying *any* compensation whatsoever—the decision to assert that position did not display the high degree of fairness, justice, and virtue that should characterize public entities. Such inequitable behavior must not be rewarded.

[34] In summary, we hold that if a public entity accepts a gift of property by the terms of which the public entity receives a fee simple subject to a condition subsequent restricting the use of the property to a particular charitable use, and if that same public entity thereafter uses its power of eminent domain to take the power of termination reserved by the donor or given by the donor to a third party, with the intention of eliminating the use restriction and thereby permitting a use of the property which would violate the condition, then a violation of that condition is reasonably imminent. Accordingly, the public entity must pay compensation to the holder of the power of termination. (§ 1265.410(a)(1).)

3. *The Requirement to Pay Compensation Is Not An Improper Limitation on The Power of Eminent Domain.*

The City argues that because eminent domain is an inherent governmental power, the exercise of that power can never constitute a breach of contract, and thus its decision to take the future interest by eminent domain to build a *631 golf course cannot constitute a breach of the conditions of the Deed, citing *City of Glendale v. Superior Court* (1993) 18 Cal.App.4th 1768, 23 Cal.Rptr.2d 305. Its reliance is misplaced. There, Glendale, as lessor, had let a city building to a private **873 lessee for a period of 20 years under a lease which provided for specified damages should Glendale terminate the lease prematurely. (*Id.*, p. 1773, 23 Cal.Rptr.2d 305.) After five years, Glendale filed an action in eminent domain to take the balance of the lessee's leasehold interest. (*Id.*, pp. 1773–1774, 23 Cal.Rptr.2d 305.) The lessee cross-complained for damages for breach of contract. (*Id.*, p. 1774, 23 Cal.Rptr.2d 305.) The issue was whether Glendale had agreed not to terminate the lease through eminent domain and thus was liable for contractual damages instead of simply compensation for the property taken. (*Id.*, p. 1175, 23 Cal.Rptr.2d 305.)

The appellate court held that Glendale had not covenanted to refrain from exercising its power of eminent domain either expressly or by implication, and that even if it had, its agreement to do so would not have been enforceable because an inherent governmental power such as eminent domain cannot be limited by contract. (*City of Glendale v. Superior Court, supra*, 18 Cal.App.4th at pp. 1777–1780, 23 Cal.Rptr.2d 305.) Thus, the lessee could recover compensation for the value of the balance of the leasehold interest, but could not collect damages for the breach of the alleged covenant. (*Id.*, pp. 1780–1781, 23 Cal.Rptr.2d 305.)

[35] This case is readily distinguishable from *City of Glendale*. First, no one contends that the exercise of eminent domain to take the future interest constitutes a breach of the conditions. Instead, it is the City's decision to cease using the Land, in which it already owned a present interest, in conformity with the use restrictions which established that a breach of the conditions was imminent.

Second, there is no claim here that, by accepting the gift, the City either assumed enforceable obligations to use the property in accordance with the conditions or agreed to a limitation of its right to exercise the power of eminent domain. Indeed, as noted in part A of this opinion, the holder of a conditional fee has no enforceable obligation and cannot be

compelled to perform in accordance with the conditions of the gift. The only remedy is the power of termination. Thus, unlike *City of Glendale,* no one is suing the City for damages for breach of contract.

Third, the issue here is not whether the condemnor had the power to take the condemnee's property interest. The Living Desert did not contest the City's right to take either below or on appeal. Instead, the only issue is whether the property interest taken by the City has compensable value. The requirement to pay compensation is not an improper limitation on the power of eminent domain. (U.S. Const., 5th Amend; Cal. Const., art. I, § 19.)

***632** The City's reliance upon *City of South San Francisco v. Mayer* (1998) 67 Cal.App.4th 1350, 79 Cal.Rptr.2d 704, is similarly misplaced. There, the city was the lessee of a long-term lease and exercised its power of eminent domain to take the interest of the lessor, but not its own leasehold interest. (*Id.*, p. 1352, 79 Cal.Rptr.2d 704.) The issue on appeal was whether the lessor could force the city to take the city's leasehold interest. (*Id.*, p. 1354, 79 Cal.Rptr.2d 704.) The appellate court held that the lessor could not, reasoning in part that the city cannot be forced " 'to buy again that which it has already bought and paid for.' " (*Id.*, p. 1355, 79 Cal.Rptr.2d 704, quoting *State of California v. Whitlow* (1966) 243 Cal.App.2d 490, 494, 52 Cal.Rptr. 336.)

Again, that opinion has no application here. South San Francisco had paid for the leasehold interest it enjoyed, and thus could not be required to pay for it a second time. By contrast, the City has never "paid for" its present interest in the Land. Rather than convey the Land to the City in exchange for monetary consideration, the Foundation asked only that the City put the Land to the charitable use specified by Pearl McManus. The City having reneged on its promise to do so, it will have gained an unfair windfall unless it is required to pay for it now.

4. *Conclusion*

Given the identity of the grantee and the condemnor, the trial court prejudicially erred ****874** in refusing to consider the City's condemnation proceedings when deciding whether a violation of the use restriction by the City was reasonably imminent. Accordingly, the trial court's conclusions that the violation was not reasonably imminent and that the Living Desert's power of termination was not compensable must be reversed. However, no retrial on that issue is necessary, because the evidence establishing the imminence of the violation is both undisputed and indisputable. Accordingly, the trial court is instructed that the violation of the use restriction was reasonably imminent and that the power of termination was compensable. (§ 1265.410(a)(1).)

[36] Had the condition been violated before the City commenced its condemnation action, the measure of compensation payable to the Living Desert would have been the fair market value of an estate in fee simple absolute. (Rest., Property, § 53, com. d, p. 190.) The violation here had not yet occurred when this action was filed but was reasonably imminent. Indeed, given that the City was requesting possession of the Land within 30 days, that violation was likely to occur within a matter of months. Under that circumstance, the trial court should apply the same measure of compensation to determine the value of Living Desert's power of termination, i.e., 100 percent of the value of the unrestricted fee in the Land. (*Pa. Dept. of Transp.* ***633** *v. Montgomery Tp.* (Pa.Cmwlth.1995) 655 A.2d 1086, 1090 [6 months until violation].)[8]

DISPOSITION

That portion of the judgment ruling in favor of the City on the Living Desert's cross-complaint to quiet title is affirmed. That portion ruling in favor of the City on its complaint in eminent domain is reversed, and the trial court is directed that the Living Desert's power of termination is compensable. The matter is remanded to the trial court to determine the compensation due, in accordance with the views expressed in this opinion. The Living Desert Reserve shall recover its costs on appeal. (Code Civ. Proc., § 1268.720.)

RAMIREZ, P.J., and GAUT, J., concur.

All Citations

70 Cal.App.4th 613, 82 Cal.Rptr.2d 859, 99 Cal. Daily Op. Serv. 1664, 1999 Daily Journal D.A.R. 2123

Footnotes

1 The Attorney General asked us to take judicial notice of the document which purportedly established the Foundation, the order settling the final account of the executor of the estate of McManus. That request is denied because the Attorney General did not provide the court with a copy of that order. (Evid.Code, § 453, subd. (b).)

2 A third possibility is that the Land was given subject to a charitable trust, but that the trust was subject to a condition subsequent with a gift over to the Living Desert. (See Rest.2d, Trusts, § 401, p. 309.) No one urges such a construction here.

3 Charitable purposes include the fulfillment of general municipal or other governmental purposes, such as the creation or maintenance of public parks. (11 Witkin, Summary of Cal. Law (9th ed. 1990) Trusts, § 285, p. 1118; Rest.2d Trusts, § 373, com. a, p. 256; Bogert, Law of Trusts & Trustees (2d ed. rev.1991) § 378, pp. 199; *Schaeffer v. Newberry* (1951) 235 Minn. 282, 286, 50 N.W.2d 477, 480 ["gifts for public parks have long been recognized as serving charitable purposes"]; cf. *McKevitt v. City of Sacramento* (1921) 55 Cal.App. 117, 125–126, 203 P. 132 [enforcing obligations of city under charitable trust to create a park].) Such gifts may be made to third parties, or directly to the governmental entity. (Bogert, § 378, pp. 191–193.)

4 Under the common law, there were two types of defeasible estates: a fee simple determinable, the reversionary interest of which was the possibility of reverter; and a fee simple subject to a condition subsequent, the reversionary interest of which was the right of re-entry. (5 Miller & Starr, Current Law of Cal. Real Estate (2d ed. 1989) Estates, §§ 11:4–11:6, pp. 6–11.) The distinctions between these two defeasible estates were statutorily abolished by the adoption of Civil Code section 885.020 in 1982. (Stats.1982, ch. 1268, § 1, p. 4678.) All defeasible fees are now known as fees simple subject to a condition subsequent, and all executory interests reserved by the grantor after granting such fees are known as powers of termination. (Civ.Code, §§ 885.010 & 885.020.)

5 That comment provides in relevant part: "If, viewed from the time of the commencement of an eminent domain proceeding, and not taking into account any changes in the use of the land sought to be condemned which may result as a consequence of such proceeding, the event upon which a possessory estate in fee simple defeasible is to end is an event the occurrence of which, within a reasonably short period of time, is probable, then the amount of damages is ascertained as though the estate were a possessory estate in fee simple absolute, and the damages, so ascertained, are divided between the owner of the estate in fee simple defeasible and the owner of the future interest in such shares as fairly represent the proportionate value of the present defeasible possessory estate and of the future interest." (Rest., Property, § 53, com. c, p. 188.)

6 Noting that the trial court expressly declined to decide whether use of the Land for a golf course would violate the conditions, the City argues that the issue must be remanded for trial. It is mistaken. Trials are reserved for disputed factual issues. No trial is necessary when a factual issue cannot be disputed. The Deed provides that the Land is to be used "solely" for the exhibition of desert flora and fauna. Even if we were to accept the City's questionable assertion that a golf course could be landscaped in such a fashion as to exhibit desert plants and animals, the fairways and greens would obviously not be devoted to such an exhibition, and thus such a course would not comply with the conditions of the Deed.

7 For the same reason, we question whether the City's condemnation solely of the reversionary interest relieves it of its duty under the Deed to comply with the use restriction. However, the parties have not raised that issue, and we do not decide it.

8 The City contends that it is improper for us to discuss valuation, an issue which the trial court did not reach below. It is mistaken. Code of Civil Procedure section 43 requires an appellate court to determine all questions of law involved in the case which are necessary to the final determination of the case upon retrial. Because we are remanding the matter for a new trial to determine the amount of compensation due for the taking of the future interest, it is proper for us to instruct the trial court concerning the measure of valuation to be used.

End of Document

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
Jefferson Davis, Jr.,	)	C/A No.: 2020-cp-36-00093
	)	
Plaintiff	)	
	)	Supplemental Affidavit of Chad Connelly
Vs.	)	
	)	
Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund	)	

COMES NOW, CHAD CONNELLY, being duly sworn, deposes and states:

I am the executive director of Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions.

The numbers provided for fundraising in my prior affidavit are correct. These numbers include both checks received and reservations under the tax credit cap for tax year donations. The system allows donors or CPAs to make a reservation of the tax credit for a forthcoming donation. Some donors use this reservation process or "pledges" to commit to make donations to better meet their personal tax planning schedules. We hold that donation slot until they submit their money, we obviously don't distribute that money until it is received but we do count it toward donations so that we hold their amount for them. In the past three fundraising cycles this reservation system has been heavily used. I do not recall any donor not sending the funding and honoring the reservation made on their behalf. I am informed this has happened only once in the past three years for an insignificant amount of money.

Contacting donors and CPAs to encourage both immediate donations and pledges for donations during the fundraising cycle is part of my job and directly results in revenue for Exceptional SC.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

Chad Connelly

Chad Connelly

April 16, 2020

Sworn to me this

16th day of April 2020

Notary Public for the State of South Carolina

My commission expires: July 16, 2029

KeyCite Yellow Flag - Negative Treatment
Distinguished by In re Trust of Mary Baker Eddy, N.H., June 14, 2019

61 Cal.2d 750
Supreme Court of California, In Bank.

J. Frank HOLT et al., Plaintiffs and Appellants,
v.
COLLEGE OF OSTEOPATHIC PHYSICIANS AND SURGEONS et al., Defendants andRespondents.

L. A. 26995.
|
Aug. 31, 1964.
|
Rehearing Denied Sept. 24, 1964.

Synopsis

Minority trustees of charitable corporation brought action against corporation and majority trustees to enjoin alleged breach of charitable trust and for declaratory relief. The Superior Court, Los Angeles County, Leon T. David, J., entered a judgment of dismissal after the sustaining of a demurrer to the complaint without leave to amend, and the minority trustees appealed. The Supreme Court, Traynor, J., held that the minority trustees had the capacity to bring the action in behalf of the corporation against the majority trustees to enjoin threatened breach of trust, and that the complaint stated a cause of action for enjoining a threatened breach of charitable trust, and that the complaint also stated a cause of action for declaratory relief.

Judgment reversed.

McComb, J., dissented.

Opinion, 36 Cal.Rptr. 397, vacated.

West Headnotes (12)

[1] **Charities** Persons entitled to enforce charitable trust

Sections of Corporations Code providing that if there is failure to comply with charitable trust, Attorney General shall institute in name of State proceedings necessary to correct noncompliance or departure do not preclude trustees from bringing action to enforce trust. West's Ann.Corp.Code, §§ 9505, 10207.

18 Cases that cite this headnote

[2] **Charities** Persons entitled to enforce charitable trust

Uniform Supervision of Trustees for Charitable Purposes Act authorizing Attorney General to supervise charitable trusts does not preclude trustees from bringing action to enforce trust. West's Ann.Gov.Code, §§ 12580–12595.

17 Cases that cite this headnote

[3] **Charities** Purposes of gift

Charitable contributions must be used only for purposes for which they were received in trust.

2 Cases that cite this headnote

[4] **Charities** Purposes of gift

Charitable trust is not fulfilled merely by applying assets in public interest.

1 Cases that cite this headnote

[5] **Charities** Nature and requisites in general

Cy-pres doctrine permits change of charitable purposes under some circumstances.

[6] **Charities** General rules of construction

Rules governing charitable trusts ordinarily apply to charitable corporations.

2 Cases that cite this headnote

[7] **Trusts** Rights of action and defenses between cotrustees

One trustee of private trust may sue cotrustee to enjoin conduct by him that violates trust, notwithstanding right of beneficiaries to bring action in their own behalf.

1 Cases that cite this headnote

[8] **Charities** Persons entitled to enforce charitable trust

Charitable trust should be enforceable by one or more of its trustees.

2 Cases that cite this headnote

[9] **Charities** Actions for administration or enforcement

Minority trustees of charitable corporation had capacity to bring action in behalf of corporation against majority trustees to enjoin alleged threatened breach of trust by majority trustees.

13 Cases that cite this headnote

[10] **Charities** Actions for administration or enforcement

Complaint of minority trustees of charitable corporation stated cause of action against majority trustees for enjoining threatened breach of charitable trust, where complaint alleged that majority trustees threatened to repudiate charitable purpose of corporation to conduct osteopathic medical and surgical college and to convert corporation into school teaching nonosteopathic medicine and surgery according to allopathic school of medicine.

5 Cases that cite this headnote

[11] **Declaratory Judgment** Subjects of relief in general

Complaint of minority trustees alleged cause of action against majority trustees of charitable corporation for declaratory relief, where minority trustees alleged that controversy existed between them and majority trustees over their rights and duties as trustees, and minority trustees sought judicial declaration of charitable purposes of charitable trust and whether certain conduct by majority trustees would be contrary to those purposes and therefore a breach of trust.

2 Cases that cite this headnote

[12] **Charities** Actions for administration or enforcement

Association was indispensable party to action by minority trustees of charitable corporation against majority trustees and corporation to enjoin performance by corporation of contract between corporation and association. West's Ann.Code Civ.Proc. § 389.

3 Cases that cite this headnote

Attorneys and Law Firms

***245 **933 *751** Mitchell, Silberberg & Knupp, Arthur Groman and Howard S. Smith, Los Angeles, for plaintiffs and appellants.

***752** Stanley Mosk, Atty. Gen., Carl Boronkay, Deputy Atty. Gen., Belcher, Henzie & Biegenzahn, Belcher, Henzie & Fargo, George M. Henzie and Seth M. Hufstedler, ***246 **934** Los Angeles, for defendants and respondents.

Opinion

TRAYNOR, Justice.

Plaintiffs appeal from a judgment of dismissal entered after the sustaining of a demurrer to their complaint without leave to amend in an action to enjoin the breach of a charitable trust and for declaratory relief.

Plaintiffs are three trustees of defendant College of Osteopathic Physicians and Surgeons (hereinafter COPS), a California charitable corporation. The other defendants are the twenty-three remaining trustees on the COPS board of trustees and the Attorney General. The complaint alleges in substance that COPS holds assets in excess of $1,500,000 in trust for charitable purposes, and that defendant trustees have acted contrary to these purposes and threaten other such acts. By their first cause of action plaintiffs seek to enjoin these acts, and by their second cause of action they seek a declaration of their and defendants' rights and duties with regard to the operation of COPS.

The Attorney General filed an answer to the complaint denying for want of information and belief the allegations that defendant trustees were diverting the assets of COPS from its charitable purposes. As an affirmative defense the

Attorney General stated that 'The matter of proposed changes in the operation of said College was reviewed by the Attorney General to determine whether such changes would constitute a violation of a charitable trust warranting institution of a suit by this office to remedy the situation. It has been concluded that the changes to be made in the operation of said College would not be detrimental to the public interest and do not warrant legal action by this office to prevent such changes.' The Attorney General also stated that he had not granted 'relator status' to plaintiffs and had not consented to their bringing this action. Defendant trustees demurred to the complaint and the trial court sustained the demurrer on the grounds that plaintiffs have no capacity to bring this action and that the complaint does not state facts showing a threatened breach of a charitable trust.

The first issue is whether plaintiffs, as minority trustees of a charitable corporation, can sue the majority trustees to enjoin their allegedly wrongful diversion of corporate assets *753 in breach of a trust for charitable purposes. Defendants contend that only the Attorney General can bring such an action.

The prevailing view of other jurisdictions is that the Attorney General does not have exclusive power to enforce a charitable trust and that a trustee or other person having a sufficient special interest may also bring an action for this purpose.[1] This position is adopted by the American Law Institute (Rest.2d Trusts, s 391) and is supported by many legal scholars. (Karst, The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility, 73 Harv.L.Rev. 433, 443-449; 4 Scott, Trusts (2d ed.) s 391; 4 Pomeroy, Equity (5th ed.) 287, n. ***247 **935 13; see also Note 62 A.L.R. 881; 4 Witkin, Summary of California Law (7th ed.) 2918-2919.)

In accord with the majority view, this court has stated that '* * * the only person who can object to the disposition of the trust property is one having some definite interest in the property he must be a trustee, or a cestui, or have some reversionary interest in the trust property.' (O'Hara v. Grand Lodge I.O.G.T., 213 Cal. 131, 140, 2 P.2d 21, 24; see also People ex rel. Ellert v. Cogswell, 113 Cal. 129, 136, 45 P. 270, 35 L.R.A. 269; Pratt v. Security Trust & Sav. Bank, 15 Cal.App.2d 630, 640-641, 59 P.2d 862; cf. St. James Church v. Superior Court, 135 Cal.App.2d 352, 360, 287 P.2d 387.)

[1] [2] Defendants invoke Corporations Code, sections 9505 and 10207 for the proposition that only the Attorney General can bring an action for the enforcement of a charitable trust administered by either a nonprofit or charitable corporation. *754 These sections provide that if there is a failure to comply with a charitable trust '* * * the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure.' Nothing in these sections suggests that trustees are precluded from bringing an action to enforce the trust. The Uniform Supervision of Trustees for Charitable Purposes Act (Gov.Code, ss 12580-12595) similarly authorizes the Attorney General to supervise charitable trusts, and likewise fails to preclude suits by trustees.

The foregoing statutes were enacted in recognition of the problem of providing adequate supervision and enforcement of charitable trusts.[2] Beneficiaries of a charitable trust, unlike beneficiaries of a private trust, are ordinarily indefinite and therefore unable to enforce the trust in their own behalf. (E. g., People ex rel. Ellert v. Cogswell, 113 Cal. 129, 136-137, 45 P. 270, 35 L.R.A. 269; Pratt v. Security Trust & Sav. Bank, 15 Cal.App.2d 630, 639-641, 59 P.2d 862.) Since there is usually no one willing to assume the burdens of a legal action, or who could properly represent the interests of the trust or the public, the Attorney General has been empowered to oversee charities as the representative of the public, a practice having its origin in the early common law. (See generally Scott, supra, s 391, pp. 2753-2756.)

[3] In addition to the general public interest, however, there is the interest of donors who have directed that their contributions be used for certain charitable purposes. Although the public in general may benefit from any number of charitable purposes, charitable contributions must be used only for the purposes for which they were received in trust. (O'Hara v. Grand Lodge I.O.G.T., supra, 213 Cal. at pp. 140-141, 2 P.2d 21; Pacific Home v. County of L. A., 41 Cal.2d 844, 854, 264 P.2d 539; see also Estate of Faulkner, 128 Cal.App.2d 575, 578, 275 P.2d 818.) Moreover, part of the problem of enforcement is to bring to light conduct detrimental to a charitable trust so that remedial action may be *755 taken. The Attorney General may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact, and the various responsibilities of his office may also tend to make it burdensome for him to institute legal actions except in situations of serious public detriment. (See Karst, supra, 73 Harv.L.Rev. at pp. 478-479; Bogert, Proposed Legislation Regarding State Supervision of Charities, 52 Mich.L.Rev. 633, 634-636; Scott, supra, s 391, pp. 2754-2756.)

***248 **936 [4] [5] The present case illustrates these difficulties. The pleading filed by the Attorney General stated that he had no information or belief as to the plaintiffs' allegations that trust assets were being diverted from their charitable purpose. Yet the pleading also stated that the Attorney General determined that legal action by his office was not warranted because the changes in the operation COPS 'would not be detrimental to the public interest. * * *' The test applied by the Attorney General in deciding not to take legal action is clearly incorrect, for the assets of COPS as a charitable institution can be used only for the purposes for which they were received in trust. The trust is not fulfilled merely by applying the assets in the public interest. [3]

Although the Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him. The protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf. This consideration '* * * is quite inapplicable to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity's affairs.' (Karst, supra, 73 Harv.L.Rev. at pp. 444-445.) There is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity. [4] The administration of charitable *756 trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available. 'The charity's own representative has at least as much interest in preserving the charitable funds as does the Attorney General who represents the general public. The cotrustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention.' (Karst, supra, 73 Harv.L.Rev. at p. 444.) Moreover, permitting suits by trustees does not usurp the responsibility of the Attorney General, since he would be a necessary party to such litigation and would represent the public interest. (See In re L. A. County Pioneer Society, 40 Cal.2d 852, 861, 257 P.2d 1.)

Defendant trustees urge that a distinction should be made between trustees of a charitable trust and the governing board of a charitable corporation. They apparently concede that a minority trustee of a charitable trust has the capacity to sue, but contend that members of a governing board of a charitable corporation are not truly trustees and that a different rule applies to them. The Attorney General takes the position that he is the only one empowered to bring suit in either situation. Corporations Code, section 10205 states that the powers of a charitable corporation shall be vested in a 'board of trustees.' Defendant trustees contend, however, that this title does not disclose their true status, that it is the corporation as a legal entity that is properly designated the trustee of the assets held in trust for charitable purposes, and that the members of the board are merely employees of the corporate trustee.

[6] It is true that trustees of a charitable corporation do not have all the attributes of a trustee of a charitable trust. ***249 **937 They do not hold legal title to corporate property (see Corp.Code, s 10206, subd. (d)) and they are not individually liable for corporate liabilities (Corp.Code, s 9504). The individual trustees in either case, however, are the ones solely responsible for administering the trust assets (Corp.Code, s 10205), and in both cases they are fiduciaries in performing their trust duties. (St. James Church v. Superior Court, 135 Cal.App.2d 352, 361, 287 P.2d 387.) Rules governing charitable trusts ordinarily apply to charitable corporations. (Karst, supra, *757 73 Harv.L.Rev. at pp. 435-436; Rest.2d Trusts, supra, s 348, p. 212; Scott, supra, s 348.1, p. 2559; Comment, Trusts Gifts to Charitable Corporations, 26 So.Cal.L.Rev. 80, 85.) There is no sound reason why minority directors or 'trustees' of a charitable corporation cannot maintain an action against majority trustees when minority trustees of a charitable trust are so empowered.

[7] [8] The rules governing private trusts also support plaintiffs' position with respect to the enforcement of a charitable trust. It is settled that one trustee of a private trust may sue a cotrustee to enjoin conduct by him that violates the trust, notwithstanding the right of the beneficiaries to bring an action in their own behalf. (E.g., Estate of Hensel, 144 Cal.App.2d 429, 438, 301 P.2d 105; Stanton v. Preis, 138 Cal.App.2d 104, 106, 291 P.2d 118; Rest.2d Trusts, s 200, comment e.) It follows a fortiori that a charitable trust should be enforceable by one or more of its trustees, since its indefinite class of beneficiaries is ordinarily not able to protect its own interest by legal action. [5]

[9] Plaintiff trustees therefore have the capacity to bring an action in behalf of COPS against the majority trustees to enjoin any breach of trust that is threatened. To the extent it is contrary to this opinion, George Pepperdine Foundation v. Pepperdine, 126 Cal.App.2d 154, 271 P.2d 600, is disapproved.

The question remains whether the complaint states a cause of action. A summary of the complaint follows. The articles of incorporation of COPS state its charitable purposes to be:

> 'To establish, maintain, carry on and conduct an osteopathic medical and surgical college, in which all branches of learning, and instruction which now pertain or which may in the future pertain to the science and art of health maintenance; prevention, relief and recovery from disease, as well as any or all academic subjects desirable or necessary as a foundation for the teaching of such branches.'

Osteopathic medicine, unlike allopathic medicine, places ***758** special emphasis on the 'functions and importance of the dysfunctions of the musculoskeletal system of the human body,' on the 'intimate interrelationship and natural curative resources of the human body viewed as a whole,' and on the 'value of manipulative therapy for conditions and ailments of the human body.' Students in an osteopathic school receive a special and unique education and training in the principles of osteopathic medicine not taught at medical schools teaching the allopathic theory of medicine. Physicians trained at osteopathic schools are known as osteopathic physicians and surgeons, or as osteopaths, and constitute a separate and distinct profession practicing the diagnosis and treatment of all human ailments. An osteopath receives an unlimited physician's and surgeon's license that grants him rights and privileges identical with those granted by the license issued to a graduate of an allopathic medical school. Osteopathy is *****250** ****938** a growing profession in the United States and is generally accepted and recognized as a distinct and separate school and theory of medicine.

At all times since its incorporation in 1914 until about May 24, 1961, COPS continuously conducted an osteopathic medical and surgical college that trained young men and women in osteopathic medicine. Other activities of COPS include staffing, teaching, and assisting in the operation of the Los Angeles Osteopathic Hospital, a division of the Los Angeles County Hospital; carrying on research in osteopathic medicine; conducting a general clinic providing osteopathic medical and surgical care; and operating a postgraduate school in osteopathic medicine and surgery. During this period the trustees of COPS have held out to the public and members of the osteopathic profession that COPS was an osteopathic medical college dedicated to providing training in osteopathic medicine. On the basis of such representations, COPS has solicited and received donations for use in teaching, research, and the general promotion of osteopathy. COPS also has actively solicited and received scholarship funds and research grants from the American Osteopathic Associations, a national organization dedicated to the furtherance of osteopathic medicine and surgery in the United States.

Plaintiffs allege that defendant trustees threaten to divert the assets of COPS to purposes other than those for which it was organized and for which COPS has in the past solicited and received funds in trust. The particular acts complained of ***759** are (1) on May 24, 1961 defendant trustees resolved that COPS shall perform certain acts contemplated in an agreement between the California Medical Association and the California Osteopathic Association, including changing the name of COPS so that neither the word 'osteopathic' or any similar word shall be used, and using its best efforts to obtain approval by the Council on Medical Education and Hospitals of the American Medical Association and to obtain membership in the Association of American Medical Colleges; (2) on June 5, 1961 defendant trustees resolved to apply for membership for COPS in the Association of American Medical Colleges, and to apply for approval of COPS by the Council on Medical Education and Hospitals of the American Medical Association; (3) COPS has, on the direction of defendant trustees, applied to the Association of American Medical Colleges for approval as an allopathic medical school, and has applied to the Council on Medical Education and Hospitals of the American Medical Association to become an approved allopathic medical school; (4) on June 5, 1961, defendant trustees resolved to amend the articles of incorporation of COPS to change its name to 'California College of Medicine,' and COPS has since filed an amendment with the Secretary of State so changing its name; (5) on November 8, 1961 defendant trustees approved an agreement between COPS and the California Osteopathic Association in which COPS agreed to perform various of the acts already recited and also 'to assist in the removal of the distinction among any persons practicing medicine in the State of California holding an unlimited Physician and Surgeon's certificate.'

Plaintiffs contend that the foregoing acts have the purpose and effect of abandoning and repudiating the charitable purpose of

COPS to conduct an osteopathic medical and surgical college and to convert COPS into a school teaching nonosteopathic medicine and surgery according to the allopathic school of medicine.

[10] We have concluded that the complaint states a cause of action for enjoining a threatened breach of a charitable trust. If the allegations of the complaint are true, the charitable purpose of COPS is primarily to conduct a college of osteopathy for the training of osteopathic physicians and surgeons and for the general furtherance of the profession of osteopathy. The complaint sufficiently alleges a distinction between osteopathic and allopathic medicine. Consequently, ***760** the change of *****251** ****939** COPS' curriculum or the taking of other steps for the purpose of gaining accreditation as an allopathic medical college, and the training of allopathic physicians and surgeons, are sufficiently alleged to be acts not within the purpose of conducting an osteopathic college.

Defendant trustees contend that the differences between the two branches of medicine are insignificant and that the removal of any distinction between these branches would not change the teaching of osteopathy from that previously practiced at COPS. These contentions, however, do not go to the sufficiency of the complaint, but only raise issues of the truth of the allegations of the complaint.

Defendant trustees also point out that the articles of COPS provide that it shall establish a college 'in which shall be taught all branches of learning, and instruction which now pertain or which may in the future pertain to the science and art of health maintenance. * * *' This provision justifies the teaching of subjects in allopathic medicine at COPS, and in fact the complaint alleges that COPS provides 'training and education equal in scope and subject matter in all respects to the training received by students in medical schools teaching the allopathic school and theory of medicine.' The purpose of COPS nevertheless is to conduct an osteopathic college, and, if the allegations of the complaint are true, the teaching of allopathic medicine is proper only insofar as is useful in the training of osteopaths. It is alleged that osteopathic schools place special emphasis on osteopathic theories and practices not emphasized in schools of allopathic medicine. According to the complaint, the training of osteopaths depends on the emphasis given to various subjects, even though courses may be given in allopathic medicine. Whether the teaching of allopathic medicine as threatened by defendant trustees will change the teaching emphasis at COPS contrary to the charitable purpose of conducting an osteopathic college presents a question of fact that cannot be decided on demurrer.

[11] The complaint also states a cause of action for declaratory relief. Plaintiffs have alleged that a controversy exists between them and defendant trustees over their rights and duties as trustees of COPS. Plaintiffs are entitled to a judicial declaration of the charitable purposes of the COPS trust and whether certain conduct by COPS trustees would be contrary to these purposes and therefore a breach of trust.

[12] The trial court correctly held that the California Osteopathic Association (hereinafter COA) is an indispensable ***761** party to this action. Since plaintiffs seek to enjoin the performance by COPS of a contract between COPS and COA, the effect of a decree in favor of plaintiffs would be to enjoin COA as well as COPS. COA is therefore an indispensable party. (Miracle Adhesives v. Peninsula Tile Assn., 157 Cal.App.2d 591, 593-594, 321 P.2d 482; Code Civ.Proc. s 389.) Plaintiffs should be given leave to amend to join COA as a party defendant.

The judgment is reversed.

GIBSON, C. J., and PETERS, TOBRINER and PEEK, JJ., concur.

McCOMB, Justice (dissenting).

I dissent. In my opinion, this is the sole question necessary to determine: Did the three minority trustees have the capacity to sue the corporation without the consent of the Attorney General?

No. Only the Attorney General may bring an action to correct noncompliance with a trust assumed by a charitable corporation.

The affairs of either a private corporation or a charitable corporation are managed by a majority of the board of directors or board of trustees of the corporation (Corp.Code, ss 800, 10205),[1] and the Corporations *****252** ****940** Code contains no provision to permit a minority of the directors or trustees, as such, to question action taken by the majority.[2]

***762** If a private corporation engages in unauthorized business, either a shareholder of the corporation or the State

may enjoin the doing or continuation of such business by the corporation. (Corp.Code, s 803.)[3]

Where a charitable corporation has failed to comply with any trust which it has assumed, or where such a corporation has departed from the general purpose for which it was formed, the Attorney General is required to institute the proceedings necessary to correct the noncompliance or departure. (Corp.Code, s 10207.)[4] No provision has been made for such a right to be exercised by any other person.

The provisions of the General Corporation Law (Corp.Code, ss 1-8999) are made applicable to corporations formed under the General Nonprofit Corporation Law (Corp.Code, ss 9000-10703) except as to matters specifically otherwise provided for (Corp.Code, s 9002). However, the matter of who is entitled to bring an action for ultra vires acts of the officers or directors of a charitable corporation is 'specifically otherwise provided for' by section 10207 of the Corporations Code. Therefore, no action may be filed under section 803 of the Corporations Code with respect to a charitable corporation.

In any event, however, although 'shareholder' is defined to include a member of a nonstock corporation (***763** Corp.Code, s 103), no showing has been made that plaintiffs are members of defendant college.[5]

*****253** ****941** Accordingly, plaintiffs lacked capacity to bring the present action.[6]

I am of the opinion that we should not disapprove the holding in Geo. Pepperdine Foundation v. Pepperdine, 126 Cal.App.2d 154, 271 P.2d 600, in which this court unanimously denied a hearing.

That case was decided in 1954 and has, presumably, been the law for ten years. There is no way of telling how many citizens have followed the law as stated in that case or how many trial courts have rendered judgments relying thereon.

The Legislature has met on numerous occasions and has not seen fit to overrule the decision or to change the law as set forth therein. It could have done so very simply by amending ***764** section 10207 of the Corporations Code, which at that time vested, and now vests, in the Attorney General the sole authority to bring an action to correct noncompliance with a trust assumed by a charitable corporation.

In my opinion, in the absence of a showing that a prior decision was rendered through (1) corruption or (2) an obvious mistake, or (3) that conditions have changed making it inapplicable, the doctrine of stare decisis should be followed by this court so that the District Courts of Appeal, the trial courts, and lawyers may know what the established law is. Thus, trial courts will be in a position to render uniform decisions on similar facts, and lawyers will be able to advise their clients as to the course they should follow. (See People v. Hines, 61 A.C. 148, 166, 37 Cal.Rptr. 622, 390 P.2d 398 et seq.)

My views on this subject are well expressed by the Honorable Paul R. Hutchinson, President of the Los Angeles County Bar Association, as follows:

'History records that when tyrants take over governments the first thing they do is suspend the judicial processes or, worse, select judges to do their bidding without regard for established law.

