

VOLUME 1 OF 2

(Pages 0 to 250)

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

RECEIVED

Aug 24 2022

SC Court of Appeals

Jefferson Davis, Jr.Appellant,

v.

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

RECORD ON APPEAL

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Attorneys for Respondents

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3600093

Jefferson Davis, Jr
PLAINTIFF(S)

Chad Connelly et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The plaintiff requested an emergency temporary restraining order, without notice, pursuant to Rule 65, SCRPC. Having reviewed the documents filed, there does not appear to be a supporting affidavit or verified complaint, as required by the Rule. Further, this situation does not appear to be one which is appropriate for a restraining order, without notice. The plaintiff may contact Judge Hocker's office to request a hearing on a preliminary injunction, after notice. The Complaint was filed two weeks ago.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/26/2020 .

Jefferson Davis, Jr for Jefferson Davis, Jr
S C Educational Fund Credit For Exceptional Needs Children F
Tom Persons
Chad Connelly
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600093

Type: Order/Electronic Form 4

Circuit Judge (Code #2050)

s/ William P. Keesley

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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

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.

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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

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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), SCRC.P.

AND IT IS SO ORDERED.

May____, 2020

The Honorable Donald B. Hocker

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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

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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

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, SCRC. 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

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

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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

COUNTY OF NEWBERRYJEFFERSON DAVIS, JR.

Plaintiff(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020 -CP- 36-00093vs.
CHAD CONNELLY, TOM PERSONS & S.C. EDUCATIONAL
CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

Defendant(s)

Submitted By: Jefferson Davis, Jr.Address: 403 McCarter Avenue
Greenville, SC 29615SC Bar #: n/a - Pro SeTelephone #: 843-901-8036 (cell)

Fax #:

Other:

E-mail: jeff@apogeetax.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

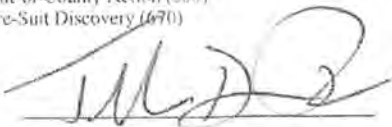
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
<u>20 -NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Incapacitated Adult
Settlement (790)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☒ Other (699) <u>Judgment</u>
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an
Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | | |

Submitting Party Signature: Date: February 12, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)

) C.A. NO. 2020-CP-36- 00093
)

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



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

PLAINTIFF

February 12, 2020
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)
)

C.A. NO. 2020-CP-36-

00093

**COMPLAINT FOR
DECLARATORY JUDGMENT &
INJUNCTIVE RELIEF**

STATEMENT OF CLAIMS

COMES NOW the Plaintiff, **Jefferson Davis, Jr.**, seeking a Declaratory Judgment against the above named Defendants declaring that they have violated S.C. Code Ann. § 12-6-3790(B)(4) which states the "public charity may expend up to two percent of the fund for administration and related costs",

Our Supreme Court has long recognized a citizen's right to judicial process to decide a matter of great public importance necessary to provide future guidance. ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008). Illegal acts by public officials constitute a matter of great public importance. See Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E. 2d 69, 75 (1999); see also Sloan v. School Dist. Of Greenville County, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (2000) (holding plaintiff had standing as citizen and taxpayer: "Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts Taxpayers must have some mechanism of enforcing the law.") (citation omitted).

The statute at issue in this case caps the overhead expense allowed for **Defendant South Carolina Educational Credit for Exceptional Needs Children Fund** (hereinafter “**ECENC Fund**”). Plaintiff requests that this Court decide this matter because if the Defendants are allowed to circumvent the plain language of the statute limiting administrative expenses to **no more than two percent**, then there is no limit at all on the administrative expenses the Defendants can spend. This issue is of such public importance as to require its resolution for future guidance, to stop the current over-spending which is robbing our states K-12 children with special needs of the scholarships they were promised, and to reimburse the program for funds overspent by Defendants.

This Complaint details (with supporting CPA documents) that **\$99,935** has been illegally misappropriated (in Plaintiff’s belief “embezzled” pursuant to the criminal code S.C. Code Ann. § 16-13-230 – Breach of Trust with Fraudulent Intent) by the non-profit’s Executive Director, **Mr. Chad Connelly**, and Board Chairman, **Mr. Tom Persons**, for the fiscal year 7/1/2018 – 6/30/2019. All indications are that the misappropriation (again, in Plaintiff’s belief “embezzlement”) is ongoing with an additional **\$125,643** accruing since 7/1/2019 (see below calculations) **approaching a grand total of approximately \$250,000** and as such requires immediate attention of this Court to cease further illegal misappropriations in excess of the statutory limit of two percent.

Jefferson Davis, Jr. (hereinafter “Plaintiff”) shows unto the Court as follows:

PLAINTIFF

1. Plaintiff **Jefferson Davis, Jr.** is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina. Plaintiff was born in Charleston, SC, attended K-

12 in South Carolina, is a graduate of The Citadel in Charleston, SC, and received a law degree and Masters of Business Administration from the University of South Carolina. Plaintiff is a tax attorney (not a litigator), a member of the Georgia Bar and a licensed CPA in Georgia. Plaintiff has been solicited by and is a donor to Defendant ECENC Fund.

DEFENDANTS

2. Defendant **Chad Connelly** (hereinafter “Connelly”) is the Executive Director of Defendant **South Carolina Educational Credit for Exceptional Needs Children Fund**, a resident of **Newberry County** and a citizen of the State of South Carolina residing at 107 Connelly Drive, Prosperity, South Carolina 29217. Defendant Connelly is also a Board Member of Palmetto Family Council and Palmetto Family Alliance, and a former Board Member of South Carolinians for Responsible Government and the SCRG Foundation. Defendant Connelly is also President and a Board Member of **Faith Wins**, a principal with **Faith Wins Action**, and former statewide Chairman of the SC Republican Party (SCGOP).
3. Defendant **Tom Persons** (hereinafter “Persons”) is the Board Chairman of Defendant **South Carolina Educational Credit for Exceptional Needs Children Fund**, a principal of Lindsay & Persons Public Relations, LLC, President & CEO of the South Carolina Technology Alliance, a resident of Richland County and a citizen of the State of South Carolina residing at 100 Dibble Lane, Columbia, South Carolina 29223.

4. Defendant **South Carolina Educational Credit for Exceptional Needs Children Fund** (hereinafter “ECENC Fund”) is a South Carolina legislatively created non-profit organization formed by the State of South Carolina having its operations administered by Defendant South Carolina Department of Revenue. The ECENC Fund does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County. **Rick Reames** former Director of Defendant South Carolina Department of Revenue, is the registered agent of Defendant ECENC Fund with an address of 1201 Main St., Suite 985, Columbia, South Carolina 29201.

JOINT & SEVERAL

5. All Defendants herein are sued jointly and severally.

JURISDICTION AND VENUE

6. This court has jurisdiction of the subject matter of this complaint and of the parties. Venue is proper.

FACTUAL ALLEGATIONS

7. The ECENC Fund is a single purpose legislatively created 501(c)(3) entity that is strictly regulated and governed by S.C. Code Ann. § 12-6-3790.
8. The applicable provision related to this complaint is as follows: **“The public charity may expend up to two percent of the fund for administration and related costs.”** S.C. Code Ann. § 12-6-3790(B)(4).

9. S.C. is one of 18 states with a K-12 tax credit scholarship program such as the one administered by Defendant ECENC Fund.
10. All of the aforementioned K-12 tax credit scholarship programs, and all non-profits administering said programs (well over 500 nationally), have a maximum percentage (two percent in the case of the ECENC Fund) of annual donations as the limit of available funds which can be used on an annual basis for administration and related costs.
11. For all non-profits participating in K-12 tax credit scholarship programs nationwide, compliance with this legal maximum of expenses is one of the most important and critical legal and statutory compliance measures.
12. The ECENC Fund administrative expenses are capped at two percent of net annual donations (aka contributions) plus investment income.
13. The legislative intent of S.C. Code Ann. § 12-6-3790(B)(4) was to cap the ECENC Fund at two percent of administrative expenses.
14. The ECENC Fund confirms the definition and methodology of how the legal maximum administration expenses are calculated – using total contributions, net of returns, plus any investment income.
15. The ECENC Fund reported in its Independent Audit Report for the years ending June 30, 2018 and 2017 (page 6) the following:

“The [ECENC Fund] may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the ‘fund’ is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year.”

16. The following is a screenshot (emphasis added) of the immediately above referenced disclosure in the ECENC Funds Independent Audit Report for the years ending June 30, 2018 and 2017 (page 6):

Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the “Department”), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the “fund” is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

SEE COMPLAINT ATTACHMENT #1 – PAGE 9.

17. The ECENC Fund donor solicitation materials state that at least 98% of all funds donated go directly to K-12 children’s scholarships and that no more than 2% of donations will be used for administrative expenses.
18. The ECENC Fund states on its website the following: “As stated in legislation, 98% of all donations go directly to student scholarships and 2% supports program administration costs.”
19. The following is a screenshot (emphasis added) of the immediately above referenced disclosure on the ECENC Funds website:

Scholarship Fund - Exceptional x +
exceptionalsc.org/donors/scholarship-fund/

Scholarship Fund

What is the Exceptional SC Scholarship Fund?

The Exceptional SC 501(c)(3) scholarship fund (also known as the Educational Credit for Exceptional Needs Children) was created by the South Carolina Legislature. The fund is made up of tax-deductible donations that serve as scholarships for the private school tuition of exceptional needs students in South Carolina. To receive a scholarship, exceptional needs students **complete an application** to prove eligibility. The **Exceptional SC board** reviews applications and awards scholarships based on a number of criteria. Students who are awarded the scholarship must **attend a school that the Education Oversight Committee has approved** for program participation.

As stated in legislation, 98% of all donations go directly to student scholarships and 2% supports program administrative costs.

Who Can Donate

How to Donate



20. An analysis of the 7/1/2018 – 6/30/2019 CPA prepared financial statements demonstrates a misappropriation of \$99,935 above the maximum two percent expense ratio required by law and promised in the ECENC Fund donor solicitations.
21. The following is an analysis of the year-ending 6/30/2019 CPA prepared financial statements detailing the immediately above referenced misappropriation of \$99,935 above the maximum two percent expense ratio required by law and promised in the ECENC Fund donor solicitations.

Exceptional SC - Misappropriating Funds

Fiscal Year 7/1/2018 - 6/30/2019 Fundraising: \$11,575,509 *Per 1/15/2020 CPA Compilation Report*
 Maximum Fee % allowed by law: 2.00% *Per Section 12-6-3790 (B)(4)*

TOTAL ALLOWED EXPENSES: \$231,510

7/1/2018 - 6/30/2019

Exhibit B

Salary	\$31,500	<i>Per 1/15/2020 CPA Compilation Report</i>
Payroll Taxes	\$1,982	<i>Per 1/15/2020 CPA Compilation Report</i>
Office Expenses	\$224	<i>Per 1/15/2020 CPA Compilation Report</i>
Contract Services *	\$246,332	<i>Per 1/15/2020 CPA Compilation Report</i>
Legal & Professional	\$11,200	<i>Per 1/15/2020 CPA Compilation Report</i>
Bank Fees	\$21,154	<i>Per 1/15/2020 CPA Compilation Report</i>
Misc	\$8,653	<i>Per 1/15/2020 CPA Compilation Report</i>
Website	\$10,400	<i>Per 1/15/2020 CPA Compilation Report</i>
TOTAL ACTUAL EXPENSES:	\$331,445	<i>Per 1/15/2020 CPA Compilation Report</i>

TOTAL ALLOWED EXPENSES: \$231,510

TOTAL ACTUAL EXPENSES: (\$331,445)

EXCESS FUNDS EXPENDED: (\$99,935) **Misappropriated funds**

* Upon information and belief, the \$246,332 for "Contract Services" is the amounts paid to Executive Director Chad Connelly and allied parties either directly or indirectly. No further detail has been provided by the SC Department of Revenue.

Section 12-6-3790 (B)(4): "The public charity may expend up to two percent of the fund for administration and related costs."

22. Upon information and belief, the misappropriated \$99,935 was paid directly to or via an entity to Defendant Chad Connelly.
23. Upon information and belief, the misappropriated \$99,935 was authorized solely by Defendant Tom Persons.

24. Upon information and belief, the Board of the ECENC Fund did not authorize administrative expenses to exceed the two percent legal maximum of S.C. Code Ann. § 12-6-3790(B)(4).

25. The S.C. Department of Revenue did not authorize administrative expenses to exceed the two percent legal maximum of S.C. Code Ann. § 12-6-3790(B)(4). **SEE COMPLAINT ATTACHMENT #1 – PAGE 27.**

In response to the first bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that at no time has it authorized or opined that administrative expenses could exceed two percent.

Ongoing Misappropriation Since 7/1/2019 & DAMAGES

26. For the ECENC Fund's current fiscal year beginning July 1, 2019, for the first six-month period (7/1/2019 – 12/31/2019) the ECENC Fund has only raised \$2,003,988.69. **SEE COMPLAINT ATTACHMENT #1 – PAGE 28 & 29 (S.C. Department of Revenue disclosure).**

27. Two percent of \$2,003,988.69 is \$40,079.77.

28. Approximately \$40,079.77 is the maximum amount of administrative expenses the ECENC Fund was legally allowed to spend during the six-month period of 7/1/2019-12/31/2019.

29. Upon information and belief, the Defendants have spent on administrative expenses in excess of the two percent legal maximum allowed by S.C. Code Ann. § 12-6-3790(B)(4).
30. Upon information and belief, the excess spending since 7/1/2019 was paid directly to or via an entity to Defendant Chad Connelly.
31. Upon information and belief, the excess spending since 7/1/2019 was authorized solely by Defendant Tom Persons.
32. Upon information and belief, the Board of the ECENC Fund did not authorize administrative expenses since 7/1/2019 to be in excess of the two percent legal maximum of S.C. Code Ann. § 12-6-3790(B)(4).
33. The following is an analysis of the first six-months of the ECENC Funds current fiscal year beginning 7/1/2019 estimating misappropriation during this time period at \$125,643.

Exceptional SC - Misappropriating Funds?

EXHIBIT D

July 2019	\$141,978.29	<i>Per SC Department of Revenue</i>
August 2019	\$49,464.46	<i>Per SC Department of Revenue</i>
September 2019	\$189,559.67	<i>Per SC Department of Revenue</i>
October 2019	\$133,350.00	<i>Per SC Department of Revenue</i>
November 2019	\$70,450.32	<i>Per SC Department of Revenue</i>
December 2019	\$1,419,185.95	<i>Per SC Department of Revenue</i>
Six Month Total:	<u>\$2,003,988.69</u>	

Total Six Mth Fundraising:	\$2,003,988.69
Maximum Fee % Allowed:	2.00%
Allowed Expenses to Date:	<u>\$40,079.77</u>

TOTAL ALLOWED EXPENSES:	\$40,080	
TOTAL ESTIMATED EXPENSES:	<u>(\$165,723)</u>	50% of Prior Year Actual
ESTIMATED EXCESS FUNDS EXPENDED:	<u>(\$125,643)</u>	

Estimated additional misappropriation since 7/1/2019

34. Parents and children that these scholarships were intended to aid have been damaged by Defendants' actions in that the families have either failed to receive scholarships, failed to receive timely scholarships or received reduced scholarship awards.
35. Schools serving the children intended to benefit from these scholarships have also suffered damages in delayed tuition payments and inability to admit (without payment) students intended to benefit from this program given the schools do not know if scholarships will ever be awarded.
36. Fundraising has also been impaired, further damaging the parents, children and schools, due to **Defendant Connelly** and **Defendant Persons'** misappropriation of

funds, their apparent attempts to cover-up the misappropriations, and their failure to correct their ongoing actions.

A FIRST CLAIM FOR RELIEF

(Violation of § 12-6-3790(B)(4) – two percent cap on administrative expenses)

37. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

38. S.C. Code Ann. § 12-6-3790(B)(4) prohibits Defendants from spending in excess of two percent on administrative expenses.

39. The ECENC Fund spent on administrative expense in fiscal year 7/1/2018 – 6/30/2018 a total of **\$99,935** in excess of the legally allowed limit in violation of S.C. Code Ann. § 12-6-3790(B)(4).

40. Defendants have failed to acknowledge their violation of S.C. Code Ann. § 12-6-3790(B)(4), have apparently only acted to cover-up the violation, and as such made it necessary to file this complaint.

A SECOND CLAIM OF RELIEF

(Preliminary and Permanent Injunctive Relief)

41. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

42. Defendants have failed to make any corrective action to cease their ongoing violation of S.C. Code Ann. § 12-6-3790(B)(4). As such it has become necessary to file this

complaint seeking an immediate preliminary injunction and eventually a permanent injunction ordering Defendants to cease violating the two percent maximum.

A THIRD CLAIM OF RELIEF
(Unjust Enrichment & Repayment of Converted Funds)

43. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.
44. Defendant Connelly and Persons have been unjustly enriched in the amount of \$99,935 for the fiscal year 7/1/2018 – 6/30/2019 and a to be determined amount for the current 7/1/2019 – 6/30/2020 fiscal year.
45. Being unjustly enriched, Defendants Connelly and Persons should be compelled to repay the misappropriated funds to the ECENC Fund so that the funds can be used for their intended purpose of K-12 children's scholarships.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Issue a declaratory judgment stating that Defendants have violated S.C. Code Ann. § 12-6-3790(B)(4) by expending more than the legally allowed "two percent of the fund for administration and related costs."
- B. Enter appropriate preliminary and permanent injunctive relief to ensure that Defendants do not expend more than the legally allowed "two percent of the fund for administration and related costs."

- C. Order Defendants Connelly and Persons to reimburse the ECENC Fund for all funds expended over the legally allowed “two percent of the fund for administration and related costs” plus any other actual and punitive damages suffered because of this misappropriation.
- D. Award Plaintiff the costs of this action; and
- E. Grant Plaintiff such further and additional relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'JMD', is written over a horizontal line.

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

PLAINTIFF

February 12, 2020
Greenville, South Carolina

AUDITED FINANCIAL STATEMENTS
*SOUTH CAROLINA EDUCATIONAL CREDIT
FOR
EXCEPTIONAL NEEDS CHILDREN FUND*

June 30, 2018

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June 30, 2018

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
South Carolina Educational Credit for Exceptional Needs Children Fund

REPORT ON THE FINANCIAL STATEMENTS

We have audited the accompanying financial statements of South Carolina Educational Credit for Exceptional Needs Children Fund (a nonprofit organization), which comprise the statements of assets, liabilities, and net assets – modified cash basis as of June 30, 2018 and 2017, and the related statements of support, revenue, and expenses – modified cash basis for the years then ended, and the related notes to the financial statements.

MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting as described in Note A; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net assets of South Carolina Educational Credit for Exceptional Needs Children Fund as of June 30, 2018 and 2017, and its support, revenue, and expenses for the years then ended in accordance with the modified cash basis of accounting as described in Note A.

BASIS OF ACCOUNTING

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Columbia, South Carolina
January 15, 2019

The Hall Group, P.A.

AUDITED FINANCIAL STATEMENTS

STATEMENTS OF ASSETS, LIABILITIES, AND NET ASSETS - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

		June 30,	
		2018	2017
ASSETS			
Current Assets			
Cash and cash equivalents		\$ 3,361,511	\$ 280,730
Total Current Assets		3,361,511	280,730
Noncurrent Assets			
Investments		69,233	0
Intangible assets, net		10,400	20,800
Total Noncurrent Assets		79,633	20,800
TOTAL ASSETS		<u>\$ 3,441,144</u>	<u>\$ 301,530</u>
LIABILITIES AND NET ASSETS			
Liabilities			
Total Liabilities		\$ 0	\$ 0
Net Assets			
Unrestricted		137,111	85,835
Temporarily restricted		3,304,033	215,695
Total Net Assets		<u>3,441,144</u>	<u>301,530</u>
TOTAL LIABILITIES AND NET ASSETS		<u>\$ 3,441,144</u>	<u>\$ 301,530</u>

The accompanying notes are an integral part of these financial statements

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2018

	Unrestricted	Temporarily Restricted	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 14,105,223	\$ 14,105,223
Interest	\$ 2,651		2,651
Net assets released from restrictions	11,016,885	(11,016,885)	0
Total Revenues and Other Support	11,019,536	3,088,338	14,107,874
EXPENSES			
Program services	10,874,403		10,874,403
Management and general	91,257		91,257
Fundraising	2,600		2,600
Total Expenses	10,968,260	0	10,968,260
CHANGE IN NET ASSETS	51,276	3,088,338	3,139,614
Net assets at beginning of year	85,835	215,695	301,530
NET ASSETS AT END OF YEAR	\$ 137,111	\$ 3,304,033	\$ 3,441,144

The accompanying notes are an integral part of these financial statements.

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2017

	Unrestricted	Temporarily Restricted	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 10,030,001	\$ 10,030,001
Scholarship funding organization residual funds		52,110	52,110
Interest	\$ 677		677
Net assets released from restrictions	9,866,416	(9,866,416)	0
Total Revenues and Other Support	9,867,093	215,695	10,082,788
EXPENSES			
Program services	9,724,926		9,724,926
Management and general	53,732		53,732
Fundraising	2,600		2,600
Total Expenses	9,781,258	0	9,781,258
CHANGE IN NET ASSETS	85,835	215,695	301,530
Net assets at beginning of year	0	0	0
NET ASSETS AT END OF YEAR	<u>\$ 85,835</u>	<u>\$ 215,695</u>	<u>\$ 301,530</u>

The accompanying notes are an integral part of these financial statements

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2018

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Activities

South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization") was incorporated in South Carolina on June 16, 2016. The Organization's mission is to provide scholarship grants to K through 12th grade "exceptional needs" children by means of the efficient implementation of the South Carolina State Budget Proviso (the "Proviso" or "Program"). The Proviso is also commonly referred to as the Educational Credit for Exceptional Needs Children (ECENC).

South Carolina Educational Credit for Exceptional Needs Children Fund is the sole organization distributing scholarship grants as defined under the terms of the Proviso. Activities of the Organization are limited to accepting contributions eligible for a tax credit under the terms of the Proviso and issuing scholarships to eligible children in accordance with the Proviso. The Organization shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

In an act dated and signed May 14, 2018, the Governor signed into permanent law by adding section 12-6-3790 to provide definitions and to create the ECENC which sets limits for tax credits available and the way the scholarships should be awarded.

Summary of Significant Accounting Policies

Basis of Accounting: The financial statements of the Organization are prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (GAAP). Management has determined that the modified cash basis of accounting is an acceptable basis for the presentation of the Organization's financial statements, and the opinion in our Independent Auditors' Report is not modified with respect to this matter.

Basis of Presentation: The Organization prepares its financial statements in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 958, Financial Statements of Not-for-Profit Organizations. Under ASC 958, the Organization is required to report information regarding its financial position and activities according to three net asset categories: unrestricted, temporarily restricted, and permanently restricted. The three categories are defined as follows:

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Unrestricted Net Assets: net assets that are not subject to donor-imposed restrictions as provided by the Proviso.

Temporarily Restricted Net Assets: net assets subject to donor-imposed stipulations, which are met by either actions of the Organization and/or the passage of time. When a donor-imposed restriction is met, that is, when the stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restriction. Temporarily restricted net assets represent net assets designated specifically for scholarships and grants pursuant to the Proviso.

Permanently Restricted Net Assets: net assets subject to donor-imposed stipulations neither expire by passage of time nor can be fulfilled or otherwise be removed by actions of the Organization. As of June 30, 2018 and 2017, the Organization has no permanently restricted net assets.

Cash and Cash Equivalents: The Organization considers all highly liquid investments available for current use with an initial maturity of three months or less, to be cash equivalents. The carrying value of cash approximates fair value because of the short maturities of these financial instruments.