'Uncivilized governments of history were corrupt because their courts were not dependable. Justice was subject to the whim of the court. The law was whatever the Court said was the law. There was no stability there was no assurance that the law on which men relied would still be the law when their rights reached the courts for adjudication.

*****254** ****942** 'The common law set out to end this fickle, unreliable, unstable, capricious and sometimes corrupt system by adopting a system that called for adherence to established law. Stare decisis, we called it, which Bouvier defines as meaning, 'To abide by, or adhere to decided cases. It is a general maxim that when a point of law has been settled by decision, it forms a precedent which is not afterwards to be departed from. * * * Where there have been a series of decisions by the supreme judicial tribunal of a state, the rule of stare decisis may usually be regarded as impregnable, except by legislative act.'

'This doctrine was the crowning glory of the common law and of American jurisprudence. By it we became a government of laws, and not of men. 'The law' was the established law of the people. They provided the soundest basis for determining ***765** the law by which they chose to be governed. If they thought a law was bad they could change it. But until they did so, the judge enforced it. He could not arrogate to himself the right to change the law and substitute his opinion for the established law of the people.

'We prospered under this rule, while less stable governments floundered all around us. Not in any country, at any time or era, was so much even-handed justice dispensed to the people. We were the envy of other people in other lands. They beat upon our gates for admission to our country like waves upon a dike. They came here by the millions. For they knew that, in spite of faults, that sometimes appeared, the system was so much bigger than the faults, that through it we had made one of the great contributions to man's eternal effort to establish justice among all men.

'Granted that the law should never be wholly inflexible; granted that changing conditions call for changing interpretations to prevent injustices stemming from an adherence to form that is so slavish it is blind to the heart and soul of the legal principle being ruled on, these exceptions should never justify a court re-writing the organic laws people have ordained for themselves without great and compelling reasons that find substantial support among the thinking people of the Country. * * *' (39 Los Angeles Bar Bulletin (July 1964) 321-322.)

'* * * I cannot but conclude that there is a strong feeling arising among thinking lawyers that it is time to speak out to restore our fundamental system of checks and balances in government, which concept was one of the greatest contributions our Constitution made to organized governments throughout the world.

'Under this system the court construes the laws of the people. In construing them, it should not make new and fundamental laws not arising by fair implication from the laws at hand, for if it does it usurps the law-making power of the people and their legislative representatives.

'It is no valid answer that a majority of the justices think that the law they make is good law. We are not, under the Constitution, nor can we permit ourselves to become by construction or by default, a government by a shifting majority of the members of the Supreme Court.

'Nor should the Court's impatience to achieve reforms justify its refusal to apply established law. Roscoe Pound ***766** was perhaps America's greatest jurist. His death this month prompts me to quote from his masterful address on 'The Causes of Popular Dissatisfaction with the Administration of Justice.' It has been re-published by the American Judiciary Society. Because basic truths never change, it comes as a surprise to learn that the remarks so apt were delivered in 1906. He said:

"Public opinion must affect the administration of justice through the rules by which justice is administered rather than through the direct administration. All interference with the uniform and automatic applications of these rules, when actual controversies arise, induces an anti-legal *****255** ****943** element which becomes intolerable. * * * We must pay a price for certainty and uniformity." (39 Los Angeles Bar Bulletin (Aug. 1964) 379-380.)

I would affirm the judgment.

Rehearing denied; McCOMB, J., dissenting, MOSK, J., not participating.

All Citations

61 Cal.2d 750, 394 P.2d 932, 40 Cal.Rptr. 244

Footnotes

1 Duffee v. Jones, 208 Ga. 639, 68 S.E.2d 699, 703; Jenkins v. Berry, 26 Ky. 1141, 83 S.W. 594, 597; Sister Elizabeth Kenny Foundation v. National Foundation, 267 Minn. 352, 126 N.W.2d 640, 646; Dickey v. Volker, 321 Mo. 235, 11 S.W.2d 278, 281; Souhegan Nat. Bank v. Kenison, 92 N.H. 117, 26 A.2d 26, 30; DiCristofaro v. Laurel Grove Memorial Park, 43 N.J.Super. 244, 128 A.2d 281, 284; Trustees of Sailors' Snug Harbor v. Carmody, 158 App.Div. 738, 144 N.Y.S. 24, 37, Affd. 211 N.Y. 286, 105 N.E. 543, 546; Shields v. Harris, 190 N.C. 520, 130 S.E. 189, 192; Agan v. United States Nat. Bank, 227 Or. 619, 363 P.2d 765, 769; Wiegand v. Barnes Foundation, 374 Pa. 149, 97 A.2d 81, 82-83; Clevenger v. Rio Farms, Tex.Civ.App., 204 S.W.2d 40, 45-46; Clark v. Oliver, 91 Va. 421, 22 S.E. 175, 176; Nash v. Morley, 49 Eng.Rep. 545, 547-548; see also Thurlow v. Berry, 247 Ala. 631, 25 So.2d 726, 733; Cannon v. Stephens, 18 Del.Ch. 276, 159 A. 234, 236-237; Holden Hosp. Corp. v. Southern Ill. Hosp. Corp., 22 Ill.2d 150, 174 N.E.2d 793, 796; Gilbert v. McLeod Infirmary, 219 S.C. 174, 64 S.E.2d 524, 528, 24 A.L.R.2d 60; Bellows Free Aeademy v. Sowles, 76 Vt. 412, 57 A. 996, 999.

2 This problem has been extensively discussed in recent years. (See Karst, The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility, 73 Harv.L.Rev. 433; Bogert, Proposed Legislation Regarding State Supervision of Charities, 52 Mich.L.Rev. 633; Bogert, Recent Developments Regarding the Law of Charitable Donations and Charitable

Trusts, 21 U.Chi.L.Rev. 118; Note, State Supervision of the Administration of Charitable Trusts, 47 Colum.L.Rev. 659; Note, The Charitable Corporation, 64 Harv.L.Rev. 1168.)

3 We are not presented with the applicability of the cy-pres doctrine, which permits change of charitable purposes under some circumstances. (See, e. g., Estate of Loring, 29 Cal.2d 423, 436, 175 P.2d 524; O'Hara v. Grand Lodge I.O.G.T., supra, 213 Cal. at 140-141, 2 P.2d 21.)

4 Defendant trustees' reference to the safeguards afforded in the area of private corporations (Corp.Code, s 834) is inapplicable, since trustees as fiduciaries have a special interest wholly unlike that of a private corporate shareholder. We do not reach the question whether minority directors of a private corporation can bring an action in behalf of the corporation. (Cf. Sealand Inv. Corp. v. Emprise, Inc., 190 Cal.App.2d 305, 12 Cal.Rptr. 153.) The differences between private and charitable corporations make the consideration of such an analogy valueless.

5 St. James Church v. Superior Court, supra, 135 Cal.App.2d 352, 360, 287 P.2d 387, 391, relied on this rule in upholding an action brought by a majority of trustees of a charitable religious corporation against one of the trustees to enjoin his breach of trust. The court quoted section 200, comment e, of the Restatement Second of Trusts, supra, for the rule that 'if there are several trustees, one or more of them can maintain a suit against another to compel him to perform his duties under the trust, or to enjoin him for committing a breach of trust * * *.'

1 Section 800 of the Corporations Code provides: 'Subject to limitations of the articles and of this division as to action which shall be authorized or approved by the shareholders, all corporate powers shall be exercised by or under authority of, and the business and affairs of every corporation shall be controlled by, a board of not less than three directors.'

Section 10205 of the Corporations Code provides: 'Subject to the provisions of the articles of incorporation (of a charitable corporation), the exercise of the powers of the corporation, with the right to delegate to officers and agents the performance of duties and the exercise of powers, shall be vested in a board of trustees.'

Under section 10201 of the Corporations Code, a charitable corporation is required to have not less than 9, nor more than 25, trustees.

2 Unlike California, New York specifically permits a director or officer of a corporation, as such, to institute and maintain a suit questioning action taken by one or more of the other directors or officers thereof. (N.Y.Gen.Corp.Law, ss 60, 61; see Tenney v. Rosenthal, 6 N.Y.2d 204, 189 N.Y.S.2d 158, 160 N.E.2d 463, 467.) Without such statutory authorization, an action by an individual director would violate the requirement that the affairs of the corporation be managed by the board. (See Goldman and Kwestel, Director's Statutory Action in New York (1961) 36 N.Y.U.L.R. 199, 202.)

3 Section 803 of the Corporations Code provides: 'The statement in the articles of the objects, purposes, powers, and authorized business of the corporation constitutes, as between the corporation and its directors, officers, or shareholders, an authorization to the directors and a limitation upon the actual authority of the representatives of the corporation. Such limitations may be asserted in a proceeding by a shareholder or the State, to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or to dissolve the corporation, or in a proceeding by the corporation or by the shareholders suing in a representative suit, against the officers or directors of the corporation for violation of their authority. * * *'

4 Section 10207 of the Corporations Code provides: 'Each such corporation (charitable corporation) shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. * * *' (See also Corp.Code, s 9505.)

5 'Member' includes each person signing the articles of a nonstock corporation and each person admitted to membership therein (Corp.Code s 104), and under certain circumstances the persons on the controlling board of a nonprofit corporation are regarded as members (Corp.Code, s 9603).

6 Although plaintiffs and the individual defendants are designated 'trustees,' they are not trustees in the strict sense, since the title to the property of the corporation is in the corporation and not in them. (Bainbridge v. Stoner, 16 Cal.2d 423, 428(2, 3), 106 P.2d 423; Brown v. Memorial Nat. Home Foundation, 162 Cal.App.2d 513, 540(23), 329 P.2d 118, 75 A.L.R.2d 427 et seq. (hearing denied by the Supreme Court); see Rest.2d Trusts (1959) s 16 A, com. a, p. 52.)

Whether or not plaintiffs could maintain this action if they and the individual defendants were trustees of a charitable trust, rather than members of the controlling board of a charitable corporation, is a question not now before us. There is, however, substantial authority to the effect that one of several trustees of a charitable trust may maintain an action against the others to enforce the trust or to compel the redress of a breach of trust. (See Rest. 2d Trusts (1959) s 391, p. 278; 4 Scott, Trusts (2d ed. 1956) s 391, p. 2757. Cf. O'Hara v. Grand Lodge I.O.G.T., 213 Cal. 131, 140(4) 2 P.2d 21.)

In Pepperdine Foundation v. Pepperdine, 126 Cal.App.2d 154, 161(3), 271 P.2d 600, 601, an action by a charitable corporation against its former directors for damages resulting from 'dissipation of its assets through illegal and speculative transactions and mismanagement of its affairs' by the defendants during their incumbencies, the District Court of Appeal held that the Attorney General was the only person qualified to maintain an action on behalf of a benevolent, public, charitable trust whose beneficiaries were of an indefinite class of persons, and that the plaintiff therefore lacked capacity to bring the action. Although the language used by the District Court of Appeal refers to charitable trusts, and not to charitable corporations, the plaintiff there involved was, in fact, a charitable corporation.

End of Document

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr., Plaintiff, vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	)	**PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT & SANCTIONS FOR FALSE AFFIDAVIT**

TO: DEFENDANT CHAD CONNELLY, TOM PERSONS & SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

PLEASE TAKE NOTICE, Plaintiff Jefferson Davis, Jr. hereby moves before this honorable Court for an Order finding Perjury by Defendant Chad Connelly for the filing of a false sworn affidavit with this Court on March 4th, 2020, and for Contempt of Court and Sanctions against all Defendants as this Court deems appropriate.

On March 4th, 2020, counsel for the Defendants filed with this honorable Court an **Affidavit of Chad Connelly** in support of Defendants Motion to Dismiss. See Exhibit A. Mr Connelly's sworn affidavit stated, in part, the following:

> **"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result the number is constantly in flux. The current rate of donation receipts is approximately $350,000 per week or $50,000 per day."**
>
> March 4, 2020, Affidavit of Chad Connelly (Exhibit A.)

Mr. Connelly's sworn affidavit in support of Defendant's Motion to Dismiss continued on to claim that **"the damages suffered will be between $45,000 and $50,000 per day over the next six weeks."** *Id.*

On April 15th, 2020, Plaintiff Davis received a response to his Freedom of Information Act (FOIA) request with the actual donation totals as of March 30th, 2020, subtotaled by month. See Exhibit B. Although Mr. Connelly had sworn on March 4th, 2020 that Exceptional SC had raised "approximately $1,045,000 in donations" over the past 21 days, the South Carolina Department of Revenue reported that only $477,332.10 had been raised for the three months ending March 31, 2020.[1]

On April 16th, 2020, knowing the truth was out, counsel for the Defendants filed with this honorable Court a **Supplemental Affidavit of Chad Connelly**. See Exhibit D. In this sworn affidavit, Mr. Connelly belligerently continues to contend that the **"numbers provided for fundraising in my prior affidavit are correct"** and that the $1,045,000 figure represented actual donations and "pledges".

According to Black's Law Dictionary, Sixth Edition, donation comes from the Latin, *donatio*, meaning gift.

> **"Donatio. Lat. A gift. A transfer of the title to property to one who receives it without paying for it. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration."**

Non-binding "pledges" are not transfers and thus are not donations by any definition.

---

[1] A subsequent FOIA request has caused the disclosure by the South Carolina Department of Revenue that only $550,432.41 has been raised in donations for calendar year 2020 as of April 30, 2020. See Exhibit C.

CONCLUSION

Plaintiff now respectfully does pray and ask this Court to grant an Order finding Perjury by Defendant Chad Connelly for the filing of a false sworn affidavit as to the actual donations raised and projected damages, and for Contempt of Court and Sanctions as this Court deems appropriate against all Defendants related to the egregiousness of the false claims and Defendants ongoing proclivity to lie to the Court and their non-profit stakeholders – K-12 children with special needs, their families, and the schools that serve them.

Plaintiff would also ask this honorable Court to COMPEL (*subject to seal*) any claimed "pledges" given the inability to independently verify what appears to be additional perjured claims by Mr. Chad Connelly, and condoned by the other Defendants.

Pursuant to Rule 11, and in a desperate effort to help the K-12 children being needlessly failed by Defendants failures, Plaintiff certifies that prior to filing this motion, he has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion (and all matters in fact) with no response whatsoever from Defendants.

Plaintiff reserves the right to support this Motion with a Memorandum of Law, Affidavits, and any other relevant information which may (*and in fact will*) be submitted at a later date.

Respectfully submitted this **12th day of May, 2020**.

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **12th day of May, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT & SANCTIONS FOR FALSE AFFIDAVIT**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LL
411 Walnut Street #10646
Green Cove Springs, FL 32043
g.k.chambers@gmail.com
geoffrey@cperlgroup.com
Connelly, Persons & ECENC Fund

M. Dawes Cooke, Jr., Esq. &
Justin Paul Novak, Esq.
Barnwell Whaley
P.O. Drawer H
Charleston SC 29402
mdc@barnwell-whaley.com
jnovak@barnwell-whaley.com
Connelly, Persons & ECENC Fund

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

EXHIBIT A

Affidavit of Chad Connelly
(Filed March 4, 2020)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
Jefferson Davis, Jr.,	)	C/A No.: 2020-cp-36-00093
Plaintiff	)	
Vs.	)	Affidavit of Chad Connelly
Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund	)	

COMES NOW, CHAD CONNELLY, being duly sworn, deposes and states:

I am the executive director of Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions.

Donations to charity organizations have become less advantageous to tax payers because of recent IRS rulings limiting the ability to claim deductions on Federal Income Tax. As a result, it takes our staff constant contact through calls, emails and visits to sell potential donors on the merits of donating to our program. If our staff were eliminated and these donor contacts stop, the donations to the program will dry up.

The eight weeks before April 15th and the month of December have historically been our most productive time for receiving donations.

In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result that number is constantly in flux. The current rate of donation receipt is approximately $350,000 per week or $50,000 per day.

Damages to this program resulting from a shutdown of operations are all donations being lost to other organizations courting these same donors. If our staff is not being paid to work, the damages suffered will be between $45,000 and $50,000 per day over the next six weeks. After six weeks, exact damages are unknown but significant.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

Chad Connelly

Chad Connelly

March 4, 2020

Sworn to me this

4th day of March 2020

Angela J Carter

Notary Public for the State of South Carolina

My commission expires:

My Commission Expires August 20, 2025

EXHIBIT B

SC Dept. of Revenue FOIA Response
Exceptional SC Fundraising Through 3/30/2020
(April 15, 2020)

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

Joe S. Dusenbury, Jr.
PO Box 125
Columbia, SC 29214-0580

April 15, 2020

R. Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Re: Freedom Of Information Act Request Dated April 2, 2020

Dear Mr. Davis:

This is a supplemental response to your FOIA request dated April 2, 2020 and the Department's response dated April 8, 2020.

The attached document contains the deposits through the end of March.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosure

CY19 Exceptional SC Donations by Month

Mar-19	1,949,959.72
Apr-19	285,701.00
May-19	211,700.00
Jun-19	95,751.69
Jul-19	141,978.29
Aug-19	49,464.46
Sep-19	189,559.67
Oct-19	133,350.00
Nov-19	70,450.32
Dec-19	1,419,185.95
Total CY19	4,547,101.10

CY20 Exceptional SC Donations by Month

Jan-20	36,038.51
Feb-20	311,343.90
Mar-20	129,950.00
Total CY20 YTD	477,332.41

EXHIBIT C

SC Dept. of Revenue FOIA Response
Exceptional SC Fundraising Through 4/30/2020
(May 5, 2020)

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

Joe S. Dusenbury, Jr.
PO Box 125
Columbia, SC 29214-0580

May 5, 2020

R. Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Re: Freedom Of Information Act Request Dated May 1, 2020

Dear Mr. Davis:

This will acknowledge the receipt of your FOIA request dated May 1, 2020.

The attached document contains the deposits through the end of April.

We are also returning your check for $2.00 to the Department of Revenue.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosures

CY19 Exceptional SC Donations by Month

Mar-19	1,949,959.72
Apr-19	285,701.00
May-19	211,700.00
Jun-19	95,751.69
Jul-19	141,978.29
Aug-19	49,464.46
Sep-19	189,559.67
Oct-19	133,350.00
Nov-19	70,450.32
Dec-19	1,419,185.95
Total CY19	4,547,101.10

CY20 Exceptional SC Donations by Month

Jan-20	36,038.51
Feb-20	311,343.90
Mar-20	129,950.00
Apr-20	73,100.00
Total CY20 YTD	550,432.41

EXHIBIT D

Supplemental Affidavit of Chad Connelly (Filed April 16, 2020)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY)	
Jefferson Davis, Jr.,)	C/A No.: 2020-cp-36-00093
)	
Plaintiff)	
)	Supplemental Affidavit of Chad Connelly
Vs.)	
)	
Chad Connelly, Thomas Persons and)	
South Carolina Educational Credit for)	
Exceptional Needs Children Fund)	
)	

COMES NOW, CHAD CONNELLY, being duly sworn, deposes and states:

I am the executive director of Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions.

The numbers provided for fundraising in my prior affidavit are correct. These numbers include both checks received and reservations under the tax credit cap for tax year donations. The system allows donors or CPAs to make a reservation of the tax credit for a forthcoming donation. Some donors use this reservation process or "pledges" to commit to make donations to better meet their personal tax planning schedules. We hold that donation slot until they submit their money, we obviously don't distribute that money until it is received but we do count it toward donations so that we hold their amount for them. In the past three fundraising cycles this reservation system has been heavily used. I do not recall any donor not sending the funding and honoring the reservation made on their behalf. I am informed this has happened only once in the past three years for an insignificant amount of money.

Contacting donors and CPAs to encourage both immediate donations and pledges for donations during the fundraising cycle is part of my job and directly results in revenue for Exceptional SC.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

Chad Connelly

Chad Connelly

April 16, 2020

Sworn to me this

16th day of April 2020

Notary Public for the State of South Carolina

My commission expires: July 16, 2029

July 6, 2020

VIA US MAIL

The Honorable Elizabeth P. Folk
Clerk of Court, Newberry County
P.O. Drawer 10
Newberry, SC 29108

The Honorable Donald B. Hocker
P.O. Box 972
Laurens, SC 29360
Fax (864-984-2333)

RE: ***Jefferson Davis Jr vs. Chad Connelly, et al.***
C.A. NO. 2020-CP-36-00093

Dear Judge Hocker & Ms. Folk:

Please find enclosed the following for the above referenced matter. Although I am an attorney (licensed in Georgia), I am not a member of the SC Bar and am required to file by paper.

1. **Declaration – Jeff Davis (Dept of Revenue FOIA Response 6/9/2020)**
   - Only **$639,666.94** in donations for 1/1/2020 – 5/31/2020 period
   - 2019 & 2020 Official SC Department of Revenue Totals by Month

This filing is a supplement related to my Motion for Perjury, Contempt & Sanctions for False Affidavit (Stamped filed on May 12, 2020) related to Mr. Connelly's March 4th, 2020 sworn affidavit falsely claiming **"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations."** ... as well as **"The current rate of donation receipts is approximately $350,000 per week or $50,000 per day."**

If you have any questions, please feel free to email me at *jeff@apogeetax.com* or give me a call at 843-901-8036 (cell).

Sincerely,

Jeff Davis, *JD, MBA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr., Plaintiff, vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	

DECLARATION OF JEFFERSON DAVIS, JR.

1. My name is Jefferson Davis, Jr. I am more than eighteen (18) years of age and competent to testify to the matters stated in this Declaration. The facts provided in this declaration are based upon my personal knowledge.
2. I am the *Pro Se* Plaintiff in the above captioned case.
3. Exhibit A is a true and correct copy of the SC Freedom of Information Act response dated June 9, 2020 which I received from the SC Department of Revenue detailing the monthly donation totals of Exceptional SC (aka Defendant. South Carolina Educational Credit for Exceptional Needs Children Fund).
4. These official donation numbers confirm the false and perjured claims of the Exceptional SC Executive Director, Defendant Chad Connelly, in his March 4th, 2020 Sworn Affidavit filed in this matter with this Honorable Court (falsely claiming, among other things, that **"[i]n the past 21 days Exceptional SC raised approximately $1,045,000 in donations."**).

I hereby declare under the penalty of perjury that the foregoing is true and correct according to my personal knowledge, and if called as a witness, I could and would testify truthfully about the information contained in this Declaration.

This 6th day of July, 2020.

JEFFERSON DAVIS, JR.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com

PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

Joe S. Dusenbury, Jr.
PO Box 125
Columbia, SC 29214-0580

June 9, 2020

R. Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Re: Freedom Of Information Act Request Dated June 1, 2020

Dear Mr. Davis:

This will acknowledge the receipt of your FOIA request dated June 1, 2020.

The attached document contains the deposits through the end of May.

We are also returning your check for $2.00 to the Department of Revenue.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosures

CY19 Exceptional SC Donations by Month

Mar-19	1,949,959.72
Apr-19	285,701.00
May-19	211,700.00
Jun-19	95,751.69
Jul-19	141,978.29
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Sep-19	189,559.67
Oct-19	133,350.00
Nov-19	70,450.32
Dec-19	1,419,185.95
Total CY19	4,547,101.10

CY20 Exceptional SC Donations by Month

Jan-20	36,038.51
Feb-20	311,343.90
Mar-20	129,950.00
Apr-20	73,100.00
May-20	89,234.53
Total CY20 YTD	639,666.94

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **6th day of July, 2020**, as follows:

PLEADINGS: **Cover Letter & DECLARATION – Jeff Davis (Department of Revenue FOIA Response 6/9/2020)**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LL
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PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	**PLAINTIFF'S NOTICE AND MOTION FOR RECONSIDERATION OF ORDER**
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

TO: DEFENDANT CHAD CONNELLY, TOM PERSONS & SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff Jefferson Davis, Jr. hereby submits this motion for reconsideration of the Court's Order entered on **June 30, 2020** (the "Order")[1]. The Order was served on the Plaintiff by mail from Defense counsel with a postage meter stamp dated **July 2, 2020**. Plaintiff raises the following exceptions to statements, findings, and conclusions in the Order and Plaintiff respectfully request that the Court reconsider the same.

South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an

[1] The Order was "ELECTRONICALLY FILED - 2020 Jun 30 4:31 PM". Plaintiff, as a *Pro Se* party, is prohibited (for unknow reasons) from receiving electronic notification from the court (which is something we are all trying to raise awareness of to have corrected if appropriate). Although no mailed copy was ever received from the Clerk of Court (further demonstrating the disadvantages that *Pro Se* parties suffer in our State), a mailed copy was first received on **July 6th, 2020** from Defense Counsel.

argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Department of Transportation*, 602 SE 2d 772 (S. C. 2004).

PROCEDURAL BACKGROUND & ARGUMENTS

This declaratory judgment action was originally filed on February 12, 2020. A hearing was held on March 5th, 2020. On Wednesday April 29th, 2020, the Honorable Judge Hocker ruled (among other points) as follows:

> **"Grants Defendants' Motion to Dismiss this case on the issue of Standing, only recognizing the current state of the law in South Carolina and that South Carolina has not addressed the issue of whether a Donor has standing. Consequently, the other issues raised in the Motion will not be addressed."**

A final order, as solely drafted by Defense Counsel and the subject of this Motion for Reconsideration of Order was filed on June 30, 2020.

Although this Honorable Courts initial finding was based on SC having not addressed this novel issue of standing, other state appellate courts have and in doing so have all found that similarly situated donors do in fact have standing. Given the urgency of the issue as it relates to K-12 children with special needs on our state, and the delay that a potentially two year appeal will take, Plaintiff respectfully asks for this Court to reconsider its decision and/or allow the litigants to **have a special hearing on this sole matter of standing**. When our home state has not addressed and issue, it is proper to look at other state findings. All other identified appellate court

decisions in other states have found standing, and a deeper review of the matter by the trial court here in SC will likely yield the same result. Our most vulnerable K-12 children at least deserve that opportunity.

Furthermore, no harm will be done in allowing this Declaratory Judgment to proceed should the Court reverse its decision and rule in Plaintiffs favor, while substantial damage will continue to occur if Defendants are allowed to continue to operate in (delayed) secrecy as they have. Eventually, although it may take years, all the financial data Plaintiff is asking for from the 501(c)(3) non-profit defendant will become public record pursuant to IRS rules and reporting requirements. This transparency is the bedrock of all non-profits special statutory privilege of being tax-free organizations, as well as the bedrock of our governmental operations which Defendant is certainly entangled with given the SC Department of Revenues statutorily required administration of the entity.

Alternatively, if this Court will not simply reverse its order on standing, or at a minimum allow for a special hearing on the issue, Plaintiff would ask that his attached proposed order (Attachment A) be used in place of Defendants' proposed (and signed) order. Although this Court ordered the parties to consult on a proposed order, Defense Counsel refused and excluded any recommendations from Plaintiff. Plaintiffs order is fair and balanced and contains citations to other states appellate cases which have found standing for similarly situated donors.

[CONTINUED ON NEXT PAGE.]

CONCLUSION

THEREFORE, as set forth herein and in other filings, Plaintiff respectfully submits that the Court reconsider its Order regarding standing, at a minimum allow for a rehearing on this single standing issue so that the Court will be afforded all available information, and allow this Declaratory Judgment matter to proceed.

Plaintiff reserves the right to support this Motion with a Memorandum of Law, Affidavits, and any other relevant information which may be submitted at a later date.

Respectfully submitted this **9th day of July, 2020**.

Jefferson Davis, Jr.
403 McCarter Avenue
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jeff@apogeetax.com
PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2020-CP-36-00093

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND DISMISSING PLAINTIFF'S SUMMONS AND COMPLAINT AND DENYING MOTION FOR SANCTIONS

This matter came before the Court on March 5, 2020, upon Plaintiff's Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020, Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint filed on March 4, 2020, and Defendants' Motion for Sanctions filed on March 6, 2020.[1] Present at the hearing were Geoffrey K. Chambers, Esquire, and Justin P. Novak, Esquire, as counsel for Defendants South Carolina Educational Credit for Exceptional Needs Children Fund, Chad Connelly, and Tom Persons, and Plaintiff Jefferson Davis, Jr., *pro se*.[2]

[1] Plaintiff filed the Summons and Complaint for Declaratory Judgment and Injunctive Relief in this matter on February 12, 2020, followed by a Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020. On February 27, 2020, The Honorable William P. Keesley found that the matter did not qualify for a temporary restraining order without notice, and entered a form order to that effect. The Court scheduled a hearing of the remaining motion for preliminary injunction for March 5, 2020 at 9:00AM. Defendants filed the Motion to Deny Preliminary Injunction and to Dismiss the Complaint for Declaratory Judgment on March 4, 2020 at 3:59PM, and the Motion for Sanctions on March 6, 2020 after the hearing was held. The Court allowed Plaintiff 10 days to respond to Defendants' motions and Defendants an additional 10 days after service of Plaintiff's response to serve and file any reply. Plaintiff served and filed responses to Defendants' motions and Defendants subsequently served and filed a reply.

[2] Plaintiff is an attorney and Certified Public Accountant (CPA) licensed to practice in the State of Georgia. Plaintiff has never applied for or been licensed in South Carolina and as such proceeds in this action *pro se*.

After careful review and consideration of the parties' arguments and submissions, this Court grants Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint for Declaratory Judgment based solely on lack of standing by the Plaintiff. This Court further denies Defendants' Motion for Sanctions.

FINDINGS

The South Carolina Educational Credit for Exceptional Needs Children Fund (the "ECENC Fund") is a domestic nonprofit entity originally incorporated pursuant to a legislative budget proviso on June 16, 2016.[3] Pursuant to S.C. Code § 12-6-3790, the ECENC Fund operates as a public charity and provides scholarships to exceptional needs children attending eligible independent schools as approved by the South Carolina Education Oversight Committee. Donors to the ECENC Fund receive tax credits against their South Carolina income taxes up to the applicable annual statutory limit of $12 million.[4]

Pursuant to S.C. Code § 12-6-3790(B)(4), the ECENC Fund **"is governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, two appointed by the Chairman of the Senate Finance Committee, and one appointed by the Governor."** Defendant Tom Persons is the ECENC Fund's Board Chairman and a director appointed by SC State Senator Hugh K. Leatherman, Sr., Chairman of the Senate Finance Committee on June 21, 2016.

---

[3] Effective May 18, 2018, South Carolina codified into permanent law the creation of the ECENC Fund in S.C. Code § 12-6-3790.

[4] Pursuant to statute, the ECENC Fund may not receive any appropriation of public funds and the amounts on deposit in the fund do not constitute public funds and are not property of the State. S.C. Code § 12-6-3790(B)(1), (2). The ECENC Fund is also statutorily prohibited from expending public funds. S.C. Code § 12-6-3790(B)(4). This Court has made no determination on whether or not the ECENC Fund has received public funds, whether the amounts on deposit are public funds, or if the ECENC Fund has expended or benefited from the expending of public funds as Plaintiff contends.

S.C. Code § 12-6-3790(B)(4) also provides that the **"directors of the public charity, along with the director of the [South Carolina Department of Revenue], shall designate an executive director of the public charity."** Defendant Chad Connelly has been designated as the executive director or the ECENC Fund by the public charities five legislatively appointed directors and the director of the SC Department of Revenue.

In addition to being governed by the terms of S.C. Code § 12-6-3790, as a domestic nonprofit entity incorporated in South Carolina, the ECENC Fund is also governed by the South Carolina Nonprofit Corporation Act. S.C. Code § 33–31–101 *et seq*.

Unlike typical public charities, the ECENC Fund is statutorily limited to the amount the public charity can expend on operational expenses. Pursuant to S.C. Code § 12-6-3790(B)(4), the ECENC Fund **"may expend up to two percent of the fund for administration and related costs."** As such, at least ninety-eight (98%) of all donations the ECENC Fund must be used for scholarships for exceptional needs children to attend schools approved by the SC Education oversight Committee. It is this provision of the S.C. Code that the Plaintiff contends has been violated and seeks a declaratory judgment.

In the action, Plaintiff challenges certain conduct of Defendants specifically related to S.C. Code § 12-6-3790(B)(4) which limits administrative expenses to two percent and requires at least ninety-eight percent of donations be used for scholarships. Specifically, based upon publicly available data and CPA financials obtained via Freedom of Information Act requests, Plaintiff contends the ECENC Fund has exceeded that two percent administrative fee limit and has failed to use at least ninety-eight percent of donations for scholarships.

As such, Plaintiff seeks a declaratory judgment based on publicly available data and CPA financials through the ECENC Fund's fiscal year ending June 30, 2019, that Defendants have

violated the two percent administrative fee maximum. Plaintiff is also requesting Defendants provide certain public data that has yet to have been released related to the ECENC Fund administrative and operational expenses and donations since July 1, 2019.[5] Plaintiff alleges standing to challenge the conduct and obtain such a declaration and the yet to be released public data post July 1, 2019 as a donor to the ECENC Fund, as well as a citizen, resident, taxpayer, and registered elector of South Carolina.[6]

In response to Plaintiff's summons and complaint and motion for preliminary injunction, Defendants moved to dismiss Plaintiff's pleadings and motion pursuant, *inter alia*, to Rule 12(b)(1) on the grounds that Plaintiff does not have standing to challenge the conduct of the nonprofit corporation or its officers and directors under South Carolina law.

Defendants also moved pursuant to Rule 11, SCRCP, for an order imposing sanctions on Plaintiff for serving and filing a frivolous pleading and motion in bad faith and for which there exist no good ground for support under South Carolina law. This Court dismisses this motion of sanctions outright.

ORDER

A trial court must dismiss a complaint whenever the court lacks subject matter jurisdiction. Rule 12(b)(1), SCRCP; see also Edens v. Bellini, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004). One requirement of subject-matter jurisdiction is standing. Anders v. South Carolina Parole & Community Corrections Board, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Michael P. v. Greenville County Dept. of Social Services, 385 S.C. 407, 415, 684

[5] Plaintiff does not seek any private or confidential information related to the identity of scholarship recipients, their parents or donors.

[6] Plaintiff is not a member or director of the ECENC Fund nor a representative of the South Carolina Attorney General.

S.E.2d 211, 215 (Ct. App. 2009). "Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception." ATC South Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

The issue of a donor having standing is a matter of first impression for the South Carolina courts.[7] As such, and solely as such, this Court finds that based on current law in South Carolina that Plaintiff does not have standing to assert the subject claims. S.C. Code § 12-6-3790 does not provide for any private right of action to enforce its provisions. The South Carolina Nonprofit Corporation Act expressly circumscribes standing to challenge the conduct of a nonprofit corporation, and such provisions do not include a typical donor. S.C. Code § 33-31-304 ("A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights . . . by the Attorney General, a director, or by a member or members in a derivative proceeding."); see also S.C. Code § 1-7-130 ("[t]he Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.").

Under current case law in South Carolina, there is no authority for a similarly situated donor to have standing through the rubric of constitutional standing or through its narrow public importance exception as a citizen, resident, taxpayer, and registered elector of South Carolina. The conduct of which Plaintiff complains also does not involve any legislative or executive

[7] Plaintiff has provided appellate case law in other states whereby a similarly situated donor does have standing. See *L.B. Research & Educ. Found. v. Ucla Found.*, 29 Cal.Rptr.3d 710, 130 Cal.App.4th 171 (Cal. App. 2005) (in reversing the lower court, the appellate court held that the donor had standing to pursue the action against the donee under both the principal of #1 a contract subject to a condition subsequent, as well as #2 a charitable trust.); and *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426, 281 A.D.2d 127 (N.Y. App. Div. 2001) (in reversing the lower court, the appellate court held that the estate of the donor of a charitable gift has standing to sue the donee to enforce the terms of the gift.)

action. Moreover, if the challenged conduct did involve public funds or government action, Plaintiff's allegations of such standing would be indistinguishable from any other citizen, resident, taxpayer, and registered elector in South Carolina except for the fact that Plaintiff is a donor to the nonprofit corporation. In South Carolina, the mere act of donating to a nonprofit corporation does not accord standing to the donor to challenge the conduct of the nonprofit corporation or its administration by duly appointed officers and directors. See S.C. Code § 33-31-304; Davis v. Hamm, 300 S.C. at 288, 387 S.E.2d at 678.

Although this Court finds that Plaintiff does not have standing to assert the claims contained in the Summons and Complaint for Declaratory Judgment and Injunctive Relief filed on February 12, 2020, or the Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020, this Court declines to impose sanctions upon Plaintiff for filing and serving them.[8] This Court does not find that Plaintiff has filed this action in bad faith and that he has cause for seeking a declaratory judgment.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint is **GRANTED** and that Defendants' Motion for Sanctions is **DENIED** in accordance with the above order. Plaintiff's Complaint is hereby dismissed pursuant to Rules 12(b)(1), SCRCP.

AND IT IS SO ORDERED.

_____
The Honorable Donald B. Hocker

June ____, 2020

[8] This Court's denial of Defendants' Motion for Sanctions is limited to Plaintiff's conduct as it relates to this case and shall not prejudice in any way any right of any defendant in any other action in which the parties are or may be involved.

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **9th day of July, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S NOTICE AND MOTION FOR RECONSIDERATION OF ORDER**

PARTIES SERVED:

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Green Cove Springs, FL 32043
g.k.chambers@gmail.com
geoffrey@cperlgroup.com
Connelly, Persons & ECENC Fund

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Justin Paul Novak, Esq.
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Connelly, Persons & ECENC Fund

The Honorable Donald B. Hocker
P.O. Box 972
Laurens, SC 29360

Jefferson Davis, Jr.
403 McCarter Avenue
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PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	C.A. NO. 2020-CP-36-00093 **PLAINTIFF'S NOTICE AND MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING**

TO: DEFENDANT CHAD CONNELLY, TOM PERSONS & SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

PLEASE TAKE NOTICE, should the Court elect not to reconsider & reverse its initial decision and find that Plaintiff Davis does in fact have standing in this Declaratory Judgment action, Plaintiff would request **#1 brief 30 day stay** and **#2 leave from the Court to substitute a plaintiff with known statutory standing** (i.e., the SC Attorney General or a board member of the non-profit Defendant the South Carolina Educational Credit for Exceptional Needs Children).

Upon information and belief, a party does exist that might be willing to substitute as the named plaintiff in this matter. If such party is willing to join this Declaratory Judgment action, it will save substantial time and money, as well as serve the interest of justice for the South Carolina K-12 children with special needs that Plaintiff Davis believes (*based on available certified financial data*) have suffered due to the embezzlement of scholarship funds pursuant to the criminal code S.C. Code Ann. § 16-13-230 – Breach of Trust with Fraudulent Intent - by the named

individual Defendants, the non-profit's Executive Director, **Mr. Chad Connelly**, and Board Chairman, **Mr. Tom Persons**,

Plaintiff Davis hereby certifies that consultation with the Defendants would serve no useful purpose under Rule 11. Plaintiff reserves the right to support this Motion with a Memorandum of Law, Affidavits, and any other relevant information which may be submitted at a later date.

Respectfully submitted this **13th day of July, 2020**.

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PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **13th day of July, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S NOTICE AND MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING**

PARTIES SERVED:

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Connelly, Persons & ECENC Fund

The Honorable Donald B. Hocker
P.O. Box 972
Laurens, SC 29360

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PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Jefferson Davis, Jr., Plaintiff, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-36-00093 **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT**

PLEASE TAKE NOTICE that Defendants Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") (collectively "Defendants"), by and through the undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit filed on May 14, 2020, in which Plaintiff seeks an Order granting unspecified sanctions against Defendants and compelling the production of certain confidential and statutorily protected information ("Motion for Perjury"). This Court should deny Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit because Plaintiff's motion is meritless.

ARGUMENT

Plaintiff filed the Motion for Perjury alleging the affidavits of Chad Connelly are false and do not match numbers supplied to Plaintiff by the SCDOR. Chad Connelly issued two affidavits in this case. Both report the same information and explain it clearly. It is absolutely clear that the numbers obtained by Plaintiff are only a part of the fundraising picture for Defendant ECENC. The numbers obtained by Plaintiff from SCDOR would not be expected to closely follow or match Exceptional SC

fundraising until later in or near the end of the tax year. Defendants fail to see merit to Plaintiff's Motion for Perjury.

Defendants believe that Mr. Connelly's affidavits are stand alone and so clear that no one in this matter cannot clearly see the shortfall of Plaintiff's attack on the veracity of Mr. Connelly's affidavits. It is explicit that Plaintiff's accusations of perjury does not take into account the complete picture of fundraising and the donation tax cap reservation process included in this organization's fundraising metrics as outlined in Mr. Connelly's affidavits. The affidavits so clearly explain the metrics used in these calculations, and what they represent relative to damages incurred by shutting down the fundraising of this program, that they stand alone and are not misleading or inaccurate.

Facts Presented in Affidavits of Chad Connelly

Exhibit 1 is the first affidavit of Chad Connelly. This document was presented to the Court to show the necessity of having staff working to secure donations and reported the rate at which those donations were being secured. Its purpose was to establish the potential damage of the relief sought of freezing the finances of Exceptional SC.

In the first affidavit, Mr. Connelly reports that a) he is the Executive Director of Exceptional SC, b) a description of IRS regulations that make donations to Exceptional SC disadvantageous or neutral at best to donors, and c) the constant work it takes to secure donations. The affidavit also reported the fundraising picture of Exceptional SC at that time totaling $1,045,000 in donations, which includes donation reservations, secured over a 21-day period.

In Mr. Connelly's supplemental affidavit, attached as Exhibit 2, Mr. Connelly explains there is a donation tax cap reservation system where CPA's or donors can reserve space under the tax cap for their donation and send the donation during the tax year at a time convenient for the donor's CPA. It was explained that not all donations use this reservation system, but the fundraising total tracked by Exceptional SC includes both donation reservations and direct donations that have not gone through

that donation reservation system. The supplemental affidavit also explains the accuracy and reliability of the metric from the donation reservation system in years past. The one million forty-five thousand dollars was a combination of tax cap reservations and funding already received that was not under a reservation.

Affidavit of David Wilson

Exhibit 3 is the affidavit of David Wilson and attachments thereto. Mr. Wilson is the person who ran the donation tax cap reservation system. He supplied Mr. Connelly with the figure of nine hundred seventy-six thousand dollars in reservations for calendar year 2020. That figure was supplied to Mr. Connelly on March 3. The data from which this figure was calculated is also attached. Donor information has been excluded from this dataset. Counsel for Defendants has a copy of the data. That copy can be shared with the court for *in camera* review upon request.

Conclusion

It is expressly clear how the figures in Mr. Connelly's affidavits were calculated. The nine hundred seventy-six thousand dollars in donation reservations, plus approximately seventy thousand dollars in direct donations that did not use the reservation system, resulted in Mr. Connelly's figure. It is known to be accurate and expresses the damage that would be caused if the staff was to stop actively soliciting donations under the current tax credit system that is non-advantageous to the donor. Therefore, the Plaintiff's Motion for Perjury is without merit and once again a feeble attempt to circumvent a court order denying him access to Exceptional SC financial information. Attorneys for Defendants respectfully request this court deny Plaintiff's Motion for Perjury.

Respectfully submitted,

CPERL GROUP

s/ Geoffrey Chambers
Geoffrey K. Chambers, Esquire

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– and –

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Attorneys for Defendant South Carolina Educational Credit for Exceptional Needs Children Fund, Chad Connelly & Tom Persons

August 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
Jefferson Davis, Jr.,	)	C/A No.: 2020-cp-36-00093
Plaintiff	)	
	)	Affidavit of Chad Connelly
Vs.	)	
Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund	)	

COMES NOW, CHAD CONNELLY, being duly sworn, deposes and states:

I am the executive director of Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions.

Donations to charity organizations have become less advantageous to tax payers because of recent IRS rulings limiting the ability to claim deductions on Federal Income Tax. As a result, it takes our staff constant contact through calls, emails and visits to sell potential donors on the merits of donating to our program. If our staff were eliminated and these donor contacts stop, the donations to the program will dry up.

The eight weeks before April 15th and the month of December have historically been our most productive time for receiving donations.

In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result that number is constantly in flux. The current rate of donation receipt is approximately $350,000 per week or $50,000 per day.

Damages to this program resulting from a shutdown of operations are all donations being lost to other organizations courting these same donors. If our staff is not being paid to work, the damages suffered will be between $45,000 and $50,000 per day over the next six weeks. After six weeks, exact damages are unknown but significant.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

EXHIBIT 1

Chad Connelly

Chad Connelly

March 4, 2020

Sworn to me this

4th day of March 2020

Angela J Carter

Notary Public for the State of South Carolina

My commission expires:

My Commission Expires August 20, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
Jefferson Davis, Jr.,	)	C/A No.: 2020-cp-36-00093
Plaintiff	)	
	)	Supplemental Affidavit of Chad Connelly
Vs.	)	
Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund	)	

COMES NOW, CHAD CONNELLY, being duly sworn, deposes and states:

I am the executive director of Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions.

The numbers provided for fundraising in my prior affidavit are correct. These numbers include both checks received and reservations under the tax credit cap for tax year donations. The system allows donors or CPAs to make a reservation of the tax credit for a forthcoming donation. Some donors use this reservation process or "pledges" to commit to make donations to better meet their personal tax planning schedules. We hold that donation slot until they submit their money, we obviously don't distribute that money until it is received but we do count it toward donations so that we hold their amount for them. In the past three fundraising cycles this reservation system has been heavily used. I do not recall any donor not sending the funding and honoring the reservation made on their behalf. I am informed this has happened only once in the past three years for an insignificant amount of money.

Contacting donors and CPAs to encourage both immediate donations and pledges for donations during the fundraising cycle is part of my job and directly results in revenue for Exceptional SC.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

EXHIBIT 2

Chad Connelly

Chad Connelly

April 16, 2020

Sworn to me this

16th day of April 2020

Notary Public for the State of South Carolina

My commission expires: July 16, 2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
Jefferson Davis, Jr.,	)	C/A No.: 2020-cp-36-00093
	)	
Plaintiff	)	
	)	**Affidavit of David Wilson**
Vs.	)	
	)	
Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund	)	

COMES NOW, DAVID WILSON, being duly sworn, deposes and states:

I was the communications consultant at Exceptional SC.

Exceptional SC is a nonprofit 501(c)3 corporation that solicits private donations to be used to provide scholarships to exceptional needs children attending private educational institutions. Donors to the charity receive a state tax credit from the South Carolina Department of Revenue. There is a twelve million dollar cap on these tax credits and in years past that cap has been reached quickly. Prior to there being a federal cap on deducting state and local tax from federal personal income taxes it was advantageous to give to state tax credit programs. A revenue ruling went into effect for the 2019 tax year that subjects donations to state tax credit charities to the State and Local Tax cap. This cap eliminates federal write-off for gifts to tax credit organizations from tax year 2019 forward.

Other states, such as Georgia and Connecticut have schemes that allow a person to channel income through pass through entities and pay state taxes through the pass through entity. Under Georgia's scheme a person using a pass through entity to pay state tax would show zero state tax write-off on their personal federal income taxes. As a result, donations to tax credit programs do not show up as conferring a benefit to the taxpayer and the taxpayer may write the charitable donations off on his or her federal taxes. For that reason, tax credit programs in states like Georgia are doing well.

South Carolina does not have the pass-through entity loophole like Georgia or a corporate tax incentive for donations like that found in Florida.

In previous years when the state and local tax cap did not apply, the 12 million dollar cumulative cap on tax credits would be reached within a matter of weeks. For this reason, a reservation pledge system was developed. This year many, but not all, donors have continued to use the donation reservation system.

EXHIBIT 3

Attached are exhibits showing the link to the reservation system on the Exceptional SC website and a page from the donation reservation information input on the same website.

I operated a webpage that promotes the charity. Part of that web page allowed donors to the program to make a donation reservation. The donation reservation was used to reserve an amount of donation under the tax cap for that donor and allowed the donor's CPA to transfer the donation to the charity and file the tax credit on the CPA's chosen schedule.

Chad Connelly requested the amount of donations received by the donation reservation system in early March 2020 for the purpose of use in Court. The number provided for fundraising in my report to Mr. Connelly was $976,404.60 in donations on March 3, 2020. The time stamps of these donation reservations are listed below in Attachment B. We keep other information that can be provided to the Court upon request, but information such as social security numbers, names, and addresses have been deleted for the security of the donors in Attachment B.

Attachment B does not include donations received that were not made through our donation reservation system. I do not have or keep data from direct donations but do know they exist and are in addition to ones placed through the donation reservation system.

FURTHER AFFIANT SAITH NOT.

(signatures on next page)

Dave Wilson

Aug 4
~~April~~ __, 2020

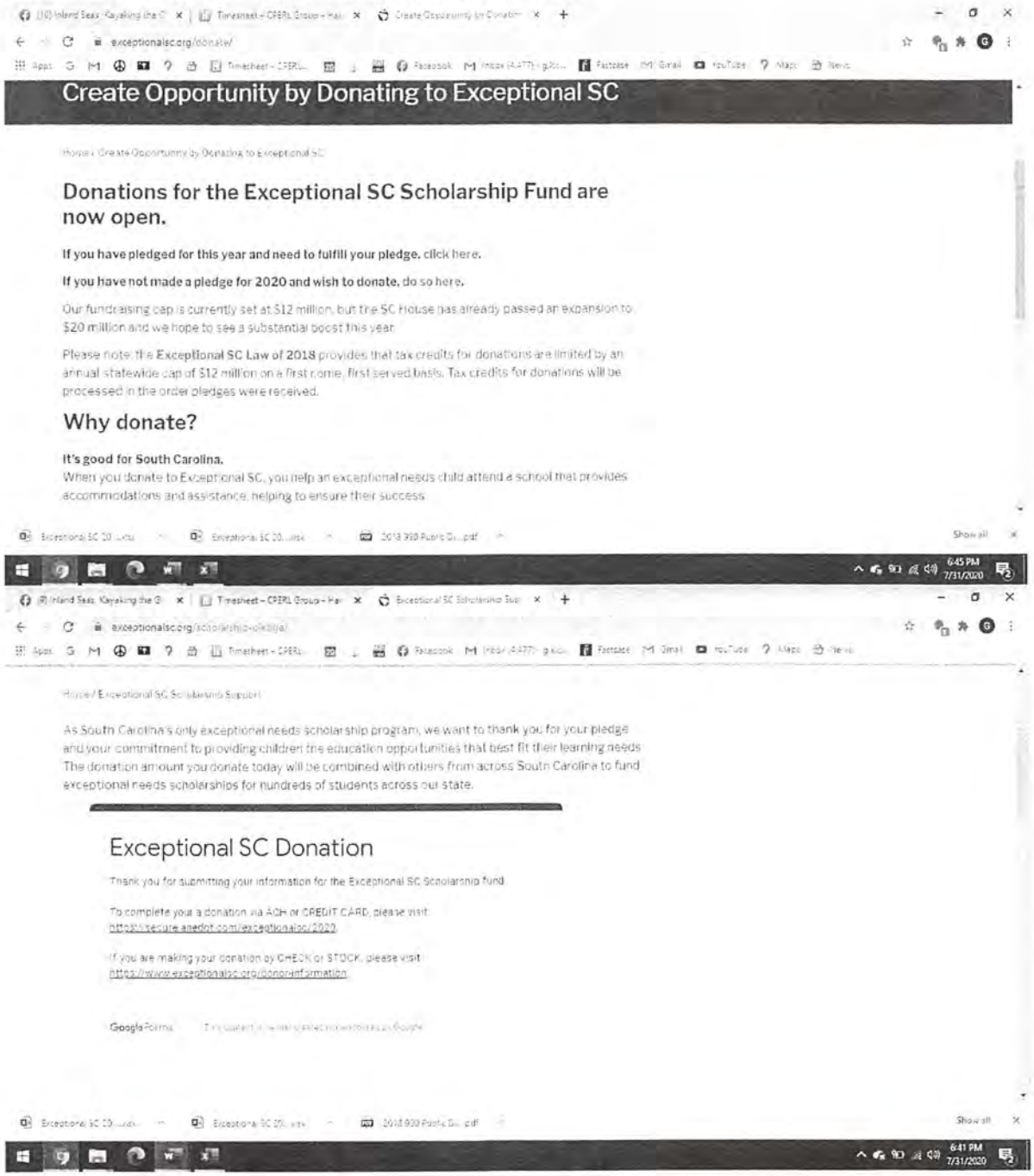
Sworn to me this

4 day of August 2020

Notary Public for the State of South Carolina

My commission expires: 10/20/2025

Attachment A: Exceptional SC Fundraising / Donation Portal



Attachment B: Timestamp Data for Donation Reservation System

Timestamp	Designate this donation for which tax year:	Form of Donation	Amount of Donation
3/8/2019 14:02:02		Check	$21,500
4/12/2019 12:17:59		Check	6000
12/23/2019 18:57:56		Check	15000.00
1/2/2020 14:40:35		Check	5,000.00
1/3/2020		Credit Card	500.00
1/13/2020		Credit Card	6,000.00
1/14/2020 11:22:17		Credit Card	1,180.00
1/14/2020 13:50:54		Credit Card	5,500.00
1/17/2020 10:52:50	2019	Check	10,000.00
1/19/2020 1:38:47	2019	Check	1,000.00
1/23/2020		Sale of Stock	9,630.32
1/26/2020	2020	Credit Card	100.00
1/26/2020 4:21:24	2019	ACH	5.00
2/3/2020		credit Card	7,500.00
2/3/2020		Credit Card	500.00
2/3/2020 10:53:47	2020	Credit Card	1,000.00
2/3/2020 11:58:30	2020	Check	10,000.00
2/3/2020 12:01:10	2020	Credit Card	4,000.00
2/3/2020 12:01:30	2020	Check	4,000.00
2/3/2020 12:01:46	2020	Check	4,500.00
~~2/3/2020 12:01:54~~	~~2020~~	~~Check~~	
2/3/2020 12:03:34	2020	Check	14,000.00
2/3/2020 12:04:03	2020	Check	15,000.00
~~2/3/2020 12:06:48~~	~~2020~~	~~Check~~	
2/3/2020 12:08:07	2020	Check	10,000.00
2/3/2020 12:09:27	2019	Check	2,500.00
2/3/2020 12:11:14	2020	Check	30,000.00
~~2/3/2020 12:16:44~~	~~2020~~	~~Check~~	
2/3/2020 12:18:49	2020	Check	6,500.00
2/3/2020 12:23:16	2020	Check	5,000.00
2/3/2020 12:25:18	2020	Sale of Stock	
2/3/2020 12:28:51	2020	Check	25,000.00
2/3/2020 12:31:52	2020	Credit Card	5,000.00
2/3/2020 12:32:56	2020	Check	9,500.00
2/3/2020 12:36:07	2020	Check	750.00
2/3/2020 12:38:48	2020	Check	3,500.00
2/3/2020 12:41:56	2020	Check	30,000.00
2/3/2020 12:43:20	2020	Check	750.00

2/3/2020 12:55:26	2020	Check	13,000.00
2/3/2020 12:59:02	2020	Credit Card	200.00
~~2/3/2020 13:00:46~~	~~2020~~	~~Check~~	
2/3/2020 13:39:37	2020	Check	20,000.00
~~2/3/2020 13:46:40~~	~~2020~~	~~Check~~	
2/3/2020 13:53:39	2020	Check	10,000.00
2/3/2020 13:56:18	2020	Check	2,000.00
2/3/2020 13:56:30	2020	Check	5,000.00
2/3/2020 14:08:56	2020	ACH	2,000.00
2/3/2020 14:14:18	2020	Check	20,000.00
2/3/2020 14:34:59	2020	Credit Card	3,000.00
~~2/3/2020 14:47:34~~	~~2020~~	~~ACH~~	
2/3/2020 14:55:48	2020	Check	25,000.00
2/3/2020 15:02:51	2020	Check	6,000.00
~~2/3/2020 15:46:54~~	~~2020~~	~~Credit Card~~	
2/3/2020 15:53:39	2020	Check	5,000.00
2/3/2020 16:00:57	2020	Check	1,000.00
2/3/2020 16:17:39	2020	ACH	
~~2/3/2020 16:20:37~~	~~2020~~	~~ACH~~	
2/3/2020 16:29:33	2020	Check	15,000.00
2/3/2020 17:06:09	2020	ACH	5,000.00
2/3/2020 18:07:36	2020	Check	5,000.00
2/3/2020 18:29:08	2020	Check	3,600.00
2/3/2020 18:34:28	2020	Sale of Stock	
2/3/2020 18:46:38	2020	Credit Card	50,000.00
2/3/2020 19:00:00	2020	Check	40,000.00
2/3/2020 19:01:06	2020	Credit Card	20,000.00
2/3/2020 19:32:42	2020	Check	45,000.00
2/3/2020 19:54:20	2020	Credit Card	7,250.00
2/3/2020 20:35:29	2019	Check	9,000.00
2/3/2020 21:49:00	2020	ACH	6,000.00
2/4/2020 5:30:23	2020	Credit Card	5,000.00
2/4/2020 7:29:30	2020	Check	10,000.00
2/4/2020 7:49:05	2020	Credit Card	5,000.00
2/4/2020 9:34:21	2020	Credit Card	5,500.00
2/4/2020 9:49:20	2020	Check	5,000.00
2/4/2020 14:40:36	2020	Check	5,000.00
2/4/2020 16:30:39	2020	Check	12,000.00
2/4/2020 17:20:40	2020	Sale of Stock	12,063.48
2/5/2020		credit Card	60,000.00
2/5/2020 10:01:29	2020	Sale of Stock	?

2/5/2020 14:32:16	2020	ACH	
~~2/5/2020 14:47:35~~	~~2019~~	~~Credit Card~~	
2/5/2020 14:54:17	2019	ACH	3,000.00
2/5/2020 20:19:58	2020	Check	20,000.00
2/6/2020 0:04:13	2020	Credit Card	5,000.00
~~2/6/2020 0:07:32~~	~~2020~~	~~Credit Card~~	
~~2/6/2020 0:07:57~~	~~2020~~	~~Credit Card~~	
2/6/2020 10:21:20	2020	Sale of Stock	6,674.80
2/6/2020 15:28:11	2020	Check	5,000.00
2/6/2020 16:35:35	2020	Credit Card	10,000.00
~~2/6/2020 16:38:08~~	~~2020~~	~~Credit Card~~	
2/7/2020 8:27:36	2020	Credit Card	15,000.00
~~2/7/2020 9:57:21~~	~~2020~~	~~Credit Card~~	
2/7/2020 10:48:27	2020	Check	25,000.00
2/7/2020 11:11:16	2020	Check	5,000.00
2/7/2020 11:26:02	2020	Check	25,000.00
2/7/2020 11:34:10	2020	Check	5,000.00
2/7/2020 11:51:23	2020	Credit Card	6,000.00
2/7/2020 11:55:54	2020	Check	6,000.00
2/7/2020 15:19:12	2020	Check	5,000.00
2/7/2020 16:31:33	2020	Credit Card	15,000.00
2/8/2020 10:57:49	2020	Check	5,000.00
2/10/2020 13:09:58	2020	Credit Card	7,500.00
~~2/10/2020 18:33:23~~	~~2020~~	~~Check~~	
2/10/2020 21:01:31	2020	Sale of Stock	
2/13/2020 5:45:56	2019	Credit Card	3,000.00
2/15/2020 9:39:02	2019	Check	5,000.00
~~2/15/2020 10:30:50~~	~~2020~~	~~Credit Card~~	
2/16/2020 20:21:34	2020	Credit Card	1,000.00
2/19/2020 13:25:34	2020	Sale of Stock	
2/20/2020 11:56:03	2020	Check	10,000.00
2/20/2020 12:02:37	2020	ACH	12,000.00
2/20/2020 14:08:03	2020	Check	5,000.00
~~2/20/2020 14:11:28~~	~~2020~~	~~Check~~	
2/21/2020 11:00:39	2020	ACH	5,000.00
2/22/2020 11:20:29	2020	Check	7,500.00
2/24/2020 15:27:00	2019	Check	1.00
2/25/2020 10:18:30	2020	Check	100.00
2/26/2020	2020	Credit Card	100.00
2/26/2020 9:50:09	2020	Credit Card	10,000.00
2/27/2020 8:18:49	2020	Check	10,000.00
2/27/2020 8:19:42	2020	Check	20,000.00
~~2/27/2020 8:22:48~~	~~2020~~	~~Check~~	
3/1/2020 12:08:16	2020	Check	10,000.00

3/3/2020	Credit Card	500.00

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Jefferson Davis, Jr., Plaintiff, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-36-00093 **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING**

PLEASE TAKE NOTICE that Defendants Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") (collectively "Defendants"), by and through the undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff with Standing filed on July 15, 2020, in which Plaintiff requests an order staying this action and leave to substitute an unidentified party with standing to serve as the plaintiff. This Court should deny Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff because Plaintiff's Complaint has been dismissed with prejudice because Plaintiff is not a real party in interest and does not have standing to assert the subject claims, Plaintiff has not identified a real party in interest for substitution, the granting of such a stay would harm cause undue harm to Defendants, and a proper party with standing may pursue any such claims through its own action.

ARGUMENT

A South Carolina court may order substitution of parties upon the death of a party, the incompetency of a party, the transfer of interest, or upon the separation from office of a public officer. Rule 25, SCRCP. In order to effect such a substitution, an action must be commenced by a real party in interest for whom a proper prosecuting party is substituted. See id. For example, upon transfer of

an interest from one corporation to another through a merger that extinguishes the original corporation. See, e.g., Bryant v. Waste Management, Inc., 342 S.C. 159, 164, 536 S.E.2d 380, 383 (Ct. App. 2000).

In this case, this Court has determined that Plaintiff is not a real party in interest because Plaintiff does not have standing to assert the subject claims and, therefore, this Court does not have jurisdiction over Plaintiff's allegations. (Order Den. Mot. for Prelim. Inj. and Dismissing Compl. and Denying Mot. for Sanctions, June 30, 2020.) "'Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'" Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). As a result, this Court dismissed Plaintiff's Complaint with prejudice pursuant to Rules 12(b)(1) and (6), SCRCP.

As this Court does not have jurisdiction over the subject claims because Plaintiff does not have standing to assert them, this Court should deny Plaintiff's motion to continue this litigation in his hopes of finding a party with standing to pursue his allegations. Moreover, Plaintiff does not seek to substitute a real party in interest to prosecute his allegations. Instead, Plaintiff seeks an order allowing this action to proceed without a proper plaintiff despite its dismissal while Plaintiff attempts to identify a party with proper standing to pursue his allegations while the action is stayed even though it has been dismissed with prejudice.[1]

"The circuit court has discretion whether to grant a stay of a matter pending before the court." City of Spartanburg v. Belk's Dep't Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942).

[1] Notably, Plaintiff has not identified any such party in the five months that have elapsed since service of Defendants' Motion to Deny Preliminary Injunction and Dismiss the Complaint in which Defendants first argued that Plaintiff did not have standing to bring the asserted claims or in the month since entry of the Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions on June 30, 2020.

South Carolina courts, however, generally employ a stay of proceedings only when there is another issue pending between the same parties in another action and the and the resolution of that issue will affect the action sought to be stayed. See, e.g., Rush v. Thompson, 203 S.C. 106, 106, 26 S.E.2d 411, 414 (1943). Plaintiff does not seek a stay pending the resolution of another matter that will affect the instant litigation. Instead, Plaintiff seeks to stay an already dismissed action in order to permit Plaintiff additional time to find a party with standing to pursue his allegations. In essence, Plaintiff seeks a stay to collaterally attack an existing judgment. See Henry v. Cottingham, 253 S. C. 286, 170 S. E. 2d 387 (1969).

In addition to being untimely and improper, such a stay would serve only to prejudice Defendants by keeping them embroiled in an already dismissed action brought by a party without standing while that party seeks a proper party to pursue his cause. The stay would also result in an inefficient use of South Carolina's courts as any party with standing may bring its own claim at any time in accordance with South Carolina law.

As a result, this Court should deny Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff in accordance with the Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on June 30, 2020.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff. This memorandum is further based upon the pleadings, applicable South Carolina jurisprudence, and any other matter as may be acceptable to the Court.

Respectfully submitted,

[Separate Signature Page Follows]

BARNWELL WHALEY PATTERSON & HELMS, LLC

/s Justin P. Novak
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– and –

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Attorneys for Defendant South Carolina Educational Credit for Exceptional Needs Children Fund, Chad Connelly & Tom Persons

August 4, 2020

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Jefferson Davis, Jr., Plaintiff, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-36-00093 **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER**

PLEASE TAKE NOTICE that Defendants Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") (collectively "Defendants"), by and through the undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Reconsideration of Order filed on July 13, 2020, in which Plaintiff requests an order altering or amending this Court's Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on June 30, 2020 ("Order Dismissing Complaint"). This Court should deny Plaintiff's Motion for Reconsideration of Order because Plaintiff's motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider.

STANDARD OF REVIEW

South Carolina's Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Id. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps

failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990).

ARGUMENT

Plaintiff asks "this Court to reconsider its decision and/or allow the litigants to have a special hearing on th[e] sole matter of standing" on the grounds that "[w]hen our home state has not addressed [the] issue, it is proper to look at other state findings" and that "no harm will be done in allows [Plaintiff] to proceed[.]" (Pl.'s Mot. for Recons., July 13, 2020.) In the alternative, Plaintiff asks this Court to enter a proposed order already rejected by this Court in place of this Court's Order Dismissing Plaintiff's Complaint. (Id.)

Plaintiff's motion, however, fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider. Plaintiff, instead, merely seeks to revisit the previously raised argument that this Court should ignore South Carolina law and adopt foreign common law to accord him standing as a donor to challenge directly the conduct of a nonprofit corporation under the theory that his donation created either an implied contract subject to a condition subsequent or a charitable trust.

In previously considering this argument, this Court properly determined that Plaintiff does not have standing to assert the subject claims pursuant to any South Carolina statute, through the rubric of constitutional standing, or through the narrow public importance exception. (Id.) Plaintiff does not assert that this Court has misunderstood, failed to consider, or failed to rule on any argument or issue. Plaintiff merely asks this Court to ignore South Carolina law in favor of the laws of other states that—Plaintiff argues—may provide him a basis for standing to assert the subject claims.[1]

[1] Defendants deny that Plaintiff would be accorded standing under any of the cases cited in his filings.

South Carolina law, however, actually directly refutes Plaintiff's arguments.[2] As this Court's Order notes, the South Carolina Nonprofit Corporation Act expressly circumscribes standing to challenge the conduct of a nonprofit corporation such as Exceptional SC to the Attorney General, a director, or by a member or members in a derivative proceeding. S.C. Code § 33-31-304; S.C. Code § 33-31-810; Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989). Accordingly, Plaintiff's status as a donor to the nonprofit corporation does not accord him standing to assert the subject claims under South Carolina law. See id.

As a result, this Court should deny Plaintiff's Motion for Reconsideration of Order because Plaintiff's motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider and South Carolina law does not accord Plaintiff standing to assert the subject claims.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's Motion for Reconsideration of Order. This memorandum is further based upon the pleadings, applicable South Carolina jurisprudence, and any other matter as may be acceptable to the Court.

Respectfully submitted,

[Separate Signature Page Follows]

[2] In the interest of economy, Defendants incorporate by reference the jurisprudence and arguments contained in Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint filed on March 4, 2020, and Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions filed on April 16, 2020.

BARNWELL WHALEY PATTERSON & HELMS, LLC

/s Justin P. Novak
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Attorneys for Defendant South Carolina Educational Credit for Exceptional Needs Children Fund, Chad Connelly & Tom Persons

August 4, 2020

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	C.A. NO. 2020-CP-36-00093 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING**

Plaintiff Jefferson Davis, Jr. on July 15th filed his Motion to Stay 30 Days & Substitute Plaintiff with Standing.

On information and belief, Plaintiff Davis believes parties which Defendants have conceded have standing (i.e., the South Carolina Attorney General and/or a current Board member of Defendant the South Carolina Educational Credit for Exceptional Needs Children Fund) are interested in pursuing this matter. **Plaintiff Davis submits this Motion in an effort of judicial efficiency and avoidance of the time and expense on all parties of filing new litigation.**

This belief is further strengthened by the recent ***termination*** of **Defendant Chad Connelly** as Executive Director of the South Carolina Educational Credit for Exceptional Needs Children Fund, as well as the ***resignation*** of **Defendant Tom Persons** as the Board Chairman of the same. See Exhibit A & B. These terminations / resignations were the result of a directive from the South Carolina Department of Revenue for the Defendants to "cut costs" **due to the current Defendants violation** of the S.C. Code Ann. § 12-6-3790(B)(4) two percent (2%) maximum administrative fee cap – which is the subject matter of this case.

ALTERNATIVELY, Plaintiff Davis would move this court to allow him to **AMEND HIS COMPLAINT** to add the South Carolina Department of Revenue ("SCDOR") as a Defendant in this case. Plaintiff as a South Carolina Citizen and Taxpayer without debate has standing as it relates to SCDOR.

S.C. Code Ann. § 12-6-3790(B)(4) states as follows:

> "(4) In concert with the public charity directors, ***the department shall administer the public charity*** including, but not limited to, the keeping of records, ***the management of accounts***, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. …" (Emphasis added.)

Since it is the SCDOR, who by statute, is charged with **"administering the public charity"** and **"the management of accounts"**, Plaintiff contends that the appropriate party defendant is the SCDOR. The Defendant non-profit is not the typical South Carolina non-profit, and is in fact an extension of the SCDOR.

Furthermore, given SCDORs now apparent concession that Defendants have violated the two percent (2%) maximum administrative fee cap of S.C. Code Ann. § 12-6-3790(B)(4) as evidenced by the termination / resignation of Defendants Connelly and Persons, Plaintiff contends that he should be allowed to AMEND HIS COMPLAINT as this is most assuredly a matter where **"leave shall be freely given when justice so requires"**. SCRCP, Rule 15(a). Plaintiff has alleged in his original Complaint that Defendants Connelly and Persons have "embezzled" funds pursuant to the criminal code S.C. Code Ann. § 16-13-230 – Breach of Trust with Fraudulent Intent. Funds that were intended as scholarships for K-12 children with special needs. When would "justice" be required more if not in this case?

Respectfully submitted this **10th August, 2020**.