Intangible Asset: Consists of capitalized costs associated with the Organization's website. The costs of the website are amortized on a straight-line basis over its estimated useful life of three years.

Contributions: Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions. All donor-restricted support is reported as an increase in temporarily or permanently restricted net assets, depending on the nature of the restriction. When a restriction expires or the purpose of the restriction is satisfied temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Contributions received with donor-imposed restrictions that are met in the same year in which the contributions are received are classified as unrestricted contributions.

Investments: Investments in marketable securities with readily determinable market values are reported at their fair value in the statements of assets, liabilities, and net assets – modified cash basis. Investment income or loss (including unrealized and realized gains on investments, interest and dividends) are included in the statements of support, revenues and expenses – modified cash basis as an increase in unrestricted net assets if the restrictions are met (either by the passage of time or accomplishment of a purpose restriction) in the reporting period in which the income and gains are recognized.

Estimates: The preparation of the financial statements in conformity with accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The significant estimates in these financial statements are the functional allocation of expenses, and the fair value measurements of assets (Note C).

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Functional Allocation of Expenses: Management estimates the Organization's indirect expenses on a functional basis. Management's estimates of other indirect costs are based on pro-rated percentages as determined by management. Expenses that can be identified with a specific program or supporting service are charged directly to the program or supporting service.

Income Taxes: The Organization has received a determination letter from the Internal Revenue Service (IRS) indicating it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Organization has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Organization and recognize a tax liability (or asset) if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Organization, and has concluded that as of June 30, 2018 and 2017, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Organization is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations for tax years prior to 2015.

Donor-Imposed Restrictions: The Organization limits any donor-imposed restrictions on contributions to those allowed by the Proviso so that the contribution will be eligible for a tax credit. In order for contributions to be eligible for a tax credit, the Proviso prohibits donors from designating a specific child or school as the beneficiary of the contribution. The Organization does not accept contributions designated for the benefit of a specific child or school.

Educational Credit for Exceptional Needs Children Program: The 2017-2018 and 2016-2017 South Carolina State Budget Provisos 109.11 and 109.15, respectively, allows for the issuance of a total of \$11,000,000 and \$10,000,000, respectively, in individual scholarship grants in an amount not exceeding \$11,000 (as may be adjusted) or the total cost of tuition (whichever is less). These funds may be used for tuition, transportation or textbook expenses for eligible "exceptional needs" children attending approved South Carolina independent schools. Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

The Organization may not award grants solely for the benefit of one school. The Department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain. The Department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

The Provisos also limit the Organization to administrative and related expenses of not more than 2% of the fund.

Recent Accounting Pronouncements and Proposed Accounting Pronouncements: In August 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update ("ASU") 2016-14 *Not-for-Profit Entities* (Topic 958), *Presentation of Financial Statements of Not-for-Profit Entities*. The amendments in the update make certain improvements that address many of the identified issues of current financial reporting for not-for-profits. A second phase of the project is expected to address more protracted issues identified by the FASB. The update addresses some of the current financial reporting challenges as follows: 1) reduces complexity in reporting donor imposed restrictions; 2) improves transparency and utility in assessing a not-for-profit's liquidity; and 3) enhances the consistency of reporting of not-for-profit expenses by nature and function. The amendments in this update go into the effect for annual financial statements issued for year's beginning after December 15, 2017.

Reclassifications: Certain reclassifications have been made to the 2017 account classifications to make the presentation comparative to the 2018 presentation. These reclassifications have no impact on net assets as previously reported.

Subsequent Events: Subsequent events have been evaluated through January 15, 2019, which represents the date the financial statements were available to be issued.

NOTE B -- CONCENTRATION OF CREDIT RISK

The Organization maintains cash balances that at times, may exceed amounts insured. Accounts at each financial institution are insured by the Federal Deposit Insurance Corporation (FDIC insured) up to \$250,000 for bank and certificate of deposit balances. The Organization believes it is not exposed to any significant credit risk on its cash balances. The bank balances consist of the following at June 30:

	2018	2017
Cash and cash equivalents		
on deposit insured by the FDIC	\$ 250,000	\$ 250,000
Cash and cash equivalents		
on deposit uninsured by the FDIC	423,458	830
	<u>\$ 673,458</u>	<u>\$ 250,830</u>

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE C -- FAIR VALUE MEASUREMENTS

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy under FASB ASC 820 are described as follows:

Level 1 Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Organization has the ability to access.

Level 2 Inputs to the valuation methodology include:

- quoted prices for similar assets or liabilities in active markets;
- quoted prices for identical or similar assets or liabilities in inactive markets;
- inputs other than quoted prices that are observable for the asset or liability;
- inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodology used for the investments measured at fair value.

Common Stock: Valued at the closing price reported on the New York Stock Exchange.

The following table sets forth by level, within the fair value hierarchy, the Organization's assets at fair value as of June 30, 2018:

	Assets at Fair Value as of June 30, 2018			
	Level 1	Level 2	Level 3	Total
Common Stock	\$ 69,233			\$ 69,233
TOTAL ASSETS AT FAIR VALUE	\$ 69,233	\$ 0	\$ 0	\$ 69,233

There were no investments held by the Organization as of June 30, 2017.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE D -- INTANGIBLE ASSET

Intangible asset is as follows at June 30:

	2018	2017
Website	\$ 31,200	\$ 31,200
Less: Accumulated Amortization	(20,800)	(10,400)
INTANGIBLE ASSET, NET	\$ 10,400	\$ 20,800

Amortization charged to expense for the both years ended June 30, 2018 and 2017, was \$10,400.

NOTE E -- TEMPORARILY RESTRICTED NET ASSETS

A summary of temporarily restricted net assets is as follows at June 30:

	2018	2017
Restricted to scholarship grants for eligible "exceptional needs" children enrolled at approved South Carolina Independent Schools	\$ 3,384,039	\$ 215,695

Included in net assets released from restrictions in 2018 and 2017 is \$230,881 and \$115,821, respectively, spent for administrative and related costs.

COMPILED FINANCIAL STATEMENTS

*SOUTH CAROLINA EDUCATIONAL CREDIT FOR
EXCEPTIONAL NEEDS CHILDREN FUND*

June 30, 2019

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June 30, 2019

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Management is responsible for the accompanying financial statements of South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization"), which comprise the statement of assets, liabilities, and net assets - modified cash basis as of June 30, 2019 and the related statements of support, revenue, and expenses and functional expenses - modified cash basis for the year then ended and the related notes to the financial statements in accordance with the modified cash basis of accounting, and for determining that the modified cash basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements, nor were we required to perform any procedures to verify the accuracy or the completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared in accordance with the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

We are not independent with respect to the Organization.

Columbia, South Carolina
January 15, 2020

The Hobbs Group, P.A.

COMPILED FINANCIAL STATEMENTS

STATEMENT OF ASSETS, LIABILITIES, AND NET ASSETS - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 June 30, 2019

ASSETS

Current Assets

Cash and cash equivalents

	\$ 2,850,552
Total Current Assets	<u>2,850,552</u>

TOTAL ASSETS	<u><u>\$ 2,850,552</u></u>
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LIABILITIES AND NET ASSETS

Liabilities

	\$ -
Total Liabilities	<u>-</u>

Net Assets

Without donor restrictions

58,330

With donor restrictions

2,792,222

Total Net Assets	<u>2,850,552</u>
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TOTAL LIABILITIES AND NET ASSETS	<u><u>\$ 2,850,552</u></u>
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See accountants' compilation report and notes to the financial statements.

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

	Net Assets Without Donor Restrictions	Net Assets With Donor Restrictions	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 11,562,752	\$ 11,562,752
Investment income	\$ 12,757		12,757
Net assets released from restrictions	12,074,563	(12,074,563)	-
Total Revenues and Other Support	12,087,320	(511,811)	11,575,509
EXPENSES			
Program services	12,025,514		12,025,514
Management and general	137,987		137,987
Fundraising	2,600		2,600
Total Expenses	12,166,101	-	12,166,101
CHANGE IN NET ASSETS	(78,781)	(511,811)	(590,592)
Net assets at beginning of year	137,111	3,304,033	3,441,144
NET ASSETS AT END OF YEAR	\$ 58,330	\$ 2,792,222	\$ 2,850,552

See accountants' compilation report and notes to the financial statements.

STATEMENT OF FUNCTIONAL EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

	Program Services	Supporting Services		Total
		Management and General	Fundraising	
Awards and grant scholarships	\$ 11,834,656			\$ 11,834,656
Salaries and wages		\$ 31,500		31,500
Payroll taxes		1,982		1,982
Office		224		224
Contract services	183,578	62,754		246,332
Professional and legal fees		11,200		11,200
Bank fees		21,154		21,154
Miscellaneous		8,653		8,653
Amortization	7,280	520	\$ 2,600	10,400
TOTAL EXPENSES	<u>\$ 12,025,514</u>	<u>\$ 137,987</u>	<u>\$ 2,600</u>	<u>\$ 12,166,101</u>

See accountants' compilation report and notes to the financial statements.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2019

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Activities

South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization") was incorporated in South Carolina on June 16, 2016. The Organization's mission is to provide scholarship grants to K through 12th grade "exceptional needs" children by means of the efficient implementation of the South Carolina State Budget Proviso (the "Proviso" or "Program"). The Proviso is also commonly referred to as the Educational Credit for Exceptional Needs Children (ECENC).

South Carolina Educational Credit for Exceptional Needs Children Fund is the sole organization distributing scholarship grants as defined under the terms of the Proviso. Activities of the Organization are limited to accepting contributions eligible for a tax credit under the terms of the Proviso and issuing scholarships to eligible children in accordance with the Proviso. The Organization shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

In an act dated and signed May 14, 2018, the Governor signed into permanent law by adding section 12-6-3790 to provide definitions and to create the ECENC which sets limits for tax credits available and the way the scholarships should be awarded.

Summary of Significant Accounting Policies

Basis of Accounting: The financial statements of the Organization are prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (GAAP). Management has determined that the modified cash basis of accounting is an acceptable basis for the presentation of the Organization's financial statements.

Basis of Presentation: The Organization classifies its resources for accounting and reporting purposes into two classes of net assets, according to externally imposed restrictions:

Net assets without donor restrictions: The portion of the net assets of the Organization that can be used subject only to the broad limits resulting from the nature of the Organization,

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

the environment in which it operates, and the purposes specified in its bylaws. The Organization has the ability to choose when using these resources.

Net assets with donor restrictions: The portion of net assets of the Organization that is subject to either donor-imposed time restrictions or donor-imposed purpose restrictions. These restrictions limit the Organization's choices when using these resources as the Organization has a fiduciary responsibility to the donors to follow their instructions.

Cash and Cash Equivalents: The Organization considers all highly liquid investments available for current use with an initial maturity of three months or less, to be cash equivalents. The carrying value of cash approximates fair value because of the short maturities of these financial instruments.

Contributions: Contributions received are recorded as net assets with or without donor restricted support, depending on the existence and/or nature of any donor restrictions. All donor-restricted support is reported as an increase in net assets with donor restrictions, depending on the nature of the restriction. When a restriction expires or the purpose of the restriction is satisfied net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions.

Estimates: The preparation of the financial statements in conformity with accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The significant estimate in these financial statements is the functional allocation of expenses.

Functional Allocation of Expenses: Management estimates the Organization's indirect expenses on a functional basis. Management's estimates of other indirect costs are based on pro-rated percentages as determined by management. Expenses that can be identified with a specific program or supporting service are charged directly to the program or supporting service.

Income Taxes: The Organization has received a determination letter from the Internal Revenue Service (IRS) indicating it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Organization has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Organization and recognize a tax liability (or asset) if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Organization, and has concluded that as of June 30, 2019, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Organization is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations for tax years prior to 2016.

Donor-Imposed Restrictions: The Organization limits any donor-imposed restrictions on contributions to those allowed by the Proviso so that the contribution will be eligible for a tax credit. In order for contributions to be eligible for a tax credit, the Proviso prohibits donors from designating a specific child or school as the beneficiary of the contribution. The Organization does not accept contributions designated for the benefit of a specific child or school.

Educational Credit for Exceptional Needs Children Program: The 2018-2019 South Carolina State Budget New law act 247 approved by the Governor, allows for the issuance of a total of \$12,000,000 in individual scholarship grants in an amount not exceeding \$11,000 (as may be adjusted) or the total cost of tuition (whichever is less). These funds may be used for tuition, transportation or textbook expenses for eligible "exceptional needs" children attending approved South Carolina independent schools. Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

The Organization may not award grants solely for the benefit of one school. The Department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain. The Department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

The Provisos & Law also limit the Organization to administrative and related expenses of not more than 2% of the fund.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

New Accounting Pronouncement: In August 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*. The Organization has adjusted the presentation of its financial statements accordingly. The new standard changes the following aspects of the Organization's financial statements:

- The temporarily restricted and permanently restricted net asset classes have been combined into a single net asset class called *net assets with donor restrictions*.
- The unrestricted net asset class has been renamed net assets without donor restrictions.
- The financial statements include a new disclosure about liquidity and availability of resources.

Subsequent Events: Subsequent events have been evaluated through January 15, 2020, which represents the date the financial statements were available to be issued.

NOTE B -- CONCENTRATION OF CREDIT RISK

The Organization maintains cash balances that at times, may exceed amounts insured. Accounts at each financial institution are insured by the Federal Deposit Insurance Corporation (FDIC insured) up to \$250,000 for bank and certificate of deposit balances. The Organization believes it is not exposed to any significant credit risk on its cash balances. The bank balances consist of the following at June 30, 2019:

Cash and cash equivalents	
on deposit insured by the FDIC	\$ 250,000
Cash and cash equivalents	
on deposit uninsured by the FDIC	2,604,590
	<u>\$ 2,854,590</u>

NOTE C -- NET ASSETS WITH DONOR RESTRICTIONS

A summary of temporarily restricted net assets is as follows at June 30, 2019:

Restricted to scholarship grants for eligible	
"exceptional needs" children enrolled at approved	
South Carolina independent schools	\$ 2,792,222

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE D -- LIQUIDITY AND AVAILABILITY OF RESOURCES

The following table reflects the Organization's financial assets as of June 30, 2019, reduced by amounts not available for general expenditure within one year. Financial assets are considered unavailable when illiquid or not convertible to cash within one year, or because the Organization has set aside the funds for a specific contingency reserve. Board designations could be drawn upon if the Board approves that action.

	<u>2019</u>
Financial assets:	
Cash and cash equivalents	\$ 2,850,552
Total Financial Assets	<u>2,850,552</u>
Less those unavailable for general expenditure within one year, due to:	
Funds with donor restrictions	<u>(2,792,222)</u>
FINANCIAL ASSETS AVAILABLE TO MEET CASH NEEDS FOR GENERAL EXPENDITURES WITHIN ONE YEAR	<u>\$ 58,330</u>

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

February 4, 2020

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

Re: Freedom Of Information Act Request Dated January 24, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 24, 2020.

Your FOIA request contains three bullet points requesting documents.

Your third bullet point requests engagement letters with the Hobbs Group. The Department has elected to produce the only two such engagement letters in its possession. One is dated November 8, 2017, and the other dated August 27, 2018.

In response to the first bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that at no time has it authorized or opined that administrative expenses could exceed two percent.

In response to the second bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that it does not agree with your editorial comment or conclusion that the Hobbs Group is not independent.

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

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosures

NOTE: The Hobbs Group, P.A. affirmatively states for the first time that they are not independent. See Exhibit B, YE 6/30/2019, report page #1. The Department evidently believes / agrees that Hobbs is (or should be) professionally independent with respect to the ECENC Fund.

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

February 4, 2020

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

Re: Freedom Of Information Act Request Dated January 22, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 22, 2020.

In response to your FOIA request, the Department has elected to produce the attached list of donations to Exceptional SC by month from March through December of 2019 totaling in the amount of \$4,547,101.10.

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

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:weg
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	<u><u>4,547,101.10</u></u>

NOTE: Support for first six months of fundraising for the 7/1/2019 - 6/30/2020 fiscal year for estimating ongoing misappropriations.

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	)	
	)	Answer and Counterclaims of Defendants
Vs.	)	Chad Connelly, Thomas Persons and
	)	South Carolina Educational Credit for
Chad Connelly, Thomas Persons and	)	Exceptional Needs Children Fund
South Carolina Educational Credit for	)	
Exceptional Needs Children Fund	)	
	)	

To: Jefferson Davis, Jr.

FOR A FIRST DEFENSE
General Denial

Defendants Chad Connelly, Thomas Persons and South Carolina Educational Credit for Exceptional Needs Children Fund (Hereinafter "Exceptional SC") answer the Complaint and would respectfully show this Honorable Court as Follows:

1. The allegations, inference of standing and relief sought in introductory paragraphs without numbers are denied unless specifically admitted in answers to the numbered paragraphs below.
2. The allegations of paragraph 1 are denied in part and admitted in part. It is admitted that Plaintiff is a tax attorney and CPA licensed in Georgia. It is admitted that Plaintiff made a \$10 donation to the fund in March 2019. All other allegations are denied for lack of sufficient information to form a belief.
3. The allegations of paragraph 2 are admitted.
4. The allegations of paragraph 3 are admitted.
5. The allegations of paragraph 4 are admitted in part and denied in part. It is denied that Exceptional SC, the nonprofit corporation, is administered by the South Carolina Department of Revenue. All other allegations of paragraph 4 are admitted.
6. Defendants defer to the laws of the State of South Carolina in answer to paragraph 5. Any and all inferences and allegations of paragraph 5 not addressed by case law and statutory law are denied.

7. Jurisdiction is a matter of law and cannot be conferred by the parties; therefore, Defendants cannot admit or deny the allegations. To the extent that a response is required, the allegations of paragraph 6 are denied.
8. The allegations of paragraph 7 are admitted in part and denied in part. The Defendants deny all allegations of paragraph 7 based upon lack of clarity as to whether Defendant is discussing the actual fund itself or the nonprofit that administers that fund. Defendants further deny that the nonprofit corporation has a single purpose. Defendants admit that the nonprofit corporation was legislatively created and is described by §12-6-3970. Defendants deny that §12-6-3970 “regulates and governs” the nonprofit corporation based upon lack of sufficient clarity and specificity in Plaintiffs pleadings. All other inferences and allegations of paragraph 7 are denied or denied for lack of sufficient information to form a belief.
9. The allegations of paragraph 8 are admitted in part and denied in part. Defendants deny the contents of paragraph 8 are applicable to its current situation. Defendants admit that the statute limits spending on administrative and other costs to 2% of donations to the fund. All other allegations of paragraph 8 are denied for lack of sufficient information to form a belief.
10. The allegations of paragraph 9 are denied for lack of sufficient information to form a belief.
11. The allegations of paragraph 10 are denied for lack of sufficient information to form a belief.
12. The allegations of paragraph 11 are denied for lack of sufficient information to form a belief.
13. The allegations of paragraph 12 are denied.
14. The allegations of paragraph 13 are denied for lack of sufficient information to form a belief.
15. The allegations of paragraph 14 are denied.
16. Defendants crave reference to the audit reports for answer to paragraph 15.
17. Defendants crave reference to the audit reports for answer to paragraph 16.
18. Defendants crave reference to specific solicitation materials for answer to paragraph 17.
19. Defendants crave reference to Exceptional SC’s website for answer to paragraph 18.

20. The allegations of paragraph 19 are denied.
21. The allegations of paragraph 20 are denied.
22. The allegations of paragraph 21 are denied.
23. The allegations of paragraph 22 are denied.
24. The allegations of paragraph 23 are denied.
25. The allegations of paragraph 24 are denied in part and admitted in part. It is admitted that the Board of Exceptional SC approved all budgets, salaries and spending. It is denied that Exceptional SC has spent monies not in compliance with the law.
26. The allegations of paragraph 25 are denied for lack of sufficient information to form a belief.
27. The allegations of paragraph 26 are denied. Defendant would crave reference to financial records.
28. The defendants deny the allegations of paragraph 27 for lack of sufficient information to form a belief and would crave reference to a Texas Instruments TI-30 calculator for answer to paragraph 27.
29. The allegations of paragraph 28 are denied.
30. The allegations of paragraph 29 are denied.
31. The allegations of paragraph 30 are denied.
32. The allegations of paragraph 31 are denied.
33. The allegations of paragraph 32 are denied in part and admitted in part. It is admitted that the Board of Exceptional SC approved all budgets, salaries and spending. It is denied that Exceptional SC has spent monies not in compliance with the law.
34. The allegations of paragraph 33 are denied.
35. The allegations of paragraph 34 are denied.
36. The allegations of paragraph 35 are denied.
37. The allegations of paragraph 36 are denied.
38. Paragraph 37 does not warrant response. Any allegation of paragraph 37 not specifically admitted is denied.
39. The allegations of paragraph 38 are denied.
40. The allegations of paragraph 39 are denied.
41. The allegations of paragraph 40 are denied.

42. Paragraph 41 does not warrant response. Any allegation of paragraph 41 not specifically admitted is denied.
43. The allegations of paragraph 42 are denied.
44. Paragraph 43 does not warrant response. Any allegation of paragraph 43 not specifically admitted is denied.
45. The allegations of paragraph 44 are denied.
46. The allegations of paragraph 45 are denied.
47. The allegations of and relief sought paragraph A of the Plaintiff's prayer for relief are denied.
48. The allegations of and relief sought paragraph B of the Plaintiff's prayer for relief are denied.
49. The allegations of and relief sought paragraph C of the Plaintiff's prayer for relief are denied.
50. The allegations of and relief sought paragraph D of the Plaintiff's prayer for relief are denied.
51. The allegations of and relief sought paragraph E of the Plaintiff's prayer for relief are denied.

FOR A SECOND DEFENSE

SCRPC Rule 12(b)6 Plaintiff Fails to State a Claim for which Relief Can Be Granted

52. Plaintiff alleges damages to students receiving scholarships, parents of students receiving scholarships and schools in paragraphs.
53. Plaintiff does not allege that he is a school, parent or student damaged by Plaintiff's allegations and does not list any Parent, Student or School as a Plaintiff in this action.
54. Plaintiff is not a South Carolina licensed attorney.
55. Plaintiff cannot represent the interests of others in a South Carolina Court.
56. Plaintiff never alleges damages to himself and never alleges damages to an interest of the Plaintiff's that would warrant an injunction and other relief sought by Plaintiff.

FOR A THIRD DEFENSE

SCRPC 12(b)1 and SCRPC 12(b)6, Plaintiff Lacks Standing

57. Plaintiff lacks standing to bring an action for ultra vires.
58. The South Carolina Nonprofit Corporations Act establishes who has standing to bring an action against a corporation for acting beyond its legal power or authority in South Carolina Code §33-31-304.
59. South Carolina Code §33-31-304 specifically states that the only way the validity of a corporate action may be challenged is through South Carolina Code §33-31-304.
60. South Carolina Code §33-31-304 states that an ultra vires action can only be brought against the corporation by the Attorney General, a director of the corporation or a member of the corporation.
61. South Carolina Code §33-31-304 states that an ultra vires action can only be brought against a director or officer of the corporation by the corporation, the Attorney General, a receiver or trustee, or a legal representative of the corporation.
62. The entire basis of defendants suit is the allegation that the corporation spent money beyond what is allowed by law. This is purely an ultra vires action.
63. Plaintiff does not allege that he is the Attorney General, a receiver or trustee, represents the Corporation in a legal capacity, is a director of the corporation, is a member of the corporation or the corporation itself.
64. Plaintiff is not in a class allowed to bring an ultra vires action against the corporation or one of its directors / officers.
65. Plaintiff does not have standing to bring this action and the action must be dismissed.