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **10th day of August, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LL
411 Walnut Street #10646
Green Cove Springs, FL 32043
g.k.chambers@gmail.com
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Connelly, Persons & ECENC Fund

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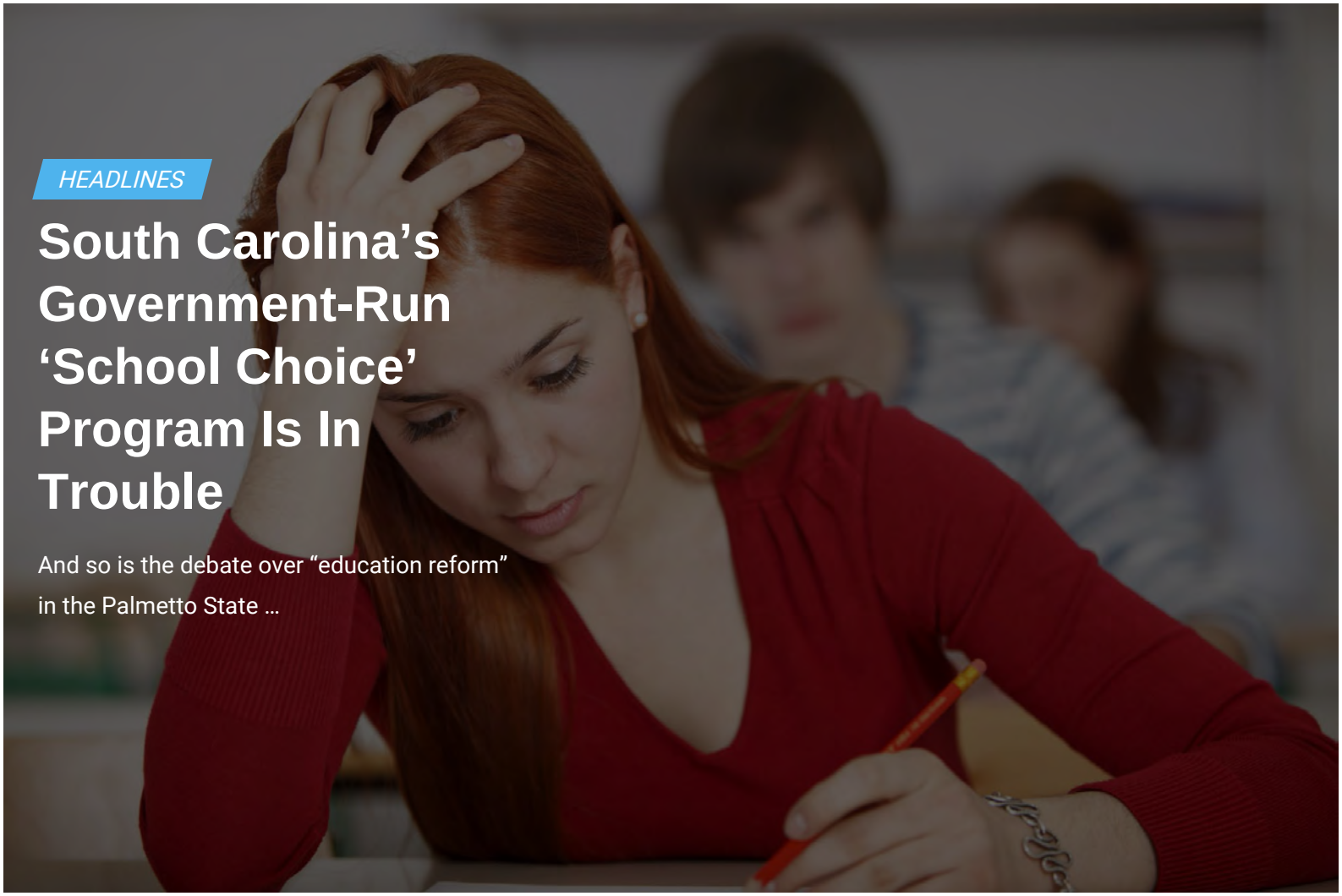
PLAINTIFF, *PRO SE*

EXHIBIT A



HEADLINES

South Carolina's Government-Run 'School Choice' Program Is In Trouble

And so is the debate over "education reform" in the Palmetto State …

Published 1 week ago on August 1, 2020
By FITSNews

The month of July provided no shortage of disappointing news when it comes to "education reform" in South Carolina. Dominating the headlines was governor **Henry McMaster**'s embarrassingly anemic proposal to route **$32.5 million** in federal coronavirus "stimulus" money into one-time "school choice" grants.

McMaster's idea – like previous "school choice" proposals in the Palmetto State – *is a joke*. And while the rhetoric emanating from both "reformers" and status quo apologists regarding these grants has been supercharged (and a legal battle is underway as to the appropriation of the money) – it is, to quote **Macbeth**, "full of sound and fury, signifying nothing."

Whether you support this appropriation or not, it falls spectacularly short of the sort of permanent, universal parental choice that's needed to materially expand the education marketplace, create real

competition and improve academic outcomes for *all* students in South Carolina.

To be clear: We do not object to the grants themselves, as they would provide some temporary relief to a small universe of at-risk students. But to pretend they are something bigger than they are – to pretend they will even make a dent in the ongoing legacy of increasingly costly government-run failure – *that is a lie*.

And frankly, the so-called "conservatives" peddling this lie are every bit as contemptible in our eyes as the status quo snake oil salesmen who have been telling us for decades that more money "for the children" will fix our historic academic woes.

It hasn't. It can't. And it won't. But nor, for that matter, will the weak "school choice" half-measures pushed by establishment Republican politicians.

To quote the great playwright again, "a pox on both (their) houses."

As we previously reported, McMaster's proposed appropriation would help only **5,000** low-income students with a one-time grant of **$6,500**. To put those numbers in context, there are a total of **783,000** students in South Carolina's chronically failing government run education system – with taxpayers shelling out a staggering **$14,227** per pupil, per year.

That's **$11.2 billion** … *each year, every year*.

Oh, and that is *before* we count "education" money spent in connection with local bond referendums … or the **$1.5 billion** in unrestricted reserve cash South Carolina's school districts are currently sitting on.

So, are we seriously to pretend that McMaster's plan – which would help a mere **0.63 percent** of South Carolina students cover **45.7 percent** of the state's average per pupil cost *for just one year* – is real reform?

Because it isn't …

Anyway … late last week there was another significant development on the school choice front in South Carolina.

According to our sources, a major shakeup took place in the leadership of the **Exceptional SC** organization – a 501(c)(3) which bills itself as "dedicated to supporting exceptional needs students and families in South Carolina."

This special needs program – which has come under fire in recent months for alleged misappropriation – has been operating under the auspices of the S.C. Department of Revenue (SCDOR). The agency doesn't have direct control over the program, but it does have joint oversight responsibility along with an appointed board.

What sort of shakeup are we referring to? Nothing has been announced officially, but we are told the program's executive director – former S.C. Republican party (SCGOP) chairman **Chad Connelly** – no longer occupies his leadership role with the organization. We are similarly told the chairman of the Exceptional SC board – **Tom Persons** – is also "out."

What happened? Well, as have previously noted charitable giving across the country has been trending downward in the aftermath of the 2017 tax cut – which reduced the incentive for most Americans to make donations. With less chance of obtaining a tax write-off for their benevolence, fewer Americans have been benevolent – which has had a pernicious impact on programs like Exceptional SC.

But there were serious structural problems with the program, as well.

Years ago, this news outlet reluctantly supported the transfer of Exceptional SC to SCDOR in light of repeated legislative threats to terminate it. However, we continue to believe its best long-term interests would be served by private sector management – which is what leading fiscal conservatives in the S.C. General Assembly (including senator **Tom Davis**) have proposed doing with it.

The sooner that happens, the better …

***

RELATED || Misappropriation Allegations Greeted By Lawsuit Threat

***

The program has also been mired in legal battles. According to **Palmetto Kids FIRST** – a scholarship funding organization run by Greenville, S.C. attorney **Jeff Davis** and his wife **Olga Lisinksa** – the group's supporters have engaged in a "smear campaign" against them and their organization in the hopes of keeping the program under government control.

"They did not want this program to be run by independent non-profits," a recent email from Lisinska's

group noted.

Davis and Lisinska have also accused Exceptional SC of fiscal mismanagement and "overspending" – and of failing to even come close to reaching the **$12 million** state cap on charitable contributions for special needs scholarships.

"It is ongoing and not going to be pretty when it all comes out," the same email noted, referring to Exceptional SC's finances.

This news outlet will keep its eyes peeled for any official announcements from SCDOR regarding the leadership of this program. In the meantime, we will continue to hold accountable *anyone* who claims to advocate on behalf of the best interests of the children of this state – whether they are apologists for our failed government-run school system or so-called "reformers."

South Carolina's perpetual underachievement requires big change and bold leadership – not status quo self-preservation or self-serving "reform."

Unfortunately, in the Palmetto State there is little boldness … but never any shortage of self-interest.

-FITSNews

***

WANNA SOUND OFF?

Got something you'd like to say in response to one of our stories? We have an open microphone policy! Submit your own letter to the editor (or guest column) via-email HERE. Got a tip for a story? CLICK HERE. Got a technical question or a glitch to report? CLICK HERE. Want to help support what we're doing? SUBSCRIBE HERE.

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RELATED TOPICS: *#CHAD CONNELLY* *#FEATURED* *#HENRY MCMASTER* *#JEFF DAVIS* *#MACBETH* *#OLGA LISINSKA* *#SCHOOL CHOICE* *#SOUTH CAROLINA SCHOOL CHOICE* *#TOM DAVIS*

DON'T MISS

Tropical Storm Warning Issued For SC Coast As Isaias Moves Closer

UP NEXT

South Carolina Tourism Update: Still Stalled Out

EXHIBIT B

FOR PARENTS

#FireChadConnelly … FIRED?!?!?

Published 7 days ago on August 3, 2020
By PALMETTOKIDSFIRST

SHARE TWEET

Saturday before last we shared with you the actual JUNE 30, 2020 Exceptional SC bank statements. The SC Department of Revenue provided them to us … and unfortunately these official documents exposed the real truth … **only $107,338.68** (less outstanding checks) in the bank … and **only $8.91** in their brokerage account.

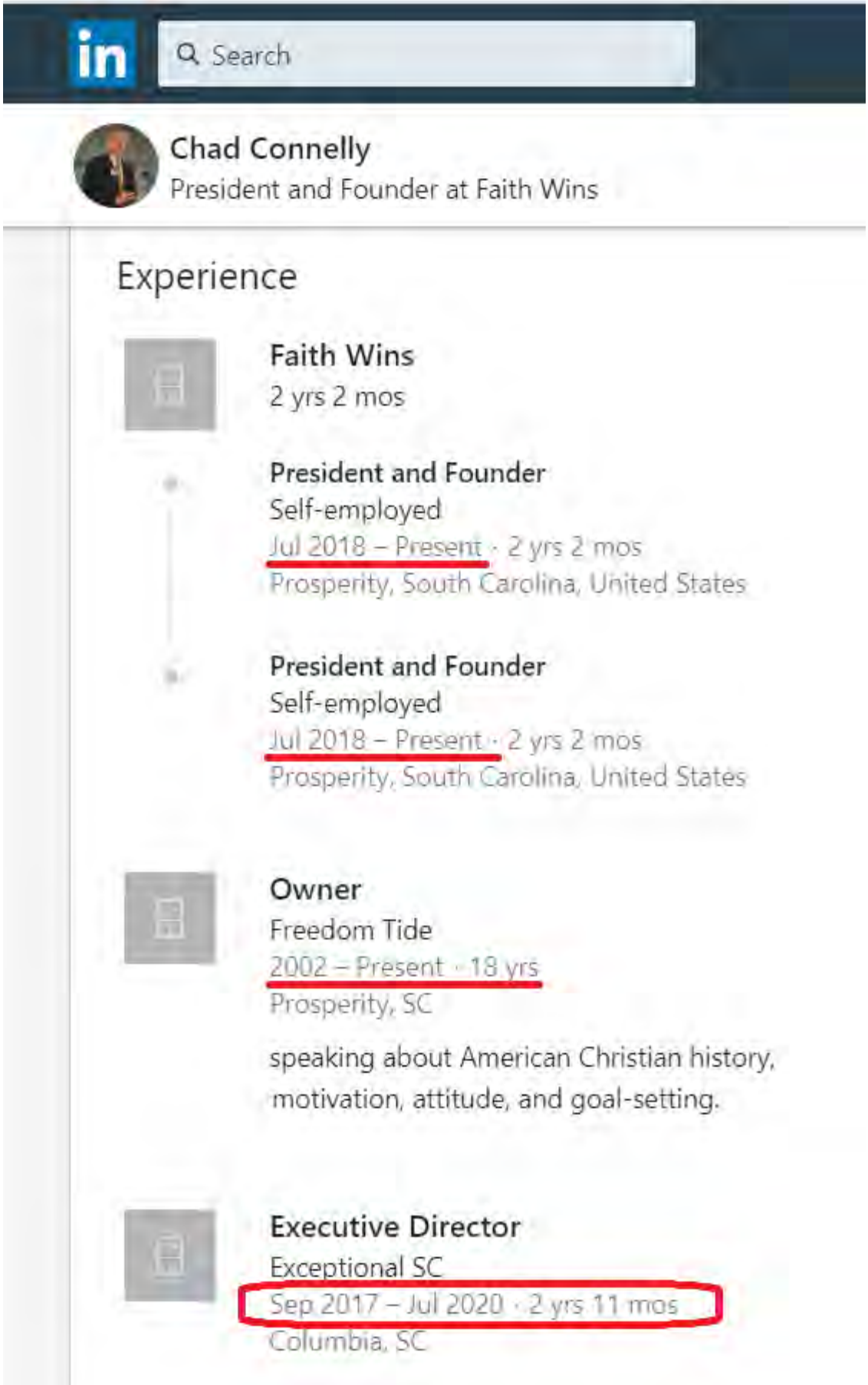
This past week we keep hearing the "chatter" from multiple unrelated sources … is all abuzz with TWO CLAIMS:

#FireChadConnelly (and his entire "team") are GONE …

#RemoveTomPersons is OUT as Board Chairman and OFF the Board completely…

Finally … the straw that broke the camel's back … And as people say … LinkedIN never lies. Chad

Connelly was super quick at updating his business profile online. It is pretty easy to tell where his priorities have always been with his LinkedIN:



No formal announcement … as of yet … although FITSNews broke the story on Saturday:

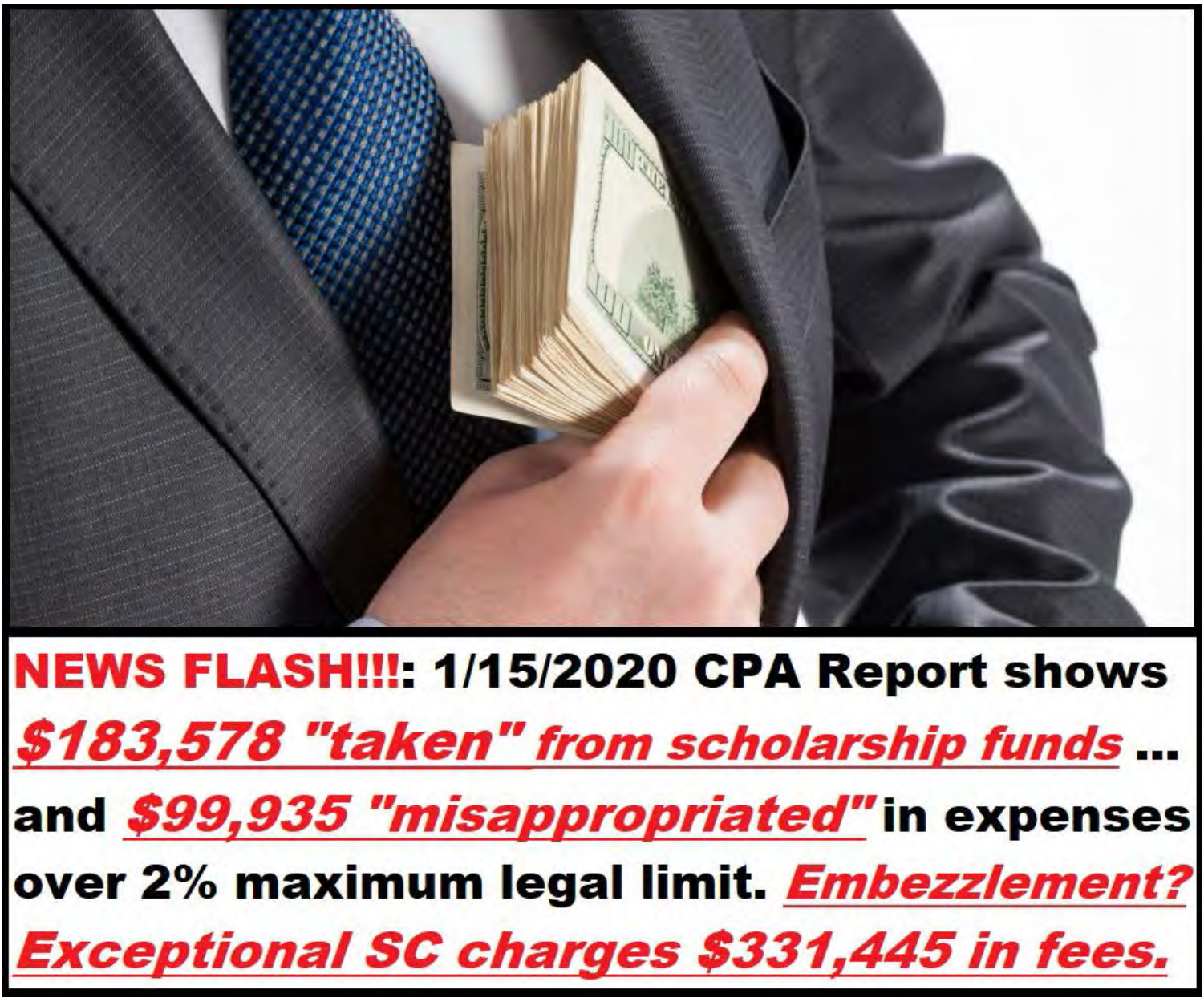
https://www.fitsnews.com/2020/08/01/south-carolinas-government-run-school-choice-program-is-in-trouble/

Obviously this is HUGE NEWS … and there has been no "formal" announcement from Exceptional SC … but we do not think this is an episode of **"Punked"** … the sources are too numerous and too broad and too unrelated to each other … and as we said this is LONG OVERDUE … so not unexpected at all.

WHY are Connelly & Persons GONE … as if we have to tell you, right? Most of you know. Look above … only $40 / incumbent is in the bank today, and we have schools starting next week. 10% scholarships last semester … so families expecting $5,000 only received $500 … and all new families received ZERO. Tons of problems … big and small … including multiple data breaches … and worst of all … these two people (Connelly & Persons) actively opposed changes and fixes that would have FULLY FUNDED all of our kids … but in doing so would have cut-off their "personal" money flow and control over the program. All because they did not want this program to be run by independent non-profits … just like EVERY OTHER STATE IN THE NATION for 300,000 students annually.

Connelly & Persons picked themselves over the children … and that was nothing less than unforgivable. #FollowTheMoney!!!

And then there is the 2% Administrative Fee Cap … and allegations of EMBEZZLEMENT. That all came out January 25th, 2020 … based on CPA & DOR financial reports. It is ongoing and not going to be pretty when it all comes out (hopefully sooner rather than later with these new developments) … but if anything … this overspending may be the straw that broke the camel's back … at least with the SC Department of Revenue.



Nobody seemed to care (other than a few of our legislator friends … not even the mainstream press) when kids did not get funding … and schools were closing over this mess … but when "important" people might have serious legal liability … and perhaps criminal charges … that fear perhaps is what spurred someone to ACT … finally!!!

The ongoing question? So, was all this apparently illegal activity limited to just Chad Connelly and Tom Persons … who seemed to be driving the ship into the ground and refusing all requests for transparency … and were aided by their CPA Firm (who is now not "independent" … which is a huge red flag) & their lawyer(s) …. and backed up by the SC Department of Revenue (who actively opposes this program for political reasons) … ***or is it a broader problem?***

More to come on all of this … we are sure.

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PERJURY, CONTEMPT & SANCTIONS FOR FALSE AFFIDAVIT**
	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
	)	
Defendants.	)	
	)	

Plaintiff Jefferson Davis, Jr. on May 14th, 2020, filed his Motion for Perjury, Contempt & Sanctions for False Affidavit.

GROSSLY PERJURED STATEMENT

On March 4th, 2020, counsel for the Defendants filed with this honorable Court an Affidavit of Chad Connelly in support of Defendants' Motion to Dismiss.

THE LIE: Defendant Connelly's March 4th, 2020 sworn affidavit stated the following:

> **"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result the number is constantly in flux. The current rate of donation receipts is approximately $350,000 per week or $50,000 per day."**

THE MOTIVE: Using the donation totals sworn to by Defendant Connelly, his sworn affidavit (in support of Defendants' Motion to Dismiss) continued on to claim that **"the damages suffered will be between $45,000 and $50,000 per day over the next six weeks."** These estimates were intentionally and grossly inflated using the false donation totals and in no way would the estimated damages be as high as Defendant Connelly claimed.

THE PROOF: In fact, given newly provided evidence from Defendants, specifically the August 4th, 2020 sworn affidavit of Mr. Dave Wilson, in a vain attempt to clear his friend and business associate Defendant Chad Connelly, we now better know (but not fully) the extent of Defendant Connelly's perjured testimony. Using Mr. Wilson's provided numbers, it is clear Defendant Connelly's estimates were off by at least **1,053%**, almost 11 times greater than actual. Donations were not $1,045,000 as Defendant Connelly swore. In fact, donations (PLUS "non-binding" pledges or reservations) were only $99,201 for the period claimed. **See Exhibit A.**

We should also remember that Defendant Connelly stated specifically "donations", not "reservations" or "pledges". **This makes the LIE much greater than 1,053%.** As outlined in Plaintiff's original Motion filed May 14th, 2020, this is not a minor error, and Plaintiff contends such was done on purpose by Defendant Connelly (and his counsel) to actively mislead this court.

FIRST ATTEMPT TO EXPLAIN GROSSLY PERJURED STATEMENT

On April 16th, 2020, knowing the truth was out, counsel for the Defendants filed with this honorable Court a **Supplemental Affidavit of Chad Connelly**. In this sworn affidavit, Defendant Connelly belligerently continues to contend that the **"numbers provided for fundraising in my prior affidavit are correct"** and that the $1,045,000 figure represented actual donations and "pledges".

Non-binding "pledges" are not transfers and thus are not donations by any definition. According to Black's Law Dictionary, Sixth Edition, donation comes from the Latin, *donatio*, meaning gift.

> **"Donatio. Lat. A gift. A transfer of the title to property to one who receives it without paying for it. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration."**

SECOND ATTEMPT TO EXPLAIN GROSSLY PERJURED STATEMENT

In yet what has proven to be another vain attempt to mask Defendant Connelly's grossly false sworn testimony before this Court, Defendants have now provided a sworn affidavit from **Mr. Dave Wilson**. Mr. Wilson is a personal friend, business associate, and a well-known ally of Defendant Connelly in the community. In his sworn affidavit, Mr. Wilson claims to be a "communications consultant" to Exceptional SC.[1] However, Mr. Wilson is in fact the "Chief Strategist" of the political consulting firm **McAlister Communications** in Columbia, SC, and is also a "Team Member" of Defendant Connelly's non-profit Faith Wins with several other SC political insiders.

Mr. Wilson specifically swears:

> **"Chad Connelly requested the amount of donations received by the donation reservation system in early March 2020 for the purpose of use in Court. The number provided for fundraising in my report to Mr. Connelly was $976,404.60 in donations on March 3, 2020."**

[1] Although Mr. Wilson is a "communications consultant", he does not claim to have any financial, accounting, fundraising, or tax expertise. Although Mr. Wilson may claim to be a "communication consultant" for Exceptional SC, upon information and belief Mr. Wilson (and his firm) were simply PAID by Exceptional SC, but did work for Defendant Connelly with his other ventures, politicians, and non-profits such as with Faith Wins. Mr. Wilson has been observed and reported lobbying for Exceptional SC and on behalf of Mr. Chad Connelly at the State House, although he is not a registered lobbyist. This would be a violation of State lobbying laws as was similarly done with the recent Quinn investigations and indictments. Mr. Wilson also runs the political campaigns for such individuals as Secretary of State Mark Hammond and former 4th Congressional candidate Josh Kimbrell (a current SC Senate candidate) and he and his firm have represented such politicians as George W. Bush, Senator John McCain and Senator Lindsey Graham as well as significant commercial business interest. The structure and actions are nearly identical to the **criminal structure** used by the Quinn family as recently reported.

Even if we believe Mr. Wilson's sworn affidavit, which Plaintiff contends contains numerous misleading as well as factually and technically inaccurate statements, there is no explanation as to how Defendant Connelly arrived at his inflated $1,045,000 donation total over the prior 21-day period or Defendant Connelly's claim that the current rate of donations was "$350,000 per week or $50,000 per day".

Furthermore, Mr. Wilson admits to knowing that Defendant Connelly needed these donation numbers for this Court. Although in his affidavit it is unclear exactly what he provided Defendant Connelly aside from a total of $976,404.60 in donations, this sworn affidavit appears to be yet another attempt by Defendants (and their legal counsel) to mislead this Court.

DAVE WILSON'S DONATION "RESERVATION" SUMMARY

Mr. Wilson claims in his sworn affidavit to have reported to Defendant Connelly, knowing this information was to be used by this Court, that Exceptional SC **"fundraising in my report to Mr. Connelly was $976,404.60 in donations on March 3, 2020"**.

As with Defendant Connelly, Mr. Wilson is fraudulently misleading with his term "donations", when in fact these numbers were not donations, just non-binding pledges or "reservations". However, it is clear from the report provided to this Court on August 4th, 2020, that Mr. Wilson and Defendant Connelly knew they were misleading this Court.

First, the grand total of the report provided by Mr. Wilson is as claimed, $976,404.60. **See Exhibit A, *page 3***. However, that total in Mr. Wilson's report includes donation "reservations" from Calendar Year 2019, as far back as March 8, 2019. ***Id, page 1.*** The report also includes

"reservations" in 2020 that are marked for tax year 2019.[2] ***Id, page 1 & 2.*** Regardless the overall "reservation" totals are in fact only $917,399.60 for calendar year 2020 as of March 3rd, 2020. ***Id, page 3.***

EXCLUDING THE MAD RUSH: Next, it is important to understand, as Defendant Connelly, Mr. Wilson, and the other Defendants (and their legal counsel) well know, that there is typically a "mad rush" for tax credits on the first day / week that such are accepted. For example, the similar K-12 tax credit program in Georgia opens donations on January 1st each year, and in 2020 raised **$81,755,058 in the first seven (7) days of the year**.[3] **See Exhibit B**. After the initial "mad rush", donations drop off significantly.

So, when did Exceptional SC "open" up for donations / "reservations"? Not until Monday February 3rd, 2020 at 12 noon. See DONOR RESERVATION TIMELINE at Exhibit C. As such, the "mad rush" (a misnomer in the SC programs case given the relatively minor donations), started on February 3rd with the following results per Mr. Wilson's report" (***See Exhibit A, page 2.***)

- **Monday, February 3rd: $507,050.00**
- **Tuesday, February 4th: $ 59,563.48**
- **Wednesday, February 5th: $ 83,000.00**

---

[2] Both Defendant Connelly and Persons, despite years of experience with running Exceptional SC, have incorrectly advised donors that they can donate after the end of the income tax year. SCDOR has confirmed that said legal and tax advice was incorrect. See Exhibit C, Attachment 5 as just one example.

[3] The $100 million Georgia K-12 tax credit program differs from SC in that by law donors must apply with the Georgia Department of Revenue for their tax credit, and once approved, the donor has 60 days by law to fulfil their non-binding pledge. The is no similar provision in the SC law, and in fact there is no authority in the SC law that would even allow Exceptional SC to "hold" pledges or reservations. In fact the SC law specifically requires a "first-come, first-serve" donor tax credit and the SCDOR has previously maintained that a donor's tax credit is not valid (or holdable) and is only effective upon mailing of the check, etc. as is consistent with IRS donation timing rules. If Exceptional SC is holding "reservations", that too is illegal according to SC law.

- **Thursday, February 6th: $ 26,674.80**
- **Friday, February 7th: $107,000.00**
- **Saturday, February 8th: $ 5,000.00**
- **Sunday, February 9th: - zero –**

7 DAY TOTAL: $788,288.28

Outside the initial 5 days of the donations being "open", Defendant Connelly and Exceptional SC had "reservations" of approximately $100,000 as of his March 4th, 2020 sworn affidavit. In fact per Mr. Wilson's report, **in the immediate 21-days period Defendant Connelly noted there were only *$99,201.00* in reservations, or just $4,723.86 per day**. ***See Exhibit A, page 3***. This is a far cry from the perjured claims of $1,045,000 in the past 21-days and the pace of $50,000 per day Defendant Connelly used in his March 4th, 2020 sworn affidavit.[4]

As stated above, Mr. Wilson's sworn affidavit, which Plaintiff contends also contains numerous misleading as well as factually and technically inaccurate statements, the entity Exceptional SC does not have the legal authority to take "reservations", and is yet another vain attempt to explain Defendant Connelly's grossly false sworn affidavit.

DETRIMENTAL RELIANCE ON CONNELLY STATEMENTS

Aside from this Court's detrimental reliance on the sworn affidavit of Defendant Connelly, thousands of parents and over 100 schools relied upon Defendant Connelly's fundraising claims. This is especially true given the sworn nature of Defendant Connelly's testimony.

[4] As of June 30th, 2020, donations are only $704,293.76 for the 6-month period of 2020. See Exhibit C, Attachment 6.

Defendant Connelly went on to provide *The State Newspaper* on March 13th, 2020 with an exaggerated claim of $2 MILLION in donations. **See Exhibit D**. This too was a lie.

Plaintiff is prepared to provide further witness testimony in Court and/or via sworn affidavits to this effect and would ask the Court to consider such in its penalty and ruling on this Motion.

TERMINATION / RESIGNATION OF DEFENDANT CONNELLY & PERSONS

The Court should also note the recent ***termination*** of **Defendant Chad Connelly** as Executive Director of the South Carolina Educational Credit for Exceptional Needs Children Fund, as well as the ***resignation*** of **Defendant Tom Persons** as the Board Chairman of the same. **See support previously provided on August 10th, 2020**. These terminations / resignations were the result of a directive from the South Carolina Department of Revenue for the Defendants to "cut costs" **due to the current Defendants' violation** of the S.C. Code Ann. § 12-6-3790(B)(4) two percent (2%) maximum administrative fee cap – which is the subject matter of this case.

It is further believed that Defendant Connelly's termination is the result of his false and perjured sworn affidavit in this case.

LEGAL COUNSEL PARTICIPATION IN FRAUD

Legal Counsel for Defendants are well aware of the false claims of Defendant Connelly and yet they still allowed him to submit a false sworn affidavit to this Court. This has been a long and ongoing matter in relation to false claims by Defendants, yet legal counsel enables the fraud.

Plaintiff would request that the Court Order counsel to appear and explain their participation in this matter.

ORDER TO ENFORCE TRANSPARENCY & FOR DAMAGES

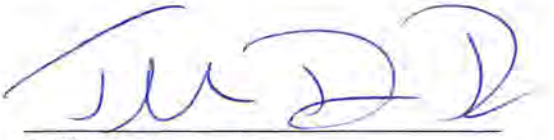
Plaintiff now respectfully does pray and ask this Court to grant an Order finding Perjury by Defendant Chad Connelly for the filing of a false sworn affidavit as to the actual donations raised and projected damages, and for Contempt of Court and Sanctions (***PAYABLE TO THE BENEFIT OF THESE CHILDREN & SCHOOLS***) as this Court deems appropriate against all Defendants related to the egregiousness of the false claims and Defendants' ongoing proclivity to lie to the Court and their non-profit stakeholders – K-12 children with special needs, their families, and the schools that serve them.

Financial Damages: The financial damages suffered due to the false sworn claims by Defendant Connelly are substantial. Plaintiff would request that the Court issue instructions to further investigate this matter, including by Plaintiff and ***appropriate criminal investigative authorities (specifically SLED)***, and provide testimony from parents, school leaders and others to determine the full extent of these damages to help determine the financial sanctions this Court issues. Defendants and legal counsel should be disgorged of their ill-gotten gains. Furthermore, **Plaintiff individually has incurred costs and time well in excess of $10,000 in just this specific matter**.

Transparency: Plaintiff would also ask this honorable Court to COMPEL Defendants (*subject to confidentiality and seal*) to produce any additional financial data requested from Plaintiff related to claimed "pledges" & donations given the inability to independently verify what appears to be additional perjured claims by Defendant Connelly & Mr. Wilson, and as condoned by the other Defendants and their legal counsel in this case. Plaintiff is a licensed and professional tax attorney and CPA and as such can be trusted to maintain confidentiality.

Plaintiff is awaiting additional information and reserves the right to supplement this Memorandum with affidavits, witness testimony and any other relevant information which may be submitted at a later date.

Respectfully submitted this **12th August, 2020**.



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PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
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Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **12th day of August, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PERJURY, CONTEMPT & SANCTIONS FOR FALSE AFFIDAVIT**

PARTIES SERVED:

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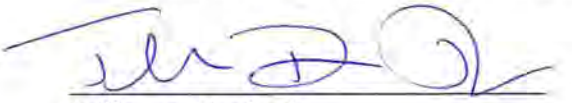

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PLAINTIFF, *PRO SE*

EXHIBIT A

ANALYSIS OF DAVE WILSON 8/4/2020 SWORN AFFIDAVIT - ATTACHMENT B

Attachment B: Timestamp Data for Donation Reservation System

NOTE: "Reservations" are non-binding "pledges" and not actual donations (which would be even less)

Date	"Reservation" Amount	Sub-Totals		Notes
03/08/19	$21,500.00			
04/12/19	$6,000.00			
12/23/19	$15,000.00			
		$42,500.00		2019 Dated Pledges (For 2019)
01/02/20	$5,000.00			
01/03/20	$500.00			
01/13/20	$6,000.00			
01/14/20	$1,180.00			
01/14/20	$5,500.00			
01/17/20	**$10,000.00**			**2019 Pledge**
01/19/20	**$1,000.00**			**2019 Pledge**
01/23/20	$9,630.32			
01/26/20	$100.00			
01/26/20	$5.00			2019 Pledge
		$38,915.32		
		($11,005.00)	Less 2019 Pledges	
		$27,910.32	January 2020 Pledges	
02/03/20	$7,500.00			
02/03/20	$500.00			
02/03/20	$1,000.00			
02/03/20	$10,000.00			
02/03/20	$4,000.00			
02/03/20	$4,000.00			
02/03/20	$4,500.00			
02/03/20	$14,000.00			
02/03/20	$15,000.00			
02/03/20	$10,000.00			
02/03/20	**$2,500.00**			**2019 Pledge**
02/03/20	$30,000.00			
02/03/20	$6,500.00			
02/03/20	$5,000.00			
02/03/20	$25,000.00			
02/03/20	$5,000.00			
02/03/20	$9,500.00			
02/03/20	$750.00			
02/03/20	$3,500.00			
02/03/20	$30,000.00			
02/03/20	$750.00			
02/03/20	$13,000.00			
02/03/20	$200.00			
02/03/20	$20,000.00			

Date	"Reservation" Amount	Sub-Totals	Notes
02/03/20	$10,000.00		
02/03/20	$2,000.00		
02/03/20	$5,000.00		
02/03/20	$2,000.00		
02/03/20	$20,000.00		
02/03/20	$3,000.00		
02/03/20	$25,000.00		
02/03/20	$6,000.00		
02/03/20	$5,000.00		
02/03/20	$1,000.00		
02/03/20	$15,000.00		
02/03/20	$5,000.00		
02/03/20	$5,000.00		
02/03/20	$3,600.00		
02/03/20	$50,000.00		
02/03/20	$40,000.00		
02/03/20	$20,000.00		
02/03/20	$45,000.00		
02/03/20	$7,250.00		
02/03/20	$9,000.00		
02/03/20	$6,000.00	**$507,050.00**	***February 3rd, 2020 Pledges***
02/04/20	$5,000.00		
02/04/20	$10,000.00		
02/04/20	$5,000.00		
02/04/20	$5,500.00		
02/04/20	$5,000.00		
02/04/20	$5,000.00		
02/04/20	$12,000.00		
02/04/20	$12,063.48	**$59,563.48**	***February 4th, 2020 Pledges***
02/05/20	$60,000.00		
02/05/20	**$3,000.00**		**2019 Pledge**
02/05/20	$20,000.00	**$83,000.00**	***February 5th, 2020 Pledges***
02/06/20	$5,000.00		
02/06/20	$6,674.80		
02/06/20	$5,000.00		
02/06/20	$10,000.00	**$26,674.80**	***February 6th, 2020 Pledges***
02/07/20	$15,000.00		
02/07/20	$25,000.00		
02/07/20	$5,000.00		
02/07/20	$25,000.00		
02/07/20	$5,000.00		
02/07/20	$6,000.00		
02/07/20	$6,000.00		
02/07/20	$5,000.00		
02/07/20	$15,000.00	**$107,000.00**	***February 7th, 2020 Pledges***
02/08/20	$5,000.00	**$5,000.00**	***February 8th, 2020 Pledges***
02/09/20	$0.00	**$0.00**	***February 9th, 2020 Pledges***
02/10/20	$7,500.00	**$788,288.28**	**Seven Day "mad rush" total**

Date	"Reservation" Amount	Sub-Totals	Notes
02/13/20	$3,000.00		
02/15/20	$5,000.00		
02/16/20	$1,000.00		
02/20/20	$10,000.00		
02/20/20	$12,000.00		
02/20/20	$5,000.00		
02/21/20	$5,000.00		
02/22/20	$7,500.00		
02/24/20	$1.00		
02/25/20	$100.00		
02/26/20	$100.00		
02/26/20	$10,000.00		
02/27/20	$10,000.00		
02/27/20	$20,000.00		
03/01/20	$10,000.00		
03/03/20	$500.00	**$99,201.00**	***Total Pledges for 21 DAYS Prior to Sworn Affidavit***

"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result the number is constantly in flux. The current rate of donation receipts is approximately $350,000 per week or $50,000 per day." MARCH 3, 2020 CONNELLY SWORN AFFIDAVIT.

$1,045,000.00	***Claimed "Donations" in SWORN Affidavit by Connelly***
($99,201.00)	***Actual "Donations" PLUS "Pledges"***
$945,799.00	***DIFFERENCE***

NOTE: Connelly stated $1.045 MILLION in "donations". The $99,201 is donation "reservations" (i.e., non-binding pledges.) The actual LIE in support of a Motion to Dismiss is much worse than these numbers present.

$976,404.60	**Grand Total**
$933,904.60	All Pledges starting 1/1/2020
($16,505.00)	LESS: Pledges in 2020 marked for 2019
$917,399.60	**TOTAL 2020 Pledges in Calendar Year 2020**

EXHIBIT B

QUALIFIED EDUCATION EXPENSE TAX CREDIT

January 7, 2020

The Qualified Education Expense Credit Cap is $100 million

2020 Year: For preapprovals processed through the date of this report, $81,755,058 of the $100 million cap has been preapproved. As such there is $18,244,942 remaining in the cap.

2019 Year: For preapprovals processed through the date of this report, $100 million of the $100 million cap has been preapproved. As such there is $0 remaining in the cap.

2019 Calendar Year Federal Poverty Level Information

O.C.G.A. § 20-2A-3 requires SSOs to report certain information based on the Federal Poverty Levels (in place of quartile information). Federal Poverty Level for this purpose means the poverty guidelines issued each year in the Federal Register by the Department of Health and Human Services. For scholarship recipients in the 2019 calendar year (for purposes of the Form IT-QEE-SSO2 due on January 12, 2020), the 2019 Federal Poverty Level information is listed below.

2019 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA	
Persons in family/household	**Poverty guideline**
For families/households with more than 8 persons, add $4,420 for each additional person.	
1	$12,490
2	$16,910
3	$21,330
4	$25,750
5	$30,170
6	$34,590
7	$39,010
8	$43,430

Other Qualified Education Expense Information

Electronic Mandate for the Georgia Form IT-QEE-TP1

The Qualified Education Expense Credit Preapproval Form must be submitted through our Self-Service Portal, Georgia Tax Center (GTC) at https://gtc.dor.ga.gov .

If you have never filed a return with the State of Georgia you must call the Taxpayer Services Call Center at 1-877-423-6711 to get registered, receive a web logon and a temporary password for GTC.

Current filers, with the State of Georgia, that do not already have a GTC log on can visit our informational page by choosing Detailed Instructions, General Information and Georgia Tax Center Help Guide on http://dor.georgia.gov/georgia-tax-center-info website.

Listed below are a few additional items as it relates to the Department of Revenue's QEE application process:

1. Pre-approval letters will be mailed directly to the taxpayer. Taxpayers should make sure that the correct address is on file before applying for the credit. Additionally, letters can now be viewed and printed by the taxpayer via GTC.

2. If a taxpayer does not make their contribution within the 60-day window of pre-approval, the taxpayer will need to re-apply for the QEE credit.

If you have any questions regarding the electronic submission of Qualified Education Expense Credit applications, you can contact the Tax Credits & Incentives Unit at TaxCredits.Inquiries@dor.ga.gov.

Please read the following instructions before submitting your request for preapproval on GTC:

Instructions

- The contribution must be preapproved by the end of the calendar year. Also, the contribution must be made within 60 days of the date of the preapproval notice or by the end of the calendar year in which it was preapproved, whichever is earlier.
- The taxpayer must add back to Georgia taxable income the amount of any federal charitable contribution deduction taken on a federal return for which a Georgia qualified education expense credit is allowed.
- The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education expense for a particular individual.
- The student scholarship organization must be on the Department of Education's website before preapproval is submitted through GTC.

The Official Code of Georgia Annotated Section **48-7-29.16** establishes an income tax credit for qualified education expenses.

A credit is allowed for the expenditure of funds by the taxpayer to a student scholarship organization, operating pursuant to Chapter 2A of Title 20, which uses the contribution for tuition and fees for a qualified school or program.

Credit Limits

Individual Taxpayers

An individual taxpayer is allowed a credit for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or $1,000.00 per tax year, whichever is less; or

(2) In the case of married couple filing a joint return, the actual amount expended or $2,500.00 per tax year, whichever is less; or

(3) In the case of a married couple filing a separate return, the actual amount expended or $1,250.00 per tax year, whichever is less.

For an individual taxpayer the credit is further limited and may not exceed the taxpayer's income tax liability. The amount of the credit that exceeds the taxpayer's income tax liability can be used against the next succeeding five years' tax liability.

Individual Taxpayers who are Members of a Limited Liability Company, Shareholders of a Subchapter S Corporation, or Partners in a Partnership

For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or $10,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. If the individual taxpayer is a member, partner, or shareholder in more than one pass through entity, the total credit allowed cannot exceed $10,000; the individual taxpayer decides which pass through entities to include when computing Georgia income for purposes of the qualified education expense credit. All Georgia income, loss, and expense from the taxpayer selected pass through entities will be combined to determine Georgia income for purposes of the qualified education expense credit. Such combined Georgia income shall be multiplied by the applicable marginal rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this paragraph. If the taxpayer(s) chooses to be preapproved pursuant to this paragraph, for all purposes of claiming the credit they shall be subject to the provisions of this paragraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § 48-7-29.16 and Regulation 560-7-8-.47. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward. Please see Regulation 560-7-8-.47 for an example of how this is calculated.

Corporate and Fiduciary Taxpayers

A corporation or fiduciary is allowed a credit for qualified education expenses in an amount not to exceed the lesser of the actual amount expended or 75 percent of the corporation's or fiduciary's income tax liability for the tax year. Any of this lesser amount (amount expended or 75% of the corporation's or fiduciary's income tax liability) that is not used can be used against the succeeding five years' tax liability. A fiduciary cannot pass through the credit to its beneficiaries.

For example: Taxpayer, a Corporation, requests preapproval for the qualified education expense credit for calendar year 2013 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the 2013 tax year to be $100,000; therefore the Department preapproves Taxpayer for $75,000 qualified education expense credit for calendar year 2013. Taxpayer makes a $75,000 donation to the SSO within 60 days of receiving preapproval from the Department and before the end of 2013. When Taxpayer files their 2013 Georgia income tax return, Taxpayer's income tax liability for tax year 2013 is $80,000. Taxpayer can only claim $60,000 of qualified education expense credit (which is 75% of their actual income tax liability for tax year 2013), and the extra $15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $60,000 qualified education expense credit claimed but not used on the taxpayer's 2013 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

Electronic Filing Electronic Filing is mandatory for taxpayers claiming this credit. Individual taxpayers that electronically file their tax return do not have to submit Form IT-QEE-SSO1. Form IT-QEE-SSO1 shall be maintained by the taxpayer and made available upon request by the Commissioner.

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

DECLARATION OF JEFFERSON DAVIS, JR.

1. My name is Jefferson Davis, Jr. I am more than eighteen (18) years of age and competent to testify to the matters stated in this Declaration. The facts provided in this declaration are based upon my personal knowledge.
2. I am the *Pro Se* Plaintiff in the above captioned case.
3. Between January 1st and the filing of Defendant Chad Connelly's March 4th, 2020, false affidavit, Defendant's (under the signature of Defendant Connelly) sent out the following four (4) donor solicitation emails. See Attachment 1, 2, 3 & 4.
4. As a prior donor I receive solicitation emails and I am aware of no other mass donor solicitation emails or reminders that were sent out until June 25, 2020, when a new series of 7 mass email blasts were sent out leading up to the July 15th, 2020 tax deadline (presumable a last ditch effort to save Defendant Connelly & Mr. Dave Wilsons jobs).
5. Attachments 1 through 6 are true and correct copies of the documents they purport to be.

6. **JANUARY 17, 2020**: **"YOU DID NOT MISS OUT if you own a PASS-THROUGH Business."** See Attachment 1. Donor Email from Defendant Chad Connelly falsely stating that Donors could still donate for tax year 2019. A FOIA request to the SCDOR confirmed 2019 donations could only be made in calendar year 2019. See Attachment 5.
7. **JANUARY 27, 2020**: **"Tax Credit Reservation Portal Opening Soon."** See Attachment 2. Donor Email from Defendant Chad Connelly stating that **"Reservations will open on Monday, February 3rd at 12 noon."** Id.
8. **FEBRUARY 3, 2020 at 11:50am**: **"Tax Credit Reservation Portal Opens Today."** See Attachment 3.
9. **FEBRUARY 7, 2020**: "Tax Credit Reservation Portal Now Open for 2020." See Attachment 4. Donor email from Defendant Chad Connelly stating with false bluster, "take advantage of **our one-of-a-kind tax credit**" and "we believe that **demand will be very high**".
10. According to a July 10th, 2020 FOIA response from the SC Department of Revenue, **donations as of June 30, 2020 are only $704,293.76**. See Attachment 6.

I hereby declare under the penalty of perjury that the foregoing is true and correct according to my personal knowledge, and if called as a witness, I could and would testify truthfully about the information contained in this Declaration.

This 12th day of August, 2020.

JEFFERSON DAVIS, JR.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

ATTACHMENT 1

Gmail

Jeff Davis <rjdavisjr@gmail.com>

YOU DIDN'T MISS OUT if you own a PASS-THROUGH Business

1 message

Chad Connelly <Chad@exceptionalsc.org> Fri, Jan 17, 2020 at 8:30 AM
To: rjdavisjr@gmail.com

YOU DID NOT MISS OUT

Pass-through Business Entities Can Make Donations to Exceptional Needs Scholarships for

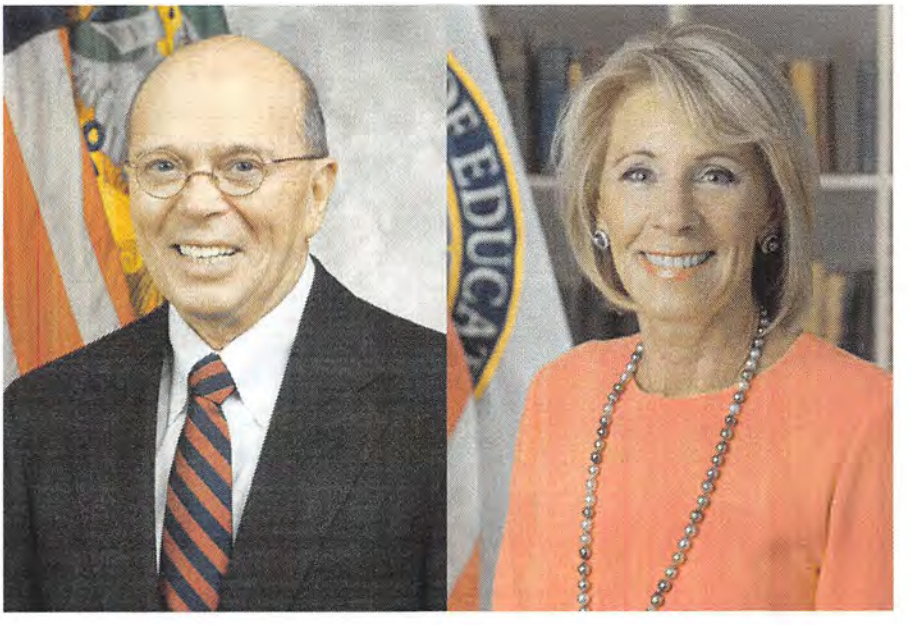
2019 or 2020

and Receive State Tax Credit and Federal Tax Deduction

The IRS **announced a clarification in December** that has reopened an opportunity for businesses to make a REAL difference in the lives of exceptional needs children in South Carolina. The US Conference of Catholic Bishops also released a **summary of this clarification**.

Click on this video to learn more.

YOU WILL BE PLEASED WITH THIS CLARIFICATION!!!



David Kautter, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, and Secretary of Education Betsy Devos cleared up confusion about the treatment of contributions by S Corps, LLC's, partnerships and pass-through entities.

Here's the quote Mr. Kautter gave:

"If a business partnership, LLC or S Corp makes a charitable donation, and they reasonably believe they will generate name

recognition and good will in the community, they can take the donation as an ordinary business expense, will receive the state dollar-for-dollar tax credit, and receive a federal deduction for their donation."

It is very important that you **let your CPA or financial planner know** about this change as you prepare your taxes.

If you have questions, please let me know.

Thanks & God Bless,

Chad Connelly
Executive Director
Exceptional SC
(803) 924-4596

Donate Today

Forward to your CPA

ATTACHMENT 2

Gmail

Jeff Davis <rjdavisjr@gmail.com>

Tax Credit Reservation Portal Opening Soon

1 message

Chad Connelly, Exceptional SC Executive Director <chad@exceptionalsc.org> Mon, Jan 27, 2020 at 10:30 AM
To: rjdavisjr@gmail.com

Tax Credit Reservation Portal Opening Soon

Hello Supporters of Exceptional SC,

We are just over a week away from opening our 2020 Exceptional SC Tax Credit Reservation Portal. I don't want you miss out on this opportunity to support exceptional needs children and take advantage of our one-of-a-kind tax credit.

Because of the **recent clarifications IRS changes to the tax laws**, we believe that **demand will be very high**, particularly for individuals with pass-through entities. You'll want to **reserve your 2020 donation early**.

Reservations will open on **Monday, February 3rd at 12 noon.**

On that day, you will receive an email with a link to the reservation portal where you will need to provide the pertinent information that the Department of Revenue requires to award you a tax credit for 2020.

Thank you so much for your interest in Exceptional SC and be on the look out for our email on Friday, February 3rd.

Chad

Chad Connelly
Executive Director, Exceptional SC
chad@exceptionalsc.org

ATTACHMENT 3

Gmail

Jeff Davis <rjdavisjr@gmail.com>

Tax Credit Reservation Portal Opens Today

1 message

Chad Connelly, Exceptional SC Executive Director <chad@exceptionalsc.org> Mon, Feb 3, 2020 at 11:50 AM
To: rjdavisjr@gmail.com

Tax Credit Reservation Portal Opens Today

Hello Supporters of Exceptional SC,

At noon today, our 2020 Exceptional SC Tax Credit Reservation Portal will open. I don't want you miss out on this opportunity to support exceptional needs children and take advantage of **our one-of-a-kind tax credit**.

Because of the **recent clarifications IRS changes to the tax laws**, we believe that **demand will be very high**, particularly for individuals with pass-through entities.

Make Your Pledge Now

On the reservation form, you will need to provide the pertinent information that the Department of Revenue requires to award you a tax credit for

2020.

Thank you so much for your interest in Exceptional SC.

Chad Connelly
Executive Director, Exceptional SC
chad@exceptionalsc.org

ATTACHMENT 4

Gmail

Jeff Davis <rjdavisjr@gmail.com>

Tax Credit Reservation Portal Now Open for 2020

1 message

Chad Connelly, Exceptional SC Executive Director <chad@exceptionalsc.org> Fri, Feb 7, 2020 at 7:17 AM
To: rjdavisjr@gmail.com

Tax Credit Reservation Portal Now Open

Hello Supporters of Exceptional SC,

Our 2020 Exceptional SC Tax Credit Reservation Portal is now open. I don't want you miss out on this opportunity to support exceptional needs children and take advantage of **our one-of-a-kind tax credit**.

Because of the **recent clarifications IRS changes to the tax laws**, we believe that **demand will be very high**, particularly for individuals with pass-through entities.

Make Your Pledge Now

On the reservation form, you will need to provide the pertinent information that the Department of Revenue requires to award you a tax credit for

2020.

Thank you so much for your interest in Exceptional SC.

Chad Connelly
Executive Director, Exceptional SC
chad@exceptionalsc.org

ATTACHMENT 5

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

Joe S. Dusenbury, Jr.
PO Box 125
Columbia, SC 29214-0580

January 30, 2020

R. Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Re: Freedom Of Information Act Request Dated January 17, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 17, 2020. There are no such written documents to produce in response to your request.

The Department would choose to affirmatively state the following:

> The document included as your Exhibit "A" was not reviewed by or approved by the Department of Revenue. Furthermore, a tax credit may only be taken in the year in which the donation was made.

We are also returning your check for $2.00 to the Department of Revenue.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosure

January 17, 2020

VIA US Mail & Fax (803-896-0151)

SC Department of Revenue – Taxpayer Advocate
Attn: Jean Funches
PO Box 125
Columbia, SC 29214

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Funches:

Section 12-6-3790 (B)(4) states **"the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section."**

As such, and as part of its administrative duties, the department should have the records herein requested.

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you mail or email (*jeff@apogeetax.com*) me a copy of the following public records:

- **Any document or record whereby the Department opined on or authorized Chad Connelly and/or the SC Educational Credit for Exceptional Needs Children Fund (aka Exceptional SC) to continue to accept 2019 tax credit donations beyond the calendar year of 12/31/2019 at 11:59pm.**

  For example, authorizing taxpayers during 2020 to receive a 2019 South Carolina tax credit stating specifically

  "Pass-through Business Entities Can Make Donations to Exceptional Needs Scholarships for 2019 or 2020 and Receive State Tax Credit and Federal Tax Deduction"

  NOTE: See Exhibit A. A January 17th, 2020 fundraising email from Mr. Chad Connelly & Exceptional SC soliciting tax credit donations for 2019.

To that extent, please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits but excluding drawings. In the event you determine that a requested document contains material or information within the

statutory exemptions to mandatory disclosure, I request that you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

Please produce responsive documents as gathered on a weekly basis until all documents have been produced. Documents should not be withheld pending complete fulfilment of this request.

If you determine that any or all documents responsive to any individual requested item (*or portion thereof*) cannot or have not been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (*or portion thereof*), I request specific written confirmation of that fact.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send me any document or portion thereof, or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents or portions thereof by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in§ 30-4-30(c).

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b).

I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). I have included a $2 deposit, but request prior notice should you determine that such costs will exceed $10.

Best,

Jeff Davis, *JD, MBA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

"Exhibit A"

YOU DIDN'T MISS OUT if you own a PASS-THROUGH Business Inbox ×

Chad Connelly Chad@exceptionalsc.org via dme3ds1.com 8:37 AM (4 hours ago)
to [redacted]

YOU DID NOT MISS OUT

Pass-through Business Entities Can Make Donations to Exceptional Needs Scholarships for 2019 or 2020

and Receive State Tax Credit and Federal Tax Deduction

The IRS **announced a clarification in December** that has reopened an opportunity for businesses to make a REAL difference in the lives of exceptional needs children in South Carolina. The US Conference of Catholic Bishops also released a **summary of this clarification**.

Click on this video to learn more.

YOU WILL BE PLEASED WITH THIS CLARIFICATION!!!

ATTACHMENT 6

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL

300A Outlet Pointe Blvd.
Columbia, SC 29210

Joe S. Dusenbury, Jr.
PO Box 125
Columbia, SC 29214-0580

July 10, 2020

R. Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Re: Freedom Of Information Act Request Dated June 30, 2020

Dear Mr. Davis:

This will acknowledge the receipt of your FOIA request dated June 30, 2020.

The attached document contains the deposits through the end of June.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosure

CY19 Exceptional SC Donations by Month

Mar-19	1,949,959.72
Apr-19	285,701.00
May-19	211,700.00
Jun-19	95,751.69
Jul-19	141,978.29
Aug-19	49,464.46
Sep-19	189,559.67
Oct-19	133,350.00
Nov-19	70,450.32
Dec-19	1,419,185.95
Total CY19	4,547,101.10

CY20 Exceptional SC Donations by Month

Jan-20	36,038.51
Feb-20	311,343.90
Mar-20	129,950.00
Apr-20	73,100.00
May-20	89,211.73
Jun-20	64,649.62
Total CY20 YTD	704,293.76

EXHIBIT D

EXHIBIT D

POLITICS & GOVERNMENT

SC school choice program for special needs students falls short of financial goal

BY JOSEPH BUSTOS

MARCH 13, 2020 05:00 AM

South Carolina's program where people can donate money for private school scholarships in exchange for income tax credits has struggled to raise money towards its $12 million cap because of IRS regulations. JOSH BELL JBELL@THESUNNEWS.COM

COLUMBIA, S.C.

A state program that raises money for scholarships to help children with special needs pay for private school once raised $17.5 million in about a day, according to its leader. But so far for this school year, it has raised only a quarter of that amount and is short of the maximum amount it could raise under state law.

The decline in funding has meant less money to pay for scholarships that families have come to rely on, according to private school leaders and critics of the state-run program.

The Exceptional SC scholarship program, which raises money for the private school scholarships, has seen donations slow down to a trickle, Executive Director Chad Connelly told The State.

EXHIBIT C D

The recent decline in donations, Connelly added, stems from a recent change in the federal tax code that makes the donations, eligible for a state tax credit, less desirable for taxpayers.

In 2017, the program raised $11 million between July 1 and Dec. 31. And in 2018, the program raised $17.5 million in a day and a half in July, including $5.5 million that had to be returned because it exceeded the state's $12 million cap on the tax credits that make the scholarship program possible, Connelly said.

Then in the 2019 calendar year, donations took a dive. The program only raised $4.5 million to be used toward the 2019-2020 school year, falling far short of the $12 million cap.

So far this year, the program is on the upswing, having raised about $2 million, including $1 million in the last three weeks, Connelly said.

But schools whose families have come to depend on the scholarships say the state's program has come up short.

At Greenville's Camperdown Academy, which caters to students with dyslexia, all of the students expect to receive scholarships at the school where tuition is nearly $12,000 a semester. Through the program, Camperdown students receive $5,000 per semester in scholarship assistance.

However, Camperdown students so far have received only the money for the first semester of this school year, and there is no guarantee the money will be there for the second semester.

"No one likes $5,000 surprises that they have to pay," said Camperdown Head of School Dan Blanch in an email to the State Newspaper. "Some may not be able to afford it, (but) the school needs the funds to pay teachers."

EXHIBIT D

At the Miracle Academy Preparatory School in Saint Stephen in Berkeley County, Principal Teresa Middleton said she has warned families at the school that the state scholarship money for the second semester may not come in.

Middleton added that some families may be faced with the tough decision of whether to come back next year.

"I don't know when we're going to be funded, if we're going to be funded, how we're going to be funded," Middleton said.

"We're like 'How do we get to incumbent parents and say 'You're not going to get the scholarship at this point in March. We haven't been told we're not going to get it either," Middleton said.

On Wednesday, Connelly attempted to dispel fears of schools not getting the scholarship money.

Exceptional SC is starting to release money for the spring. "As we're getting money, we're dispensing money," Connelly said.

The private-school scholarship program was adopted by lawmakers several years ago as a way to help students with special needs afford private school tuition. Advocates for the program argued that private schools can offer better services to students with special needs.

To pay for the scholarships, lawmakers adopted a tax credit for donations made for the scholarships. The cap on tax credits is $12 million a year, meaning the program can raise that much in donations eligible for the tax credits. Taxpayers can use the credits to reduce up to 60% of their tax liability. Parents or guardians of children with special needs can apply to Exceptional SC for scholarships to help pay private school tuition.

Failing to raise the $12 million allowed in 2019 meant millions of dollars worth of potential scholarships lost, leaving families in the lurch, critics say.

Olga Lisinska and her husband Jeff Davis, who previously raised millions for the state's special needs scholarships through their nonprofit, Palmetto Kids First, said they would have been able to raise the $12 million easily.

They blamed the fact the program is run by a government appointed board and nonprofit, not the IRS tax regulation, which they said should not be a hindrance. State lawmakers started off allowing independent nonprofits to raise money for the program, but later brought it in house, creating Exceptional SC to run the entire program.

"Your CPAs (certified public accountants) of the world actually know who has the most state income tax that would be eligible to have a credit," Davis said. "That's where you start, but then again you get out and talk to people who care about the cause who want to help."

Connelly, a former S.C. Republican Party chairman who has been director of Exceptional SC since late 2017, said he has been trying to find new donors, including by reaching out to accountants who would know who would benefit from the tax credit. The program has an email list of 5,200 potential donors of people who have "an affinity of giving to charities like ours," Connelly said.

"We funded every student in every school for the first semester," said Tom Persons the chairman of the Exceptional SC Board. The program did not fund new applicants this year, Exceptional SC officials said.

Connelly said the average donation, which was $19,000 in 2018, has now dropped to $4,285 since March 2019.

CHANGE IN TAX REGULATIONS

Connelly blamed Exceptional SC's failure to raise the amount of money allowed by the state on a change in 2018 federal tax regulations.

Before the change, taxpayers in some states including South Carolina had the option of donating to scholarship programs to get tax credits that lowered their state tax liability, then claiming the donations as charitable deductions on their federal tax returns.

EXHIBIT D

However, the IRS put a new rule into place in August 2018 that prevented taxpayers from claiming a federal charitable tax deduction if they also received a state tax credit.

That change has led accountants not to recommend donations to the state's scholarship program because there is no tax incentive on the federal level, Connelly said.

Exceptional SC went from having 1,100 donors in 2018 to only 400 donors during this cycle, Connelly said.

Connelly said there is a push for change that to allow businesses to consider charitable donations they believe would "create name recognition and good will" as ordinary business expenses that would qualify for a federal deduction.

If that change goes through, "small business people (and) CPAs are going to unload" contributions to the program, Connelly said.

Other states such as Georgia, Florida and Arizona, with tax credit programs, are not having trouble with raising money. Even though the Georgia and Arizona programs are open to individuals, Connelly argued all three of the states' programs are targeted toward corporations and are older than South Carolina's program which is targeted toward individual donors.

"They don't have the same tax structure we do," Connelly said. "We don't have an established set of donors anyway, and they were targeted at companies and corporations."

In Florida for example, the program is geared towards corporations with deeper pockets looking for tax credits, rather than individuals. Florida also does not have a personal income tax.

Patrick Gibbons, a spokesman for Step Up for Students, an independent nonprofit in Florida which raises money for private school scholarships for low-income students, said the group has raised $650 million for the 2019-20 school year.

"What's happening in programs based on personal income taxes .... is that the federal deduction

rules change, which limits how much people can deduct on state taxes paid," Gibbons said. "With limitation how much could be carried on state income tax, that's really limiting people's ability to make those contributions. The limitation doesn't apply on corporations."

JOSEPH BUSTOS

803-771-8450

Joseph Bustos is a state government and politics reporter at The State. He previously worked in Illinois covering government and politics, most recently with McClatchy sister newspaper the Belleville News-Democrat.

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

DECLARATION OF JEFFERSON DAVIS, JR.

1. My name is Jefferson Davis, Jr. I am more than eighteen (18) years of age and competent to testify to the matters stated in this Declaration. The facts provided in this declaration are based upon my personal knowledge.
2. I am the *Pro Se* Plaintiff in the above captioned case.
3. Attached are true and correct copies of email correspondences with the Court and opposing counsel related to the above referenced case. The documents are in fact what they purport to be.
    a. Exhibit A – February 25, 2020
    b. Exhibit B – February 26, 2020
    c. Exhibit C – April 29, 2020
    d. Exhibit D – July 2, 2020
    e. Exhibit E – July 7, 2020
    f. Exhibit F – August 14, 2020
    g. Exhibit G – September 10, 2020

I hereby declare under the penalty of perjury that the foregoing is true and correct according to my personal knowledge, and if called as a witness, I could and would testify truthfully about the information contained in this Declaration.

This 15th day of September 2020.

JEFFERSON DAVIS, JR.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com

PLAINTIFF, *PRO SE*

EXHIBIT A

Gmail Jeff Davis <jeff@apogeetax.com>

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Griffith, Eugene Law Clerk (Robert Dennis) <egriffithlc@sccourts.org> Tue, Feb 25, 2020 at 3:00 PM
To: Jeff Davis <jeff@apogeetax.com>, Geoffrey Chambers <g.k.chambers@gmail.com>
Cc: "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>

Mr. Davis:

I have discussed this with Judge Griffith. He believes that because the Newberry County school system is involved, it may cause a conflict for him as he has several different connections to Newberry County schools. It may be best to find another Judge within the 8th Circuit to hear this. I would be happy to provide the contact information for either Judge Addy or Judge Hocker's clerks.

Regards,

RSD

From: Jeff Davis <jeff@apogeetax.com>
Sent: Tuesday, February 25, 2020 8:32 AM
To: Geoffrey Chambers <g.k.chambers@gmail.com>; Griffith, Eugene Law Clerk (Robert Dennis) <egriffithlc@sccourts.org>
Cc: geoffrey@cperlgroup.com
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Chambers, thank you for confirming receipt, as well as service of the Summons and Complaint. Do know you also represent Mr. Chad Connelly in another case as well - at least as to a Motion to Quash a subpoena - so you may have other professional issues to consider there as well. And yes, I would presume that given the criminal issues involved in this matter, the three defendants should seek separate legal counsel, but that is not my decision to make nor is it my place to advise you or the defendants in that regards. Good luck.

Mr. Dennis, the Newberry Clerk of Court staff was kind enough to inform me yesterday you are Judge Griffith's law clerk and he is the administrative judge for the circuit ... and that I should contact you about this Rule 65 Motion. As I understand the Rule 65 process here in South Carolina, a temporary Order can be issued immediately and without a hearing to (as outlined below) temporarily prevent Defendant's from "paying themselves" and an expedited hearing scheduled within 10 days. Please know that I attached to the filed Motion (as "ATTACHMENT #1") the administrative complaint I submitted to the SC Secretary of State's Office. Their legal counsel's response has been **"Given the allegations of criminal activity, we may need to contact the Attorney General's Office on this matter."** Although the SOS and AG's Office can work quickly, it appears the Court's intervention via Rule 65 is necessary to cease the immediate and irreparable harm, hence my motion.

Mr. Dennis ... these funds Defendants are "paying themselves" with are intended to fund scholarships for children with special needs ... TODAY. The harm is irreparable. We have already documented $99,935 for the fiscal year 7/1/2018 - 6/30/2019 based on CPA financials (included in the motion) ... and the estimates (calculations included in the motion as well) is upward of an additional $125,000 for the initial 6 month period of the 7/1/2019 - 12/31/2019 period. That is nearly a quarter of a million intended for children, not Defendants individually and we need to Court's help to stop that number from growing substantially.

I trust and pray the court will also agree to the urgency of this matter provide the below relief as soon as possible.

Please advise. My schedule is completely open for a hearing at any time (or place) convenient for the Court.

Thank you, Jeff Davis 843-901-8036 (cell)

Plaintiff respectfully requests that this Court:

3. Issue a temporary restraining order, restraining and enjoining the Defendants, their respective employees, agents, affiliates and all those in active concert or participation with the Defendants or them, from expending any further ***administrative expenses*** on behalf of the ECENC Fund;

4. Schedule a hearing on Plaintiff's motion for a temporary injunction no later than ten (10) days of its issuance of the Temporary Restraining Order with notice to the Defendant, and should the Court be unable to schedule this hearing within this period, for good cause shown, order that the Temporary Restraining Order remain in full force and effect until the hearing occurs;

5. Issue an order and injunction compelling Defendants to detail and account for all ***administrative expenses*** expended on behalf of the ECENC Fund for the time period 7/1/2019 – 12/31/2020, which according to reports provided from the South Carolina Department of Revenue should not have exceeded $40,079.77;

6. For such further and additional relief as the Court deems just and proper.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Active and licensed attorney and CPA in Georgia (not SC). Thank you.

On Tue, Feb 25, 2020 at 8:00 AM Geoffrey Chambers <g.k.chambers@gmail.com> wrote:

> Mr. Davis,
>
> I think I need to be clear on my role before it causes issues. I represent ECENC in other cases. As of yet, I do not know who will be retained to represent each defendant in this matter. It could be me or could be someone else.
>
> You asked me if I would accept service of the Summons and Complaint on behalf of ECENC, Chad Connelly and Thomas Persons. I obtained authority to do so on February 20. You may take this email as confirmation the Summons and Complaint were served on Chad Connelly, Thomas Persons and ECENC on February 20, 2020.
>
> As for this motion, I will ask to accept service today. Again, the answer is likely yes. I will forward this to ECENC and get back to you regarding acceptance of service. Your acceptance of service of this motion will be an email acknowledging service.
>
> Geoffrey Chambers
>
> On Mon, Feb 24, 2020, 11:42 AM Jeff Davis <jeff@apogeetax.com> wrote:
>
> > RE: Davis v. Connelly, et al. [2020-CP-36-00093]
> >
> > **RULE 65 - MOTION FOR IMMEDIATE TRO & NOTICE / MOTION FOR TEMPORARY INJUNCTION**
> >
> > Dear Judge Griffith (via law clerk),
> >
> > Please be advised that I have just filed the attached Motion for an Immediate Temporary Restraining Order (with Notice / Motion for a Temporary Injunction) in the above referenced case. Since I am Pro

Se in this matter and only licensed with the State Bar in Georgia, I was required to file it by paper in case it is not online as of yet.

Pursuant to Rule 65, I am requesting that a hearing be scheduled as soon as possible. I am available at any time.

I also filed today a Proof of Service and have cc'd legal counsel for the Defendants on this email.

As required, I will file a Notice of Hearing and serve it upon counsel for the defendants as soon as the hearing is scheduled.