FOR A FOURTH DEFENSE

Rule 11 SCRCP and the South Carolina Frivolous Proceedings Act

66. Plaintiff knew or should have known Defendants were in compliance with the law based on Plaintiff's education, certifications, professional licenses, number of years of experience, having possession of all three years of financial reports and having previously presented the allegations in the form of a complaint to the Secretary of State and Attorney General.
67. Plaintiff knew or should have known he does not have standing to bring this action based upon his legal education, 27 years as a licensed attorney, statutory law and case law.

68. Plaintiff drafted a misleading complaint and provided misleading analysis prepared by the Plaintiff to show Defendants are not in compliance with the law. Both the complaint and analysis while alarming at first glance, do not withstand even moderate scrutiny.
69. Plaintiff alleges wrongdoing on behalf of Defendants Persons and Connelly which is not supported by documentation or fact.
70. Plaintiff brought this action in an attempt to obtain financial information previously denied to Plaintiff by order of the Court.
71. Defendant signed and filed this action with the Court.
72. Plaintiff knew or should have known he could not win this action on its merits, but intended to and used the existence of this litigation to harass and defame Defendants.
73. Plaintiff widely publicized the litigation to damage defendants, frustrate fundraising and create work for Defendants by inciting panic amongst schools and parents of children receiving scholarships.
74. The Plaintiff's intent to harass and defame is further evidenced by having Defendants served by Sheriff after requesting and receiving acceptance of service.
75. Intent to harass and defame is further evidenced by sending plaintiffs envelopes by mail in which he addresses them as Defendant Thomas Persons and Defendant Chad Connelly in large font on the address line of the envelopes.
76. Plaintiff knew or should have known the allegations of his complaint were false because Plaintiff has all financial reports of Defendant Exceptional SC and has the education and training as a tax attorney, CPA and Certified Financial Advisor to interpret the financial reports held by Plaintiff.
77. Plaintiff's year and a half premeditation of this action is evidenced by his making nominal donations to the nonprofit corporation in July 2018 and March 2019 in an attempt to gain a semblance of standing as a donor.
78. Plaintiff has filed frivolous actions against the Defendants in the past.
79. Plaintiff intended to damage Defendants by creating high legal expense in defense of this and past actions.
80. Defendants have been damaged by Plaintiff's actions, including damage to reputation, attorneys fees for defense of actions, attorneys fees for defense against Plaintiffs subpoenas and damages to fundraising capability.

81. Defendants seek damages, including but not limited to attorney's fees, costs of court, and pray for an order that Plaintiff cannot file future civil actions in South Carolina Courts unless the pleadings are signed by a licensed South Carolina Attorney.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM

Abuse of Process

82. Defendants incorporate by reference each of its prior allegations as if incorporated herein.
83. Plaintiff has the ulterior motive of obtaining financial information denied by prior Court Order.
84. Plaintiff signed and filed this action requesting an accounting of Exceptional SC after having been denied such information by the Court.
85. Plaintiff sent a subpoena to the Hobbs Group seeking the same financial information in another action pending before the Court.
86. Plaintiff has the ulterior motive of harassing Defendants.
87. Plaintiff served defendants by Sheriff after or simultaneously while getting Defendants to agree to accept service.
88. Plaintiff sent an envelope by mail addressed to "Defendant Thomas Persons" and "Defendant Chad Connelly"
89. Plaintiff published this action on his blog and sent it by email to parents, schools and potential donors to the Defendant Exceptional SC.
90. Plaintiffs commentary on this action on the web alleges malfeasance by Defendants Thomas Persons and Chad Connelly in a manner that is defamatory.
91. Plaintiff knows or should know based on the information held by Plaintiff and Plaintiffs education, expertise and professional licenses that allegations made against Defendants and public defamatory statements against Defendants are false.
92. Defendants have been damaged by Plaintiff's actions, including damage to reputation, attorneys fees for defense of actions, attorneys fees for defense against Plaintiffs subpoenas and damages to fundraising capability.

93. Defendants seek damages, including but not limited to attorney's fees, costs of court, and pray for an order that Plaintiff cannot file future civil actions in South Carolina Courts unless the pleadings are signed by a licensed South Carolina Attorney.

Respectfully Submitted:

s/Geoffrey K. Chambers

Counsel for Defendants South
Carolina Educational Credit for
Exceptional Needs Children Fund,
Chad Connelly and Thomas Persons

411 Walnut Street, No. 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLGroup.com
SC Bar No.: 78415

This 4th Day of March, 2020
Flat Rock, North Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)

) C.A. NO. 2020-CP-36-00093
)

) **MOTION FOR IMMEDIATE**
) **TEMPORARY RESTRAINING**
) **ORDER AND NOTICE OF MOTION**
) **AND MOTION FOR TEMPORARY**
) **INJUNCTION**
)

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEY, GEOFFREY CHAMBERS, ESQUIRE

Plaintiff, Jefferson Davis, Jr. respectfully moves this Court for an **immediate 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 expenses¹ on behalf of the **South Carolina Educational Credit for Exceptional Needs Children Fund** (hereinafter “**ECENC Fund**”). Plaintiff also moves this Court for 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. See Complaint, Paragraphs 26, 27 & 28.

¹ This temporary restraining order should in no way limit or delay the ECENC Fund itself or other legislatively appointed board members of the ECENC Fund from issuing scholarships which are already delayed by the negligence and malfeasance of the individual Defendants, Mr. Chad Connelly and Mr. Tom Persons.

The Plaintiff further moves this Court for an Order setting a date for the hearing on the Plaintiff's Motion for a Temporary Injunction in accordance with Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP).

Unless this Motion is granted, it is anticipated that the individual Defendants will continue to misappropriate and embezzle for themselves and other associated parties, funds in excess of the two percent (2%) maximum allowed by S.C. Code Ann. § 12-6-3790(B)(4) which states the **“public charity may expend up to two percent of the fund for administration and related costs”**.

The Plaintiff and others, specifically K-12 children with special needs and their families, have already, and will continue to suffer irreparable loss, damage, or injury as a result of the deliberate actions of the Defendants. Plaintiff believes that the dispersion of administrative expenses in violation of S.C. Code Ann. § 12-6-3790(B)(4)² will continue as well as further irreparable harm as a result of the Defendants' actions will take place and continue before a hearing can be had on the Plaintiff Motion for Temporary Injunction.

The Defendants are further notified that the Plaintiff will move this Court at such time as the matter may be scheduled and heard, for a Temporary Injunction, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, 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 **South Carolina**

² Plaintiff also believes Defendants are in violation of both their fiduciary duty to the donors to the ECENC Fund (who believed at least 98% of their donations would go to scholarships) and to the children / families that the program was intended to aid.

Educational Credit for Exceptional Needs Children Fund without first demonstrating to this Court that such disbursements are not in violation of S.C. Code Ann. § 12-6-3790(B)(4).

Plaintiff will also move this Court for an order and injunction compelling Defendants publicly report on their website or otherwise the ECENC Fund donations received and administrative expenses disbursed on a monthly basis no later than the 15th of the following month.

This Motion is based on the following allegations:

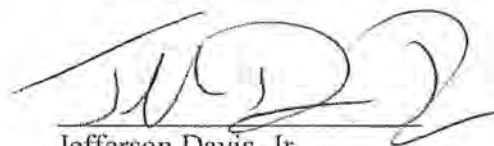
1. Plaintiff's STATEMENT OF CLAIMS, all Paragraphs, FACTS, all CLAIMS FOR RELIEF as stated in Plaintiff's **COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF** (including all exhibits therewith) filed in this case on February 12th, 2020, and which are hereby incorporated by reference.
2. Plaintiff's February 10th, 2020, administrative complaint filed with the South Carolina Secretary of State's Office, in particular the allegations detailing **Defendants' violation of S.C. Code Ann. § 16-13-230, Breach of Trust with Fraudulent Intent (commonly known as "embezzlement")** attached hereto and hereby incorporated by reference. **SEE ATTACHMENT #1.**

Based on the foregoing and the common and statutory laws of the State of South Carolina, the pleadings filed herein, affidavits, and legal memoranda that may be hereinafter filed with the Court, the Plaintiff respectfully asserts that it is entitled to an immediate temporary restraining order and temporary injunction as set forth herein.

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.

Respectfully submitted this 24th day of February, 2020.



Jefferson Davis, Jr.
Plaintiff, *Pro Se*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT

) C.A. NO. 2020-CP-36-00093

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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 **24th day of February, 2020**, as follows:

PLEADINGS:

**MOTION FOR IMMEDIATE TEMPORARY
RESTRAINING ORDER AND NOTICE OF MOTION
AND MOTION FOR TEMPORARY INJUNCTION**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPR Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043
(Attorney for Defendants)

Also via email to g.k.chambers@gmail.com & geoffrey@cperlgroup.com

MD2

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

February 10, 2020

VIA US Mail & investigations@sos.sc.gov

SC Secretary of State's Office
Attn: Doug Renew, Chief Investigator
1205 Pendleton Street, Suite 525
Columbia, SC 29201

RE: **CHARITY COMPLAINT – Breach of Trust with Fraudulent Intent - § 16-13-230**
South Carolina Educational Credit for Exceptional Needs Children Fund
(aka Exceptional SC)
Public Id: P35886

Dear Mr. Renew:

I am writing to file an urgent request that the Office of the Secretary of State investigate the above referenced South Carolina non-profit and 501(c)(3) entity (hereinafter the "ECENC Fund").

Although the Department of Revenue has limited statutory involvement in the administration of the ECENC Fund, and in fact voluntarily provided me with the information necessary for this complaint, it appears that the Department has no standing or statutory "enforcement" authority over the ECENC Fund as a S.C. non-profit & 501(c)(3) entity. I have in fact had litigation at the SC Administrative Law Court which confirms this belief and limits the Department's authority over non-profits. Davis v SC Dep't of Revenue, 15-AJ-17-0540-CC (SCALC, Substantive Decision dated 1/25/2016).

As such it appears the Office of the Secretary of State is the only administrative agency with immediate and direct enforcement authority over this charity pursuant to the S.C. Solicitation of Charitable Funds, S.C. Code Ann. § 33-56-10, *et seq.*

Although this complaint details (*with supporting CPA documents*) that **\$99,935** has been illegally misappropriated (in my belief "embezzled") by the non-profit's Executive Director and Board Chairman for the fiscal year 7/1/2018 – 6/30/2019, **all indications are that the crime is ongoing (\$125,643 estimated as of 12/31/2019) and requires immediate attention to cease further illegal misappropriations.** See complaint details and support as follows.

COMPLAINT: The ECENC Fund is a single purpose legislatively created 501(c)(3) entity that is strictly regulated and governed by S.C. Code Ann. § 12-6-3790. The applicable provision related to this complaint is as follows:

"The public charity may expend up to two percent of the fund for administration and related costs."

S.C. Code Ann. § 12-6-3790(B)(4).

For background, S.C. is one of 18 states with a K-12 tax credit scholarship program such as this. These programs assist K-12 children to attend an independent school of their choice. In the case of S.C., the program is dedicated to children with special needs.

All 18 of these states use 501(c)(3) non-profits to implement these programs. All of these programs, and all of these non-profits, have a maximum percentage (*2% in the case of the ECENC Fund*) of annual donations as the limit of available funds which can be used on an annual basis for administration and related costs.

As a CPA & tax attorney (licensed in Georgia), I have been personally involved with these programs and associated non-profits since 2008. Compliance with this legal maximum of expenses is one of the most important and critical legal compliance measures.

It is indisputable that the ECENC Fund administrative expenses are capped at 2% of annual donations. It is also indisputable that the legislative intent of S.C. Code Ann. § 12-6-3790(B)(4) was to cap the ECENC Fund at 2% of administrative expenses.

In fact, the ECENC Fund itself confirms this definition and methodology of how the legal maximum administration expenses are calculated – using total contributions, net of returns, plus any investment income.¹

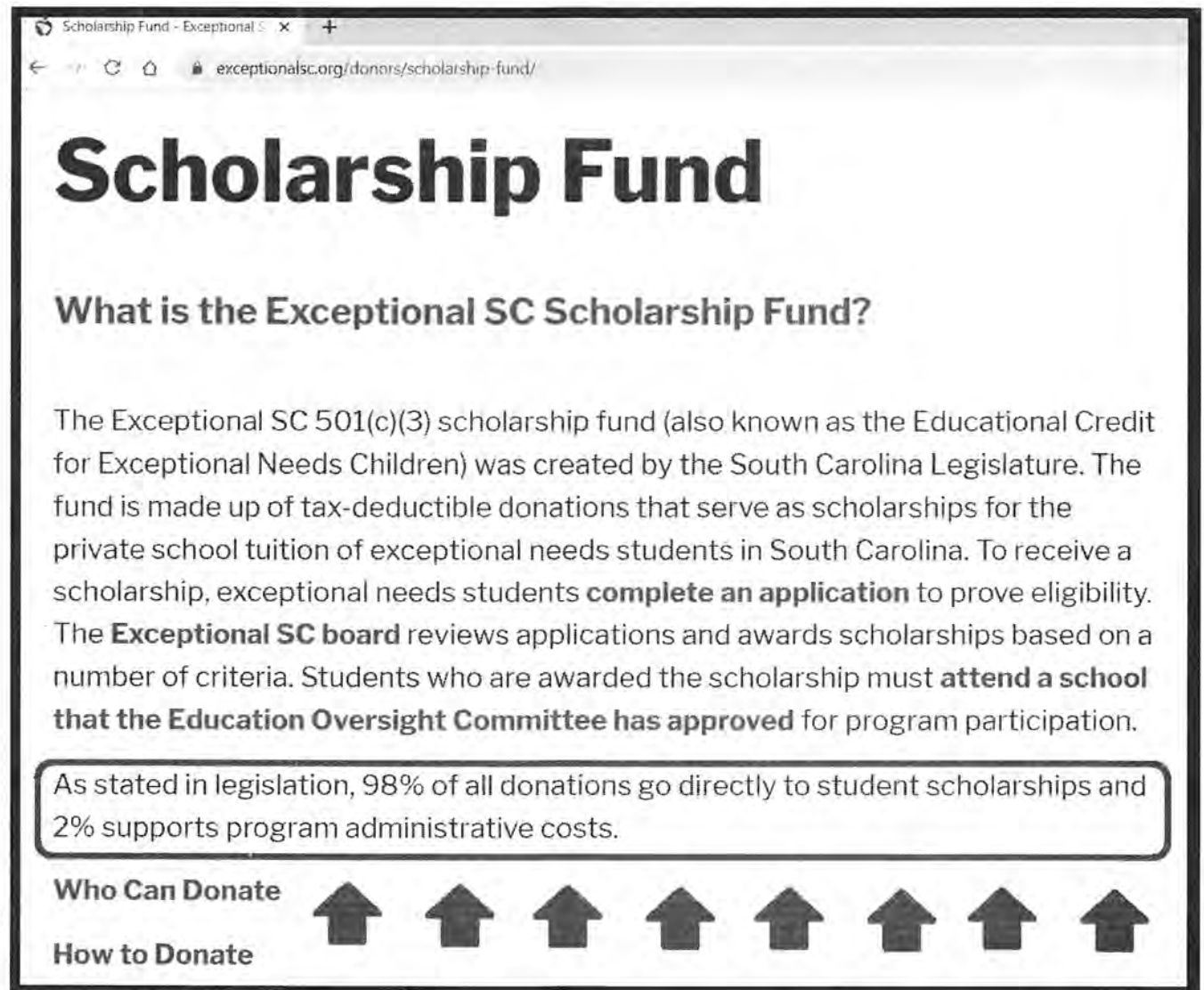
Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

**Exhibit A, Independent Auditor's Report for
June 30, 2018 and 2017, page 6.**

¹ As discussed herein, it is important to note in demonstrating the legal intent and conspiracy to defraud, this disclosure footnote was proactively removed from the CPA report for the year ending June 30, 2019. See Exhibit B and discussed herein.

Additionally, and as a donor to the ECENC Fund, the organization itself advertises on its website and in donor solicitation materials that at least 98% of all funds donated go directly to K-12 children's scholarships and that no more than 2% of donations will be used for administrative expenses.

See February 7, 2020, screenshot of the ECENC Fund's website below.

A screenshot of a web browser showing the 'Scholarship Fund - Exceptional' page. The browser's address bar shows 'exceptionalsc.org/donors/scholarship-fund/'. The page has a large heading 'Scholarship Fund' and a subheading 'What is the Exceptional SC Scholarship Fund?'. The main text describes the fund as a 501(c)(3) scholarship fund created by the South Carolina Legislature, made up of tax-deductible donations for private school tuition of exceptional needs students. It states that students must complete an application, be reviewed by the Exceptional SC board, and attend a school approved by the Education Oversight Committee. A callout box states that 98% of donations go to scholarships and 2% to administrative costs. At the bottom, there are two links: 'Who Can Donate' and 'How to Donate', each followed by a row of seven upward-pointing arrows.

Scholarship Fund - Exceptional

exceptionalsc.org/donors/scholarship-fund/

Scholarship Fund

What is the Exceptional SC Scholarship Fund?

The Exceptional SC 501(c)(3) scholarship fund (also known as the Educational Credit for Exceptional Needs Children) was created by the South Carolina Legislature. The fund is made up of tax-deductible donations that serve as scholarships for the private school tuition of exceptional needs students in South Carolina. To receive a scholarship, exceptional needs students **complete an application** to prove eligibility. The **Exceptional SC board** reviews applications and awards scholarships based on a number of criteria. Students who are awarded the scholarship must **attend a school that the Education Oversight Committee has approved** for program participation.

As stated in legislation, 98% of all donations go directly to student scholarships and 2% supports program administrative costs.

Who Can Donate

How to Donate

For the record and standing, I am a S.C. resident, S.C. taxpayer, have been solicited by and am a donor to the ECENC Fund. Aside from the legal requirements, and as an incentive to donate to the ECENC Fund, it was my belief based on these solicitations that at least 98% of my donation would go directly to scholarships.

This solicitation promise has proven to not be true. A simple analysis of the 7/1/2018 – 6/30/2019 financial statements (**Exhibit B**) demonstrates the following clear misappropriation of **\$99,935** above the maximum 2% expense ratio required by law and promised in the donor solicitations I received.

Exceptional SC - Misappropriating Funds		
Fiscal Year 7/1/2018 - 6/30/2019 Fundraising:	\$11,575,509	Per 1/15/2020 CPA Compilation Report
Maximum Fee % allowed by law:	2.00%	Per Section 12-6-3790 (B)(4)
TOTAL ALLOWED EXPENSES:	\$231,510	
7/1/2018 - 6/30/2019 Exhibit B		
Salary	\$31,500	Per 1/15/2020 CPA Compilation Report
Payroll Taxes	\$1,982	Per 1/15/2020 CPA Compilation Report
Office Expenses	\$224	Per 1/15/2020 CPA Compilation Report
Contract Services *	\$246,332	Per 1/15/2020 CPA Compilation Report
Legal & Professional	\$11,200	Per 1/15/2020 CPA Compilation Report
Bank Fees	\$21,154	Per 1/15/2020 CPA Compilation Report
Misc	\$8,653	Per 1/15/2020 CPA Compilation Report
Website	\$10,400	Per 1/15/2020 CPA Compilation Report
TOTAL ACTUAL EXPENSES:	\$331,445	Per 1/15/2020 CPA Compilation Report
TOTAL ALLOWED EXPENSES:	\$231,510	
TOTAL ACTUAL EXPENSES:	(\$331,445)	
EXCESS FUNDS EXPENDED:	(\$99,935)	<u>Misappropriated funds</u>
* Upon information and belief, the <u>\$246,332</u> for <u>"Contract Services"</u> is the amounts paid to <u>Executive Director Chad Connelly</u> and allied parties either directly or indirectly. No further detail has been provided by the SC Department of Revenue. Section 12-6-3790 (B)(4): "The public charity may expend up to two percent of the fund for administration and related costs."		

Attached please find the CPA prepared financials (both prepared by **The Hobbs Group, P.A.**) for the ECENC Fund.

- **Exhibit A** is the Independent Auditor's Report for June 30, 2018 and 2017.
- **Exhibit B** is the Accountant's Compilation Report for June 30, 2019.

CRIMINAL VIOLATION(S) – BREACH OF TRUST WITH FRAUDULENT INTENT:

The ECENC Fund management has also violated S.C. Code Ann. § 16-13-230 – Breach of Trust with Fraudulent Intent. This crime is more commonly referred to as “embezzlement”.²

SECTION 16-13-230. Breach of trust with fraudulent intent.

(A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.

(B) A person who violates the provisions of this section is guilty of a:

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.

“The elements which constitute breach of trust with fraudulent intent are not outlined in the statute governing this offense. See S.C. Code Ann. § 16-13-230 (1985). However, the crime has been defined through the development of case law. A breach of trust with fraudulent intent “is larceny after trust, which includes all of the elements of larceny or in common parlance, stealing, except the unlawful taking in the beginning.” State v. Owings, 205 S.C. 314, 316, 31 S.E.2d 906, 907 (1944), quoted in State v. Scott, 330 S.C. 125, 130, 497 S.E.2d 735, 738 (Ct.App.1998). Thus, “[t]he primary difference between larceny and breach of trust is that in ‘common-law larceny, possession of the property stolen is obtained *unlawfully*, while in breach of trust, the possession is obtained *lawfully*.” Scott, 330 S.C. at 130, 497 S.E.2d at 738 (quoting State v. McCann, 167 S.C. 393, 398, 166 S.E. 411, 413 (1932)) (emphasis in original).” State v. Jackson, 527 S.E.2d 367, 338 S.C. 565 (S.C. App. 2000).

A trust condition clearly exists in that the directors of any nonprofit organization owe a fiduciary duty of good faith, care and loyalty. See S.C. Code Ann. § 33-31-830(a)(1)-(3). Possession of the funds embezzled were obtained lawfully making it a breach of trust.

² Whereas S.C. Code Ann. § 16-13-230 appears to be the operative criminal code section, **S.C. Code Ann. § 16-13-210, Embezzlement of Public Funds**, would alternatively apply if it is ever determined that the funds embezzled are “public funds” due to the substantial government entanglements with the Department of Revenue administration of the organization, having a legislatively appointed board, and the apparent violations of the S.C. Constitution’s Blaine Amendment.

Furthermore, this is not just a simple matter of miscalculating the funds available with which third party expenses could be paid. Upon information and belief, the funds embezzled were provided directly to the ECENC Fund's Executive Director (and associated business partners) and authorized solely by the organizations Board Chairman. In fact, the Department of Revenue has already stated that they did not authorize the spending in excess of 2%. **See Exhibit C.**

In further evidence that this was not a mistake, and as discussed below, the ECENC Fund management has attempted to cover-up the misappropriation by reducing the scope of their typical third-party CPA review.

ELEMENT OF INTENT TO DEFRAUD: As you will note in comparing **Exhibit A** (*years 1 and 2*) with **Exhibit B** (*year three*), in the third year of operations / reporting, **The Hobbs Group, P.A.** prepared financials have been substantially reduced in scope and assurances from the independent **"AUDITED FINANCIAL STATEMENTS"** (**Exhibit A** – YE 6/30/2018 & 2017) to a simple **"COMPILED FINANCIAL STATEMENTS"** (**Exhibit B** – YE 6/30/2019).

Furthermore, **The Hobbs Group, P.A.** in reporting years 1 and 2 (**Exhibit A**) was professionally "independent". However, in year 3, The Hobbs Group, P.A. has now disclosed that as of its year-ending 6/30/2019 "COMPILED FINANCIAL STATEMENTS", the firm has determined (*as required by the AICPA Statements on Standards for Accounting and Review Services (SSARSs)*) that the CPA firm is no longer professionally "independent". See as follows from their financial report:

We are not independent with respect to the Organization.

Columbia, South Carolina
January 15, 2020

The Hobbs Group, P.A.

See **Exhibit B**, report page 1.

Lack of CPA Independence: This substantial reduction in scope and assurances is extremely troubling. This reduction in scope and **new lack of professional "independence"**, indicates the necessary intent and a proactive effort to avoid the CPA firm's professional requirements associated with a full audit. Specifically, the requirement to disclose and report the ECENC Funds' lack of compliance with the law (i.e., the 2% cap of S.C. Code Ann. § 12-6-3790(B)(4)) and further cover-up what I believe to be an embezzlement of funds at the organization.

Reduction to CPA "Compilation" from full "Audit": Reduction in the scope and assurances from a full independent audit to a simple compilation further indicates a deliberate attempt to cover-up the crime. By reducing the scope of the CPA review to a simple compilation, pursuant to AICPA standards, the ECENC Fund management is afforded to opportunity to, at their discretion, to exclude certain financial related footnotes (that would otherwise be required with a full audit).

Specifically, it appears in this case that the reduction in scope was intended to allow ECENC Fund management to exclude the previously required footnote(s) detailing compliance with the 2% cap of S.C. Code Ann. § 12-6-3790(B)(4) and other legal provisions. This reduction in scope plus lack of CPA independence = no requirement to disclose the crime.

Personal Relationship Conflict: Upon information and belief, **Mr. Mark T. Hobbs, CPA**, the engagement partner and principal for The Hobbs Group, P.A., is personal friends with the ECENC Fund's Executive Director and former SC GOP Chairman, Mr. Chad Connelly.

NO AUTHORIZATION ALLOWED: No board authorization, approval or other action (*including by the Board Chairman who is believed to be complicit in this matter*) can excuse this misappropriation. The statutory requirements of S.C. Code Ann. § 12-6-3790(B)(4) are absolute and by law must be enforced. Furthermore no "justification" or reasonable "need" can excuse this misappropriation. Leadership at the ECENC Fund have specifically requested additional administrative expenses to operate the organization, and those requests have been specifically ignored by the S.C. Legislature. The ECENC Fund Board cannot simply ignore these legal directives. Furthermore, the SC Department of Revenue has provided the documentation specifically stating that the Department has not authorized this excess spending. See **Exhibit C**.

ONGOING MISAPPROPRIATION FOR FISCAL YEAR 7/1/2019 – 6/30/2020: The Department of Revenue has also voluntarily and affirmatively provided (*even while the requested information is exempt from FOIA*) the necessary documentation detailing fundraising by the ECENC Fund for the current fiscal year. See **Exhibit D**.

The Department provided evidence showing only \$2,003,988.69 in fundraising indicates an **estimated \$125,643 in additional funds have been misappropriated.**

Exceptional SC - Misappropriating Funds?		
EXHIBIT D		
July 2019	\$141,978.29	Per SC Department of Revenue
August 2019	\$49,464.46	Per SC Department of Revenue
September 2019	\$189,559.67	Per SC Department of Revenue
October 2019	\$133,350.00	Per SC Department of Revenue
November 2019	\$70,450.32	Per SC Department of Revenue
December 2019	\$1,419,185.95	Per SC Department of Revenue
Six Month Total:	<u>\$2,003,988.69</u>	
Total Six Mth Fundraising:	\$2,003,988.69	
Maximum Fee % Allowed:	2.00%	
Allowed Expenses to Date:	<u>\$40,079.77</u>	
TOTAL ALLOWED EXPENSES:	\$40,080	
TOTAL ESTIMATED EXPENSES:	<u>(\$165,723)</u>	50% of Prior Year Actual
ESTIMATED EXCESS FUNDS EXPENDED:	<u>(\$125,643)</u>	
<u>Estimated additional misappropriation since 7/1/2019</u>		

If the excessive spending has continued as expected since the formal financial reports for the year ending 6/30/2019, we are approaching an excess misappropriation of **nearly a quarter of a million dollars** that was intended (*by myself, other donors and the legislature*) for South Carolina's K-12 children with special needs.

Please advise as to any questions you might have or any additional evidence and documentation you may need. I am also available to meet with you at your earliest convenience to discuss this urgent and ongoing matter.

Your attention is much appreciated.

Best,



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

AUDITED FINANCIAL STATEMENTS
SOUTH CAROLINA EDUCATIONAL CREDIT
FOR
EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2018

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
South Carolina Educational Credit for Exceptional Needs Children Fund

REPORT ON THE FINANCIAL STATEMENTS

We have audited the accompanying financial statements of South Carolina Educational Credit for Exceptional Needs Children Fund (a nonprofit organization), which comprise the statements of assets, liabilities, and net assets – modified cash basis as of June 30, 2018 and 2017, and the related statements of support, revenue, and expenses – modified cash basis for the years then ended, and the related notes to the financial statements.

MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting as described in Note A; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net assets of South Carolina Educational Credit for Exceptional Needs Children Fund as of June 30, 2018 and 2017, and its support, revenue, and expenses for the years then ended in accordance with the modified cash basis of accounting as described in Note A.

BASIS OF ACCOUNTING

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Columbia, South Carolina
January 15, 2019

The Hall Group, P.A.

AUDITED FINANCIAL STATEMENTS

STATEMENTS OF ASSETS, LIABILITIES, AND NET ASSETS - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

		June 30,	
		2018	2017
ASSETS			
Current Assets			
Cash and cash equivalents		\$ 3,361,511	\$ 280,730
Total Current Assets		3,361,511	280,730
Noncurrent Assets			
Investments		69,233	0
Intangible assets, net		10,400	20,800
Total Noncurrent Assets		79,633	20,800
TOTAL ASSETS		\$ 3,441,144	\$ 301,530
LIABILITIES AND NET ASSETS			
Liabilities			
Total Liabilities		\$ 0	\$ 0
Net Assets			
Unrestricted		137,111	85,835
Temporarily restricted		3,304,033	215,695
Total Net Assets		3,441,144	301,530
TOTAL LIABILITIES AND NET ASSETS		\$ 3,441,144	\$ 301,530

The accompanying notes are an integral part of these financial statements

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2018

	Unrestricted	Temporarily Restricted	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 14,105,223	\$ 14,105,223
Interest	\$ 2,651		2,651
Net assets released from restrictions	11,016,885	(11,016,885)	0
Total Revenues and Other Support	11,019,536	3,088,338	14,107,874
EXPENSES			
Program services	10,874,403		10,874,403
Management and general	91,257		91,257
Fundraising	2,600		2,600
Total Expenses	10,968,260	0	10,968,260
CHANGE IN NET ASSETS	51,276	3,088,338	3,139,614
Net assets at beginning of year	85,835	215,695	301,530
NET ASSETS AT END OF YEAR	\$ 137,111	\$ 3,304,033	\$ 3,441,144

The accompanying notes are an integral part of these financial statements

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2017

	Unrestricted	Temporarily Restricted	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 10,030,001	\$ 10,030,001
Scholarship funding organization residual funds		52,110	52,110
Interest	\$ 677		677
Net assets released from restrictions	9,866,416	(9,866,416)	0
Total Revenues and Other Support	9,867,093	215,695	10,082,788
EXPENSES			
Program services	9,724,926		9,724,926
Management and general	53,732		53,732
Fundraising	2,600		2,600
Total Expenses	9,781,258	0	9,781,258
CHANGE IN NET ASSETS	85,835	215,695	301,530
Net assets at beginning of year	0	0	0
NET ASSETS AT END OF YEAR	\$ 85,835	\$ 215,695	\$ 301,530

The accompanying notes are an integral part of these financial statements

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2018

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Activities

South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization") was incorporated in South Carolina on June 16, 2016. The Organization's mission is to provide scholarship grants to K through 12th grade "exceptional needs" children by means of the efficient implementation of the South Carolina State Budget Proviso (the "*Proviso*" or "*Program*"). The Proviso is also commonly referred to as the Educational Credit for Exceptional Needs Children (ECENC).

South Carolina Educational Credit for Exceptional Needs Children Fund is the sole organization distributing scholarship grants as defined under the terms of the Proviso. Activities of the Organization are limited to accepting contributions eligible for a tax credit under the terms of the Proviso and issuing scholarships to eligible children in accordance with the Proviso. The Organization shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

In an act dated and signed May 14, 2018, the Governor signed into permanent law by adding section 12-6-3790 to provide definitions and to create the ECENC which sets limits for tax credits available and the way the scholarships should be awarded.

Summary of Significant Accounting Policies

Basis of Accounting: The financial statements of the Organization are prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (GAAP). Management has determined that the modified cash basis of accounting is an acceptable basis for the presentation of the Organization's financial statements, and the opinion in our Independent Auditors' Report is not modified with respect to this matter.

Basis of Presentation: The Organization prepares its financial statements in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 958, Financial Statements of Not-for-Profit Organizations. Under ASC 958, the Organization is required to report information regarding its financial position and activities according to three net asset categories: unrestricted, temporarily restricted, and permanently restricted. The three categories are defined as follows:

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Unrestricted Net Assets: net assets that are not subject to donor-imposed restrictions as provided by the Proviso.

Temporarily Restricted Net Assets: net assets subject to donor-imposed stipulations, which are met by either actions of the Organization and/or the passage of time. When a donor-imposed restriction is met, that is, when the stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restriction. Temporarily restricted net assets represent net assets designated specifically for scholarships and grants pursuant to the Proviso.

Permanently Restricted Net Assets: net assets subject to donor-imposed stipulations neither expire by passage of time nor can be fulfilled or otherwise be removed by actions of the Organization. As of June 30, 2018 and 2017, the Organization has no permanently restricted net assets.

Cash and Cash Equivalents: The Organization considers all highly liquid investments available for current use with an initial maturity of three months or less, to be cash equivalents. The carrying value of cash approximates fair value because of the short maturities of these financial instruments.

Intangible Asset: Consists of capitalized costs associated with the Organization's website. The costs of the website are amortized on a straight-line basis over its estimated useful life of three years.

Contributions: Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions. All donor-restricted support is reported as an increase in temporarily or permanently restricted net assets, depending on the nature of the restriction. When a restriction expires or the purpose of the restriction is satisfied temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Contributions received with donor-imposed restrictions that are met in the same year in which the contributions are received are classified as unrestricted contributions.

Investments: Investments in marketable securities with readily determinable market values are reported at their fair value in the statements of assets, liabilities, and net assets – modified cash basis. Investment income or loss (including unrealized and realized gains on investments, interest and dividends) are included in the statements of support, revenues and expenses – modified cash basis as an increase in unrestricted net assets if the restrictions are met (either by the passage of time or accomplishment of a purpose restriction) in the reporting period in which the income and gains are recognized.

Estimates: The preparation of the financial statements in conformity with accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The significant estimates in these financial statements are the functional allocation of expenses, and the fair value measurements of assets (Note C).

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Functional Allocation of Expenses: Management estimates the Organization's indirect expenses on a functional basis. Management's estimates of other indirect costs are based on pro-rated percentages as determined by management. Expenses that can be identified with a specific program or supporting service are charged directly to the program or supporting service.

Income Taxes: The Organization has received a determination letter from the Internal Revenue Service (IRS) indicating it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Organization has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Organization and recognize a tax liability (or asset) if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Organization, and has concluded that as of June 30, 2018 and 2017, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Organization is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations for tax years prior to 2015.

Donor-Imposed Restrictions: The Organization limits any donor-imposed restrictions on contributions to those allowed by the Proviso so that the contribution will be eligible for a tax credit. In order for contributions to be eligible for a tax credit, the Proviso prohibits donors from designating a specific child or school as the beneficiary of the contribution. The Organization does not accept contributions designated for the benefit of a specific child or school.

Educational Credit for Exceptional Needs Children Program: The 2017-2018 and 2016-2017 South Carolina State Budget Provisos 109.11 and 109.15, respectively, allows for the issuance of a total of \$11,000,000 and \$10,000,000, respectively, in individual scholarship grants in an amount not exceeding \$11,000 (as may be adjusted) or the total cost of tuition (whichever is less). These funds may be used for tuition, transportation or textbook expenses for eligible "exceptional needs" children attending approved South Carolina independent schools. Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

The Organization may not award grants solely for the benefit of one school. The Department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain. The Department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

The Provisos also limit the Organization to administrative and related expenses of not more than 2% of the fund.

Recent Accounting Pronouncements and Proposed Accounting Pronouncements: In August 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update ("ASU") 2016-14 *Not-for-Profit Entities* (Topic 958), *Presentation of Financial Statements of Not-for-Profit Entities*. The amendments in the update make certain improvements that address many of the identified issues of current financial reporting for not-for-profits. A second phase of the project is expected to address more protracted issues identified by the FASB. The update addresses some of the current financial reporting challenges as follows: 1) reduces complexity in reporting donor imposed restrictions; 2) improves transparency and utility in assessing a not-for-profit's liquidity; and 3) enhances the consistency of reporting of not-for-profit expenses by nature and function. The amendments in this update go into the effect for annual financial statements issued for year's beginning after December 15, 2017.

Reclassifications: Certain reclassifications have been made to the 2017 account classifications to make the presentation comparative to the 2018 presentation. These reclassifications have no impact on net assets as previously reported.

Subsequent Events: Subsequent events have been evaluated through January 15, 2019, which represents the date the financial statements were available to be issued.

NOTE B -- CONCENTRATION OF CREDIT RISK

The Organization maintains cash balances that at times, may exceed amounts insured. Accounts at each financial institution are insured by the Federal Deposit Insurance Corporation (FDIC insured) up to \$250,000 for bank and certificate of deposit balances. The Organization believes it is not exposed to any significant credit risk on its cash balances. The bank balances consist of the following at June 30:

	2018	2017
Cash and cash equivalents		
on deposit insured by the FDIC	\$ 250,000	\$ 250,000
Cash and cash equivalents		
on deposit uninsured by the FDIC	423,458	830
	<u>\$ 673,458</u>	<u>\$ 250,830</u>

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE C -- FAIR VALUE MEASUREMENTS

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy under FASB ASC 820 are described as follows:

Level 1 Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Organization has the ability to access.

Level 2 Inputs to the valuation methodology include:

- quoted prices for similar assets or liabilities in active markets;
- quoted prices for identical or similar assets or liabilities in inactive markets;
- inputs other than quoted prices that are observable for the asset or liability;
- inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodology used for the investments measured at fair value.

Common Stock: Valued at the closing price reported on the New York Stock Exchange.

The following table sets forth by level, within the fair value hierarchy, the Organization's assets at fair value as of June 30, 2018:

	Assets at Fair Value as of June 30, 2018			
	Level 1	Level 2	Level 3	Total
Common Stock	\$ 69,233			\$ 69,233
TOTAL ASSETS AT FAIR VALUE	\$ 69,233	\$ 0	\$ 0	\$ 69,233

There were no investments held by the Organization as of June 30, 2017.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE D -- INTANGIBLE ASSET

Intangible asset is as follows at June 30:

	2018	2017
Website	\$ 31,200	\$ 31,200
Less: Accumulated Amortization	(20,800)	(10,400)
INTANGIBLE ASSET, NET	\$ 10,400	\$ 20,800

Amortization charged to expense for the both years ended June 30, 2018 and 2017, was \$10,400.

NOTE E -- TEMPORARILY RESTRICTED NET ASSETS

A summary of temporarily restricted net assets is as follows at June 30:

	2018	2017
Restricted to scholarship grants for eligible "exceptional needs" children enrolled at approved South Carolina Independent Schools	\$ 3,384,039	\$ 215,695

Included in net assets released from restrictions in 2018 and 2017 is \$230,881 and \$115,821, respectively, spent for administrative and related costs.

COMPILED FINANCIAL STATEMENTS
*SOUTH CAROLINA EDUCATIONAL CREDIT FOR
EXCEPTIONAL NEEDS CHILDREN FUND*

June 30, 2019

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Management is responsible for the accompanying financial statements of South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization"), which comprise the statement of assets, liabilities, and net assets - modified cash basis as of June 30, 2019 and the related statements of support, revenue, and expenses and functional expenses - modified cash basis for the year then ended and the related notes to the financial statements in accordance with the modified cash basis of accounting, and for determining that the modified cash basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements, nor were we required to perform any procedures to verify the accuracy or the completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared in accordance with the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

We are not independent with respect to the Organization.

Columbia, South Carolina
January 15, 2020

The Hobbs Group, P.A.

COMPILED FINANCIAL STATEMENTS

STATEMENT OF ASSETS, LIABILITIES, AND NET ASSETS - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 June 30, 2019

ASSETS

Current Assets

Cash and cash equivalents

	\$ 2,850,552
Total Current Assets	<u>2,850,552</u>

TOTAL ASSETS	<u>\$ 2,850,552</u>
--------------	---------------------

LIABILITIES AND NET ASSETS

Liabilities

	\$ -
Total Liabilities	<u>-</u>

Net Assets

Without donor restrictions

58,330

With donor restrictions

2,792,222

Total Net Assets	<u>2,850,552</u>
------------------	------------------

TOTAL LIABILITIES AND NET ASSETS	<u>\$ 2,850,552</u>
----------------------------------	---------------------

See accountants' compilation report and notes to the financial statements.

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

	Net Assets Without Donor Restrictions	Net Assets With Donor Restrictions	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 11,562,752	\$ 11,562,752
Investment income	\$ 12,757		12,757
Net assets released from restrictions	12,074,563	(12,074,563)	-
Total Revenues and Other Support	12,087,320	(511,811)	11,575,509
EXPENSES			
Program services	12,025,514		12,025,514
Management and general	137,987		137,987
Fundraising	2,600		2,600
Total Expenses	12,166,101	-	12,166,101
CHANGE IN NET ASSETS	(78,781)	(511,811)	(590,592)
Net assets at beginning of year	137,111	3,304,033	3,441,144
NET ASSETS AT END OF YEAR	\$ 58,330	\$ 2,792,222	\$ 2,850,552

See accountants' compilation report and notes to the financial statements.

STATEMENT OF FUNCTIONAL EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

	Program Services	Supporting Services		Total
		Management and General	Fundraising	
Awards and grant scholarships	\$ 11,834,656			\$ 11,834,656
Salaries and wages		\$ 31,500		31,500
Payroll taxes		1,982		1,982
Office		224		224
Contract services	183,578	62,754		246,332
Professional and legal fees		11,200		11,200
Bank fees		21,154		21,154
Miscellaneous		8,653		8,653
Amortization	7,280	520	\$ 2,600	10,400
TOTAL EXPENSES	\$ 12,025,514	\$ 137,987	\$ 2,600	\$ 12,166,101

See accountants' compilation report and notes to the financial statements.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2019

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Activities

South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization") was incorporated in South Carolina on June 16, 2016. The Organization's mission is to provide scholarship grants to K through 12th grade "exceptional needs" children by means of the efficient implementation of the South Carolina State Budget Proviso (the "Proviso" or "Program"). The Proviso is also commonly referred to as the Educational Credit for Exceptional Needs Children (ECENC).

South Carolina Educational Credit for Exceptional Needs Children Fund is the sole organization distributing scholarship grants as defined under the terms of the Proviso. Activities of the Organization are limited to accepting contributions eligible for a tax credit under the terms of the Proviso and issuing scholarships to eligible children in accordance with the Proviso. The Organization shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

In an act dated and signed May 14, 2018, the Governor signed into permanent law by adding section 12-6-3790 to provide definitions and to create the ECENC which sets limits for tax credits available and the way the scholarships should be awarded.

Summary of Significant Accounting Policies

Basis of Accounting: The financial statements of the Organization are prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (GAAP). Management has determined that the modified cash basis of accounting is an acceptable basis for the presentation of the Organization's financial statements.

Basis of Presentation: The Organization classifies its resources for accounting and reporting purposes into two classes of net assets, according to externally imposed restrictions:

Net assets without donor restrictions: The portion of the net assets of the Organization that can be used subject only to the broad limits resulting from the nature of the Organization,

NOTES TO THE FINANCIAL STATEMENTS

*SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND*NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
- Continued

the environment in which it operates, and the purposes specified in its bylaws. The Organization has the ability to choose when using these resources.

Net assets with donor restrictions: The portion of net assets of the Organization that is subject to either donor-imposed time restrictions or donor-imposed purpose restrictions. These restrictions limit the Organization's choices when using these resources as the Organization has a fiduciary responsibility to the donors to follow their instructions.

Cash and Cash Equivalents: The Organization considers all highly liquid investments available for current use with an initial maturity of three months or less, to be cash equivalents. The carrying value of cash approximates fair value because of the short maturities of these financial instruments.

Contributions: Contributions received are recorded as net assets with or without donor restricted support, depending on the existence and/or nature of any donor restrictions. All donor-restricted support is reported as an increase in net assets with donor restrictions, depending on the nature of the restriction. When a restriction expires or the purpose of the restriction is satisfied net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions.

Estimates: The preparation of the financial statements in conformity with accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The significant estimate in these financial statements is the functional allocation of expenses.

Functional Allocation of Expenses: Management estimates the Organization's indirect expenses on a functional basis. Management's estimates of other indirect costs are based on pro-rated percentages as determined by management. Expenses that can be identified with a specific program or supporting service are charged directly to the program or supporting service.

Income Taxes: The Organization has received a determination letter from the Internal Revenue Service (IRS) indicating it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Organization has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Organization and recognize a tax liability (or asset) if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Organization, and has concluded that as of June 30, 2019, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Organization is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations for tax years prior to 2016.

Donor-Imposed Restrictions: The Organization limits any donor-imposed restrictions on contributions to those allowed by the Proviso so that the contribution will be eligible for a tax credit. In order for contributions to be eligible for a tax credit, the Proviso prohibits donors from designating a specific child or school as the beneficiary of the contribution. The Organization does not accept contributions designated for the benefit of a specific child or school.

Educational Credit for Exceptional Needs Children Program: The 2018-2019 South Carolina State Budget New law act 247 approved by the Governor, allows for the issuance of a total of \$12,000,000 in individual scholarship grants in an amount not exceeding \$11,000 (as may be adjusted) or the total cost of tuition (whichever is less). These funds may be used for tuition, transportation or textbook expenses for eligible "exceptional needs" children attending approved South Carolina independent schools. Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

The Organization may not award grants solely for the benefit of one school. The Department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain. The Department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

The Provisos & Law also limit the Organization to administrative and related expenses of not more than 2% of the fund.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

New Accounting Pronouncement: In August 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*. The Organization has adjusted the presentation of its financial statements accordingly. The new standard changes the following aspects of the Organization's financial statements:

- The temporarily restricted and permanently restricted net asset classes have been combined into a single net asset class called *net assets with donor restrictions*.
- The unrestricted net asset class has been renamed net assets without donor restrictions.
- The financial statements include a new disclosure about liquidity and availability of resources.

Subsequent Events: Subsequent events have been evaluated through January 15, 2020, which represents the date the financial statements were available to be issued.