Thank you for your assistance.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

EXHIBIT B

Gmail Jeff Davis <jeff@apogeetax.com>

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Keesley, William P. <WKeesleyj@sccourts.org> Wed, Feb 26, 2020 at 4:06 PM
To: "jeff@apogeetax.com" <jeff@apogeetax.com>, "g.k.chambers@gmail.com" <g.k.chambers@gmail.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>
Cc: "Hocker, Donald B." <dhockerj@sccourts.org>, "Hocker, Donald B. Law Clerk (Madison Hoffman)" <dhockerlc@sccourts.org>, "Keesley, William P. Law Clerk (Creasie Parrott)" <wkeesleylc@sccourts.org>

Judge Hocker's office has asked me to consider the request by Mr. Davis for a TRO without notice in this case since Judge Hocker is out of the office and Judge Griffith is recused. Judge Addy is in Lexington today, so I am the only circuit judge in the 1th Circuit today, and Court Administration has granted me permission to handle this request. Having reviewed the materials on file, the court does not find that this situation qualifies for a TRO without notice. First, the requirement of Rule 65 for affidavits or a verified complaint has not been met. Secondly, even if they were, this situation appears to be one more appropriate for a hearing, with notice, to determine if a preliminary injunction should be entered. The court declines to issue a TRO without notice. Please contact Judge Hocker's law clerk about when he can schedule the hearing for a preliminary injunction. Thank you. [wpk]

From: Keesley, William P. Law Clerk (Creasie Parrott)
Sent: Wednesday, February 26, 2020 2:11 PM
To: Keesley, William P. <WKeesleyj@sccourts.org>
Subject: FW: Davis v. Connelly, et al [2020-CP-36-00093]

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, February 26, 2020 2:03 PM
To: Jeff Davis <jeff@apogeetax.com>
Cc: g.k.chambers@gmail.com; geoffrey@cperlgroup.com; Keesley, William P. Law Clerk (Creasie Parrott) <wkeesleylc@sccourts.org>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Mr. Davis, I am forwarding this information to Judge Keesley's law clerk, Creasie Parrott, as he is in Greenwood this week holding court.

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, February 26, 2020 11:58 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Addy, Frank R. Law Clerk (Jaquon Irby) <faddylc@sccourts.org>
Cc: g.k.chambers@gmail.com; geoffrey@cperlgroup.com
Subject: Fwd: Davis v. Connelly, et al [2020-CP-36-00093]

RE: Davis v. Connelly, et al. [2020-CP-36-00093]

RULE 65 - MOTION FOR IMMEDIATE TRO & NOTICE / MOTION FOR TEMPORARY INJUNCTION

Ms. Hoffman (Judge Hocker) & Mr. Irby (Judge Addy),

Please see attached a Rule 65 Motion for an Immediate TRO. Unfortunately Judge Griffith as the chief administrative judge has a conflict and his office has asked that we reach out to each of you to see if either Judge Hocker or Judge Addy can hear this expedited matter.

For your convenience, I have left the email details / discussion below, but as I understand the Rule 65 process, we are simply asking for an immediate TRO to enjoin Defendants for expending additional administrative expenses (to prevent further embezzlement by my analysis) ... and then schedule a hearing within the next 10 days for a longer term Temporary Injunction. SEE PARAGRAPHS # 3, 4 & 5 IN THE MOTION.

I am available for a hearing at any time or location ... and counsel for the Defendants has been cc'd and have notice of this matter and request.

As soon as we have a scheduled time / location for the hearing, please let me know and I will file / serve a Notice of Hearing.

Please advise if either Judge Addy or Judge Hocker is available to hear this expedited matter. Thank you in advance.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

---------- Forwarded message ---------
From: **Griffith, Eugene Law Clerk (Robert Dennis)** <egriffithlc@sccourts.org>
Date: Tue, Feb 25, 2020 at 3:00 PM
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]
To: Jeff Davis <jeff@apogeetax.com>, Geoffrey Chambers <g.k.chambers@gmail.com>
Cc: geoffrey@cperlgroup.com <geoffrey@cperlgroup.com>

Mr. Davis:

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Regards,

RSD

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Sent: Tuesday, February 25, 2020 8:32 AM
To: Geoffrey Chambers <g.k.chambers@gmail.com>; Griffith, Eugene Law Clerk (Robert Dennis) <egriffithlc@sccourts.org>
Cc: geoffrey@cperlgroup.com
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

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Please advise. My schedule is completely open for a hearing at any time (or place) convenient for the Court.

Thank you, Jeff Davis 843-901-8036 (cell)

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6. For such further and additional relief as the Court deems just and proper.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

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> Geoffrey Chambers
>
> On Mon, Feb 24, 2020, 11:42 AM Jeff Davis <jeff@apogeetax.com> wrote:
>
> > RE: Davis v. Connelly, et al. [2020-CP-36-00093]
> >
> > **RULE 65 - MOTION FOR IMMEDIATE TRO & NOTICE / MOTION FOR TEMPORARY INJUNCTION**

Dear Judge Griffith (via law clerk),

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Pursuant to Rule 65, I am requesting that a hearing be scheduled as soon as possible. I am available at any time.

I also filed today a Proof of Service and have cc'd legal counsel for the Defendants on this email.

As required, I will file a Notice of Hearing and serve it upon counsel for the defendants as soon as the hearing is scheduled.

Thank you for your assistance.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

EXHIBIT C

Gmail Jeff Davis <jeff@apogeetax.com>

Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> Wed, Apr 29, 2020 at 12:13 PM
To: Justin Novak <jnovak@barnwell-whaley.com>, Jeff Davis <jeff@apogeetax.com>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>, "M. Dawes Cooke" <mdc@barnwell-whaley.com>, Janice Klein <jklein@barnwell-whaley.com>, Beverly Mitton <bmitton@barnwell-whaley.com>

Good afternoon,

After careful review and consideration, Judge Hocker:

1. Grants Defendants' Motion to Dismiss this case on the issue of Standing, only recognizing the current state of the law in South Carolina and that South Carolina has not addressed the issue of whether a Donor has standing. Consequently, the other issues raised in the Motion will not be addressed.

2. Deny Motion for Sanctions under Rule 11.

3. He would ask that Defense counsel prepare a proposed Order. If Defense counsel is not comfortable preparing the Order denying the Motion for Sanctions, so advise and either Judge Hocker will prepare the Order or instruct the Plaintiff to do so.

4. The Court needs to know whether or not to have any of the documents given to him at the hearing from either side (for example the large black notebook from Defense) needs to be filed with the Clerk as part of the record or if they simply need to be retained as part of Judge Hocker's file.

5. Concerning the Motion for Sanctions, Judge Hocker's denial of the same would not be prejudicial to the Defense to go back to Judge Benjamin, if the Defense believes that the Plaintiff has violated her Order(s). He is not suggesting that Plaintiff has violated but wants to be clear that this Order should not be construed as any impediment.

Judge Hocker appreciates everyone's hard work in this case.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Wednesday, April 22, 2020 1:27 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

My apologies. Yes, the first six pages of each filing consisting of the motion are identical. The only amendment to the filing was the inclusion of the inadvertently omitted cases referenced in the motion.

For your convenience, however, I've attached a full copy of the filed motion and exhibits.

Regards,

Justin

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, April 22, 2020 1:11 PM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Mr. Novak:

The attachment from Friday's email is missing a few pages in the beginning. Can those pages be supplemented with the first email attachment we received? If not, Judge Hocker will need a new copy of your document.

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Friday, April 17, 2020 4:38 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a filed copy of the ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** circulated by email yesterday. This document was re-filed this morning because the document filed yesterday afternoon inadvertently failed to include two of the cases attached as exhibits in the email sent yesterday.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy of the re-filed version is being placed in the mail for service upon him.

Regards,

Justin

From: Justin Novak
Sent: Thursday, April 16, 2020 5:41 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a courtesy copy of ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** and accompanying exhibits in the above-referenced matter. These documents were e-filed today but we have not yet received time stamped copies.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy is being placed in the mail for service upon him.

Regards,

Justin

JUSTIN P. NOVAK

Special Counsel

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street, Suite 200 | Charleston, SC 29401

843.577.7700 (O) | Web Site | Email

From: Jeff Davis <jeff@apogeetax.com>
Sent: Tuesday, April 7, 2020 12:02 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Justin Novak <jnovak@barnwell-whaley.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Sorry about the confusion. Since the file was just over 25MB, GMAIL automatically attached it as a download link.

The download link to the original is still at the bottom of the email, or a direct link (which should work for you as well) to the original is here: https://drive.google.com/file/d/1_WIRFGVnq13W-js8fMS9O3ATL6PBycwX/view

I have also slightly "compressed" the document to get it below the 25MB limit and attached it to this email. The quality appears the same level.

I am happy to mail you a paper copy as well if that is preferred or would be helpful??? I did not offer that at first as with opposing counsel, most people don't want paper copies of filing at this time.

The Newberry Clerk's Office should have it in their mail today. There appear to have thinks uploaded same day in the past, but they may be quarentining filings prior to opening / uploading. I know the Court of Appeals is doing that for at least 2 days before opening mail (although they do date it as of the date received).

Thanks again and sorry about the confusion. I should mentioned the automatic link initially.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Tue, Apr 7, 2020 at 10:33 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

Mr. Davis:

The only document attached was your response to sanctions. Could you please respond with the other filing?

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, April 6, 2020 4:11 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; jnovak@barnwell-whaley.com; mdc@barnwell-whaley.com
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

I hope you are doing well and staying safe. It has been an interesting few weeks.

Please find attached a copy of:

1. Plaintiff's Response in Opposition to Motion to Dismiss.

2. Plaintiff's Response in Opposition to Motion for Sanctions.

I have mailed the original filing to the Newberry Clerk of Court.

Thank you and Judge Hocker again for the extension of time. Judge Hocker had directed at our March 5th hearing that Defendants will now have 10 days to file any reply. Please know for the record I have no objection to an extension of time if needed by Defendants.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

2020-04-06 - Response RE MTD.pdf

EXHIBIT D

Gmail Jeff Davis <jeff@apogeetax.com>

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> Thu, Jul 2, 2020 at 4:37 PM
To: Jeff Davis <jeff@apogeetax.com>
Cc: Justin Novak <jnovak@barnwell-whaley.com>, Geoffrey Chambers <g.k.chambers@gmail.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>, "M. Dawes Cooke" <mdc@barnwell-whaley.com>, Beverly Mitton <bmitton@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>

Mr. Davis:

Judge Hocker still plans to sign the Defendant's Order once it is E-filed but certainly the Plaintiff has the right to file a proposed Order for it to be made part of the record. Concerning the Motion for Perjury, Judge Hocker will be addressing it in the very near future.

As a reminder, please ensure that any and all documents submitted to the Court at the previous hearing are separately filed with the Clerk (paper or e-file) as what was given to the Court will stay with Judge Hocker.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, June 29, 2020 11:21 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray

<dmurray@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Hoffman,

Thank you for the email and consideration by yourself and Judge Hocker as to this matter.

I respect the Court's opinion and understand and appreciate asking Defense counsel to file their proposed order, but would it be improper to ask given the Court's observation that the two orders are similar and not in stark contrast with each other, **would it not be "fair" to us Plaintiff's proposed order given Defense counsels refusal to cooperate?** It is Defense counsel who has blatantly refused to discuss any proposed changes to their proposed order ... and given such it would appear that the Court is only rewarding such unprofessional behavior (and direct disregard of the Courts instructions).

Again, I am only asking in all due respect for such consideration given the Court directed us to work together on a proposed order. Please know that I filed this matter because children with special needs are not receiving scholarships, schools are closing (and documented embezzlement) because of the belligerence and lack of transparency by Defense counsel's clients. The Court is sadly in my experience only embolden the Defendants at the cost to our most vulnerable K-12 children. I am only asking.

Also, can you please advise as to the next steps on my May 14th, 2020 Motion for Perjury, Contempt & Sanctions for False Affidavit in this case? As the Motion states, Defense counsel filed a sworn affidavit on March 4th, 2020 stating the below. Per documents provided by the funds legally required administrator, the SC Department of Revenue, as well as their public website (https://dor.sc.gov/exceptional-sc), only $639,666.94 has been donated for the entire period of 1/1/2020 - 5/31/2020. The sworn affidavit is clearing and plainly false in it's claim of raising over $1 million in 21 days and $350,000 per week.

> **"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result the number is constantly in flux. The current rate of donation receipts is approximately $350,000 per week or $50,000 per day."**

Please advise.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Mon, Jun 29, 2020 at 10:36 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Good morning,
>
> Judge Hocker would like the Defense to e-file its proposed Order to the Court. Once the signed Order is received via e-filing, please email and provide a hard copy via regular mail to Mr. Davis. Also, everything that has been previously provided will be added to Judge Hocker's file on this matter, so you will need to e-file all documents (i.e. Plaintiff's file/notebook provided at the last hearing) so the record is complete.
>
> As an observation, Judge Hocker did not find the proposed Orders to be in stark contrast with each other or stated another way, there are some similarities with both Orders. He appreciates everyone's hard work in this case and best of luck to both sides on an appeal as it has been suggested that an appeal will take place.
>
> Please let me know if you have any questions.
>
> Best,
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Monday, June 22, 2020 11:26 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Jeff Davis <jeff@apogeetax.com>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Thank you for the update.

All the best,

Justin

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Monday, June 22, 2020 11:17 AM
To: Jeff Davis <jeff@apogeetax.com>; Justin Novak <jnovak@barnwell-whaley.com>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Good morning,

Judge Hocker is still in the process of reviewing all previously submitted documents and proposed Orders in this matter due to vacation time and a heavy workload during our revised court scheduling. He wants to thank all the lawyers involved for their hard work and patience. He hopes to be completed soon.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, June 8, 2020 11:09 AM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Defense counsel has not, as directed by the Court, participated in submitting a mutually agreed upon order. Defense submitted one version which was completely one sided and had findings / rulings inconsistent with the Courts original instructions. I expressed my concerns in the attached letter dated May 29, 2020. I submitted on June 5, 2020, the attached balanced and limited in scope (pursuant to the Court's directions) proposed order.

Defense counsel then refused to discuss further and is now putting the entire burden back on the Court.

Additionally, it has come to my attention that Defense Counsel's proposed order was in fact drafted by a third law firm ... not parties to this lawsuit. The drafting law firm is representing another party in a case which involves the Defendant ECENC Fund. I presume that is improper / unethical not to disclose, but I'll leave that to the Court's discretion. A similar issue to Defense counsel's submission of a blatantly false affidavit about their fundraising / potential damages. See Motion filed 5/14/2020 in this case.

I also have discussed as part of an attempt to reach a resolution as to the lack of transparency from Defendants that I intend to appeal this matter as such has been done in other states, with the finding that a similarly situated donor has standing. I believe Defense counsel's draft of the proposed order is more in line with a one sided advocacy brief to bolster their position on appeal. I have interpreted Judge Hocker's direction to be, as stated, **"only recognizing the current state of the law in SC and**

that SC has not addressed the issue of whether a Donor has standing." I have attempted to limit the proposed order to that specific ruling, not an expansive brief for the defense.

At some point Defense counsel need to work cooperatively to resolve these ongoing matters. To date they have refused completely and have relied upon procedural issues to block all attempts for transparency ... as children suffer. Furthermore, this is not the professionalism one would expect from members of the bar - much less a former President of the SC Bar in Mr. Cooke. I am pro se in this matter, but I am also an attorney, a USC Law graduate and a member of the Georgia Bar. Defense should accord attorneys a minimal level of professionalism, even if they are actively refusing to follow this Court's directions.

As such I would request that the Court instruct Defense counsel to make an effort to resolve this matter of a mutually agreed upon proposed order. One draft, and a refusal to discuss ANY REVISIONS WHATSOEVER, was not the direction from the Court.

Alternatively, if the Defense refuses to engage, I would propose the Court accept my proposed order attached.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Mon, Jun 8, 2020 at 10:26 AM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> Please find attach defense counsel's ***proposed Order Denying Motion for Preliminary Injunction and Dismissing Complaint and Denying Motion for Sanctions*** in this matter.

In accordance with Judge Hocker's instructions, defense counsel provided a draft of the attached proposed order to plaintiff prior to submitting it to the court today. Although the parties exchanged proposed language, unfortunately, the parties could not come to an agreement on joint language to submit to the court. Accordingly, defense counsel informed plaintiff that it would be submitting the attached order this morning and proposed that plaintiff also submit a proposed order for the court's consideration. Again, Plaintiff has expressed concerns regarding the language of defense counsel's proposed order and does not consent to its language.

Again, thank you for your assistance with this matter and for the court's consideration.

Regards,

Justin

From: Jeff Davis <jeff@apogeetax.com>
Sent: Friday, May 29, 2020 2:35 PM
To: Justin Novak <jnovak@barnwell-whaley.com>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Yes, Ms. Hoffman, although it appears we are back in grammar school tattling on people, I do apologize about it taking me longer than expected to give defense counsel my feedback (16 days) as opposed to their taking 13 days and numerous follow-ups to provide a draft in the first place.

First, my review was extensive given defense counsel did not follow the Court's instructions and greatly expanded upon that which was a simple order from the Court.

Second, my wife had to have emergency surgery and was in the hospital for a week. I had not previously mentioned this to defense counsel because they have previously "cyber stalked" my wifes personal facebook page ... and incredibly ... made a "comment" on a post she has made about her ongoing medical condition. We are not personal friends or "friends" on facebook with defense counsel ... so I am sure you can imagine the additional trauma my wife suffered when suddenly seeing a "comment" posted by opposing counsel in these matters. As such I did not want to share with defense counsel anything about my wife's medical condition given the concern they might "cyber stalk" her once again online.

Not the honorable profession I graduated into back in 1993.

Best,

Jeff Davis

843-901-8036 (cell)

On Fri, May 29, 2020 at 12:14 PM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> As a quick update on this matter, Mr. Davis this afternoon provided defense counsel with his comments on the proposed order that we provided to him on May 13, 2020.
>
> We will review the comments and hope to submit a proposed order for the court's consideration early next week.
>
> Regards,
>
> Justin
>
> ---
>
> **From:** Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
> **Sent:** Tuesday, May 12, 2020 11:29 AM
> **To:** Jeff Davis <jeff@apogeetax.com>; Justin Novak <jnovak@barnwell-whaley.com>
> **Cc:** Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
> **Subject:** RE: Davis v. Connelly, et al [2020-CP-36-00093]
>
> Thank you for the update.
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, May 11, 2020 7:53 AM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

I wanted to update the Court since it is the 13th day since you provided us Judge Hocker's direction in the above referenced case.

I am still waiting on Defense counsel to provide a proposed order for my review / comment.

I have professionally followed up several times (three in fact) over the past two weeks with no response until this morning.

Although Mr. Novak informed the Court on April 30th that they would prepare the proposed order and submit it to me for review / comment, he just this morning informed me that they **"should have a proposed order for [my] review shortly."**

I just wanted the Court to know that I have not yet received a draft proposed order to review and the reason for the delay.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Thu, Apr 30, 2020 at 10:03 AM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> Thank you for the Court's attention to these motions. Defense counsel will prepare a proposed Order addressing the granting of the motion to dismiss and denial of the motion for sanctions and circulate the proposed Order to Mr. Davis by email prior to submission to the Court. Mr. Davis has everything that was provided to the Court, including the index identifying each document in the notebook handed up in the hearing. Defense counsel does not have any objection to Mr. Davis' request that the Court file everything provided to the Court with the Clerk as part of the record.
>
> Again, thank you for the Court's attention to these motions.
>
> Regards,
>
> Justin
>
> **JUSTIN P. NOVAK**
>
> **Special Counsel**
>
> **BARNWELL WHALEY PATTERSON & HELMS, LLC**
>
> 288 Meeting Street, Suite 200 | Charleston, SC 29401
>
> 843.577.7700 (O) | Web Site | Email

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, April 29, 2020 1:48 PM
To: Jeff Davis <jeff@apogeetax.com>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

If the Defense would please provide a draft of their Order to Plaintiff before it comes to the Court. Also, please provide the Plaintiff what was provided to the Court or if Plaintiff has already been provided these materials, Defense should identify to the Plaintiff each document in the notebook.

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, April 29, 2020 1:28 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Thank you for the update and for Judge Hocker's time and consideration of this novel (to South Carolina) matter.

If I could please ask for the opportunity to review Defense counsel's draft Order, that would be greatly appreciated. My previous experience has been that opposing counsel has drafted an order and shared / finalized said order with the Court in Richland without my knowledge and specifically excluding me from their communications with the court, which I thought from law school that *ex parte* communications was rule #1 not to violate. Opposing counsel apologized, but only after the Order was filed with incorrect information requiring correction.

Also as to other *ex parte* communications with the Court by the Defense in this case, I thank you for instructing the Defense to file whatever other documents (i.e., the black binder and anything else) they provided to the Court. I was not provided a copy of that information by Defense counsel at the hearing on March 5, 2020 ... and upon my request after the hearing they only provided a summary of the documents provided and refused to provide what was actually given to Judge Hocker, in the format given to the Court. I would request that they file any and all documents provided to the Court, and also provide me with a copy, so that it will be part of the record assuming there is any appeal. Again, although I am not a litigator, this is something I thought was basic procedure from law school.

Thank you again and I look forward to the opportunity to review and provide input on the proposed Order.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Wed, Apr 29, 2020 at 12:13 PM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Good afternoon,
>
> After careful review and consideration, Judge Hocker:
>
> 1. Grants Defendants' Motion to Dismiss this case on the issue of Standing, only recognizing the current state of the law in South Carolina and that South Carolina has not addressed the issue of whether a Donor has standing. Consequently, the other issues raised in the Motion will not be addressed.
>
> 2. Deny Motion for Sanctions under Rule 11.
>
> 3. He would ask that Defense counsel prepare a proposed Order. If Defense counsel is not comfortable preparing the Order denying the Motion for Sanctions, so advise and either Judge Hocker will prepare the Order or instruct the Plaintiff to do so.
>
> 4. The Court needs to know whether or not to have any of the documents given to him at the hearing from either side (for example the large black notebook from Defense) needs to be filed with the Clerk as part of the record or if they simply need to be retained as part of Judge Hocker's file.
>
> 5. Concerning the Motion for Sanctions, Judge Hocker's denial of the same would not be prejudicial to the Defense to go back to Judge Benjamin, if the Defense believes that the Plaintiff has violated her Order(s). He is not suggesting that Plaintiff has violated but wants to be clear that this Order should not be construed as any impediment.

Judge Hocker appreciates everyone's hard work in this case.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Wednesday, April 22, 2020 1:27 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

My apologies. Yes, the first six pages of each filing consisting of the motion are identical. The only amendment to the filing was the inclusion of the inadvertently omitted cases referenced in the motion.

For your convenience, however, I've attached a full copy of the filed motion and exhibits.

Regards,

Justin

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, April 22, 2020 1:11 PM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Mr. Novak:

The attachment from Friday's email is missing a few pages in the beginning. Can those pages be supplemented with the first email attachment we received? If not, Judge Hocker will need a new copy of your document.

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Friday, April 17, 2020 4:38 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a filed copy of the ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** circulated by email yesterday. This document was re-filed this morning because the document filed yesterday afternoon inadvertently failed to include two of the cases attached as exhibits in the email sent yesterday.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy of the re-filed version is being placed in the mail for service upon him.

Regards,

Justin

From: Justin Novak
Sent: Thursday, April 16, 2020 5:41 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a courtesy copy of ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** and accompanying exhibits in the above-referenced matter. These documents were e-filed today but we have not yet received time stamped copies.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy is being placed in the mail for service upon him.

Regards,

Justin

JUSTIN P. NOVAK

Special Counsel

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street, Suite 200 | Charleston, SC 29401

843.577.7700 (O) | Web Site | Email

From: Jeff Davis <jeff@apogeetax.com>
Sent: Tuesday, April 7, 2020 12:02 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Justin Novak <jnovak@barnwell-whaley.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Sorry about the confusion. Since the file was just over 25MB, GMAIL automatically attached it as a download link.

The download link to the original is still at the bottom of the email, or a direct link (which should work for you as well) to the original is here: https://drive.google.com/file/d/1_WIRFGVnq13W-js8fMS9O3ATL6PBycwX/view

I have also slightly "compressed" the document to get it below the 25MB limit and attached it to this email. The quality appears the same level.

I am happy to mail you a paper copy as well if that is preferred or would be helpful??? I did not offer that at first as with opposing counsel, most people don't want paper copies of filing at this time.

The Newberry Clerk's Office should have it in their mail today. There appear to have thinks uploaded same day in the past, but they may be quarentining filings prior to opening / uploading. I know the Court of Appeals is doing that for at least 2 days before opening mail (although they do date it as of the date received).

Thanks again and sorry about the confusion. I should mentioned the automatic link initially.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Tue, Apr 7, 2020 at 10:33 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Mr. Davis:
>
> The only document attached was your response to sanctions. Could you please respond with the other filing?
>
> Thank you,
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org
>
> ---
>
> **From:** Jeff Davis <jeff@apogeetax.com>
> **Sent:** Monday, April 6, 2020 4:11 PM
> **To:** Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
> **Cc:** Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; jnovak@barnwell-whaley.com; mdc@barnwell-whaley.com
> **Subject:** Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)
>
> *** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
>
> Re: Davis v. Connelly, et al [2020-CP-36-00093]
>
> Ms. Hoffman,
>
> I hope you are doing well and staying safe. It has been an interesting few weeks.
>
> Please find attached a copy of:

1. Plaintiff's Response in Opposition to Motion to Dismiss.
2. Plaintiff's Response in Opposition to Motion for Sanctions.

I have mailed the original filing to the Newberry Clerk of Court.

Thank you and Judge Hocker again for the extension of time. Judge Hocker had directed at our March 5th hearing that Defendants will now have 10 days to file any reply. Please know for the record I have no objection to an extension of time if needed by Defendants.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

2020-04-06 - Response RE MTD.pdf

EXHIBIT E

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> Tue, Jul 7, 2020 at 2:58 PM
To: Jeff Davis <jeff@apogeetax.com>
Cc: Justin Novak <jnovak@barnwell-whaley.com>, Geoffrey Chambers <g.k.chambers@gmail.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>, "M. Dawes Cooke" <mdc@barnwell-whaley.com>, Beverly Mitton <bmitton@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>

Good afternoon,

The Court is in receipt of Plaintiff's Motion for Perjury, Contempt and Sanctions with attachments. While the Court is somewhat uncertain as to the specific relief that is being requested as to the Motion for Perjury and Sanctions since the alleged false Affidavit (if the Court's memory is correct) did not factor in to the Court's decision to dismiss, the Court is willing to hold a hearing on these Motions. Also, as to the contempt relief being sought, Mr. Connelly is entitled to notice and opportunity to be heard. Now with all of that said, the Court would be willing to offer to the parties a hearing via video conferencing with a court reporter or an in person hearing in court. Judge Hocker has held video conferencing for Common Pleas matters and General Sessions matters during these past four months. Let us know everyone's preference.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Hocker, Donald B. Law Clerk (Madison Hoffman)
Sent: Thursday, July 2, 2020 4:38 PM

To: 'Jeff Davis' <jeff@apogeetax.com>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Mr. Davis:

Judge Hocker still plans to sign the Defendant's Order once it is E-filed but certainly the Plaintiff has the right to file a proposed Order for it to be made part of the record. Concerning the Motion for Perjury, Judge Hocker will be addressing it in the very near future.

As a reminder, please ensure that any and all documents submitted to the Court at the previous hearing are separately filed with the Clerk (paper or e-file) as what was given to the Court will stay with Judge Hocker.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, June 29, 2020 11:21 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Thank you for the email and consideration by yourself and Judge Hocker as to this matter.

I respect the Court's opinion and understand and appreciate asking Defense counsel to file their proposed order, but would it be improper to ask given the Court's observation that the two orders are similar and not in stark contrast with each other, **would it not be "fair" to us Plaintiff's proposed order given Defense counsels refusal to cooperate?** It is Defense counsel who has blatantly refused to discuss any proposed changes to their proposed order ... and given such it would appear that the Court is only rewarding such unprofessional behavior (and direct disregard of the Courts instructions).

Again, I am only asking in all due respect for such consideration given the Court directed us to work together on a proposed order. Please know that I filed this matter because children with special needs are not receiving scholarships, schools are closing (and documented embezzlement) because of the belligerence and lack of transparency by Defense counsel's clients. The Court is sadly in my experience only embolden the Defendants at the cost to our most vulnerable K-12 children. I am only asking.

Also, can you please advise as to the next steps on my May 14th, 2020 Motion for Perjury, Contempt & Sanctions for False Affidavit in this case? As the Motion states, Defense counsel filed a sworn affidavit on March 4th, 2020 stating the below. Per documents provided by the funds legally required administrator, the SC Department of Revenue, as well as their public website (https://dor.sc.gov/exceptional-sc), only $639,666.94 has been donated for the entire period of 1/1/2020 - 5/31/2020. The sworn affidavit is clearing and plainly false in it's claim of raising over $1 million in 21 days and $350,000 per week.

> **"In the past 21 days Exceptional SC has raised approximately $1,045,000 in donations. Donations are being received every day and as a result the number is constantly in flux. The current rate of donation receipts is approximately $350,000 per week or $50,000 per day."**

Please advise.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Mon, Jun 29, 2020 at 10:36 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Good morning,
>
> Judge Hocker would like the Defense to e-file its proposed Order to the Court. Once the signed Order is received via e-filing, please email and provide a hard copy via regular mail to Mr. Davis. Also, everything that has been previously provided will be added to Judge Hocker's file on this matter, so you will need to e-file all documents (i.e. Plaintiff's file/notebook provided at the last hearing) so the record is complete.
>
> As an observation, Judge Hocker did not find the proposed Orders to be in stark contrast with each other or stated another way, there are some similarities with both Orders. He appreciates everyone's hard work in this case and best of luck to both sides on an appeal as it has been suggested that an appeal will take place.
>
> Please let me know if you have any questions.
>
> Best,
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org
>
> ---
>
> **From:** Justin Novak <jnovak@barnwell-whaley.com>
> **Sent:** Monday, June 22, 2020 11:26 AM
> **To:** Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Jeff Davis

<jeff@apogeetax.com>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Thank you for the update.

All the best,

Justin

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Monday, June 22, 2020 11:17 AM
To: Jeff Davis <jeff@apogeetax.com>; Justin Novak <jnovak@barnwell-whaley.com>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Good morning,

Judge Hocker is still in the process of reviewing all previously submitted documents and proposed Orders in this matter due to vacation time and a heavy workload during our revised court scheduling. He wants to thank all the lawyers involved for their hard work and patience. He hopes to be completed soon.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, June 8, 2020 11:09 AM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Defense counsel has not, as directed by the Court, participated in submitting a mutually agreed upon order. Defense submitted one version which was completely one sided and had findings / rulings inconsistent with the Courts original instructions. I expressed my concerns in the attached letter dated May 29, 2020. I submitted on June 5, 2020, the attached balanced and limited in scope (pursuant to the Court's directions) proposed order.

Defense counsel then refused to discuss further and is now putting the entire burden back on the Court.

Additionally, it has come to my attention that Defense Counsel's proposed order was in fact drafted by a third law firm ... not parties to this lawsuit. The drafting law firm is representing another party in a case which involves the Defendant ECENC Fund. I presume that is improper / unethical not to disclose, but I'll leave that to the Court's discretion. A similar issue to Defense counsel's submission of a blatantly false affidavit about their fundraising / potential damages. See Motion filed 5/14/2020 in this case.

I also have discussed as part of an attempt to reach a resolution as to the lack of transparency from Defendants that I intend to appeal this matter as such has been done in other states, with the finding that a similarly situated donor has standing. I believe Defense counsel's draft of the proposed order is more in line with a one sided advocacy brief to bolster their position on appeal. I have interpreted Judge Hocker's direction to be, as stated, **"only recognizing the current state of the law in SC and that SC has not addressed the issue of whether a Donor has standing."** I have attempted to limit the proposed order to that specific ruling, not an expansive brief for the defense.

At some point Defense counsel need to work cooperatively to resolve these ongoing matters. To date they have refused completely and have relied upon procedural issues to block all attempts for

transparency ... as children suffer. Furthermore, this is not the professionalism one would expect from members of the bar - much less a former President of the SC Bar in Mr. Cooke. I am pro se in this matter, but I am also an attorney, a USC Law graduate and a member of the Georgia Bar. Defense should accord attorneys a minimal level of professionalism, even if they are actively refusing to follow this Court's directions.

As such I would request that the Court instruct Defense counsel to make an effort to resolve this matter of a mutually agreed upon proposed order. One draft, and a refusal to discuss ANY REVISIONS WHATSOEVER, was not the direction from the Court.

Alternatively, if the Defense refuses to engage, I would propose the Court accept my proposed order attached.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Mon, Jun 8, 2020 at 10:26 AM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> Please find attach defense counsel's ***proposed Order Denying Motion for Preliminary Injunction and Dismissing Complaint and Denying Motion for Sanctions*** in this matter.
>
> In accordance with Judge Hocker's instructions, defense counsel provided a draft of the attached proposed order to plaintiff prior to submitting it to the court today. Although the parties exchanged proposed language, unfortunately, the parties could not come to an agreement on joint language to submit to the court. Accordingly, defense counsel informed plaintiff that it would be submitting the

attached order this morning and proposed that plaintiff also submit a proposed order for the court's consideration. Again, Plaintiff has expressed concerns regarding the language of defense counsel's proposed order and does not consent to its language.

Again, thank you for your assistance with this matter and for the court's consideration.

Regards,

Justin

From: Jeff Davis <jeff@apogeetax.com>
Sent: Friday, May 29, 2020 2:35 PM
To: Justin Novak <jnovak@barnwell-whaley.com>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Yes, Ms. Hoffman, although it appears we are back in grammar school tattling on people, I do apologize about it taking me longer than expected to give defense counsel my feedback (16 days) as opposed to their taking 13 days and numerous follow-ups to provide a draft in the first place.

First, my review was extensive given defense counsel did not follow the Court's instructions and greatly expanded upon that which was a simple order from the Court.

Second, my wife had to have emergency surgery and was in the hospital for a week. I had not previously mentioned this to defense counsel because they have previously "cyber stalked" my wifes personal facebook page ... and incredibly ... made a "comment" on a post she has made about her ongoing medical condition. We are not personal friends or "friends" on facebook with defense counsel ... so I am sure you can imagine the additional trauma my wife suffered when suddenly seeing a "comment" posted by opposing counsel in these matters. As such I did not want to share with defense counsel anything about my wife's medical condition given the concern they might "cyber stalk" her once again online.

Not the honorable profession I graduated into back in 1993.

Best,

Jeff Davis

843-901-8036 (cell)

On Fri, May 29, 2020 at 12:14 PM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> As a quick update on this matter, Mr. Davis this afternoon provided defense counsel with his comments on the proposed order that we provided to him on May 13, 2020.
>
> We will review the comments and hope to submit a proposed order for the court's consideration early next week.
>
> Regards,
>
> Justin
>
> ---
>
> **From:** Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
> **Sent:** Tuesday, May 12, 2020 11:29 AM
> **To:** Jeff Davis <jeff@apogeetax.com>; Justin Novak <jnovak@barnwell-whaley.com>
> **Cc:** Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
> **Subject:** RE: Davis v. Connelly, et al [2020-CP-36-00093]
>
> Thank you for the update.
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, May 11, 2020 7:53 AM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

I wanted to update the Court since it is the 13th day since you provided us Judge Hocker's direction in the above referenced case.

I am still waiting on Defense counsel to provide a proposed order for my review / comment.