NOTE B -- CONCENTRATION OF CREDIT RISK

The Organization maintains cash balances that at times, may exceed amounts insured. Accounts at each financial institution are insured by the Federal Deposit Insurance Corporation (FDIC insured) up to \$250,000 for bank and certificate of deposit balances. The Organization believes it is not exposed to any significant credit risk on its cash balances. The bank balances consist of the following at June 30, 2019:

Cash and cash equivalents	
on deposit insured by the FDIC	\$ 250,000
Cash and cash equivalents	
on deposit uninsured by the FDIC	2,604,590
	<u>\$ 2,854,590</u>

NOTE C -- NET ASSETS WITH DONOR RESTRICTIONS

A summary of temporarily restricted net assets is as follows at June 30, 2019:

Restricted to scholarship grants for eligible	
"exceptional needs" children enrolled at approved	
South Carolina independent schools	\$ 2,792,222

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE D -- LIQUIDITY AND AVAILABILITY OF RESOURCES

The following table reflects the Organization's financial assets as of June 30, 2019, reduced by amounts not available for general expenditure within one year. Financial assets are considered unavailable when illiquid or not convertible to cash within one year, or because the Organization has set aside the funds for a specific contingency reserve. Board designations could be drawn upon if the Board approves that action.

	<u>2019</u>
Financial assets:	
Cash and cash equivalents	\$ 2,850,552
Total Financial Assets	<u>2,850,552</u>
Less those unavailable for general expenditure within one year, due to:	
Funds with donor restrictions	<u>(2,792,222)</u>
FINANCIAL ASSETS AVAILABLE TO MEET CASH NEEDS FOR GENERAL EXPENDITURES WITHIN ONE YEAR	<u>\$ 58,330</u>

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

February 4, 2020

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

Re: Freedom Of Information Act Request Dated January 24, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 24, 2020.

Your FOIA request contains three bullet points requesting documents.

Your third bullet point requests engagement letters with the Hobbs Group. The Department has elected to produce the only two such engagement letters in its possession. One is dated November 8, 2017, and the other dated August 27, 2018.

In response to the first bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that at no time has it authorized or opined that administrative expenses could exceed two percent.

In response to the second bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that it does not agree with your editorial comment or conclusion that the Hobbs Group is not independent.

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

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosures

NOTE: The Hobbs Group, P.A. affirmatively states for the first time that they are not independent. See Exhibit B, YE 6/30/2019, report page #1. The Department evidently believes / agrees that Hobbs is (or should be) professionally independent with respect to the ECENC Fund.

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

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

February 4, 2020

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

Re: Freedom Of Information Act Request Dated January 22, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 22, 2020.

In response to your FOIA request, the Department has elected to produce the attached list of donations to Exceptional SC by month from March through December of 2019 totaling in the amount of \$4,547,101.10.

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	<u><u>4,547,101.10</u></u>

NOTE: Support for first six months of fundraising for the 7/1/2019 - 6/30/2020 fiscal year for estimating ongoing misappropriations.

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' MOTION TO
DENY PRELIMINARY INJUNCTION
AND TO DISMISS THE COMPLAINT**

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 and specifically reserving the defenses asserted in the simultaneously filed Motion to Dismiss as well as the right to answer fully the allegations of the Complaint, moves this Court before pleading pursuant to Rule 65, SCRPC, to enter an order denying the preliminary injunction requested by Plaintiff in the Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction filed on February 24, 2020.¹ Defendants also move to dismiss Plaintiff's Complaint pursuant to Rules 12(b)(1), (2), (3) and (6), SCRPC

ARGUMENT SUMMARY

Plaintiff seeks an order suspending the general operation of the South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") based upon the allegation that Exceptional SC expended in excess of two percent of its funds on administrative expenses and related

¹ On February 27, 2020, The Honorable William P. Keesley entered a form order denying Plaintiff's motion for a temporary restraining order, requiring Plaintiff to provide notice to Defendants of the remaining motion for preliminary injunction, and directing to Plaintiff to contact Judge Hocker's chambers to request a hearing on the remaining motion for preliminary injunction. Form 4 Order, Feb. 27, 2020.

costs during an eighteen month period in violation of S.C. Code Ann § 12-6-3790(B)(4). Plaintiff also seeks an accounting of all Exceptional SC administrative expenses from July 1, 2019, through December 31, 2020, and the continuing publication of all donations to and administrative expenses of Exceptional SC. This Court should deny the motion for injunctive relief and dismiss Plaintiff's Complaint because (1) Plaintiff does not have standing to bring the asserted claims, (2) Plaintiff cannot demonstrate any particularized immediate, irreparable harm, (3) Plaintiff seeks to alter, not preserve, the status quo, (4) adequate remedies for the asserted claims exist at law for other parties with standing, (5) Defendants are likely to prevail on the merits, and (6) Plaintiff has not offered to provide security for the payment of costs and damages that may be suffered by Defendants as a result of an improper injunction.

BACKGROUND

Exceptional SC is a domestic nonprofit entity originally created by a legislative budget proviso and incorporated in South Carolina on June 16, 2016.² Exceptional SC grants tuition scholarships to qualifying special needs students who may be better assisted by the services provided by approved independent institutions with programs designed for students with disabilities. The scholarships are funded entirely by private donations for which donors receive a state tax credit.³

Exceptional SC is governed by five directors, including Tom Persons, and employs an executive director, Chad Connelly. In order to fulfill its mission, Exceptional SC may expend up to two percent of the fund for administration and related costs. S.C. Code § 12-6-3790(B)(3). Any funds available for administration and other related costs that are not used in any fiscal year may be reserved for administration and other related costs in future fiscal years. (Affidavit of Tim Derrick ¶¶13-14.)

² Effective May 18, 2018, South Carolina codified the creation of Exceptional SC in S.C. Code § 12-6-3790.

³ 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).

Exceptional SC's financial reporting requirements are governed by statute. In concert with the directors, the South Carolina Department of Revenue, the South Carolina Senate Education Oversight Committee, and South Carolina Secretary of State maintain oversight of the administration of Exceptional SC.

Plaintiff is a highly educated and accredited attorney who has been practicing law for 27 years. Plaintiff received his MBA from the Moore School, one of the top, if not the top, business schools in the United States and world. Plaintiff has a specialty of tax law, is a CPA and held a CFA until recently. Plaintiff is extremely active in politics in his position as the current president of the Greenville County Tea Party.

Plaintiff continues to abuse South Carolina courts in relentless attempts to harass his perceived political rivals and obtain confidential statutorily protected information in hopes of validating his theories of corruption. Prior to filing this action, Plaintiff, who is an attorney licensed by the State of Georgia, has filed two other unsuccessful lawsuits against Exceptional SC.

In the first action filed in the Court of Common Pleas for the County of Greenville⁴ on November 13, 2017, Plaintiff sought judicial intervention to compel Exceptional SC to reveal confidential financial information and to provide him with notice of all entity meetings pursuant to the Freedom of Information Act ("FOIA"). After venue was transferred to the Court of Common Pleas for Richland County⁵, The Honorable DeAndrea Benjamin granted Exceptional SC's motions for judgment on the pleadings and for summary judgment after determining that FOIA does not apply to Exceptional SC because it is not a "public body". Plaintiff's appeal of the dismissal is currently pending in the South Carolina Court of Appeals.⁶

⁴ Jefferson Davis, Jr. v. South Carolina Educational Credit for Exceptional Needs Children Fund, Civil Action No. 2017-CP-23-04748.

⁵ Jefferson Davis, Jr. v. South Carolina Educational Credit for Exceptional Needs Children Fund, Civil Action No. 2017-CP-40-06976.

⁶ Jefferson Davis, Jr. v. South Carolina Educational Credit for Exceptional Needs Children Fund, Appellate Case No. 2019-001231.

After the hearing on the motions giving rise to the dismissal of the first action, Plaintiff then attempted to join Exceptional SC and its executive director, Chad Connelly, to a lawsuit already commenced by Plaintiff against two of Plaintiff's perceived political rivals—Ellen Weaver and Palmetto Promise Institute—that included nine causes of action including defamation and conspiracy (“Weaver Action”).⁷ Plaintiff eventually sought to amend the complaint in that action to include 31 additional defendants.⁸ On February 19, 2019, The Honorable Doyet A. Early entered an order dismissing all of the claims against each of those 31 defendants. Plaintiff's appeal of the dismissal of the second action is also currently pending in the South Carolina Court of Appeals.⁹

Despite the dismissal of these actions, Plaintiff continued his attempts to obtain the confidential and statutorily protected information now sought in this action by serving myriad subpoenas in the Weaver Action upon the dismissed parties and a spate of other entities with alleged ties to his perceived political rivals and Exceptional SC. The subpoenaed third parties included The Hobbs Group, P.A., which is the accounting firm that has performed audits of Exceptional SC in accordance with the requirements of S.C. Code Ann § 12-6-3790. As a result of these continued efforts to use the Weaver Action as a vehicle to circumvent South Carolina law, on January 31, 2020, The Honorable L. Casey Manning stayed all discovery in that action until the disposition of Plaintiff's appeal. (Order Staying All Discovery Until Appeal is Resolved, Jan. 31. 2020).

Less than two weeks after that order, on February 12, 2020, Plaintiff filed the summons and complaint in the instant action in which Plaintiff facially seeks a declaration that Defendants violated S.C. Code Ann § 12-6-3790, injunctive relief to prohibit Exceptional SC from expending more than two percent of the fund for administration and related costs, and reimbursement to Exceptional SC

⁷ Jefferson Davis, Jr. v. Ellen Weaver et al., Civil Action No. 2018-CP-40-02425.

⁸ Of note, the Amended Complaint in that action failed to mention Exceptional SC other than to: (a) identify it and its executive director; and (b) allege that another named defendant provided services to it, assisted it with fundraising and once employed one of its employees (See Am. Compl. ¶¶ 3, 17, 180, 185, 186.) The Amended Complaint did not otherwise reference Exceptional SC or assert any cause of action against it.

⁹ Jefferson Davis, Jr. v. Ellen Weaver et al., Appellate Case No. 2019-000648.

by the chairman of the board of directors and the executive director of any funds expended in excess of the statutory limitation. Two weeks later, Plaintiff also filed a Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction seeking the same relief sought in his complaint, as well as an accounting of all Exceptional SC administrative expenses and the publication of all donations to and administrative expenses of Exceptional SC—the same statutorily protected information sought in each of his prior actions.

LEGAL STANDARD FOR INJUNCTIVE RELIEF

Actions for injunctive relief are equitable. Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass’n, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). “Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law.” FOC Lawshe Ltd. Partnership v. Int’l Paper Co., 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002) (affirming the denial of a temporary injunction based upon the existence of conflicting evidence).

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. Calcutt v. Calcutt, 282 S.C. 565, 572, 320 S.E.2d 55, 59 (Ct. App. 1984). In order to prevail upon a motion for a preliminary injunction, the plaintiff’s “complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action.” Peek v. Spartanburg Reg’l Healthcare Sys., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005). If great injury will be done to the defendants with little benefit to the plaintiffs, it is proper for the trial court to deny equitable relief. Kneale v. Bonds, 282 S.C. 262, 268, 452 S.E.2d 840, 843 (Ct. App. 1994).

“The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.” FOC Lawshe Ltd. P’ship v. Int’l Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001)). Accordingly, “[a] preliminary injunction should issue only if necessary to preserve the status quo[.]” Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

ARGUMENT

I. This Court Should Deny Plaintiff’s Motion Because Plaintiff Does Not Have Standing.

“Standing to sue is a fundamental requirement in instituting an action.” Blandon v. Coleman, 285 S.C. 472, 475, 330 S.E. 2d 298, 299 (1985). “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).

“In order to have standing to present a case before the courts of this State, a party must have a personal stake in the subject matter of the lawsuit.” Duke Power Co. v. South Carolina Pub. Serv. Comm’n, 284 S. C. 81, 96, 326 S. E. 2d 395, 404 (1985). “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. For example, “[a] private individual may not invoke judicial power to determine the validity of an executive or legislative act unless he can show that he has sustained, or is in immediate danger of sustaining, a direct injury as a result of that action.” Blandon, 285 S.C. at 475, 330 S.E.2d at 299 (citing Ex parte Levitt, 302 U.S. 633 (1937)); see also

Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940). Although “standing may 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, “[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).

“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.” S.C. Code § 33-31-304. The South Carolina Reports’ Comments to this statute provide as follows:

Under this section of the Nonprofit Act, a member of a nonprofit corporation has no right to bring a direct attack against a proposed action. The claim may only be brought derivatively. If an action has been accomplished and the members believe that the directors or others in charge have done something wrong, have acted “ultra vires,” the members may bring a derivative action against the alleged wrongdoers. There was consideration of adopting language more similar to the South Carolina Business Corporation Act. However, the South Carolina Business Corporation Act, as noted, provides for damage actions against the board which was viewed as undesirable in the context of nonprofit corporations. Consideration was also given as to whether the Attorney General should have authority to bring an action against directors of mutual benefit corporations as well as against directors of public benefit corporations. It was determined that the members of these corporations would have sufficient interest in the entity to adequately police any alleged wrongdoing.

Accordingly, 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. Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979) (holding that parties who are not members of a nonprofit corporation have no standing to challenge the conduct of the corporation).

“[T]he liability of directors or officers of a corporation for loss to the corporation due to their mismanagement is an asset of the corporation and that 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); see also Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 703-04 (Ct. App. 1988). In the case of

public charities, “[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.” S.C. Code § 1-7-130; see also Furman University v. McLeod, 238 S.C. 475, 483, 120 S.E.2d 865, 868 (1961) (“It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having ‘immediate or peculiar interests.’”).

Plaintiff cannot claim a private right of action or standing to assert the subject claims pursuant to any statute. S.C. Code § 12-6-3790 does not provide for a private right of action to enforce its provisions. Plaintiff also cannot claim standing pursuant to any provision of Title 33 of the S.C. Code as Plaintiff is not a director or member of Exceptional SC. Moreover, Plaintiff cannot claim any an injury-in-fact that is concrete and particularized caused by the alleged conduct or that could be redressed by a favorable decision.

Instead, Plaintiff appears to assert standing on the grounds that whether Exceptional SC expended in excess of two percent of its funds on administrative expenses and related costs during a certain period is an issue of such public importance as to require its resolution by this court for future guidance. This narrow exception to the traditional tests for standing, however, applies only to governmental actions, not the conduct of corporations. Standing to challenge the actions of a corporation or its directors and officers is statutorily reserved to the corporation or the Attorney General. As a result, this Court should deny Plaintiff’s motion for a temporary injunction and dismiss Plaintiff’s Complaint because Plaintiff lacks standing to bring the asserted claims.

II. This Court Should Deny Plaintiff’s Motion Because Plaintiff Cannot Demonstrate Immediate, Irreparable Harm.

Plaintiffs seek a judicial declaration that Defendants violated S.C. Code Ann § 12-6-3790, injunctive relief to prohibit Exceptional SC from expending more than two percent of the fund for

administration and related costs, and reimbursement to Exceptional SC by the chairman of the board of directors and the executive director of any funds expended in excess of the statutory limitation. Plaintiff also seeks an accounting of all Exceptional SC administrative expenses from July 1, 2019, through December 31, 2020, and the continuing publication of all donations to and administrative expenses of Exceptional SC. Unless injunctive relief is granted, Plaintiff argues that he will suffer immediate and irreparable but unspecified harm.

In fact, Plaintiff cannot show any particularized immediate or irreparable harm from the general operation of Exceptional SC or the involvement in the corporation by Chad Connelly or Tom Persons. Although Plaintiff alleges that he has suffered harm as a donor to Exceptional SC, Plaintiff cannot show any particularized immediate or irreparable harm resulting from the use of any donated funds expended by Exceptional SC for administrative expenses because Plaintiff has already received the benefit sought from any donated funds—a state tax credit for the amount of funds donated. Once any such funds have been donated, the funds are the property of the corporation and, as such, any right to challenge to the manner in which they are used is reserved specifically to the corporation or the Attorney General.

III. This Court Should Deny Plaintiff's Motion Because Plaintiffs Seek to Alter, Not Preserve, the Status Quo.

“The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.” FOC Lawshe Ltd. P’ship v. Int’l Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) (quoting Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001)). Accordingly, “[a] preliminary injunction should issue only if necessary to preserve the status quo[.]” Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The status quo in this case is the ongoing general operation of Exceptional SC, including the involvement of its five duly appointed directors and its executive director. In his motion for injunctive

relief, Plaintiff seeks judicial intervention to alter the status quo by suspending the general operation of Exceptional SC by (1) enjoining the corporation from expending any additional administrative expenses, (2) enjoining the corporation's duly appointed directors and executive director from participating in the administration of the corporation, and (3) requiring the production of financial information that the organization is statutorily prohibited from releasing. As the sole purpose of a temporary injunction is to preserve the status quo and avoid potential irreparable injury to a party pending litigation, this Court should deny Plaintiff's request for injunctive relief.

IV. This Court Should Deny Plaintiff's Motion Because Other Parties With Standing Have Adequate Remedies at Law.

"An injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole." MailSource, LLC v. M.A. Bailey & Assoc., 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003) (denying injunction on the basis that plaintiffs could seek damages and therefore had an adequate remedy at law); see also Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

Although Plaintiff does not have standing to assert the claims contained in Plaintiff's Complaint, an adequate remedy for the allegations asserted in the Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction and Plaintiff's Complaint exists for Exceptional SC and the Attorney General. Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989); see also Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 703-04 (Ct. App. 1988). The legal and equitable remedies available in such actions include monetary damages. Any such damages would be easily ascertainable and awardable through an action at law or inequity by the corporation. As a result, this Court should deny Plaintiff's request for injunctive relief.

V. This Court Should Deny Plaintiff's Motion Because Defendants Likely Will Succeed on the Merits.

“In evaluating whether a [party] is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the [party] has made a sufficient prima facie showing of entitlement to relief.” Compton v. S. Carolina Dep’t of Corrections, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). The court must, based solely on the allegations of the complaint, “determine only the *likelihood* of whether [the party] will prevail on the merits.” Id. (emphasis in original).

As discussed above, Plaintiff does not have standing to bring the asserted claims. Nevertheless, *arguendo*, in the event that Plaintiff did have standing to bring the claims, Defendants would likely prevail because Exceptional SC has not expended in excess of two percent of its funds on administrative expenses and related costs during the relevant time period because any funds available for administration and other related costs that are not used in any fiscal year may be reserved for administration and other related costs in future fiscal years. (Affidavit of Tim Derrick ¶9.) As a result, Plaintiff cannot make a sufficient prima facie showing of entitlement to relief and a likelihood of prevailing on the merits.

VI. Upon Grant of Injunctive Relief, Plaintiff Must Provide Security for the Payment of Costs and Damages as May Be Suffered by Defendants.

“[N]o restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Rule 65(c), SCRPC. See also AJG Holdings, LLC v. Dunn, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009) (remanding a case when the circuit court failed to order a party to post a bond before issuing a temporary injunction); Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (stating that even a “nominal security bond does not satisfy Rule 65(c) because it

erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper”).

In the event that this Court issues an injunction in favor of Plaintiff, Plaintiff should be required to post a bond in the amount necessary to cover the payment of such costs and damages as may be incurred or suffered by Defendants. This amount should include the total loss of revenue to each Defendant that will not be able to be collected during the pendency of the injunction and an amount sufficient to protect each Defendant against any claims asserted by the corporation, Attorney General, or other party as a result of the cessation of operations of Exceptional SC or the involvement of the corporation’s duly appointed director or executive director or from the disclosure of protected information. Accordingly, in the event that this Court grants injunctive relief in favor of Plaintiff, the Court should also require a bond to protect Defendants in the event the injunction is ultimately deemed improper.

CONCLUSION

For the foregoing reasons, this Court should deny the injunctive relief requested by Plaintiff and dismiss Plaintiff’s causes of action with prejudice. This motion is further based upon the pleadings, exhibits to this motion, applicable South Carolina jurisprudence, any affidavits and memoranda as may be submitted, and any other matter as may be acceptable to the Court.

Respectfully submitted,

CPERL GROUP

s/Geoffrey K. Chambers

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– and –

**BARNWELL WHALEY PATTERSON &
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s/Justin P. Novak

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

March 4, 2020

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff

Vs.

Chad Connelly, Thomas Persons and
South Carolina Educational Credit for
Exceptional Needs Children Fund

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

C/A No.: 2020-cp-36-00093

Affidavit of Chad Connelly

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

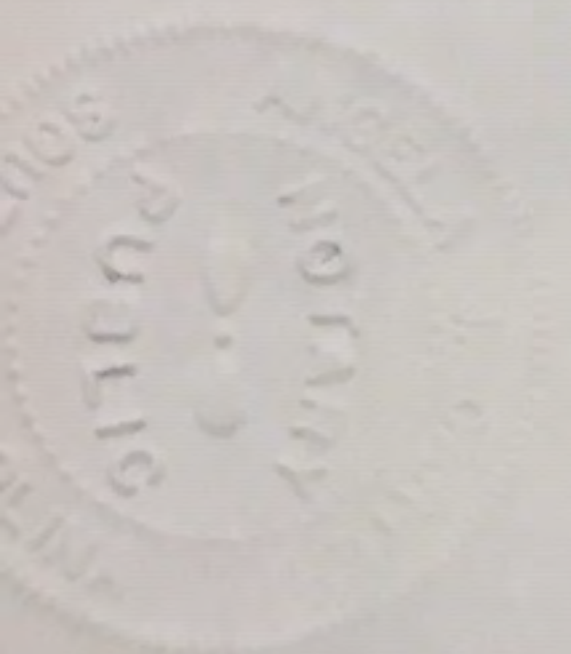
Sworn to me this

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



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

MOTION FOR SANCTIONS

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 and specifically reserving the defenses asserted in the simultaneously filed Motion to Dismiss as well as the right to answer fully the allegations of the Complaint, moves this Court before pleading pursuant to Rule 11, SCRPC, to enter an order imposing sanctions against Plaintiff for filing and serving a summons and complaint and motion for preliminary injunction for which there exist no good ground for support and which Plaintiff commenced in bad faith.

STANDARD FOR SANCTIONS

“Under Rule 11(a), SCRPC, a party and/or the party’s attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. Ex parte Gregory, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citing Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996)). “The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it.” Id. “The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the

frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." Id. "Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith." Id.

ARGUMENT

Any reasonable investigation by Plaintiff, who is an attorney licensed in the State of Georgia and an experienced *pro se* litigator in South Carolina courts, would have revealed that there is no basis for the Summons and Complaint 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. South Carolina law expressly provides that "[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." S.C. Code § 33-31-304. In addition, the South Carolina Supreme Court specifically held that "petitioners, not being members of [a nonprofit corporation] have no standing to raise [actions alleged to be ultra vires]." Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979). Nevertheless, Plaintiff filed and served these pleadings and motions while on notice that Plaintiff does not have standing to bring the asserted claims.

In addition, Plaintiff had intent to use the filing of this action for purposes other than litigating a valid cause of action. Plaintiff intended to obtain financial information Judge Benjamin Ordered Plaintiff was not entitled to in Richland County Case Number 2017-cp-40-06976. The present cause of action is the third attempt to circumvent Judge Benjamin's Order. The first was discovery issued to Defendants in Case Number 2018-cp-40-02426. The second was a subpoena to the Hobbs Group issued by Plaintiff in Case Number 2018-cp-40-02426.

Plaintiff also sought to harass and damage Defendants using the inuendo of a filed civil action. This is evidenced by Plaintiff blogging about the filing of this action on the internet, posting on social media, emailing the Summons and Complaint to hundreds of recipients, including school officials, parents, past donors and members of the legislature. Furthermore, Plaintiff asked for Exceptional SC counsel to accept service and did not disclose that Plaintiff had already arranged for service by Sheriff. After accepting service, Defendants were served by the Sheriff's deputies at their homes. Lastly, Plaintiff determined it necessary to get one last tiny jab at Defendants by sending mail to their homes in which the envelope was addressed to "Thomas Persons, Defendant" and "Chad Connelly, Defendant" in abnormally large bold font.

CONCLUSION

For the foregoing reasons, this Court should impose sanctions against Plaintiff in an amount sufficient to reimburse Defendants for the reasonable costs and attorney fees incurred in defending against this frivolous action commenced in bad faith and impose other sanctions designed to deter Plaintiff from bringing future frivolous actions commenced in bad faith. This motion is further based upon the pleadings, exhibits to this motion, applicable South Carolina jurisprudence, any affidavits and memoranda as may be submitted, and any other matter as may be acceptable to the Court.

(signatures on next page)

Respectfully submitted,

CPerl GROUP

s/Geoffrey Chambers

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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*

March 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2017-CP-40-06976
Jefferson Davis, Jr.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
South Carolina Educational Credit for	)	
Exceptional Needs Child Fund	)	
	)	
Defendant.	)	
	)	
_____	)	

This matter came before the court on October 3, 2018 pursuant to Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery, Plaintiff's Motion for Contempt, Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment.

BRIEF HISTORY

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

STANDARD OF REVIEW

Any party may move for a judgment on the pleadings under Rule 12(C), SCRCP. “A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint, which if resolved in favor of the plaintiff, would entitle him to judgment.” Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). “If, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Brown v. James, 389 S.C. 41, 47, 697 S.E.2d 604, 607 (Ct. App. 2010).

Summary judgment is appropriate when there is no genuine issue of material fact such that the nonmoving party must prevail as a matter of law. Rule 56(C), SCRCP. “When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the nonmoving party.” Fleming v. Rose, 350 S.C. 448, 493, 567 S.E.2d 857, 860 (2002).

LEGAL ANALYSIS

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

"Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter. South Carolina Code Annotated 1976 § 30-4-20(a)

South Carolina Educational Credit for Exceptional Needs Children Fund is statutorily defined as a corporation that does not receive, have or spend public funds.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018).

In DomainsNewMedia.com, the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to “narrow and targeted” reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply.

Educational Credit for Exceptional Needs Children Fund registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive, like the Chamber of Commerce.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. South Carolina Code, Annotated 1976 Title 12, Chapter 6, Section 3790(B)(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. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants

must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act. [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings.

CONCLUSION

This Court finds there is no genuine issue of material fact, that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is not a “public body” as defined by South Carolina Freedom of Information Act. Therefore, FOIA does not apply to the defendant and the Defendant is entitled to summary judgment as a matter of law.

For the foregoing reasons, Plaintiff’s Renewed Motion for Summary Judgment, Plaintiff’s Motion to Compel Discovery and Plaintiff’s Motion for Contempt are denied. Defendant’s Motion for Judgment on the Pleadings and Defendant’s Motion for Summary Judgment are granted.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

Columbia, South Carolina
December 21, 2018



Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs
Children Fund
Case Number: 2017CP4006976
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-12-21 12:41:35 page 5 of 5

STATE OF SOUTH CAROLINA

RICHLAND

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND
JEFFERSON DAVIS, JR., Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ELLEN WEAVER, ET AL., DefendantCase Number: 2018-CP-40-02425Pending in RICHLAND CountyTO: **The Hobbs Group, P.A., c/o Mark Hobbs, CPA, 1704 Laurel Street, Columbia, SC 29201**☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY _____

COURTROOM _____

DATE AND TIME _____

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of deposition in the above case.

PLACE OF DEPOSITION _____

DATE AND TIME _____

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:**SEE ATTACHMENT A**PLACE **SEE ATTACHMENT A**DATE AND TIME **SEE ATTACHMENT A**☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES _____

DATE AND TIME _____

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number:

JEFFERSON DAVIS, JR., 403 MCCARTER AVENUE, GREENVILLE, SC 29615**JEFF@APOGEETAX.COM 843-901-8036 (CELL)**

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A

(The Hobbs Group, P.A.)

PRODUCTION: Produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

- **WORKPAPER / TAX FILES:** Any and all Audit, Tax & Consulting or other files for the following four The Hobbs Group, P.A. clients:
 1. **Palmetto Family Council** (*including any prior names*)
 2. **Palmetto Family Alliance** (*including any prior names*)
 3. **Palmetto Promise Institute** (*including any prior names*)
 4. **South Carolina Educational Credit for Exceptional Needs Children Fund**
- **COMMUNICATIONS:** All communications (*including but not limited to any letters, emails, phone records and text messages*) between The Hobbs Group, P.A. (*including but not limited to any of its employees, representatives, agents, consultants or attorneys*) and any of the four above listed clients (*including but not limited to any of their employees, representatives, agents, consultants or attorneys*).

PLACE:

- **The Hobbs Group, P.A. offices at 1704 Laurel Street, Columbia, SC 29201** or any other mutually agreed upon method of providing the documents to include but not limited to provision of the records in electronic format to jeff@apogeetax.com or via delivery to Jeff Davis, 403 McCarter Avenue, Greenville, SC 29615.

DATE AND TIME:

- **September 10, 2019 at 10am, September 27, 2019 at 10am** or any other mutually agreed upon time in Columbia, or by **Friday September 13, 2019 at 5pm** is providing copies.



Geoffrey Chambers <g.k.chambers@gmail.com>

Palmetto Kids FIRST - Lawsuit Filed to Return \$250,000 Misappropriated

1 message

Palmetto Kids FIRST - Parent & School Newsletter <info@palmettokidsfirst.org>
Reply-To: Palmetto Kids FIRST - Parent & School Newsletter <info@palmettokidsfirst.org>
To: g.k.chambers@gmail.com

Sat, Feb 15, 2020 at 10:02 AM

SC Tax Credits for K-12 Special Needs Scholarships

Is this email not displaying correctly?
[View it in your browser.](#)

- #1. Lawsuit filed to return \$250,000 for Scholarships**
> Violated 2% Maximum Expenses
> Injunction to Immediately Stop Excess Spending
> Overages Spent on Chad Connelly & Friends?
- #2. Exceptional SC Legal Status ... NOT "EXPIRED"!!!**
> After 2 Weeks ... They Finally Fixed It!!!
> Actually Took Complaint to SOS Office.

#3. SENATE DEBATE ON EDUCATION ... Ongoing

- > Still No Promised Amendment!!!
- > Next Week ... Paused for Santee Cooper

#4. BOARD Still Doing Nothing?!?!?

- > Simply Unbelievable!!!

#5. ESA Debacle ... Coming to SC???

- > Tennessee Fiasco - Worse than Nevada!!!
- > ClassWallet ... #FollowTheMoney!!!

#1. Lawsuit filed to return \$250,000 intended for Scholarships:

Not only has leadership at (not so) Exceptional SC cost children, parents and schools [\\$7.45 MILLION in 2019 tax credits](#) (for article, click [HERE](#)) ... **they have also overpaid themselves (and their friends) an estimated \$250,000** ... with no apparent intentions to stop the excess spending or pay the money back.

Given the Boards apparent unwillingness to address the issue (at least publicly) ... a lawsuit has been filed asking a Court to declare officially that Exceptional SC has violated the simple mathematical 2% maximum of S.C. Code Ann. § 12-6-3790(B)(4) which states **the "public charity may expend up to two percent of the fund for administration and related costs"**.

As we have previously reported, CPA financial provided by the **SC Department of Revenue** demonstrate that **\$99,935** has been **overspent for the fiscal year 7/1/2018 - 6/30/2019**.

Exceptional SC - Misappropriating Funds?		
Fiscal Year 7/1/2018 - 6/30/2019 Fundraising:	\$11,575,509	Per 1/15/2020 CPA Compilation Report
Maximum Fee % allowed by law:	2.00%	Per Section 12-6-3790 (B)(4)
TOTAL ALLOWED EXPENSES:	\$231,510	
Salary	\$31,500	Per 1/15/2020 CPA Compilation Report
Payroll Taxes	\$1,982	Per 1/15/2020 CPA Compilation Report
Office Expenses	\$224	Per 1/15/2020 CPA Compilation Report
Contract Services *	\$246,332	Per 1/15/2020 CPA Compilation Report
Legal & Professional	\$11,200	Per 1/15/2020 CPA Compilation Report
Bank Fees	\$21,154	Per 1/15/2020 CPA Compilation Report
Misc	\$8,653	Per 1/15/2020 CPA Compilation Report
Website	\$10,400	Per 1/15/2020 CPA Compilation Report
TOTAL ACTUAL EXPENSES:	\$331,445	Per 1/15/2020 CPA Compilation Report
TOTAL ALLOWED EXPENSES:	\$231,510	
TOTAL ACTUAL EXPENSES:	(\$331,445)	
EXCESS FUNDS EXPENDED:	(\$99,935)	Misappropriated funds?
* Upon information and belief, the <u>\$246,332</u> for "<u>Contract Services</u>" is the amounts paid to <u>Executive Director Chad Connelly</u> and allied parties either directly or indirectly. No further detail has been provided by the SC Department of Revenue. Section 12-6-3790 (B)(4): "The public charity may expend up to two percent of the fund for administration and related costs."		
Prepared 01/24/2020		

But it get's much worse when you analyze the current 7/1/2019 - 6/30/2020 fiscal year. An estimated **\$125,643** has been overspent in just the first 6 months of the current fiscal year ... meaning we are approaching a grand total of almost a **QUARTER OF A MILLION DOLLARS ... that was meant for children's scholarships.**

Exceptional SC - Misappropriating Funds?		
EXHIBIT D		
July 2019	\$141,978.29	Per SC Department of Revenue
August 2019	\$49,464.46	Per SC Department of Revenue
September 2019	\$189,559.67	Per SC Department of Revenue
October 2019	\$133,350.00	Per SC Department of Revenue
November 2019	\$70,450.32	Per SC Department of Revenue
December 2019	\$1,419,185.95	Per SC Department of Revenue
Six Month Total:	<u>\$2,003,988.69</u>	
Total Six Mth Fundraising:	\$2,003,988.69	
Maximum Fee % Allowed:	2.00%	
Allowed Expenses to Date:	<u>\$40,079.77</u>	
TOTAL ALLOWED EXPENSES:	\$40,080	
TOTAL ESTIMATED EXPENSES:	(\$165,723)	50% of Prior Year Actual
ESTIMATED EXCESS FUNDS EXPENDED:	(\$125,643)	
<u>Estimated additional misappropriation since 7/1/2019</u>		

This story is developing ... so stay tuned.

#2. Exceptional SC Legal Status ... NOT "EXPIRED"!!!: Finally ... after two weeks of constantly calling out the lack of leadership at (not so) Exceptional SC in being able to do even the most simple of legal compliance tasks ... and pay the \$50 annual fee ... FINALLY they updated their status with the Secretary of State's Office.

But ... did (not so) Exceptional SC do it themselves ... or not???

Unfortunately it does not appear Exceptional SC itself actually fixed the problem ... because it was not until we finally got so tired of the mess ... **a complaint pointing out the expired status was sent to leadership at the SOS Office ...** and then the status was miraculously updated.



search.scsos.com/charities

South Carolina
Secretary of State
Mark Hammond

Search Charities
Charities Search Home

<< Back to Search Results

South Carolina Educational Credit for Exceptional Needs Children Fund

Public Id: P35886
Thomas Persons, CEO
1201 MAIN ST STE 985
COLUMBIA, SC 292013230

Status: Registered. Information from this organization's annual financial report is listed below.

The following financial information has been provided to the Secretary of State's Office by the above named organization. The Secretary of State's Office has not independently verified this financial information. If a charity has recently registered with the Secretary of State's Office for the first time, there may not be any financial data available. Below are figures for the organization's fiscal year 7/1/2017 - 6/30/2018.

Financial Report	
TOTAL REVENUE:	\$14,107,874.00
PROGRAM EXPENSES:	\$10,874,403.00
TOTAL EXPENSES:	\$10,966,260.00
NET ASSETS:	\$3,441,144.00
FUNDRAISER COSTS:	\$2,600.00

Financial Report File

[P35886.pdf](#)

[p35886.pdf](#)

Next Report: 07/01/2018 - 06/30/2019 Due Date: 05/15/2020

Finally...(not so) Exceptional SC legal status no longer "expired". It only took filing a 3rd Party Complaint!!! SMH

#3. SENATE DEBATE ON EDUCATION ... Ongoing: The massive S 419 Education bill is STILL being debated on the floor of the SC State Senate. Still no promised AMENDMENT to fix (not so) Exceptional SC.

Watch the video promising an amendment below:



The SC Senate is apparently taking a break next week to discuss the Santee Cooper debacle. One debacle to the next ... welcome to SC politic. SMH!!!

#4. BOARD Still Doing Nothing?!?!?: Failed fundraising ... \$7.45 MILLION lost FOREVER ... expired non-profit ... lies ... kids not getting scholarships ... schools closing ... no valid excuses ... **MISAPPROPRIATION OF FUNDS** ... what exactly does it take for the (not so) Exceptional SC Board to act???

It is bizarre. We have been involved in non-profit work for a long time ... we have talked to lawyers and CPAs as well about this situation and frankly, NOBODY CAN FIGURE IT OUT!!!

We can only assume that when this goes down ... when the proper LAW ENFORCEMENT authorities get involved ... it is not going to be pretty for a Board of Directors who did NOTHING in the face of OVERWHELMING EVIDENCE of malfeasance.



#5. ESA Debacle ... Coming to SC???: WOW ... it was a serious week of defeat for the **Education Savings Account** lobby in Tennessee this week ... or in reality more suffering by kids at the expense of the ESA lobby!!!

We reported on the entire debacle in Nevada a few years ago ... pushed by the same people opposing us here in South Carolina ... and how that Nevada debacle harmed so many kids in that state.

Well, that same ESA lobby was able to pass an ESA law in Tennessee in the spring of 2019 ... and it is TOTALLY BLOWING UP NOW ... just like in NEVADA!!!

And yes, it is the same people pushing ESAs here in SC today.
#FollowTheMoney!!!

It all started shortly after the ESA bill was passed in Tennessee ... starting with the FBI investigating the matter.



Then came the financial improprieties of a **\$2.53 MILLION** contract for a technology company (#FollowTheMoney) called **ClassWallet**. **YES, \$2.53 MILLION before one child gets a single dime!!!**

← → ↻ 🏠 [dailymemphian.com/article/10304/state-paying-voucher-contractor-12-million-in](https://www.dailymemphian.com/article/10304/state-paying-voucher-contractor-12-million-in)

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METRO BUSINESS OPINION SPORTS ARTS & CULTURE FOOD SUBURBS NEIGHBORHOODS PODCASTS OBITUARIES

CITY OF MEMPHIS SHELBY COUNTY STATE GOVERNMENT EDUCATION CRIMINAL JUSTICE DAILY BRIEFS BICENTENNIAL ELECTIONS SPIRIT OF

State paying ~~ESA~~ voucher contractor \$1.2 million in unbudgeted money

By Sam Stockard Updated: January 28, 2020 11:26 AM CT | Published: January 27, 2020 5:56 PM CT

The Tennessee Department of Education is paying a contractor \$1.2 million this year to handle its voucher program without the funds being placed in the state budget or going through the Fiscal Review Committee, officials admitted Monday, Jan. 27.

The deviation could be incorporated into a lawsuit likely to be filed against the state within weeks to derail the state's education savings account program, Gov. Bill Lee's main first-year initiative.

Under questioning Monday from the Joint Government



The state's education savings account program is one of Gov. Bill Lee's main first-year initiatives. (Daily Memphian file)

\$2.53 MILLION Contract for vendor ClassWallet before kids get one dime!

← → × 🏠 [tennessean.com/story/news/education/2020/02/11/esa-education-savings-account-program-contract](https://www.tennessean.com/story/news/education/2020/02/11/esa-education-savings-account-program-contract)

Tennessean. HOME NEWS COUNTIES SPORTS BUSINESS MUSIC CIVIL

Nashville Democrat wants comptroller to look into Education Savings Account program contract

Jason Gonzales, Nashville Tennessean Published 5:00 a.m. CT Feb. 11, 2020



METROPOLITAN NASHVILLE PUBLIC SCHOOLS BOARD OF EDUCATION NASHVILLE, TENNESSEE

Nashville's law director, Bob Cooper, details the lawsuit against the state. Attorneys for Nashville, the school board and Shelby County argued the law creating the Education Savings Account puts an unfair burden on two counties. Nashville Tennessean



Now come the LAWSUITS to shut down the ESA program before it even starts.



There are even bi-partisan bills that have been filed in Tennessee to shut down the ESA program ... it is an entire fiasco ... and the same people are here in South Carolina opposing our work and pushing for these ESAs here. #JustSayNO!!!!

← → ↻ 🏠 🔒 tennessean.com/news/

Tennessean. HOME NEWS COUNTIES SPORT



Republican says he regrets voting for school ~~vouchers~~ amid 'sketchy' rollout **ESA**

"Since that day, I have probably regretted that vote more than any vote I've taken." **2/12/2020**

Tenn. Republican Majority Leader ... **regrets voting for ESA *more than any vote he has ever taken!!!***

SO NOW ... let's tie it all back into the past few weeks here in South Carolina and legislators pushing for the technology company **ClassWallet**:



ESAs & ClassWallet ... #FollowTheMoney!!!

All starting to make sense? #FollowTheMoney!!!

THANK YOU for your support of the program and our kids. Email or call with any questions, we are always here 24/7 to support our families and schools.

info@palmettokidsFIRST.org

843-501-1842 (office)

Olga Lisinska, Executive Director

Palmetto Kids FIRST receives School Choice Award!!!: Feb 1, 2020. For the **SECOND YEAR IN A ROW ...** Palmetto Kids FIRST has received the School Choice Leadership Award!!!



PLEASE - Contact EXCEPTIONAL SC BOARD: The four educator / school leader BOARD MEMBERS MUST Hear From You!!! We have focused on legislators to this point ... but we know Senator Tom Davis needs the backing and support of the other four board members at Exceptional SC.

 EXCEPTIONAL SC	Senator Tom Davis MUST to be able to stand up next week in the Senate and say: <i>"Four out of the Five Exceptional SC Board Members SUPPORT THIS AMENDMENT!!!"</i> Will they speak up for the kids???
--	--

With the support of these FOUR individual board members ... that will push the AMENDMENT over the top. We have support, legislators know the Exceptional SC experiment has failed ... they know parents and schools are suffering ... they know children are suffer.

With BOARD SUPPORT ... they won't be able to ignore us anymore.

These are good people ... not politicians. We are not calling these people out like we do with others we know have ulterior motives. These board members have been caught between a rock and a hard place ... and we believe threatened to be quiet.

LET THEM KNOW YOU NEED THEIR HELP.

ASK THEM TO CALL [SENATOR TOM DAVIS](#) AND PLEDGE THEIR SUPPORT!!!

The time for them to speak-up is now!!!

- **Betsy Fanning, Head of School, Trident Academy**
bfanning@tridentacademy.com 843-884-7046 x11 (school)
- **Michael Acquilano, Director, South Carolina Catholic Conference** MAcquilano@catholic-doc.org 843-261-0535 (office) 843-709-2717 (cell)
- **Edward Earwood, Executive Director, South Carolina Association of Christian Schools.**
earwood@christianeducation.org 803-798-7558 (office) 843-513-5010 (cell)
- **Dr. Spencer Jordan, Executive Director, SCISA**
administration@scisa.org & sjordan@scisa.org 803-535-4820 (office)



Betsy Fanning
Head of School, Trident Academy



Michael Acquilano, JD
Charleston Diocese



Edward Earwood
Executive Director
SC Association of Christian Schools



Dr. Spencer Jordan
Executive Director
SC Association of Independent Schools

NEXT WEEK will be big!!! Legislators tell us this is what they need to fix the program. It is time.

Find your SC State Legislators

Click [HERE](#)



- > Ask your **SC Senator** to **CO-SPONSOR [S 131](#)**
- > Ask your **SC House Rep** to **CO-SPONSOR [H 3202](#)**
- > Let us know what they say ... or if they have concerns?

(Click image above or [HERE](#).)

Educational Credit for Exceptional Needs Children's Fund (ECENC) - Act 247

SCHOOL	ADDRESS	TELEPHONE	WEBSITE ADDRESS
Abner Montessori School	432 East Boundary Street Chapin, SC 29036	803.345.9428	https://www.abnermontessori.com/
Addlestone Hebrew Academy	1639 Wallenberg Boulevard Charleston, SC 29407	843.571.1105	http://addlestone.org/
Anderson Christian School	3502 Liberty Highway Anderson, SC 29621	864.224.7309	http://www.andersonchristian.com/
Ascent Christian Academy	701 Main Street N. Myrtle Beach, SC 29582	843.548.8474	https://barefootchurch.com/family/ascent-christian-academy/
Ashley Hall	172 Rutledge Avenue Charleston, SC 29403	843.722.4088	http://www.ashleyhall.org/
Beaufort Academy	240 Sams Point Road Beaufort, SC 29907	843-524-3393	http://www.beaufortacademy.org/

Each school has completed an application to participate in the Educational Credit for Exceptional Needs Children (ECENC) program in school year 2019-20. Each school meets the program standards of Act 247 of 2018. Each school must comply with the reporting requirements of Act 247 of 2018 during school year 2019-20, and failure to submit the required reporting information will result in the school's removal from the ECENC program.

2019 - 2020 Approved School List (January 2, 2020)

www.palmettokidsFIRST.org/currentschools



The (not so) Exceptional SC PROBLEM
Ignoring it won't solve it.
 Montana Supreme Court **RULES** single non-profit
 K-12 Tax Credit Program is **UNCONSTITUTIONAL**.

(Read more about Montana by clicking image above or [HERE](#).)

2019 DONOR TAX CREDITS			
	Tax Credits Remaining (at end of month)	Dollars Raised in Month	Average raised per day
START 1/1/19	\$12,000,000		
January	\$12,000,000	\$0.00	\$0.00
February	\$12,000,000	\$0.00	\$0.00
March	\$10,050,040	\$1,949,959.72	\$21,666.22
April	\$9,764,339	\$285,701.00	\$9,523.37
May	\$9,552,639	\$211,700.00	\$6,829.03
June	\$9,456,888	\$95,751.69	\$3,191.72
July	\$9,314,909	\$141,978.29	\$4,579.94
August	\$9,265,445	\$49,464.46	\$1,595.63
September	\$9,075,885	\$189,559.67	\$6,318.66
October (updated)	\$8,887,135	\$188,750.00	\$6,088.71
November (12/9)	\$8,460,135	\$427,000.00	\$10,948.72
December (final 22 days)		TBD	
SC TOTAL RAISED IN 2019:		<u>\$3,539,864.83</u>	
GA TOTAL RAISED IN 2019:		<u>\$100,000,000.00</u>	90% individuals
Same IRS tax laws, same state income tax credit. Why can GEORGIA raise all their money and (not so) Exceptional SC can't? INDEPENDENT NON-PROFITS & Exceptional SC thinks it's about "corporate" donors.			

(Read complete story by clicking image above or [HERE.](#))

So what is the 2020 Legislative Agenda? The same as every other year. When you have it right, stick with it until you win!!!