I have professionally followed up several times (three in fact) over the past two weeks with no response until this morning.

Although Mr. Novak informed the Court on April 30th that they would prepare the proposed order and submit it to me for review / comment, he just this morning informed me that they **"should have a proposed order for [my] review shortly."**

I just wanted the Court to know that I have not yet received a draft proposed order to review and the reason for the delay.

Thank you,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Thu, Apr 30, 2020 at 10:03 AM Justin Novak <jnovak@barnwell-whaley.com> wrote:

> Ms. Hoffman,
>
> Thank you for the Court's attention to these motions. Defense counsel will prepare a proposed Order addressing the granting of the motion to dismiss and denial of the motion for sanctions and circulate the proposed Order to Mr. Davis by email prior to submission to the Court. Mr. Davis has everything that was provided to the Court, including the index identifying each document in the notebook handed up in the hearing. Defense counsel does not have any objection to Mr. Davis' request that the Court file everything provided to the Court with the Clerk as part of the record.
>
> Again, thank you for the Court's attention to these motions.
>
> Regards,
>
> Justin

JUSTIN P. NOVAK

Special Counsel

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street, Suite 200 | Charleston, SC 29401

843.577.7700 (O) | Web Site | Email

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, April 29, 2020 1:48 PM
To: Jeff Davis <jeff@apogeetax.com>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

If the Defense would please provide a draft of their Order to Plaintiff before it comes to the Court. Also, please provide the Plaintiff what was provided to the Court or if Plaintiff has already been provided these materials, Defense should identify to the Plaintiff each document in the notebook.

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, April 29, 2020 1:28 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Justin Novak <jnovak@barnwell-whaley.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Thank you for the update and for Judge Hocker's time and consideration of this novel (to South Carolina) matter.

If I could please ask for the opportunity to review Defense counsel's draft Order, that would be greatly appreciated. My previous experience has been that opposing counsel has drafted an order and shared / finalized said order with the Court in Richland without my knowledge and specifically excluding me from their communications with the court, which I thought from law school that *ex parte* communications was rule #1 not to violate. Opposing counsel apologized, but only after the Order was filed with incorrect information requiring correction.

Also as to other *ex parte* communications with the Court by the Defense in this case, I thank you for instructing the Defense to file whatever other documents (i.e., the black binder and anything else) they provided to the Court. I was not provided a copy of that information by Defense counsel at the hearing on March 5, 2020 ... and upon my request after the hearing they only provided a summary of the documents provided and refused to provide what was actually given to Judge Hocker, in the format given to the Court. I would request that they file any and all documents provided to the Court, and also provide me with a copy, so that it will be part of the record assuming there is any appeal. Again, although I am not a litigator, this is something I thought was basic procedure from law school.

Thank you again and I look forward to the opportunity to review and provide input on the proposed Order.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Wed, Apr 29, 2020 at 12:13 PM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Good afternoon,
>
> After careful review and consideration, Judge Hocker:
>
> 1. Grants Defendants' Motion to Dismiss this case on the issue of Standing, only recognizing the current state of the law in South Carolina and that South Carolina has not addressed the issue of whether a Donor has standing. Consequently, the other issues raised in the Motion will not be addressed.
>
> 2. Deny Motion for Sanctions under Rule 11.
>
> 3. He would ask that Defense counsel prepare a proposed Order. If Defense counsel is not comfortable preparing the Order denying the Motion for Sanctions, so advise and either Judge Hocker will prepare the Order or instruct the Plaintiff to do so.
>
> 4. The Court needs to know whether or not to have any of the documents given to him at the hearing from either side (for example the large black notebook from Defense) needs to be filed with the Clerk as part of the record or if they simply need to be retained as part of Judge Hocker's file.
>
> 5. Concerning the Motion for Sanctions, Judge Hocker's denial of the same would not be prejudicial to the Defense to go back to Judge Benjamin, if the Defense believes that the Plaintiff has violated her Order(s). He is not suggesting that Plaintiff has violated but wants to be clear that this Order should not be construed as any impediment.

Judge Hocker appreciates everyone's hard work in this case.

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Wednesday, April 22, 2020 1:27 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

My apologies. Yes, the first six pages of each filing consisting of the motion are identical. The only amendment to the filing was the inclusion of the inadvertently omitted cases referenced in the motion.

For your convenience, however, I've attached a full copy of the filed motion and exhibits.

Regards,

Justin

From: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Sent: Wednesday, April 22, 2020 1:11 PM
To: Justin Novak <jnovak@barnwell-whaley.com>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Mr. Novak:

The attachment from Friday's email is missing a few pages in the beginning. Can those pages be supplemented with the first email attachment we received? If not, Judge Hocker will need a new copy of your document.

Thank you,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Friday, April 17, 2020 4:38 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a filed copy of the ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** circulated by email yesterday. This document was re-filed this morning because the document filed yesterday afternoon inadvertently failed to include two of the cases attached as exhibits in the email sent yesterday.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy of the re-filed version is being placed in the mail for service upon him.

Regards,

Justin

From: Justin Novak
Sent: Thursday, April 16, 2020 5:41 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Cc: Jeff Davis <jeff@apogeetax.com>; Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; Janice Klein <jklein@barnwell-whaley.com>; Beverly Mitton <bmitton@barnwell-whaley.com>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Please find attached a courtesy copy of ***Defendants' Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Motion for Sanctions*** and accompanying exhibits in the above-referenced matter. These documents were e-filed today but we have not yet received time stamped copies.

I, of course, have copied the pro se Plaintiff on this correspondence. In addition, a hard copy is being placed in the mail for service upon him.

Regards,

Justin

JUSTIN P. NOVAK

Special Counsel

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street, Suite 200 | Charleston, SC 29401

843.577.7700 (O) | Web Site | Email

From: Jeff Davis <jeff@apogeetax.com>
Sent: Tuesday, April 7, 2020 12:02 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Justin Novak <jnovak@barnwell-whaley.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

Ms. Hoffman,

Sorry about the confusion. Since the file was just over 25MB, GMAIL automatically attached it as a download link.

The download link to the original is still at the bottom of the email, or a direct link (which should work for you as well) to the original is here: https://drive.google.com/file/d/1_WlRFGVnq13W-js8fMS9O3ATL6PBycwX/view

I have also slightly "compressed" the document to get it below the 25MB limit and attached it to this email. The quality appears the same level.

I am happy to mail you a paper copy as well if that is preferred or would be helpful??? I did not offer that at first as with opposing counsel, most people don't want paper copies of filing at this time.

The Newberry Clerk's Office should have it in their mail today. There appear to have thinks uploaded same day in the past, but they may be quarentining filings prior to opening / uploading. I know the Court of Appeals is doing that for at least 2 days before opening mail (although they do date it as of the date received).

Thanks again and sorry about the confusion. I should mentioned the automatic link initially.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Tue, Apr 7, 2020 at 10:33 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Mr. Davis:
>
> The only document attached was your response to sanctions. Could you please respond with the other filing?
>
> Thank you,
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Monday, April 6, 2020 4:11 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: Geoffrey Chambers <g.k.chambers@gmail.com>; geoffrey@cperlgroup.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; jnovak@barnwell-whaley.com; mdc@barnwell-whaley.com
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093] - Filings (2)

> *** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

I hope you are doing well and staying safe. It has been an interesting few weeks.

Please find attached a copy of:

1. Plaintiff's Response in Opposition to Motion to Dismiss.
2. Plaintiff's Response in Opposition to Motion for Sanctions.

I have mailed the original filing to the Newberry Clerk of Court.

Thank you and Judge Hocker again for the extension of time. Judge Hocker had directed at our March 5th hearing that Defendants will now have 10 days to file any reply. Please know for the record I have no objection to an extension of time if needed by Defendants.

Best,

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

2020-04-06 - Response RE MTD.pdf

EXHIBIT F

Gmail Jeff Davis <jeff@apogeetax.com>

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> Fri, Aug 14, 2020 at 9:59 AM
To: "g.k.chambers@gmail.com" <g.k.chambers@gmail.com>, "mdc@barnwell-whaley.com" <mdc@barnwell-whaley.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>, "bmitton@barnwell-whaley.com" <bmitton@barnwell-whaley.com>, "dmurray@barnwell-whaley.com" <dmurray@barnwell-whaley.com>, "jnovak@barnwell-whaley.com" <jnovak@barnwell-whaley.com>, Jeff Davis <jeff@apogeetax.com>
Cc: "Hocker, Donald B. Secretary (Regan A. Snow)" <dhockersc@sccourts.org>, "Hocker, Donald B." <dhockerj@sccourts.org>

Good morning,

After careful review, Judge Hocker has made his rulings regarding the pending matters in this case.

1. Motion for Reconsideration: Denied. There has been nothing submitted by Plaintiff that would alter the Court's original decision that Plaintiff lacked standing to bring this lawsuit. This issue was thoroughly researched and considered.

2. Motion for Perjury: Denied. The Court is not going to get into whether or not false Affidavits were submitted. The Court did not rely on these in making a ruling on the standing issue.

3. Motion for Stay: Denied. The Court has already ruled that Plaintiff does not have standing and the Court believes that it would not be proper to stay this case to allow some unknown person to be substituted. Certainly, if there is someone that has standing and believes that a lawsuit is proper and necessary then this Court's Order in this case would not prevent such an action from proceeding forward.

Judge Hocker would request that the Defendant prepare an Order. The Court's expectation is that the Defendant will use their previously submitted Memorandum as a guide for the Order and not use any argumentative language. You may submit the proposed Order via E-filing but please also provide the Plaintiff with a copy via email or a hard copy.

Thank you all for your hard work!

Best,

Madison Hoffman

Law Clerk to

Honorable Donald B. Hocker

P.O. Box 972

100 Hillcrest Square

Laurens, S.C. 29360

dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, August 12, 2020 11:54 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: g.k.chambers@gmail.com; geoffrey@cperlgroup.com; mdc@barnwell-whaley.com; jnovak@barnwell-whaley.com; bmitton@barnwell-whaley.com; dmurray@barnwell-whaley.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

RE: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Please find attached a courtesy copy of the following documents.

> **Plaintiff's Memorandum in Support of Motion for Perjury, Contempt & Sanctions for False Affidavit. (plus Certificate of Service and Exhibits)**

Hardcopies of this filing have been placed in the mail today to the Newberry Clerk of Court as unfortunately I am not allowed to file these electronically. Service copies are being mailed as well to Defense counsel.

Although I understand the Court would like to rule upon this without the need of an in person hearing, I believe a hearing and witness testimony would be beneficial (if this is unclear in the least to the Court).

Thank you for your assistance in this matter. I will not have any supplemental filings for my Motion to Reconsider (re standing).

Best regards,

Jeff Davis
843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

EXHIBIT G

Gmail Jeff Davis <jeff@apogeetax.com>

RE: Davis v. Connelly, et al [2020-CP-36-00093]

1 message

Hocker, Donald B. <dhockerj@sccourts.org> Thu, Sep 10, 2020 at 8:37 AM
To: Justin Novak <jnovak@barnwell-whaley.com>, Jeff Davis <jeff@apogeetax.com>, "Hocker, Donald B. Law Clerk (Madison Hoffman)" <dhockerlc@sccourts.org>
Cc: "g.k.chambers@gmail.com" <g.k.chambers@gmail.com>, "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "geoffrey@cperlgroup.com" <geoffrey@cperlgroup.com>, Beverly Mitton <bmitton@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>, "Hocker, Donald B. Secretary (Regan A. Snow)" <dhockersc@sccourts.org>

Thank you Justin: That will be fine. (dbh)

From: Justin Novak <jnovak@barnwell-whaley.com>
Sent: Thursday, September 10, 2020 8:29 AM
To: Hocker, Donald B. <dhockerj@sccourts.org>; Jeff Davis <jeff@apogeetax.com>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: g.k.chambers@gmail.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; geoffrey@cperlgroup.com; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Judge Hocker,

Defense counsel intends to have the proposed order submitted early next week.

Regards,

Justin

JUSTIN P. NOVAK

Special Counsel

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street, Suite 200 | Charleston, SC 29401

843.577.7700 (O) | Web Site | Email

From: Hocker, Donald B. <dhockerj@sccourts.org>
Sent: Thursday, September 10, 2020 8:21 AM
To: Jeff Davis <jeff@apogeetax.com>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: g.k.chambers@gmail.com; M. Dawes Cooke <mdc@barnwell-whaley.com>; geoffrey@cperlgroup.com; Beverly Mitton <bmitton@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>; Justin Novak <jnovak@barnwell-whaley.com>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

Mr. Davis: My law clerk is on vacation this week and I will get her to follow-up when she returns. In the meantime, can I get defense counsel to give the Court an idea when they believe they will get an Order to the Court. Thank you. (dbh)

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, September 9, 2020 4:44 PM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: g.k.chambers@gmail.com; mdc@barnwell-whaley.com; geoffrey@cperlgroup.com; bmitton@barnwell-whaley.com; dmurray@barnwell-whaley.com; jnovak@barnwell-whaley.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Hocker, Donald B. <dhockerj@sccourts.org>
Subject: Re: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

I have followed up with Defense counsel on multiple occasions with no response. It does not appear that they intend, even though the Court instructed them to, file a proposed order. It has been nearly a month. Children are suffering and opposing counsel does not seem to care about the kids, rules or procedure - basically the reason we are in court in the first place. Sorry about the venting.

Would it be possible for the court to file a simple Form 4 order denying the below 3 motions so that we can get moving on the rather simple appeal? I have already secured the transcript, and initial brief drafted, so we are all ready to go. Just waiting on this final order.

Thank you.

Jeff Davis

843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

On Fri, Aug 14, 2020 at 9:59 AM Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org> wrote:

> Good morning,
>
> After careful review, Judge Hocker has made his rulings regarding the pending matters in this case.
>
> **1. Motion for Reconsideration**: Denied. There has been nothing submitted by Plaintiff that would alter the Court's original decision that Plaintiff lacked standing to bring this lawsuit. This issue was thoroughly researched and considered.
>
> **2. Motion for Perjury**: Denied. The Court is not going to get into whether or not false Affidavits were submitted. The Court did not rely on these in making a ruling on the standing issue.
>
> **3. Motion for Stay:** Denied. The Court has already ruled that Plaintiff does not have standing and the Court believes that it would not be proper to stay this case to allow some unknown person to be substituted. Certainly, if there is someone that has standing and believes that a lawsuit is proper and necessary then this Court's Order in this case would not prevent such an action from proceeding forward.
>
> Judge Hocker would request that the Defendant prepare an Order. The Court's expectation is that the Defendant will use their previously submitted Memorandum as a guide for the Order and not use any argumentative language. You may submit the proposed Order via E-filing but please also provide the Plaintiff with a copy via email or a hard copy.
>
> Thank you all for your hard work!
>
> Best,
>
> **Madison Hoffman**
>
> Law Clerk to
>
> Honorable Donald B. Hocker
>
> P.O. Box 972
>
> 100 Hillcrest Square
>
> Laurens, S.C. 29360
>
> dhockerlc@sccourts.org

From: Jeff Davis <jeff@apogeetax.com>
Sent: Wednesday, August 12, 2020 11:54 AM
To: Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>
Cc: g.k.chambers@gmail.com; geoffrey@cperlgroup.com; mdc@barnwell-whaley.com; jnovak@barnwell-whaley.com; bmitton@barnwell-whaley.com; dmurray@barnwell-whaley.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>
Subject: RE: Davis v. Connelly, et al [2020-CP-36-00093]

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

RE: Davis v. Connelly, et al [2020-CP-36-00093]

Ms. Hoffman,

Please find attached a courtesy copy of the following documents.

> **Plaintiff's Memorandum in Support of Motion for Perjury, Contempt & Sanctions for False Affidavit. (plus Certificate of Service and Exhibits)**

Hardcopies of this filing have been placed in the mail today to the Newberry Clerk of Court as unfortunately I am not allowed to file these electronically. Service copies are being mailed as well to Defense counsel.

Although I understand the Court would like to rule upon this without the need of an in person hearing, I believe a hearing and witness testimony would be beneficial (if this is unclear in the least to the Court).

Thank you for your assistance in this matter. I will not have any supplemental filings for my Motion to Reconsider (re standing).

Best regards,

Jeff Davis
843-901-8036 (cell)

Jeff Davis, JD, MBA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jeff@apogeetax.com*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **15th day of September, 2020**, as follows:

PLEADINGS: **DECLARATION OF JEFFERSON DAVIS, JR. (emails)**

PARTIES SERVED (*via email only due to COVID-19*):

Geoffrey K. Chambers, Esq.
CPER Law Group, LL
411 Walnut Street #10646
Green Cove Springs, FL 32043
g.k.chambers@gmail.com
geoffrey@cperlgroup.com
Connelly, Persons & ECENC Fund

M. Dawes Cooke, Jr., Esq. &
Justin Paul Novak, Esq.
Barnwell Whaley
P.O. Drawer H
Charleston SC 29402
mdc@barnwell-whaley.com
jnovak@barnwell-whaley.com
Connelly, Persons & ECENC Fund

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr., Plaintiff, vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	)	**PLAINTIFF'S NOTICE AND MOTION TO RECONSIDER ORDER - PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT**

TO: DEFENDANT CHAD CONNELLY, TOM PERSONS & SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff Jefferson Davis, Jr. hereby submits this motion for reconsideration of the Court's Order entered on **September 28, 2020** on **PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT** (the "Order")[1]. The Order was served on the Plaintiff by mail from Newberry County Clerk of Court with a postage meter stamp dated **September 28th, 2020**. Plaintiff raises the following exceptions to statements, findings, and conclusions in the Order and Plaintiff respectfully request that the Court reconsider the same.

South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she

[1] The subject September 28, 2020 Order encompassed rulings on three (3) motions. This Motion to Reconsider deals only with the ruling on **Plaintiff's Motion for Perjury, Contempt, and Sanctions for False Affidavit**, dated May 12th, 2020, and stamped filed on May 14th, 2020.

believes the court has misunderstood, failed to fully consider, or perhaps ***failed to rule on an argument or issue***, and the party wishes for the court to reconsider or rule on it. ***A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.***" *Elam v. South Carolina Department of Transportation*, 602 SE 2d 772 (S. C. 2004) (emphasis added).

As outlined in *Elam*, Plaintiff is therefore required to file this **MOTION TO RECONSIDER ORDER - PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT** as the merits of his Motion have not been ruled upon and to preserve the matter for appellate review.

PROCEDURAL BACKGROUND & ARGUMENTS

On May 14th, 2020, Plaintiff Davis filed his **PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT**. No hearing was held on the matter. On Friday August 14th, 2020, the Honorable Judge Hocker ruled as follows:

> **"2. Motion for Perjury: Denied. The Court is not going to get into whether or not false Affidavits were submitted. The Court did not rely on these in making a ruling on the standing issue."**

A final order, as solely drafted by defense counsel, was filed on September 28, 2020.

ANALYSIS

(1) RELIANCE IS NOT AN ELEMENT OF PERJURY: According to the SC Court Bench Book, the criminal offence of Perjury and Subordination of Perjury is a Class F Felony, with up to 5-years imprisonment. Reliance upon a perjured / false Affidavit in making the Court's ruling is not an element of the offense as outlined in the SC Court Bench Book.

PERJURY AND SUBORDINATION OF PERJURY

Class F Felony — Code §§16-9-10 and 16-9-30
CDR Codes 2377, 1157-1158, 2378 & 507

Elements Of The Offense:

(1) That the accused willfully gave false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

OR

(2) That the accused willfully gave false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Note:

For subordination of perjury in civil actions, see §16-9-20.

As an alternative, a magistrate or municipal judge may charge an individual with perjury under §16-9-30. Under this section, one may commit perjury by merely:

1. Wilfully and knowingly swearing falsely,
2. in taking any oath required by law,
3. administered by any person directed or permitted by law to administer an oath.

Penalty:

For violating (1) above - Imprisonment for not more than 5 years, or a fine in the discretion of the court, or both.

For violating (2) above - Imprisonment for not more than 6 months, or a fine of not less than $100, or both.

Defendant Connelly swore to this Court that in the applicable prior 21-day period, there had been $1,045,000 in donations. Plaintiff's Motion, and specifically his Memorandum in Support and Exhibits, *prove* that were only $99,201.00 in non-binding pledges, not even donations.

Defendant Connelly intended for the Court to use his perjured / false Affidavit. He committed a fraud on the Court. A party should not skirt a serious FELONY simply because the Court did not rely upon the perjured / false Affidavit, or his personal and political "connections".

(2) THE COURT ALWAYS HAS JURISDICTION OVER CONDUCT IN COURT: In the Order filed on September 28, 2020, as solely drafted by defense counsel, it is stated that "this Court's lack of jurisdiction over this matter prohibits it from proceeding beyond announcing its dismissal with prejudice." See September 28. 2020 Order, page 3, paragraph 2, last sentence.

This statement is patently untrue as it relates to the perjured / false Affidavit submitted to this Court by Defendant Connelly. Perhaps it is true in relation to deciding further legal issues related to the matter, but as for CONDUCT within Court or related to a perjured / false Affidavit, this Court obviously has jurisdiction over such matters and the party perpetrators.

(3) CRIMINAL REFERRAL: A crime has been committed. Not a minor misstatement or a mistaken belief, but an arrogant culmination of a pattern of false statements and a deliberate attempt to mislead this Court to the detriment of the Plaintiff and justice. If this Court is unable to investigate a South Carolina and national PUBLIC & POLITICAL FIGURE such as Defendant Connelly for a Class F Felony, in the alternative, Plaintiff would ask for this Court to make the appropriate criminal referral of Defendant Connelly's perjured / false Affidavit so that he may be called to answer for his offences and betrayal of the general public trust.

[CONTINUED ON NEXT PAGE.]

CONCLUSION

THEREFORE, as set forth herein and in other filings, Plaintiff respectfully submits that the Court reconsider its Order regarding obvious PERJURY committed by Defendant Connelly.

Plaintiff reserves the right to support this Motion with a Memorandum of Law, Affidavits, and any other relevant information which may be submitted at a later date.

Respectfully submitted this **2nd day of October, 2020**.

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2020-CP-36-00093
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **2nd day of October, 2020**, as follows:

PLEADINGS: **PLAINTIFF'S NOTICE AND MOTION TO RECONSIDER ORDER - PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LL
411 Walnut Street #10646
Green Cove Springs, FL 32043
g.k.chambers@gmail.com
geoffrey@cperlgroup.com
Connelly, Persons & ECENC Fund

M. Dawes Cooke, Jr., Esq. &
Justin Paul Novak, Esq.
Barnwell Whaley
P.O. Drawer H
Charleston SC 29402
mdc@barnwell-whaley.com
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Connelly, Persons & ECENC Fund

The Honorable Donald B. Hocker
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PLAINTIFF, *PRO SE*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Hon. Donald B. Hocker, Circuit Court Judge

C.A. No.: 2020-CP-36-00093

Jefferson Davis, Jr. .....Appellant.

v.

Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund .....Respondents.

NOTICE OF APPEAL

Jefferson Davis, Jr. ("Davis") appeals the two Orders of the Honorable Donald B. Hocker, electronically filed **June 30th, 2020** & **September 28, 2020**. On July 13th, 2020, Davis timely filed a "Motion to Reconsider" the existing Order dismissing the case on Standing. The Court denied Davis' Motion to Reconsider in an Order electronically filed on **September 28, 2020**. In that same September 28th, 2020 Order, the Court also denied Davis' Motion for Perjury. A timely filed "Motion to Reconsider (the Perjury issue)" was denied by the Court on **October 6th, 2020**. Davis now timely Appeals the original Orders filed **June 30th, 2020**. & **September 28th, 2020**. Attached are copies of said Orders.

Date: October 7th, 2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
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Hon. Donald B. Hocker, Circuit Court Judge

C.A. No.: 2020-CP-36-00093

Jefferson Davis, Jr. .....Appellant.

v.

Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund .....Respondents.

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** on the below named parties at the addresses noted by depositing a copy of it in the United States Mail, postage prepaid, on **October 7th, 2020**.

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APPELLANT

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Jefferson Davis, Jr., Plaintiff, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-36-00093 **ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND DISMISSING PLAINTIFF'S SUMMONS AND COMPLAINT WITH PREJUDICE AND DENYING MOTION FOR SANCTIONS**

This matter came before the Court on March 5, 2020, upon Plaintiff's Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020, Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint filed on March 4, 2020, and Defendants' Motion for Sanctions filed on March 6, 2020.[1] Present at the hearing were Geoffrey K. Chambers, Esquire, and Justin P. Novak, Esquire, as counsel for Defendants South Carolina Educational Credit for Exceptional Needs Children Fund, Chad Connelly, and Tom Persons, as well as Chad Connelly and Tom Persons, and Plaintiff Jefferson Davis, Jr., pro se. After careful review and consideration of the parties' arguments and

[1] Plaintiff filed the Summons and Complaint for Declaratory Judgment and Injunctive Relief in this matter on February 12, 2020, followed by a Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020. On February 27, 2020, The Honorable William P. Keesley entered a form order denying Plaintiff's motion for a temporary restraining order and requiring Plaintiff to provide notice to Defendants of the remaining motion for preliminary injunction. The Court scheduled a hearing of the remaining motion for preliminary injunction for hearing on March 5, 2020. Although Defendants filed the Motion to Deny Preliminary Injunction and to Dismiss the Complaint on March 4, 2020, and the Motion for Sanctions on March 6, 2020, all parties consented to the Court's consideration of all pending motions at the hearing on March 5, 2020. In addition, the Court allowed Plaintiff an additional 10 days to respond to Defendants' motions and Defendants an additional 10 days after service of Plaintiff's response to serve and file any reply. After obtaining an extension to respond, Plaintiff served and filed responses to Defendants' motions and Defendants subsequently served and filed a timely reply.

submissions, this Court grants Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and denies Defendants' Motion for Sanctions.[2]

FINDINGS

South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") is a domestic nonprofit entity incorporated pursuant to a legislative budget proviso on June 16, 2016.[3] Pursuant to S.C. Code § 12-6-3790, Exceptional SC operates as a public charity entirely dependent upon private donations to provide scholarships to exceptional needs children attending eligible schools for which donors receive refundable tax credits against their South Carolina income taxes.[4] In order to fulfill its mission, Exceptional SC may expend up to two percent of the fund for administration and related costs. Exceptional SC is governed by five directors, including Defendant Tom Persons, and employs an executive director, Defendant Chad Connelly. As a domestic nonprofit entity incorporated in South Carolina, Exceptional SC is governed by the South Carolina Nonprofit Corporation Act. S.C. Code § 33–31–101 et seq.

Although Plaintiff is an attorney licensed to practice law in the State of Georgia, Plaintiff proceeds in this action pro se.[5] In the action, Plaintiff challenges certain conduct of Exceptional SC, one of its directors, and its executive director by alleging, inter alia, that the conduct violates S.C. Code § 12-6-3790. Plaintiff also seeks an accounting of the nonprofit corporation's administrative expenses and donations. Plaintiff alleges standing to challenge the conduct and obtain such an

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2 A trial court may consider affidavits and other evidence outside the pleadings in support of a motion to dismiss based on lack of jurisdiction without converting the motion to dismiss into one for summary judgment. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

3 Effective May 18, 2018, South Carolina codified the creation of Exceptional SC in S.C. Code § 12-6-3790.

4 Pursuant to statute, Exceptional SC may not receive any appropriation of public funds and the amounts on deposit in the fund do not constitute public funds and are not property of the State. S.C. Code § 12-6-3790(B)(1), (2). Exceptional SC is also statutorily prohibited from expending public funds. S.C. Code § 12-6-3790(B)(4).

5 Plaintiff is not licensed to practice law in South Carolina.

accounting as a citizen, resident, taxpayer, registered elector of South Carolina and as a donor to Exceptional SC.[6]

In response to Plaintiff's summons and complaint and motion for preliminary injunction, Defendants moved to dismiss Plaintiff's pleadings and motion pursuant, inter alia, to Rules 12(b)(1) and (6) on the ground that Plaintiff does not have standing to challenge the conduct of the nonprofit corporation or its officers and directors under South Carolina law. Defendants also moved pursuant to Rule 11, SCRCP, for an order imposing sanctions on Plaintiff for serving and filing a frivolous pleading and motion in bad faith and for which there exist no good ground for support under South Carolina law.

ORDER

A trial court must dismiss a complaint whenever the court lacks subject matter jurisdiction. Rule 12(b)(1), SCRCP; see also Edens v. Bellini, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004). One requirement of subject-matter jurisdiction is standing. Anders v. South Carolina Parole & Community Corrections Board, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Michael P. v. Greenville County Dept. of Social Services, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). "Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception." ATC South Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

Plaintiff does not have standing to assert the subject claims pursuant to any South Carolina statute. S.C. Code § 12-6-3790 does not provide for any private right of action to enforce its provisions and the South Carolina Nonprofit Corporation Act expressly circumscribes standing to

[6] Plaintiff is not a member or director of Exceptional SC nor a representative of the South Carolina Attorney General.

challenge the conduct of a nonprofit corporation such as Exceptional SC. S.C. Code § 33-31-304 ("A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights . . . by the Attorney General, a director, or by a member or members in a derivative proceeding."); see also S.C. Code § 1-7-130 ("[t]he Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law."). Moreover, in South Carolina, "the doctrine of ultra vires cannot be used as a sword by a third party to try and invalidate an action by a nonprofit corporation." S.C. Code § 33-31-304 South Carolina Reporters' Comments (citing Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979)).

South Carolina courts have also long held that "the assets of a corporation belong to the corporation and not the individual stockholders, and . . . the liability of directors or officers of a corporation for loss to the corporation due to their mismanagement is an asset of the corporation and . . . any recovery on such a cause of action belongs solely to the corporation." Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989). South Carolina law similarly circumscribes standing to remove a director of a nonprofit corporation to the corporation, certain of its members, and the Attorney General. S.C. Code § 33-31-810.

Plaintiff also does not have standing to assert the subject claims through the rubric of constitutional standing or through the narrow public importance exception. Constitutional standing is comprised of three elements: "(1) the plaintiff must have suffered an injury-in-fact that is concrete and particularized, and actual and imminent as opposed to hypothetical; (2) the injury and the conduct complained of the defendant must be causally connected; and (3) it must be likely that the

injury will be redressed by a favorable decision." Michael P., 385 S.C. at 416, 684 S.E.2d at 215. "[S]tanding may [also] be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." ATC South Inc., 380 S.C. at 198, 669 S.E.2d at 341. In general, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation or the accountability and integrity of government action. See, e.g., Sloan v. Greenville County, 356 S.C. 531, 550, 590 S.E.2d 338, 349 (Ct. App. 2003) (quoting Sloan v. School District of Greenville County, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000)). "However, "[t]he mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." Crews v. Beattie, 197 S.C. 32, 32, 14 S.E.2d 351, 358 (1941).

Plaintiff does not have standing to assert the subject claims through the rubric of constitutional standing or through its narrow public importance exception as a citizen, resident, taxpayer, and registered elector of South Carolina because the challenged actions are those of a nonprofit corporation statutorily prohibited from receiving or expending public funds. S.C. Code § 12-6-3790(B)(1), (2), (4). The conduct of which Plaintiff complains also does not involve any legislative or executive action. Moreover, if the challenged conduct did involve public funds or government action, Plaintiff's allegations of such standing would be indistinguishable from any other citizen, resident, taxpayer, and registered elector in South Carolina except for the allegation that Plaintiff is a donor to the nonprofit corporation. This feature of commonality would necessarily defeat the constitutional requirement of a concrete and particularized injury. ATC South Inc., 380 S.C. at 198, 669 S.E.2d at 340-41. Plaintiff's status as a donor to the nonprofit corporation also does not accord him standing to assert the subject claims under South Carolina law. As discussed above, the South Carolina Nonprofit Corporation Act expressly circumscribes standing to challenge the

conduct of a nonprofit corporation or its officers and directors. S.C. Code § 33-31-304; S.C. Code § 33-31-810; Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989). In South Carolina, the mere act of donating to a nonprofit corporation does not accord standing to the donor to challenge the conduct of the nonprofit corporation or its administration by duly appointed officers and directors. See S.C. Code § 33-31-304; S.C. Code § 33-31-810; Davis v. Hamm, 300 S.C. at 288, 387 S.E.2d at 678.

Although this Court finds that Plaintiff does not have standing to assert the claims contained in the Summons and Complaint for Declaratory Judgment and Injunctive Relief filed on February 12, 2020, or the Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020, this Court declines to impose sanctions upon Plaintiff for filing and serving them. However, this Court's denial of Defendants' Motion for Sanctions shall not be construed to prejudice in any way any right of any defendant in this action to seek sanctions against Plaintiff for any other conduct in any other action in which the parties are or may be involved arising from Plaintiff's filing and serving of the summons and complaint and motion for temporary restraining order and preliminary injunction in this action.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint is **GRANTED** and that Defendants' Motion for Sanctions is **DENIED** in accordance with the above order. Plaintiff's Complaint is hereby dismissed with prejudice pursuant to Rules 12(b)(1) and (6), SCRCP.

AND IT IS SO ORDERED.

_____
The Honorable Donald B. Hocker

May_____, 2020

Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600093

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Jefferson Davis, Jr., Plaintiff, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2020-CP-36-00093 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER, PLAINTIFF'S MOTION TO STAY 30 DAYS & SUBSTITUTE PLAINTIFF WITH STANDING, AND PLAINTIFF'S MOTION FOR PERJURY, CONTEMPT, AND SANCTIONS FOR FALSE AFFIDAVIT**

This matter came before the Court upon Plaintiff's Motion for Reconsideration of this Court's Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on July 13, 2020 ("Motion for Reconsideration"),[1] Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff with Standing filed on July 15, 2020 ("Motion for Stay"), and Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit filed on May 14, 2020 ("Motion for Sanctions"). As the parties filed detailed motions, memoranda, and other submissions, this Court did not conduct a hearing on the motions.[2] After careful review and consideration of the parties' submissions, this Court denies Plaintiff's Motion for Reconsideration, Plaintiff's Motion to Stay, and Plaintiff's Motion for Sanctions.

ORDER

South Carolina's Rules of Civil Procedure "contemplate two basic situations in which a party should

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1 Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on June 30, 2020.

2 See South Carolina Supreme Court Order No. 2020-04-22-01(c)(4) ("A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.").

consider filing a Rule 59(e) motion." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Id. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990).

Plaintiff's motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to consider. Plaintiff, instead, revisits the previously raised argument that this Court should apply foreign common law to accord him standing where South Carolina law expressly denies him such standing.[3] Accordingly, this Court denies Plaintiff's Motion for Reconsideration because Plaintiff's motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider and South Carolina law does not accord Plaintiff standing to assert the subject claims.

In the alternative, Plaintiff requests an order staying this action and leave to substitute an unidentified party who would have standing to serve as the plaintiff in this action. A South Carolina court may order substitution of parties upon the death of a party, the incompetency of a party, the transfer of interest, or upon the separation from office of a public officer. Rule 25, SCRCP. In order to effect such a substitution, an action must be commenced by a real party in interest for whom a proper prosecuting party is substituted. Plaintiff is not a real party in interest because Plaintiff does not have standing to assert the

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[3] The South Carolina Nonprofit Corporation Act expressly circumscribes standing to challenge the conduct of a nonprofit corporation such as Exceptional SC to the Attorney General, a director, or by a member or members in a derivative proceeding. S.C. Code § 33-31-304; S.C. Code § 33-31-810; Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989).

subject claims and, therefore, this Court does not have jurisdiction over Plaintiff's allegations. "'Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'" Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). Plaintiff also fails to identify a real party in interest to prosecute the allegations. Instead, Plaintiff seeks an order allowing this action to proceed without a proper plaintiff despite its dismissal with prejudice. While this Court has discretion whether to grant a stay of a matter pending before the court, City of Spartanburg v. Belk's Dep't Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942), such a stay in this matter would serve only to maintain an already dismissed action brought by a party without standing while that party seeks a proper party to pursue his cause.