#1 FULL FUNDING

#2 INDEPENDENT NON-PROFITS

Get ready ... the legislative session starts **TUESDAY JANUARY 14TH!!!!**

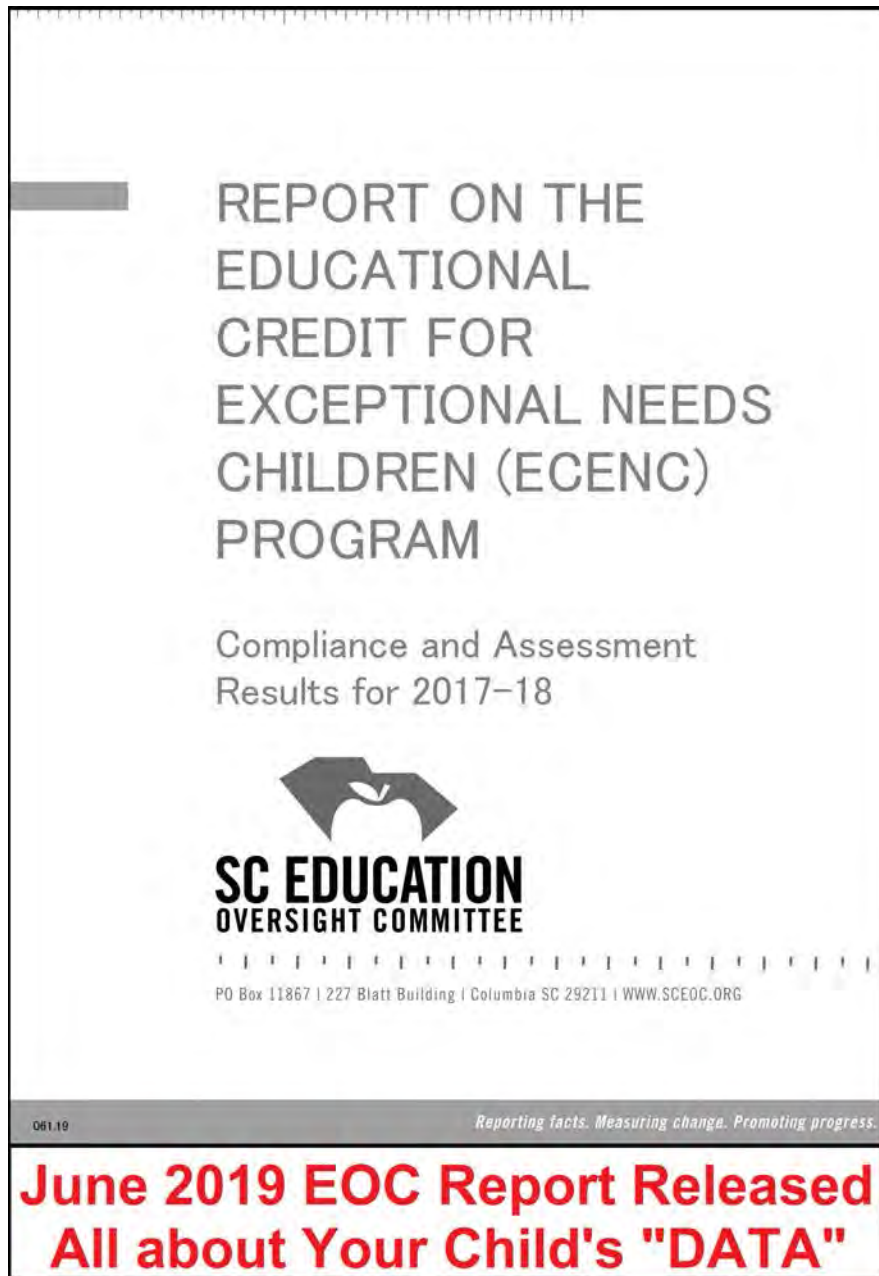


<https://www.scstatehouse.gov/legislatorssearch.php>

YOUR CHILD = GOVERNMENT DATA: The SC Education Oversight Committee (EOC) ... the government organization that along with the SC Department of Revenue we have found to be **HIGHLY OPPOSED** to his program ... has released it's "Compliance and Assessments Results for 2017-2018".

The short summary ... **EXPECT MORE TESTING!!!**

Check out the "report" yourself ... click image below or **HERE** for the complete "report".



2019-2020 GOV'T Funding Formula: Everything we feared ... and 100% not what they told us would happen when the government took over the program.

So, here it is the 2019-2020 "funding formula":

THE FUNDING FORMULA

- Our stated goal is to provide up to 50% of tuition to each incumbent student and then fund new applicants with the remaining available funds.
- As a parental choice program, the funds we provide follow your student to the school that you choose.
- Scholarships are based on the actual tuition of the school you choose for your student to attend.

Here are two examples of how this works...

EXAMPLE 1

If your child is an incumbent and you choose a school that costs \$10,000 per year, the maximum scholarship you could receive would be \$5000.

EXAMPLE 2

If you choose to move your child from a school that costs \$20,000 per year to a school that charges only \$10,000 per year, your maximum scholarship would be \$5000.

2019-2020 (not so) Exceptional SC Gov't "Funding Formula" Announced
50% Maximum - Based on Tuition Rate?

Charleston City Paper Opinion of Chad Connelly - "COMPULSIVE LIAR"?

Here is just ONE thing we came across in our research. Certainly not the worse thing we heard about CHAD CONNELLY but it is in the NEWSPAPER from 2013.

CHARLESTON
CITY PAPER

Lights of Magnolia Tickets Available Now
Get Tickets To Taste of Charleston
Get Tickets to Great Local Events

FOOD+DRINK
MUSIC+CLUBS
NEWS+OPINION
ARTS+I



Haire of the Dog

Biting commentary and rabid rants

GOP hires SCGOP head and compulsive liar Chad Connelly

Changing Freedom Tide?
Posted by [Chris Haire](#) on Mon, Jun 10, 2013 at 11:56 AM

Chad Connelly is motivational speaker, which is just another way of saying he's a con artist, a snake oil salesman, a compulsive liar looking to make a buck off his lies.

And for a brief time, Connelly was the head of the SCGOP, but just weeks into his second term, the one-time Amway salesman and author jumped ship to the national GOP. According to [reports](#), Connelly is going to help the Republican Party woo evangelicals, a group that that the GOP hasn't had to woo since at least 1980. Oh well.

Of course, there's no reason to expect much out of Connelly. As the head of the SCGOP his most notable accomplishment was... um... abh



Chad Connelly - "**COMPULSIVE LIAR**"

Charleston City Paper (June 10, 2013) ... and the BOARD at **(not so) Exceptional** SC HIRED HIM???

(Click image above or [HERE](#) for full article.)


SC Hotline
Grand Strand
Daily

NEWS | OPINION | **POLITICS**

TRENDING: ***TALKING POLITICS TV - FEATURING PAUL GABLE AND JOHN BONSIGNOR***

Chad Connelly Slander Lawsuit to Mediation

© JULY 17, 2014 7:00 AM IEWS: 724

By Paul Gable

A lawsuit, with former SCGOP chairman Chad Connelly, the SCGOP executive committee and the SCGOP as defendants, will have a mediation hearing next week in an attempt to settle the case before trial.

The lawsuit was filed by Republican Party member Brian Frank on April 25, 2013 in Cherokee County court. Frank's complaint alleges Connelly both slandered and libeled him with a series of verbal bombs in a speech

ECENC Fund (aka Exceptional SC) Board:

- **General contact:** administrator@exceptionalSC.org 803-602-4398
- **Chad Connelly**, Executive Director, Exceptional SC.
chad@exceptionalSC.org chad@chadconnelly.com 803-924-4596 (cell)
- **Thomas Persons**, ECENC FUND CHAIRMAN - President & CEO, South Carolina Technology Alliance tepsr@att.net tep@sctech.org 803-261-0348 (cell) 803-748-1323 (office)
- **Betsy Fanning**, Head of School, Trident Academy
bfanning@tridentacademy.com 843-884-7046 x11 (school)
- **Michael Acquilano**, Director, South Carolina Catholic Conference
MAcquilano@catholic-doc.org 843-261-0535 (office) 843-709-2717 (cell)
- **Edward Earwood**, Executive Director, South Carolina Association of Christian Schools. earwood@christianeducation.org 803-798-7558 (office) 843-513-5010 (cell)
- **Dr. Spencer Jordan**, Executive Director, SCISA
administration@scisa.org 803-535-4820 (office)

IMPORTANT NOTICE AND DISCLAIMER: Please note that donations by scholarship applicants, parents, guardians, friends or other family members, as well as other assistance related to donations, by law cannot and will not have any bearing on the award of a scholarship grant to a specific student or at a specific school. Any participation or assistance related to donor issues by parents, guardians or other parties is not required, nor will such persons be considered as a volunteers in any capacity for Palmetto Kids FIRST Scholarship Program. All information provided is for general informational purposes only and should not be construed as legal or tax advice. Palmetto Kids FIRST Scholarship Program, Inc. does not provide legal or tax advice. All donors or prospective donors should consult their tax adviser or attorney.



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PO Box 24216
Greenville, SC 29616

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Timesheet - CPERL Group - Har... x | 2019-001231: Case View x | Inbox (7,604) - g.k.chambers@g... x | (12) Palmetto Kids FIRST Scholar... x

facebook.com/palmettokidsFIRST/?ref=br_rs

Apps G M P F L Timesheet - CPERL... 20 Facebook M Inbox (4,477) - g.k.c... Perfect Lakeside Ge... Fastcase

Palmetto Kids FIRST Scholarship Program

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\$250,000 Lawsuit = Board Purge???...
Continue Reading



**Will the Exceptional SC Board ACT???
Misappropriation of funds ...**

4.8 out of 5 - Based on the opinion of 4 people

Community See All

- Invite your friends to like this Page
- 1,748 people like this
- 1,765 people follow this
- Ashley Persons Hibbitts and 6 other friends like this or have checked in
- 576 check-ins

About See All



Chat (98)

Show all

IMG_8004.jpg

8:56 PM 3/4/2020

Timesheet - CPERL Group - H x 2019-001231: Case View x Inbox (7,604) - g.k.chambers@ x f (12) Palmetto Kids FIRST Schol x f (12) Palmetto Kids FIRST Schol x + -

facebook.com/palmettokidsFIRST/posts/1298106200398312?_tn_=K-R

Apps G M P L O H Timesheet - CPERL... 20 Facebook M Inbox (4,477) - g.k.c... Perfect Lakeside Ge... Fastcase

Palmetto Kids FIRST Scholarship Program

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4.8 4.8 out of 5 - Based on the opinion of 4 people

Community See All

Invite your friends to like this Page

1,748 people like this

1,765 people follow this

Ashley Persons Hibbitts and 6 other friends like this or have checked in

576 check-ins

About See All

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Change a child's life for free!

Palmetto Kids FIRST Scholarship Program is feeling determined at Palmetto Kids FIRST Scholarship Program.

February 22 at 9:30 AM · Greenville, SC ·

SC Tax Credits for K-12 Special Needs Scholarships

02/22/2020 - Saturday Morning Parents Email Update:

👉 \$250,000 Lawsuit = Board Purge???

Read email here: <https://mailchi.mp/9fd651ab8774/palmetto-kids-first-3967829...>

#1. Connelly, Kirkland & Page - PURGED FROM BOARD???

> Been there for 20 +/- Years???

> Timing is Coincidental???

#2. REPEAT: Lawsuit filed to return \$250K for Scholarships

> Violated 2% Maximum Expenses

> Injunction to Immediately Stop Excess Spending

> Overages Spent on Chad Connelly & Friends?

#3. SENATE AMENDMENT - The Language

> "Fixes" Exceptional SC

> Independent Non-Profits

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8:59 PM 3/4/2020

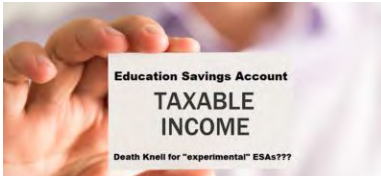


Palmetto Kids FIRST

Reporting on School Choice Corruption in SC

HOME SUPPORT PKF CONTACT US

TRENDING



FOR PARENTS / 3 months ago

1 ESAs are Taxable Income ... Death Knell for S 556?



FOR PARENTS / 5 months ago

2 Chad Connelly goes to New Orleans



FOR PARENTS / 2 months ago

3 No fundraising update – schools shutting down, students pulling out of schools, Chad Connelly goes skiing!



NEWS FLASH!!!: 1/15/2020 CPA Report shows

FOR PARENTS / 1 month ago

4 CPA & SCDOR Report Shows Chad Connelly Misappropriated \$99,935?

March	\$10,050,040	\$1,949,959.72	\$21,666.22
April	\$9,764,339	\$285,701.00	\$9,523.37
May	\$9,552,639	\$211,700.00	\$6,829.03
June	\$9,456,888	\$95,751.69	\$3,191.72
July	\$9,314,909	\$141,978.29	\$4,579.94
August	\$9,265,445	\$49,464.46	\$1,595.63
September	\$9,075,885	\$189,559.67	\$6,318.66
October	\$8,942,535	\$133,350.00	\$4,301.61
November			TBD

FOR PARENTS / 4 months ago

5 DOR releases October 31, 2019 Fundraising Totals – It's BAD!!!



Republican says he regrets voting for school vouchers

FOR PARENTS / 1 week ago

South Carolina ESA Bill Falling Apart

We reported on the entire Education Savings Account debacle in Nevada a few years ago (you can read all about...)

OUT

CHAIRMAN

Chad Connelly graduated from Clemson University with a BS degree in Civil Engineering, and served as an Armor officer in the US Army and the SC National Guard before starting his own business. He is a business owner, author and speaker and was twice-elected as the Chairman of the South Carolina Republican Party. He currently serves as the Republican National Committee's First-ever National Director of Faith Engagement traveling the

FOR PARENTS / 1 week ago

\$250,000 Lawsuit = Board Purge???

Plaintiff,

vs,

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

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

FOR PARENTS / 3 weeks ago

Lawsuit filed asking for return of \$250,000!!!

ADVERTISEMENT

Change a child's life for free!

LATEST

FOR PARENTS / 3 weeks ago

SC DOR Confirms ... No More Donations Accepted for 2019

FOR PARENTS / 4 weeks ago

SC Department Of Revenue published final 2019 fundraising total ... \$7.5M LOST FOREVER ...

FOR PARENTS / 4 weeks ago

Exceptional SC Legal Status ... "EXPIRED"!!!

FOR PARENTS / 1 month ago

ZERO Fundraising Problems in ARIZONA – Same IRS Rules

FOR PARENTS / 1 month ago

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GEORGIA 2020 Fundraising Update – \$81.8 MILLION Raised in 7 DAYS!!!

FOR PARENTS / 2 months ago

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FOR PARENTS / 3 months ago

(Not so) Exceptional SC's failures has full time special needs school fighting to stay open!

FOR PARENTS / 3 months ago

Fundraising Still Failing as of 12/09/2019!!!

FOR PARENTS / 3 months ago

Government Demands ALL Scholarship Funds Returned!!!

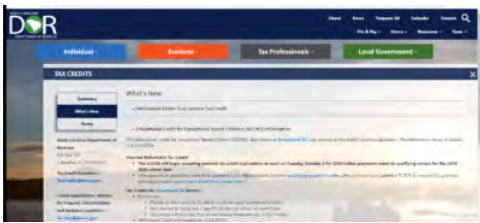
MORE NEWS

March	\$10,050,040	\$1,949,959.72	\$21,666.22
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November			TBD

STICKY POST / 4 months ago

DOR releases October 31, 2019 Fundraising Totals – It's BAD!!!

(not so) Exceptional SC continues to fail.



FOR PARENTS / 4 weeks ago

SC Department Of Revenue published final 2019 fundraising total ... \$7.5M LOST FOREVER ...

This week, SC Department Of Revenue published the final fundraising totals for 2019 ... \$4,547,101.10 RAISED ... that means \$7.5 MILLION



FOR PARENTS / 1 month ago

ZERO Fundraising Problems in ARIZONA – Same IRS Rules

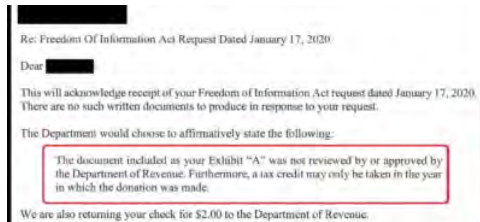
A paid expert from ARIZONA (posing as a parent but is Executive Director of a paid advocacy group???) was flown in by SC "paid" advocates to...



FOR PARENTS / 2 months ago

GEORGIA 2020 Fundraising Update – \$81.8 MILLION Raised in 7 DAYS!!!

Georgia officially broke another fundraising record – \$81.8 MILLION in ONE WEEK!!! Yes, you are reading that right – ALMOST \$82 MILLION in SEVEN DAYS and...



FOR PARENTS / 3 weeks ago

SC DOR Confirms ... No More Donations Accepted for 2019

Although for some unknown reason leadership at (not so) Exceptional SC continues to ILLEGALLY solicit 2019 contributions on their website and in emails ... the SC Department of...



FOR PARENTS / 4 weeks ago

Exceptional SC Legal Status ... "EXPIRED"!!!

\$246,332 in contract services yet #FireChadConnelly cannot keep up with the paperwork at the SC Secretary Of State's office to keep the charity status valid? Chad Connelly



NEWS FLASH!!!: 1/15/2020 CPA Report shows

FOR PARENTS / 1 month ago

CPA & SCDOR Report Shows Chad Connelly Misappropriated \$99,935?

UPDATE (1/27/2020 @ 5PM): Read the FitsNews article: <https://www.fitsnews.com/2020/01/27/sc-school-choice-battle-misappropriation-allegations-greeted-by-lawsuit-threat/> Wow ... just



FOR PARENTS / 2 months ago

No fundraising update – schools shutting down, students pulling out of schools, Chad Connelly goes skiing!

Where is (not so) Exceptional SC??? Children are suffering, Chad Connelly goes skiing ... The Waldo cartoon above might actually be funny if we were

CURRENT SCHOOLS

SCHOOL	ADDRESS	TELEPHONE	WEBSITE ADDRESS
Adams Elementary	10000 Highway 101, Columbia, SC 29209	(803) 799-1000	www.adams.k12.sc.us
Adams Middle School	10000 Highway 101, Columbia, SC 29209	(803) 799-1000	www.adams.k12.sc.us
Adams High School	10000 Highway 101, Columbia, SC 29209	(803) 799-1000	www.adams.k12.sc.us
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2019 - 2020 Approved School List (January 2, 2020)

TRENDING



FOR PARENTS / 3 months ago

ESAs are Taxable Income ... Death Knell for S 556?



FOR PARENTS / 5 months ago

Chad Connelly goes to New Orleans



FOR PARENTS / 2 months ago

No fundraising update – schools shutting down, students pulling out of schools, Chad Connelly goes skiing!



FOR PARENTS / 1 month ago

CPA & SCDOR Report Shows Chad Connelly Misappropriated \$99,935?



FOR PARENTS / 4 months ago

DOR releases October 31, 2019 Fundraising Totals – It's BAD!!!



FOR PARENTS / 4 months ago

Will Exceptional SC Pursue "John Doe"?

ADVERTISEMENT

Change a child's life for free!

THE BARCLAY CHRONICLE

DECEMBER 2019

Please help save our school!
savebarclay.com



FOR PARENTS / 3 months ago

(Not so) Exceptional SC's failures has full time special needs school fighting to stay open!

Back in October, after a Freedom of Information
Posted by Bruce Haskins | Nov 15, 2019 | Religious Freedom



FOR PARENTS / 3 months ago

Government Demands ALL Scholarship Funds Returned!!!

A Maryland 100% government run "Voucher" program started in 2016 has demanded the return of \$100,000 in scholarship funds (all funds since the beginning of the...



FOR PARENTS / 3 months ago

Fundraising Still Failing as of 12/09/2019!!!

November (plus 9 days in December) appears better when you see the \$427,000 number ... but is

MORE POSTS



HOME SUPPORT PKF CONTACT US

Copyright © 2013-2019 Palmetto Kids FIRST Scholarship Program, Inc. An IRS 501(c)(3) Non-Profit

ELECTRONICALLY FILED - 2020 Mar 06 12:11 AM - NEWBERRY - COMMON PLEAS - CASE#2020CP3600093

Timesheet - CPERL Group - Harry x | 2019-001231: Case View x | Palmetto Kids FIRST - Lawsuit Fil x | Palmetto Kids FIRST Scholarship x +

← → ↻ palmettokidsfirst.org ☆ 🗨 🏠

Apps G M 🕒 📍 📅 Facebook M Inbox (4,477) - g.k.c... Perfect Lakeside Ge... Fastcase

f t y

Palmetto Kids FIRST
Quality of Education for Our Kids



FOR PARENTS / 2 months ago

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CHAIRMAN

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FOR PARENTS / 1 week ago

\$250,000 Lawsuit = Board Purge??? Kirkland, CPA : Hired by

Plaintiff,

vs.

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Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

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FOR PARENTS / 2 months ago

No fundraising update – schools shutting down, students pulling out of schools, Chad Connelly goes skiing!

FOR PARENTS / 3 months ago

(Not so) Exceptional SC's failures

BARCLAY CHRON
December 2009
Please help save our school! See when the state

8:40 PM
3/4/2020

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GREYER / USK

**Tom Persons, Defendant
& ECENC Fund
100 Dibble Lane
Columbia, SC 29223**

0-02-27 - Proof of Service (2) DJ

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 252

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)

) C.A. NO. 2020-CP-36-00093
)

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**MOTION TO DISMISS
DEFENDANT'S
COUNTERCLAIM(S) PURSUANT
TO RULE 12(B)(6)**

Plaintiff Jefferson Davis, Jr. ("Plaintiff") hereby denies any and all wrongdoing and liability to **Defendants Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund** (hereinafter collectively referred to as "**Defendants**") and respectfully move for an order dismissing Defendant's Counterclaim(s) with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Defendants failed to state facts sufficient to constitute any counterclaim against Plaintiff Davis.

Initially, it is unclear from Defendant's Answer if Defendant's "FOR A FORTH DEFENSE" (*between ¶65 - ¶66 as Answer does not have page numbers*) is an affirmative counterclaim or simply an additional defense. Defendant's do not list this section as a counterclaim (as they do with their "FIFTH DEFENSE BY WAY OF COUNTERCLAIM" – *between ¶81 - ¶82*), but they do claim to "seek damages" in ¶ 81. Plaintiff is unable to appropriately respond to something if he is unable to determine if it is a counterclaim or not.

Both Sections FOUR & FIVE of Defendant's March 4, 2020, **Answer & Counterclaim** are attached as EXHIBIT A for ease of reference.

Furthermore, Defendant's Counterclaim(s) specifically failed to allege any facts that would subject Plaintiff Davis to any liability in his individual capacity. Defendant's Counterclaim(s) failed to state facts sufficient to constitute Defendant's Counterclaim for abuse of process, or any other potential counterclaim. Defendant's Counterclaim(s) also failed to allege anything beyond conclusory allegations with regard to their claim for abuse of process, or any other potential counterclaim.

This motion is based upon **Defendant's Answer & Counterclaim** (stamped filed March 4, 2020) and such other materials as may be submitted prior to any hearing as well as a memorandum in support of the same.

Respectfully submitted this 27th day of March, 2020.

A handwritten signature in blue ink, appearing to read 'Jeff Davis', written over a horizontal line.

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

PLAINTIFF, *PRO SE*

57. Plaintiff lacks standing to bring an action for ultra vires.
58. The South Carolina Nonprofit Corporations Act establishes who has standing to bring an action against a corporation for acting beyond its legal power or authority in South Carolina Code §33-31-304.
59. South Carolina Code §33-31-304 specifically states that the only way the validity of a corporate action may be challenged is through South Carolina Code §33-31-304.
60. South Carolina Code §33-31-304 states that an ultra vires action can only be brought against the corporation by the Attorney General, a director of the corporation or a member of the corporation.
61. South Carolina Code §33-31-304 states that an ultra vires action can only be brought against a director or officer of the corporation by the corporation, the Attorney General, a receiver or trustee, or a legal representative of the corporation.
62. The entire basis of defendants suit is the allegation that the corporation spent money beyond what is allowed by law. This is purely an ultra vires action.
63. Plaintiff does not allege that he is the Attorney General, a receiver or trustee, represents the Corporation in a legal capacity, is a director of the corporation, is a member of the corporation or the corporation itself.
64. Plaintiff is not in a class allowed to bring an ultra vires action against the corporation or one of its directors / officers.
65. Plaintiff does not have standing to bring this action and the action must be dismissed.