Plaintiff also seeks an order granting sanctions against Defendants and compelling the production of certain information and documentation used in support of Defendants' argument that this Court should require Plaintiff to post a security bond in the event that this Court granted Plaintiff's request for injunctive relief enjoining further administrative expenses in operation of the South Carolina Educational Credit for Exceptional Needs Children Fund. This Court, however, denied Plaintiff's motion for injunctive relief and dismissed Plaintiff's claims with prejudice upon jurisdictional grounds and, therefore, did not need to consider, and did not, consider arguments regarding the extent to which Plaintiff would have been required to post such a security bond. Accordingly, this Court makes no findings regarding the veracity of the information and documentation used in support of Defendants' argument. Moreover, this Court's lack of jurisdiction over this matter prohibits it from proceeding beyond announcing its dismissal with prejudice. Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)).

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

Plaintiff's Motion for Reconsideration of this Court's Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions, Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff with Standing, and Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit are **DENIED** in accordance with the above order.

AND IT IS SO ORDERED.

_____

The Honorable Donald B. Hocker

September ____, 2020

Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600093

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff vs. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	ORDER DENYING MOTION FOR RECONSIDERATION OF PLAINTIFF (AS TO PERJURY, CONTEMPT AND SANCTIONS) 2020-CP-36-00093

After due and careful review of this matter, the Plaintiff's Motion for Reconsideration is respectfully denied.

SO ORDERED.

Donald B. Hocker, Circuit Court Judge
Eighth Judicial Circuit

Laurens, South Carolina
Date: 10-6-20

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

JEFFERSON DAVIS, JR.,)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) 2020-CP-36-00093
-vs-)
) MARCH 5, 2020
CHAD CONNELLY, TOM) GREENWOOD, SOUTH CAROLINA
PERSONS AND SOUTH)
CAROLINA EDUCATIONAL)
CREDIT FOR EXCEPTIONAL)
NEEDS CHILDREN FUND,)
)
DEFENDANTS.)

B E F O R E:

THE HONORABLE DONALD HOCKER, JUDGE.

A P P E A R A N C E S:

JEFFERSON DAVIS, JR., ESQUIRE
ATTORNEY FOR THE PLAINTIFF

GEOFFREY CHAMBERS, ESQUIRE
ATTORNEY FOR THE DEFENDANTS

JUSTIN NOVAK, ESQUIRE
ATTORNEY FOR THE DEFENDANTS

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO WITNESSES CALLED)	

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, MARCH 5, 2020).

THE COURT: We are on the record this morning in the case of Davis versus Connelly. It's a 2020 case, Newberry case, file number 93.

The matter is before the court for a temporary restraining order, temporary injunction.

I acknowledge that I guess yesterday or last night some documents were filed. If you have hard copies of anything that you want me to consider for purposes of today's hearing, that would be very helpful to me.

MR. CHAMBERS: Yes, Your Honor.

THE COURT: I'll give you a chance to kind of rummage through your file and pull those out before we go any further.

MR. DAVIS: Your Honor, should I just bring them up to you?

THE COURT: Sure.

MR. DAVIS: And I did e-mail them electronic copies of these documents.

MR. CHAMBERS: Your Honor, if I may approach?

THE COURT: Sure, please.

Let's do this. Let me get the attorneys identified. I assume plaintiff here and defendants over here, so your name, sir?

MR. DAVIS: Jeff Davis.

THE COURT: Okay. All right.

And I see where there would be three defendants, is that correct?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: Okay. And do the attorneys represent all defendants, or have you got it divided up?

MR. CHAMBERS: No, Your Honor, we represent all defendants. I am Geoffrey Chambers. This is Justin Novak.

THE COURT: Geoffrey Chambers and --

MR. NOVAK: Justin Novak.

THE COURT: -- Justin Novak. Okay, gentlemen, thank you.

Okay. I'm going to let the plaintiff go first, as far as giving me a summary about this case, what it's about, and then I'll give the defendants the same opportunity. Then I'll go back to the plaintiffs and you can let me know what relief you are seeking today.

MR. DAVIS: Thank you, sir.

THE COURT: Okay?

MR. DAVIS: If it please the court, my name is Jeff Davis. I'm the plaintiff pro-se in this particular case.

I have been involved and around this program since 2013. There is a large or long history related to it.

The matter at hand today is very simple, just one

issue. It's a mathematical issue. It's an interpretation of the law and what percentage it is.

Just so you, the court, knows, I am a big supporter, the folks I work with, are big supporters of this particular program. It's a tax credit scholarship program that provides twelve million dollars on an annual basis to K through 12 children with special needs to allow them to go to a private or independent school that might best serve them. So most of the children are dislexic, autistic. We have had different children with spina bifida, deafness, blindness, all sorts of things, but it's an ability for when a public school may not fit, be the right fit for the individual. It allows the family the opportunity to go to an independent specialized school. So that's what the program is about.

There is a long history and we have been back and forth and there is some other cases that are going on, but this case in this matter today is really just a declaratory judgment to determine, based on --

I'm -- my background is a CPA financial tax attorney, if you will. I'm not a litigator. I am licensed to practice law, active and licensed as a CPA and attorney in the State of Georgia, but I'm not licensed here in the State of South Carolina, so I'm representing myself as a donor to this particular program.

One of the -- one -- the provision that is at hand, and it's in my initial brief, and hopefully you have had an opportunity to see that, it's a very simple provision that says that the program can only spend -- it's a tax credit. It's what's called a dollar-for-dollar tax credit.

So an individual -- say, for example, an individual taxpayer, or corporation, or S-Corporation that wants to donate to this 501(c)(3) entity, if you donate five thousand dollars, you get five thousand dollars back off your state income tax liability.

So it's really a no -- there is some technical tax issues. That's how I kind of got involved with it, but it's essentially a way to circumvent money going directly from the government to private independent schools, especially Christian schools. There are some issues from a legal perspective of sending money directly from the government coffers straight to especially a Christian or religious school.

So there is a structure, which is called a tax credit scholarship program, a scholarship funding organization or scholarship granting organization. There is about eighteen different states that have these programs. There is maybe twenty-three different programs. Florida has the largest. It's about an eight hundred million dollar program. Our neighbors in Georgia have a hundred million

dollar tax credit program. The State of South Carolina has one that was initially passed in 2013. It started in January of 2014, and it's a very small program to start off at eight million. It's now up to twelve million dollars.

Now, what is unique and different about the State of South Carolina's program, in 2016 they changed the law. Every other state uses what we would call independent nonprofits. So Georgia has probably about thirty different nonprofits that run out and raise money for these various schools, work with schools and raise tax credit dollars. The State of Georgia last year raised -- all their independent nonprofits raised a hundred million dollars.

The issue that we have in the State of South Carolina is the legislature has taken it and given it to a legislatively -- a legislatively created nonprofit, which we will call the educational credit for exceptional needs fund. They have -- that entity has a five-person board that is appointed by various legislators. Two are appointed by the chairman of Senate Finance. Two are appointed by the chairman of House Ways and Means, and one is appointed by the governor. So you have got a legislatively appointed board and -- by law administration is between this nonprofit entity and it's administered by the Department of Revenue.

South Carolina is the only state in the nation that has a legislatively single entity that does this type

of tax credit scholarship program. That's what -- on our side we are trying to fix and bring clarity to it. It's become a very political issue in regards to the executive director of the current -- of the program now. He's a former SC GOP chairman. He has no experience in tax credit scholarship. He doesn't know how the law works. It's a lot of issues in regards there.

The State of Georgia raised a hundred million dollars last year. Arizona has these programs, raised over a hundred million dollars. The same thing up in -- Pennsylvania has several of these programs and raised over a hundred million dollars. South Carolina has a twelve million dollar program. This organization was only able to raise 4.5 million dollars for kids last year. That's our problem.

This organization is rated by one of the large advocacy groups out there called the American Legislative Exchange Counsel as a D-minus. The prior two years it was an F. We have in the State the South Carolina literally the worst school choice program in the nation and we are trying to bring some clarity and light to that.

One of the issues with all of these programs is how much money they spend on administrative expenses. If the government is going to give us a tax credit dollar for dollar, so it's really just a push for the donors. If I

give five thousand bucks to the program, I get five thousand dollars off of my taxes. It's really -- other than the safety of just mailing it to the Department of Revenue, it is really almost a no-lose situation, especially if you want to help the cause of special needs children.

So under that scenario, in being -- in fact, it's not like a normal nonprofit where you have to go out and raise money just to get a charitable deduction, because a charitable deduction would probably be worth thirty cents on the dollar, while a tax credit is worth a dollar to a dollar. So that's the big difference.

So to incentivize that as part of that they limit the expenses that these organizations can spend. So the State of Florida I think it's a two percent cap. In the State of Georgia it's graduated. I think it starts maybe at ten or seven and a half percent and goes down from there based on the size of the organization. In the State of South Carolina they have limited it to two percent of donations, essentially. So the law says ninety-eight percent -- at least ninety-eight percent has to go to scholarships, and up to two percent can go to administrative expenses.

Now, another part of what the organization has to do is on an annual basis they have to report to the legislature and report to the Department of Revenue some of

their activities. One of their activities -- part of that reporting requirement is a CPA audit or a compilation.

An audit is the highest level of review that a CPA will do under the organization. Then there is a compilation is something much lower.

A compilation -- and you will see the relevance here in a second, a compilation is nothing more than we took the information they gave us and we put it on paper. It looks reasonable, so we put it on paper.

An audit means the CPA is going to come in and actually look at the books to make sure that you are doing it, you are not absconding with money, or you are not falsifying accounts, or something of that nature.

The first -- this organization has been around for three years. It's currently in its fourth year. The first two years they got a full CPA audit, normal, is what you would expect. In the third year for some unknown reason that we've yet to determine that audit was reduced to a very simple compilation. And even worse, in that -- in that compilation, we have the CPA reports there that's exhibits to the motion and to the complaint, the CPA actually puts on there that they are no longer independent of the organization. So they not only said we just took what they gave us, by saying you are not independent of the organization, the CPA is essentially saying don't even trust

what we say. So it -- it threw up an extremely large red flag.

When I went in and analyzed those CPA financials, the first two years there is no problems. CPA -- full CPA audit. It disclosed exactly how they calculate the expense, the maximum expense they can use to utilize each year, but in this third year when they reduced it to a compilation, when the CPA said we're not independent, we're not even -- don't trust us, we are taking what they gave us and putting it on paper, but don't even trust us, they took out the disclosures of complying with the two percent cap. So from a CPA perspective that immediately told me they are trying to hide something.

THE COURT: Let me just stop you just a minute. What -- where does the requirement that the cap of ninety-eight percent for scholarships, two percent for administration expenses, where does that provision or requirement come from? Where is that originated from?

MR. DAVIS: That comes from South Carolina Code Annotated 12-6 --

THE COURT: Okay.

MR. DAVIS: -- 3790.

THE COURT: Okay.

MR. DAVIS: (B)(4).

THE COURT: (D) or (b).

MR. DAVIS: (B) as Bob.

THE COURT: (B) as in boy, (b)(4)?

MR. DAVIS: Yes, sir.

THE COURT: Thank you.

MR. DAVIS: And that particular quote says specifically "the public charity may extend up to two percent of the fund for administrative and related costs."

THE COURT: Okay.

MR. DAVIS: So that's the one small piece of this larger pie that we have that we are asking the court to determine. What does that two percent mean, because when -- and I have got the demonstration of it within there, that when you look at the CPA financials, they were entitled -- based on how much money they raised, they were entitled to spend $231,510, and that's on page four of the attachment one of the temporary restraining order. They actually spent $331,000. Now, that is the information that comes from their own CPA's report, so they have the ability to spend 231,000. They spent 331,000. So our issue is they have overspent by a $100,000. They overspent and pocketed the money for themselves, in a sense that that money was supposed to go to scholarships.

They advertised on their website that at least ninety-eight percent of the money that a donor contributes will go to these scholarships. So I as a donor, it's a very

small donation, but I as a donor expected ninety-eight percent. I know other donors that expect ninety-eight percent to go to these scholarships. It did not go there. So I brought that particular issue up. We reached out to find out if we could get some explanation, and based on our longer history there is no discussion of the matter, so there was a fresh report about it. There was a threat from Mr. Connelly to sue me, because I even pointed this out and he just said it was defamatory, so there was a threat for him to sue me, so I waited a week or two. Nothing ever happened, so I filed this declaratory judgment case.

THE COURT: All right. So you are seeking a temporary injunction specifically for what?

MR. DAVIS: I'm seeking an injunction in the fact that the court order set forward that they cease spending anything in excess of the two percent on administrative costs.

I was very specific to make sure -- this is not about stopping scholarships. We want them to issue scholarships. We want them to issue scholarships faster. We want them to raise more money. We want them to get more money from the legislature. That's what our goal and our push as to what we are trying to get them to do, but we need the court to, number one, determine if they -- what the two percent is. Does it mean two percent of what they raise

each year? That is what's in their finance CPA's audit report the prior year. They literally walked through how they calculate that amount. It is donations that come in and investment income. They do have a small amount of interest that comes, rather de minimis, and then multiply that by two percent. That's the maximum cap. That is how they, their own organization defines the two percent cap.

THE COURT: All right.

MR. DAVIS: They did not comply with the two percent cap in year number three. That's why we think they went to their auditor and asked them to reduce the scope of the audit down to a compilation and eliminate all the disclosure footnotes that go along with a normal CPA audit or a compilation that show that they have complied with the law.

THE COURT: When the determination -- as far as this, from your perspective, the determination of what two percent means, wouldn't that be left for the actual merits of your declaratory judgment action and would not be something that the court would entertain at this stage of this case?

MR. DAVIS: Well, I think the matter is so simple, based on the fact that the language and the particular quote from the code section I just read to you is that simple, based on the combination of their own audit reports detailed

how they make that calculation. It's not like I came up with a methodology.

Now, I will tell you, I, as a CPA, I have been involved in these types of programs since 2008. I have read legislation from multiple states about how it's calculated. I have probably looked at a hundred different nonprofit organization tax returns or financials. None of them violate the cap. Every state has a cap, because if it was uncapped, the people would just say maximum expenses. So it's capped every state. It's just literally one of the most important things to follow in these organizations, to follow to make sure they do not take more administrative costs than the government has allowed them to take.

THE COURT: All right. Thank you.

All right. Mr. Chambers, Mr. Novak, who is going to argue for the defendants?

MR. CHAMBERS: I will take it, Your Honor.

THE COURT: All right, Mr. Chambers, be glad to hear from you.

MR. CHAMBERS: So I want to keep this short and sweet.

THE COURT: Thank you.

MR. CHAMBERS: I'm going to rely on the strength of our brief to fill in some of the details, as far as the case law and exactly how it applies and I'll quickly go over

it, but first I want to describe the program, the organization, and the present action and why we are here and what we are looking at, as far as the action and its viability.

First, the program was created by statute. It's 12-6-3970, and there are really three key parts to that.

First, there is the Department of Revenue. It is a state agency.

Second is a fund or a bank account.

And the third is a nonprofit 501(c)(3) organization that runs this scholarship scheme for exceptional needs children to attend private institutions where they can get the help that they need.

If someone gives to that fund or that scholarship fund they get a tax credit as that donor and they can take that tax credit with DOR.

DOR's role is to -- basically their role has been to oversee the balance in that account and basically they very much real time look at the finances of the program. They're not the ones choosing who gets the scholarship. They're not the ones out raising money for it. That goes to the nonprofit or exceptional SC.

The Exceptional SC is run by five directors and an executive director. The five directors are basically school administrators, school principals, a young attorney from the

Catholic Diocese who basically supports the -- his role is to support the catholic schools, and a former telephone company executive are the five members of that board. The executive director is Chad Connelly. The chairman of that board is Thomas Persons. The two of them were named as defendants. The -- that's basically an overview of the structure.

This present action --

Well, first, Mr. Davis is a licensed attorney in Georgia. He's been practicing for almost thirty years. He's also a CPA, an accountant, and a CFA, certified financial advisor, and he's politically active. He's the head of -- I believe the president or head of the Tea Party in Greenville.

He previously ran an organization like this in Georgia and ran one here before the legislature changed the law. Ever since that period of time he has been in a position where he's very much opposed to the current program and opposed to the -- my understanding is that he wants it to go back to a different system where there are multiple nonprofits and he's back in that game of running one of these, but what he did today is he brought what is called an ultra vires action. And what he's alleging is he's alleging that this corporation, this nonprofit exceptional SC, it did something that it is not allowed to do by law.

There is -- that presents a problem, because when we go to the Nonprofit Corporation Act, it very much defines who can bring that action. The only way that that action can be brought, pursuant to statute, is through 33-31-304, South Carolina Code, and the first part of that says that this is the only way that you can bring it.

And the second part of it says who has standing to bring that action against the corporation. And basically it's the Attorney General, a director of the corporation, or a member of the corporation can bring that action against the corporation.

To have standing to bring that action against a director of the corporation or officer of the corporation, like Mr. Connelly and Mr. Persons, it would have to be the Attorney General, the corporation itself, a legal representative of the corporation, such as a bankruptcy trustee, a court-appointed receiver, or the corporation itself could bring that action against a director. Those are the only people that have standing. Mr. Davis failed to allege that he is in that group. He didn't allege that he's the Attorney General. He didn't allege that he's a director of the corporation, a member of the corporation. He's certainly not a court-appointed or legal representative of the corporation, such as a trustee or receiver. He doesn't have standing to bring this action at all. The action

should fail and be dismissed, just based on that.

THE COURT: Is a motion to dismiss by the defendant, is that also up for consideration by the court --

MR. CHAMBERS: Yes.

THE COURT: -- today?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: Okay.

MR. DAVIS: Actually, Your Honor, I think today we are only talking about this injunction.

THE COURT: Okay.

MR. CHAMBERS: How can you have an injunction if you have no viable underlying complaint?

THE COURT: I assume a motion to dismiss has previously been filed?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: Okay.

MR. DAVIS: If it was filed, it was filed last night at 9:45 p.m..

THE COURT: Okay. Well --

MR. DAVIS: They have just made their appearance yesterday.

THE COURT: Right. Right.

Well, certainly I think probably after I hear argument from both sides, I think a motion to dismiss would certainly be something to consider. However, since it was

just filed last night, I would give the plaintiff an opportunity to make an appropriate response to that.

MR. DAVIS: And I will, yes.

THE COURT: Right. Okay. I mean, filed last night, I wouldn't hold your feet to the fire today.

MR. DAVIS: Thank you.

THE COURT: Nor would I do the same thing to these guys over here.

You may proceed.

MR. CHAMBERS: Second, the plaintiff pleads no harm. He pleads that he was a donor to the program. He was. He gave ten dollars in -- about a year ago. He received a tax credit for that ten dollar gift. He received what he bargained for. From that point the ten dollars was no longer his money. It became the property of the corporation.

If there is a problem with how that corporation is operating, it goes back to an ultra vires complaint and the Nonprofit Corporation Act and who has standing to bring that. There is no damage to the donor.

Secondly, he alleges damages to students, parents, and schools. He can't represent them and they're not plaintiffs in this case. So there is no damage to the plaintiff. The plaintiff has no standing to bring this.

Third, typically a TRO is based upon maintaining

the status quo so that no damage from a change occurs. His TRO is based upon shutting a corporation down, freezing its assets, because he alleges that it's going to go over this two percent max.

MR. DAVIS: Your Honor, I have got to object to that. That is not -- I have not asked for this corporation to be shut down. I have not asked for its assets to be frozen.

What the defendants have done here is try to scare a bunch of parents and tell them I'm trying to shut this organization down.

THE COURT: Well --

MR. DAVIS: This is about how much they are paying themselves, not what they are --

THE COURT: I understand.

From what I understand when I asked Mr. Davis what the basis for the temporary junction is, and what he told me, if I understood him correctly, is that he wants an injunction requiring this corporation to comply with the statute, insofar as ninety-eight percent, two percent. That's what I heard him say. So I'm not understanding he's wanting to shut the corporation down.

MR. CHAMBERS: Okay. I'm getting that from his prayer for relief.

THE COURT: Okay. Okay.

And it may be, and I have not seen the complaint. It may be the ultimate relief that he is seeking is possibly that.

MR. CHAMBERS: It would have that effect, Your Honor.

THE COURT: But for purposes of today's hearing I understand he's just wanting compliance with the statute.

MR. CHAMBERS: He has to freeze all administrative expenses during the pendency of this action.

THE COURT: Is that right, Mr. Davis?

MR. DAVIS: No, Your Honor. I asked them to report to the court that how much they were taking in administrative expenses to assure the court that they are not taking more than two percent.

THE COURT: Okay.

MR. DAVIS: What they have threatened to do is if we stop their administrative expenses, that they threaten to walk off the job and not help these children.

Now, I can line up people all day long that will sit there and volunteer to work for this organization for free, not to scare these parents.

THE COURT: All right. Okay.

You may proceed, Mr. Chambers.

MR. CHAMBERS: Fourth, there are adequate remedies at law. And what I mean by that is that injunction is

something -- it's an action in equity when there is no remedy at law. Section 33-31-304 gives those remedies at law.

If our court reporter is in an automobile accident, I don't have standing to sue the person at fault in that automobile accident, but somebody does. Our court reporter would, so there is an adequate remedy at law.

In the case at hand, the Attorney General, directors of the corporation, or members of the corporation, and there are none, but there are directors, or the corporation itself all have adequate remedies at law. So there are people both outside and inside this corporation who have those adequate remedies at law and standing to be here today. They are not. Instead we have the president of the Greenville Tea Party who has filed suit against this organization many times in the past.

Another thing is that typically when you have a -- or asking for a restraining order, or temporary restraining order that would impact a corporation and anything that would freeze the accounts of this corporation would require a bond. You have with you an affidavit from the executive director of what the impact of that freezing would cost, the economic harm it would cause and I would ask that the court, before it makes any move in that direction, consider the requirement of the bond, but I really don't think that the

court will get there on the standing issues before us today.

The other thing that is provided to the court is the affidavit of Tim Derrick of DOR. And remember I said that DOR -- if everyone in this nonprofit were hit by a bus, DOR could take over and continue to operate the program. They don't get into awarding scholarships. They don't get into raising the money, but they do watch these accounts like a hawk, and Tim Derrick is the accountant there that does that and his affidavit basically says that.

In his affidavit he says that there is not a problem, because basically it boils down to this. If you have someone who is three years old (sic) and they have been working and earning a salary for three years. In year one they spend half their salary and year two they spend half their salary and in year three they spend fifty percent more than their salary. That person doesn't have an empty bank account and they have not spent more than they have earned or allowed to spend and that's the situation that we have here today. Even if this were to go into a much more drawn out situation, based upon that information I think that this is something that fails on the merits.

So we have a twenty-seven year old -- or -- or a guy that's been practicing for twenty-seven years. He's a CFA, he's a CPA, and he misses these issues on standing. He cites cases that have to do with taxation and suing a

government entity, not suing a nonprofit. He didn't miss those things. He knew those things, Your Honor.

Likewise, he didn't miss the simple explanation. He's had these financial records. He didn't miss that. This guy went to the Darla Moore School of Business. I couldn't get in there if I wanted to. That's the best business school in the United States and probably the best business school in the world.

He first attempted to give to this organization in July of 2018. He tried to give five dollars, and that is pursuant to the DOR's affidavit. And then in March he gave ten dollars. To go through the trouble of getting a tax credit on five or ten dollars, it costs you more than the tax credit is worth. He gave that in an attempt to give illusion that he could be here today, but then he realized he couldn't, so he brought in all these basically non-applicable cases of suing government that don't apply to suing a nonprofit.

When we look at the case law on suing a nonprofit and we look at the statutory law on suing a nonprofit for ultra vires action, he can't be here today. He knew that coming into this courtroom.

No one gets out of law school without understanding standing. About five out of five of the written questions on the civil procedure part of the bar

exam has to do with standing and a good number of those multiple choice questions have to do with standing. So no one passes the bar without understanding standing. And certainly nobody practices law for twenty-seven years without understanding standing.

You will also find in my motion for sanctions what he has done with this, and this has a purpose other than being here today, and that purpose is to harm --

MR. DAVIS: Your Honor, his motion for sanctions is something that he filed yesterday.

THE COURT: Right, and what I'm going to do is I'm going to treat that, the motion for sanctions as I'm treating the motion to dismiss, to give you an opportunity, adequate opportunity, to make your response.

MR. DAVIS: Thank you.

THE COURT: So, again, I'm going to treat both of them the same way.

Go ahead.

MR. CHAMBERS: Your Honor, you can probably read this from here. It says defendant on it. That sums up what he's doing with this and doing with his entire action. He sent that to Mr. Connelly and sent the same thing to Mr. Persons and they received it this week.

THE COURT: What is that, Mr. Chambers?

MR. CHAMBERS: Apparently my understanding is is

that it's -- he sent the --

MR. DAVIS: Proof of service, Your Honor.

I have asked them to -- Mr. Chambers said he was going make an appearance in this case. I asked him before I mailed those, I said "will you make an appearance so I could send this to you as opposed to your clients?"

I asked him about making certain -- would he accept service as opposed to having to serve his clients. I have made every effort possible. He first makes an appearance yesterday in this case. He's promised me multiple times. We have multiple communications going back and forth. If he can't -- if he does not make an appearance, I have to serve the defendants.

THE COURT: Right, I understand. I understand.

MR. CHAMBERS: So when you serve the defendants, who writes on the outside of the envelope defendant that big?

Two, he posts it on social media. South Carolina tax credits for K through 12, blah, blah, blah. 25 or -- $250,000 lawsuit. Board purge, question, question, question.

Repeat, lawsuit filed to return 250 K for scholarships. Violated two percent maximum expenses. Injunction to immediately stop excess spending. Overages spent on Chad Connelly and his friends.

Here it is again on another spot on social media. Will the Exceptional SC Board act. Misappropriation of funds.

Here it is on a blog or website that he has that he's created that looks just like Fitz News, and right here at the bottom is a picture of the first page of this lawsuit the story he wrote on it.

Here it is on an e-mail blast that he sent out to hundreds or thousands of people, including, but not limited to, schools, the parents of children who have children -- parents of children who are receiving scholarships and likely donors of the program.

MR. DAVIS: Your Honor, I appreciate all the credence, but I'm --

THE COURT: I'm going to give you enough time to respond.

MR. CHAMBERS: And I think you can see from his e-mail that he's not a friend of the program.

Finally, not so Exceptional SC legal status no longer expired. He's following this. He's putting out this weekly. He's harassing us.

This isn't the first lawsuit. He named us in a lawsuit and he basically said very little about us.

He named us in another lawsuit where he sent a FOI to us and we told him we weren't responsible for replying to

FOI and he sued us. And Judge Benjamin said no, Mr. Davis, you can't have that financial information.

He names us in this other lawsuit and I get discovery for the same financial information.

He then sends a subpoena in that lawsuit to our accountants asking for that financial information that Judge Benjamin denied.

And here we are today in a lawsuit filed by a twenty-seven year veteran attorney with no standing. And DOR, an agency that oversees us, saying in an affidavit there is no merit to it, and what does he want? He wants the same thing that Judge Benjamin denied. That's why he's here.

And the other reason he's here is because he can see that that two percent is a very close cap and I'm not free. And he knows that if he can drive this, he can get the story that he wants, which is they exceed the cap. Not because they would exceed the cap on their planned spending, but because they had to defend legal actions, like this one today. And if he is so concerned about not going over that cap, I recommend that he pay for what he is costing this program.

That's all I have to say today, Your Honor, and I'm sorry I'm kind of upset about it --

THE COURT: Okay.

MR. CHAMBERS: -- but I'm upset about it, okay?

THE COURT: I understand. I appreciate that.

MR. CHAMBERS: Thank you.

THE COURT: All right, Mr. Davis, I'm going to give you ten days, if that's adequate time, to respond to the motion to dismiss and also the motion for sanctions.

As it relates to your request for a temporary injunction, do you have any brief response concerning whatever Mr. Chambers brought out related to that?

MR. DAVIS: Well, if -- if -- if we are going to, first, have another hearing in regards to those two other motions, I can save some of that, but Mr. Chambers got obviously very animated about it, but I literally sitting here this morning offered to get together and sit and talk to him and his organization about some of these issues. We, school leaders, parents, kids, I mean, again, remember, they raised 4.5 million dollars last year out of twelve million. They are failing by all objective measures all over the place. I speak to school officials, parents. There are two schools that have already shut down. Other schools are suffering because these guys can't get scholarships out the door. And part of that problem is because we in the State of South Carolina have the only tax credit scholarship program that is run by a legislatively appointed board and a Department of Revenue. It is, in my professional opinion,

unconstitutional.

There is one other state that has a single SFO. That is the State of Montana. That program was shut down by the Montana Supreme Court a year and a half ago and they just -- it did get certified to the U.S. Supreme Court and it was argued a few months ago. So probably in the summer when they will report out. It has to do with the Blain Amendment.

There is only one choice of -- there is no choice, it's school choice. You have to work with these guys. These guys work with religious schools, so if someone doesn't want to work with a nonprofit, that's what happened in Montana, they had -- this is why people will not donate to this organization.

When independent nonprofits ran this program in the first three years of the program, money was flowing. They are proud of -- they put in their affidavit they are getting fifty thousand dollars a day. Maybe, maybe not. We don 't really ever know because we don't get any actual financial reporting out of this any more, but I think the third year of the independent nonprofit they raised the whole ten million dollars -- eight or ten million dollars, maybe it was twelve million then, in twenty days -- or twelve days. They raised all of the money and got scholarships out -- and this was in July. They got

scholarships out to all of these families before school started in August. They literally had only -- and this was when they were still a temporary proviso, they only had a few months to raise all the money and get the scholarships out and they did.

These people have had since January 1st of 2019 to raise twelve million dollars. They only raised four and a half and they have only given out half of the years worth of scholarships to these kids. They were on a roll of giving twelve million dollars a year. These schools aren't getting scholarships. That's what we are arguing about. This program is flawed constitutionally and legally and certainly from a management perspective and what these individuals are hiding.

Mr. Chambers talks about legal fees of dealing with court cases that I'm filing? I have offered, and I offer now, and I want all these parents to hear, I'm willing to sit down and talk to them any time publicly, privately, with parents, with school officials. Open it up. Let's have a discussion about how to make this program successful. He's talking about legal fees? I don't see it on their tax return. They had ten thousand professional, or approximately ten thousand professional fees last year. Where is all this money that he says they are spending? They are -- I have got their -- not included legal and CPA.

The audit or compilation is, well, at least five, maybe ten thousand dollars, so I don't know where their legal fees are coming from, but I am more than happy to sit down. And if the court wants to order us to sit down and talk and work this, I am more than happy. I offered it this morning and they continue to refuse to do it. Hence, why I filed this declaratory judgment.

Now, Mr. Chambers has also given me credit for being president of the Tea Party. I work with the Tea Party. I'm not president of the Tea Party.

My donation, yes, it was rather de minimis. If he was to check their process to make sure they are doing it the right way.

Mr. Chambers brought up the fact that in part of our e-mail -- and I don't send out those e-mails. My wife actually runs the nonprofit that was working in this program in the first three years and represented eighty-five percent of the fund raising, eighty-five percent of the schools and families that got the -- you know, did a great job by leaps and bounds better than these guys and she sends that information out.

He gives me -- you know, everybody thinks I ran it. I don't know why they keep saying these type of things, but in that e-mail that he cited, for three weeks in a row publishing the fact that their nonprofit status with the

Secretary of State's office was expired.

Now, our biggest donor in the old days are like, when she was running it, the biggest donor was I think two and a half, three million dollars. Are you going to even give a hundred dollars, or ten thousand dollars, much less millions of dollars, to an organization whose legal status of the South Carolina Secretary of State's Office is expired? You don't do that. That is the first thing a CPA checks. You check and make sure they are a 501(c)(3), make sure their legal status with the Secretary of State. It took three weeks of publishing and publishing and publishing the fact that they couldn't get it done. It's a go on line, file it electronically and it's updated neatly and pay your fifty dollar fee. They wouldn't do it.

We point these type of things out and that's why I made the donation to figure out if they are even doing it right, because they have no experience. They hired the chairman of the South Carolina GOP and pay him, the rumor being, a hundred and thirty, a hundred and forty thousand dollars a year to be a figure head, because he doesn't know how to run a nonprofit.

The other thing, just from what the main issues were, standing? If I was suing a regular nonprofit, absolutely, I shouldn't be here. This is not a normal nonprofit. This is a legislatively created nonprofit with a

government legislatively appointed board. This is -- I am a taxpayer of this state. As a taxpayer and as a donor to this program, knowing the legal limitations.

You cannot limit a normal nonprofit two percent. The U.S. Supreme Court said you can't -- the states can't say American Red Cross can only spend so much on administrative expenses. This is a different nonprofit. That's why the State can limit theirs, but this is run by the Department of Revenue. That's part of what I gave you an affidavit from January 24th, 2018. It's another court. It's about fifty some odd pages. It's got advertisements of the Department of Revenue for this nonprofit to raise money for it.

I spoke to a former candidate running for governor that told me the director of the Department of Revenue was out soliciting donations for it. If you wanted to donate stock, which is the normal thing to donate to a nonprofit, you had to call a phone number at the Department of Revenue and talk to a Department of Revenue employee to donate stock. Maybe you can call these guys down, but they were -- the Department of Revenue is by law charged with administering the program. Chad Connelly was hired by the five person board and the director of the Department of Revenue. That is written into the law.

I'm not -- this is not a normal nonprofit. This

is not me suing American Red Cross. This is me suing a government legislatively appointed. That's where the standing issue. I'll be happy to --

THE COURT: All right. Thank you very much.

Here is the plan, gentlemen. I'm going to give the plaintiff ten days to respond to the motion to dismiss, motion for sanctions.

After he submits his, I will give the defendants ten days to respond to any new matters raised by the plaintiff as it relates to the motion to dismiss and motion for sanctions. Okay.

And then once I -- once I receive that, then I'll review and make a decision, or I will review and request some additional information, or I will review and request another hearing in the case.

I don't know until I digest all of this material and future material that you are going to send to me. So that's kind of the plan, but the first part of the plan the plaintiff has ten days to respond to your two motions. Defendants have a chance to respond to any new matters he brings out and then we will go from there. Okay.

All right. Thank y'all for your hard work and this matter is adjourned.

MR. DAVIS: Thank you, Your Honor.

MR. CHAMBERS: Thank you very much, Your Honor.

MR. NOVAK: Thank you, Your Honor.

MR. DAVIS: And to clarify, the motion for injunction is pending during that period?

THE COURT: Right, the motion for temporary injunction is pending until we get everything for me to consider.

MR. NOVAK: Thank you, Your Honor.

THE COURT: Thank you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Newberry County, South Carolina, on the 5th day of March, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MAY 14, 2020

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Hon. Donald B. Hocker, Circuit Court Judge

C.A. No.: 2020-CP-36-00093
Appellate Case No. 2020-001348

Jefferson Davis, Jr. .....Appellant,

v.

Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund .....Respondents.

CERTIFICATE OF COUNSEL / APPELLANT

As required by Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

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