FOR A FOURTH DEFENSE

Rule 11 SCRPC and the South Carolina Frivolous Proceedings Act

66. Plaintiff knew or should have known Defendants were in compliance with the law based on Plaintiff's education, certifications, professional licenses, number of years of experience, having possession of all three years of financial reports and having previously presented the allegations in the form of a complaint to the Secretary of State and Attorney General.
67. Plaintiff knew or should have known he does not have standing to bring this action based upon his legal education, 27 years as a licensed attorney, statutory law and case law.

68. Plaintiff drafted a misleading complaint and provided misleading analysis prepared by the Plaintiff to show Defendants are not in compliance with the law. Both the complaint and analysis while alarming at first glance, do not withstand even moderate scrutiny.
69. Plaintiff alleges wrongdoing on behalf of Defendants Persons and Connelly which is not supported by documentation or fact.
70. Plaintiff brought this action in an attempt to obtain financial information previously denied to Plaintiff by order of the Court.
71. Defendant signed and filed this action with the Court.
72. Plaintiff knew or should have known he could not win this action on its merits, but intended to and used the existence of this litigation to harass and defame Defendants.
73. Plaintiff widely publicized the litigation to damage defendants, frustrate fundraising and create work for Defendants by inciting panic amongst schools and parents of children receiving scholarships.
74. The Plaintiff's intent to harass and defame is further evidenced by having Defendants served by Sheriff after requesting and receiving acceptance of service.
75. Intent to harass and defame is further evidenced by sending plaintiff's envelopes by mail in which he addresses them as Defendant Thomas Persons and Defendant Chad Connelly in large font on the address line of the envelopes.
76. Plaintiff knew or should have known the allegations of his complaint were false because Plaintiff has all financial reports of Defendant Exceptional SC and has the education and training as a tax attorney, CPA and Certified Financial Advisor to interpret the financial reports held by Plaintiff.
77. Plaintiff's year and a half premeditation of this action is evidenced by his making nominal donations to the nonprofit corporation in July 2018 and March 2019 in an attempt to gain a semblance of standing as a donor.
78. Plaintiff has filed frivolous actions against the Defendants in the past.
79. Plaintiff intended to damage Defendants by creating high legal expense in defense of this and past actions.
80. Defendants have been damaged by Plaintiff's actions, including damage to reputation, attorneys fees for defense of actions, attorneys fees for defense against Plaintiff's subpoenas and damages to fundraising capability.

81. Defendants seek damages, including but not limited to attorney's fees, costs of court, and pray for an order that Plaintiff cannot file future civil actions in South Carolina Courts unless the pleadings are signed by a licensed South Carolina Attorney.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM

Abuse of Process

82. Defendants incorporate by reference each of its prior allegations as if incorporated herein.
83. Plaintiff has the ulterior motive of obtaining financial information denied by prior Court Order.
84. Plaintiff signed and filed this action requesting an accounting of Exceptional SC after having been denied such information by the Court.
85. Plaintiff sent a subpoena to the Hobbs Group seeking the same financial information in another action pending before the Court.
86. Plaintiff has the ulterior motive of harassing Defendants.
87. Plaintiff served defendants by Sheriff after or simultaneously while getting Defendants to agree to accept service.
88. Plaintiff sent an envelope by mail addressed to "Defendant Thomas Persons" and "Defendant Chad Connelly"
89. Plaintiff published this action on his blog and sent it by email to parents, schools and potential donors to the Defendant Exceptional SC.
90. Plaintiffs commentary on this action on the web alleges malfeasance by Defendants Thomas Persons and Chad Connelly in a manner that is defamatory.
91. Plaintiff knows or should know based on the information held by Plaintiff and Plaintiffs education, expertise and professional licenses that allegations made against Defendants and public defamatory statements against Defendants are false.
92. Defendants have been damaged by Plaintiff's actions, including damage to reputation, attorneys fees for defense of actions, attorneys fees for defense against Plaintiffs subpoenas and damages to fundraising capability.

93. Defendants seek damages, including but not limited to attorney's fees, costs of court, and pray for an order that Plaintiff cannot file future civil actions in South Carolina Courts unless the pleadings are signed by a licensed South Carolina Attorney.

Respectfully Submitted:

s/Geoffrey K. Chambers

Counsel for Defendants South
Carolina Educational Credit for
Exceptional Needs Children Fund,
Chad Connelly and Thomas Persons

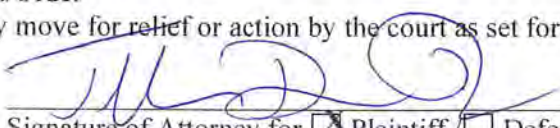
411 Walnut Street, No. 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLGroup.com
SC Bar No.: 78415

This 4th Day of March, 2020
Flat Rock, North Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF **NEWBERRY**)
JEFFERSON DAVIS, JR.)
Plaintiff,)
vs.)
CHAD CONNELLY, ET AL.)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO.: **2020** -CP- **36** - **00093**

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Jeff Davis, Pro Se , Bar No. N/A Address: 403 McCarter Avenue, Greenville, SC 29615 Phone: 843-901-8036 Fax _____ E-mail: jeff@apogeetax.com Other: _____	Defendant's Attorney: Geoffrey Chambers , Bar No. _____ Address: 411 Walnut St, #10646, Green Cove Springs, FL 32043 Phone: 864-508-0899 Fax _____ E-mail: geoffrey@cperlgroup.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: 12(b)(6) Motion to Dismiss Counterclaim(s) Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted March 27 , 20 20	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____, 20____	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

March 27, 2020

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

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

Dear Ms. Folk:

Please find enclosed an original Motion to Dismiss (and coversheet - Form SCCA 233) for filing in 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.

Pursuant to my conversation with your office on Friday, March 20, 2020, I have enclosed a personal check for the filing fee of \$25. I commend your office for your consideration during this health crisis and saving myself and other parties the need to make a personal trip to the bank to secure a money order for the filing fee.

Finally, please also find enclosed an additional copy of page 1 of the Motion. Please return a clocked in copy to me via the enclosed self-addressed stamped envelope.

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

PLAINTIFF TRIED TO RESOLVE ISSUE PRIOR TO FILING DJ ACTION

As noted in the PROCEDURAL BACKGROUND of Plaintiff's Response in Opposition to Defendants' Motion to Dismiss, Plaintiff made every effort to reach out to Defendants directly through their legal counsel as well as indirectly through the South Carolina Department of Revenue.

Defendants' legal counsel failed to respond to the detailed analysis and request for comment / resolution. The Department of Revenue on the other hand appropriately responded and noted that they had not authorized Exceptional SC to exceed the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4). Still Defendants refused to respond to plaintiff and have given all appearances that they are continuing to do whatever they like as it relates to administrative fees and refusing to comply with the 2% maximum administrative fee cap.

If Plaintiff simply wanted to harass Defendants and embarrass them as claimed, why would Plaintiff give the Defendants every opportunity to resolve the matter pre-litigation? Plaintiff and others have always maintained an "open door" policy with Defendants to resolve matters and disputes. Plaintiff offers constantly, and again in this filing, to meet with Defendants and their counsel to resolve this and all matters.

Furthermore, it is easy and simple, a few minutes and a few pieces of supporting documentary evidence, to show Plaintiff, other interested parties and the public, that Exceptional SC is compliant with the 2% maximum administrative fee cap. It is Defendants that belligerently refuse to discuss cooperatively.

As the saying goes ... ***thou doth protest too much.***

RULE 11

Rule 11, SCRCP, specifically states that:

“[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.”

PLAINTIFF COMPLIED WITH SPIRIT OF RULE 11. Although Rule 11 does not require consultation prior to filing a Declaratory Judgement, Plaintiff in fact did reach out in a good faith effort to resolve the matter with Defendants prior to filing. Plaintiff went above and beyond because he would prefer resolution without a public “fight”, but Defendants refused to respond. (See Plaintiffs Response in Opposition to Motion to Dismiss.)

DEFENDANTS DID NOT COMPLY WITH RULE 11 AS TO THEIR MOTION FOR SANCTIONS. Rule 11 is clear. Parties are to consult prior to wasting the Court’s time. Ironically, Defendants did not comply with Rule 11 themselves and consult with Plaintiff prior to filing this Motion for Sanctions (or provide a certification).

That fact alone should be sufficient to **DENY** Defendants’ Motion for Sanctions.

PLAINTIFF DOES HAVE STANDING – THUS NO SANCTIONS

Defendant’s Motion for Sanctions is also based on the false assumption that Plaintiff as a donor to Exceptional SC did not have standing. Although the Appellate Courts in South Carolina

have not addressed this specific issue and set of extenuating facts, Appellate Courts in other jurisdictions have done so and ruled in favor of donors having standing to sue.

ALTERNATIVE, PLAINTIFF HAS GOOD CAUSE TO ASSUME STANDING

Even if for some reason this Court finds Plaintiff does not have standing to file his Declaratory Judgment, given the fact that this issue has not been litigated in the SC Appellate Courts, and Appellate Courts in other states have ruled that similarly situated donors and fact scenarios would provide Plaintiff standing, Plaintiff had a good faith belief he had standing. Filing a Declaratory Judgment under these circumstances, regardless of the outcome, was in good faith and not meant to harass Defendants.

CONCLUSION

Plaintiff gave Defendants every opportunity to resolve a legitimate concern he, other interested parties and the public have in relation to the “secret” operations of Exceptional SC. Plaintiff has standing or alternatively reasonably assumed based on appellate case law that he had standing to bring his Declaratory Judgment action. As such Defendants’ Motion for Sanctions should clearly be **DENIED**.

Respectfully submitted this 6th day of April, 2020.



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

PLAINTIFF, *PRO SE*

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT

) C.A. NO. 2020-CP-36-00093

$$\left. \begin{array}{l}) \\) \\) \end{array} \right\}$$
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$$\left(\begin{array}{c}) \\) \\) \end{array} \right)$$

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)

) C.A. NO. 2020-CP-36-00093
)
)

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DENY PRELIMINARY
INJUNCTION AND TO DISMISS
THE COMPLAINT**

Plaintiff, Jefferson Davis, Jr. ("Plaintiff") respectfully submits the following in opposition to Defendants' Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") (collectively "Defendants") **MOTION TO DENY PRELIMINARY INJUNCTION AND TO DISMISS THE COMPLAINT** filed on March 4, 2020.

For the reasons set forth below, this Court should deny Defendants' aforementioned Motion.

POLITICS? NO, IT'S ABOUT ADVOCACY FOR K-12 CHILDREN

Although Defendants have cast this case as a political issue by Plaintiff against certain parties, nothing could be further from the truth. Plaintiff is not a politician nor a public figure. Plaintiff is a tax attorney (not a litigator) and a CPA who got involved from a philanthropic standpoint with K-12 tax credit scholarships in an effort to help children. In 2008 Plaintiff successfully founded what remains today the 2nd largest 501(c)(3) non-profit in Georgia working under what is now Georgia's \$100 million annual tax credit program. In 2013 after returning to

his home state of South Carolina, Plaintiff, along with his wife, Olga Lisinska, founded the largest 501(c)(3) non-profit in South Carolina, Palmetto Kids FIRST Scholarship Program, Inc. (“PKF”), working under our states newly passed Educational Credit for Exceptional Needs Children (“ECENC”) program. Here in South Carolina, PKF represented 85% of all fundraising and scholarships issued under the program for the initial three years of the program (July 1, 2013 – June 30, 2016), until the government and Department of Revenue took over the program effective July 1, 2016, eliminating all independent 501(c)(3) non-profits¹.

It was only after refusing to kowtow and work with certain unethical political operatives in late 2013 that Plaintiff Davis was dragged kicking and screaming into Defendants and other parties “world of politics”. It was not because of Plaintiff’s political agenda or interest, but that of parties such as the individual Defendants Chad Connelly and Tom Persons, and others. Plaintiff Davis is not a politician, has never run for political office, he is not a lobbyist, he is not compensated to run political campaigns, nor is he the owner of a “public relations” firm representing politicians, special interest or lobbyist principals. Those “political” titles all sit with Defendants and their associates.²

¹ South Carolina is the nation’s only government run K-12 tax credit scholarship program. Pursuant to S.C. Code Ann. § 12-6-3790, Exceptional SC is administered by the SC Department of Revenue and governed by a five person legislatively appointed board. All other states utilize independent 501(c)(3) non-profits, as SC did as well for the first three years of the program (7/1/2013 – 6/30/2016). Approximately 299,050 children receive K-12 tax credit scholarships annually in the US, with 2,295 children receiving scholarships in South Carolina (less than 0.77%). We should ask ourselves why is SC doing it differently than 99% of the rest of the nation, and failing miserably at it as well.

² **Mr. Chad Connelly** is a former SCGOP statewide Republican Party Chairman, worked for the National Republican Party, was a candidate for the 5th Congressional District in 2017 (getting the “job” with Exceptional SC immediately after losing that election with a 4th place finish), and currently and previously have been involved with politically oriented 501(c)(3) & 501(c)(4) organizations. At Exceptional SC, Mr. Connelly has used his position to contract with a host of related political consultants as opposed to hiring qualified parties to implement the program,

SIMPLE SOLUTION IS ALL IT TAKES

Although Defendants are spending a great deal of time and energy defending this case, while at the same time complaining about the defense cost being incurred, this argument is disingenuous.

Plaintiff is asking for nothing more than promised transparency³. How much has the organization raised and how much has it spent in administrative expenses – to simply determine if they have spent more than the 2% maximum administrative fee requirement on themselves and their friends. These numbers are not confidential and will be eventually disclosed. (The numbers have to date only been disclosed in totals as Exceptional SC “hides” the specific beneficiaries in a “Contract Services” line item bucket with no detail as to who received those funds.). The public, parents and school officials are clamoring for this information as well, especially giving the failures of Exceptional SC⁴.

leading to the program’s continued failures. **Mr. Tom Persons** is also a full-time political operative, his business partner is a registered SC lobbyist, and he is also a principle in a “public relations” firm that upon information and belief contracts with lobbyist principals. Although Mr. Persons has legal and fiduciary responsibilities to Exceptional SC and its beneficiary children, families and schools, he is financially conflicted based on his business interest and family members receiving scholarships from the organization and working for one of the beneficiary school.

³ On July 29, 2016, immediately after the government takeover of the program, Tom Persons and then Director of the Department of Revenue published an Op Ed promising unprecedented transparency. Instead Exceptional SC and the Department of Revenue has fought nearly every request for the most basic transparency – including this matter.

https://www.postandcourier.com/opinion/new-rules-aid-education-for-special-needs/article_2e8f1b15-ecb3-544c-9dd1-4e0dc44c8fc7.html

⁴ In calendar year 2019, the Department of Revenue has reported that Exceptional SC only raised \$4,547,101.10 of the available \$12 million of available 2019 tax credits. The organization blames changes in the IRS tax code, however other states have not experienced this problem. Georgia for example raised their entire \$100 million tax credit limit in 2019. Others states have had similar success as well, including nearly a billion dollars raised in Florida alone.

Furthermore, Plaintiff has offered on numerous occasions before filing this Declaratory Judgment action (see Procedural Background below), and after – including in open court on March 5th, 2020 – to sit down and resolve this matter. Defendants however seek to hide this transparency.

PROCEDURAL BACKGROUND

On January 9th, 2020, Plaintiff Davis sent a Freedom of Information Act (FOIA) request to the South Carolina Department of Revenue (“DOR” or “Department”) seeking a copy of the annual report the Department is required to produce by “January fifteenth of each year” pursuant to S.C. Code Ann. § 12-6-3790(B)(5). **See Exhibits A (law) & B (FOIA request)**. This report is one of a very few state government reports that has not been available online and DOR has refused to publish this report on their dedicated Exceptional SC website located at <https://dor.sc.gov/exceptional-sc>. As such, Plaintiff Davis has had to annually (for the past 3 years) submit a FOIA request to get a copy of this report so that he can in turn share the report with approximately 2,500 parents & school officials all across SC.

On January 17th, 2020, the South Carolina Department of Revenue in response to the above FOIA request, mailed Plaintiff Davis a copy of the January 15th, 2020 above noted report. **See Exhibit C (cover letter) & D (report)**.

Additionally, in calendar year 2020, the Department of Revenue has reported that Exceptional SC has only raised \$347,382.41 in tax credits as of February 29, 2020, while the Georgia Department of Revenue reported that \$81.8 million was raised in the first seven days of 2020 under its \$100 million program.

Over the past 3 years since the government takeover of the program, Exceptional SC has been independently rates as one of the worst K-12 tax credit scholarship programs in the nation, receiving an F (2016-17), F(2017-18) and D- (2018-19) by the American Legislative Exchange Council. <https://www.alecreportcard.org/state/sc/> or <https://www.palmettokidsfirst.org/2019/11/alec-gives-not-so-exceptional-sc-a-d-for-2018/>. This is all before the unprecedented failures of Exceptional SC in the 2019-2020 school year.

On January 24th, 2020, Plaintiff Davis sent an email to legal counsel for Defendant Exceptional SC, Mr. Geoffrey Chambers, entitled “URGENT: ECENC Fund - Misappropriation of Funds”. **See Exhibit E**. No response was ever received from Exceptional SC.

Also on January 24th, 2020, Plaintiff Davis sent a FOIA request to the Department of Revenue bringing this violation of the 2% maximum administrative fee requirement to DOR’s attention. **See Exhibit F**. It has become a standard practice over the prior three years to submit FOIA requests to the Department to:

1. formally inform the Department of inappropriate actions by Exceptional SC staff (i.e., incorrect technical tax statements, data breaches, false claims, etc.) and
2. have the Department step in and correct the actions of Exceptional SC and its staff.

On February 4th, 2020, the South Carolina Department of Revenue responded to Plaintiff Davis’ January 24, 2020 FOIA request stating that “at no time has it authorized or opined that administrative expenses could exceed two percent.” **See Exhibit G**.

On February 12th, 2020, given Department’s 2/4/2020 FOIA response, Exceptional SC’s failure to respond to Plaintiff Davis’ 1/24/2020 inquiry for explanation, and pursuant to conversations with other parties also concerned that Exceptional SC had violated the 2% maximum administrative fee requirement, Plaintiff Davis filed his **Complaint for Declaratory Judgment & Injunctive Relief**.

SERVICE OF PROCESS: After filing this Declaratory Judgment action on 2/12/2020, Plaintiff proceeded to have Defendants served via the Newberry and Richland Sheriff’s offices, as well as emailing a copy of the action directly to legal counsel for Defendant Exceptional SC, Mr.

Geoffrey Chambers on February 18th, 2020. **See Exhibit H.** Plaintiff once again offered to discuss the matter by specifically stating “[a]lways open to sitting down and discussing resolution with your clients if they are ever interested.” This offer to discuss resolution was ignored. Plaintiff has continued to offer to discuss resolution, which Defendants have refused.

On February 24th, 2020, Plaintiff Davis filed his **Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction**. Plaintiff Davis did not file this TRO immediately upon filing his Declaratory Judgment as he wanted Defendants to have NOTICE and be able to answer / explain their actions.

On February 27th, 2020, Plaintiff Davis’ request for an emergency TRO, without notice, was denied due to the fact that “this situation does not appear to be one which is appropriate for a restraining order, without notice” with instruction to “contact Judge Hocker’s office to request a hearing on a preliminary injunction, after notice.”

On March 4th, 2020, Defendants filed their MOTION TO DENY PRELIMINARY INJUNCTION AND TO DISMISS THE COMPLAINT.

On March 5th, 2020, a hearing was held in this action before Judge Hocker in Greenwood on Plaintiff’s request for a preliminary injunction.

On March 6th, 2020, Defendants filed their MOTION FOR SANCTIONS.

Today, April 6th, 2020, Plaintiff files this Response in Opposition. Pursuant to Judge Hocker’s instructions from the bench on March 5th, Defendants will have 10 days to file any additional reply.

THIS IS “ONLY” A DECLARATORY JUDGMENT ACTION

It should be noted that this action is not a traditional civil lawsuit. Plaintiff is only seeking an interpretation from the Court as to the meaning of certain statutory language related to the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4). Plaintiff is only asking that the Court ensure that Defendants comply with the law as written and as interpreted by the Court. Defendants have refused to sit down with Plaintiff and others to discuss the matter. Plaintiff is not willy-nilly suing Defendants for any personal financial gain.

OTHER LAWSUITS – NOT RELEVANT

Although seemingly irrelevant to this matter of a Declaratory Judgment, Defendants have attempted to “confuse” this matter with discussions of other cases involving the parties. Instead of simply showing this court and the public that they have not violated the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4), Defendants are throwing the kitchen sink at this case in an apparent effort to confuse the very simple issues being brought to the Court’s attention.

In fact, Defendants go so far as to misinform this Court by stating Plaintiff **“has filed two other unsuccessful lawsuits against Exceptional SC”**. See Motion, Page 3.

The **FOIA CASE** (*Jefferson Davis, Jr. v. South Carolina Educational Credit for Exceptional Needs Children Fund*, Civil Action No. 2017-CP-40-06976) is currently on appeal. That case however is victim of and the unintended consequence of the S.C. Supreme Court’s 2018 reversal of *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 814 S.E.2d 513 (S.C. 2018). The *DomainsNewMedia.com* case is one of the most controversial cases of 2018 with substantial commentary challenging the analysis precisely for the reason

Exceptional SC was ruled by the trial court as not subject to FOIA. There was also a well-reasoned dissent from Justice Few which is expected to be the basis for clarification and distinction of the DomainsNewMedia.com case in the coming years and in the applicable FOIA CASE..

The second case, the **WEAVER CASE** (Jefferson Davis, Jr. v. Ellen Weaver et al., Civil Action No. 2018-CP-40-02425) is a traditional civil complaint with **defamation per se, invasion of privacy through publication, negligence, intentional infliction of emotional distress, piercing the corporate veil, and civil conspiracy** causes of action – ALL REMAINING - having survived an initial 12(b)(6) Motion to Dismiss. Exceptional SC was (temporarily) dismissed on a technical service deadline issue, nothing to do with the merits of the case. This technical service issue is currently being appealed and in final briefings before the SC Court of Appeals. The case has not been dismissed and is ongoing. Only discovery has been stayed pending resolution of the appeal so that we can determine if there will be 2 defendants or 33.

These two cases have not been “unsuccessful” as Defendants incorrectly and falsely characterized them, but are simply working their way through the legal system. Defendants also have argued that other courts have “denied” Plaintiff the information he seeks in this case. This is not the case either. No subpoena has been denied, nor any discovery requests – simply stayed pending appeal. Although irrelevant to this simple Declaratory Judgment, Plaintiff felt compelled to address these claims for the Court’s background information.

DEFENDANT’S MOTION TO DISMISS - 12(B)(1), (2), (3) & (6)

Defendants in their Motion to Deny Preliminary Injunction and to Dismiss the Complaint state that they “move to dismiss Plaintiff’s Complaint pursuant to Rules 12(b)(1), (2), (3) and (6), SCRCP”. See March 4th, 2020 Motion, Page 1. Just to address this technical issue and for the

Court's information, nothing in Defendant's Motion appears to address 12(b)(1) lack of jurisdiction over the subject matter, 12(b) (2) lack of jurisdiction over the person, or 12(b)(3) improper venue. Defendant's claims appear to completely center around their incorrect claim that Plaintiff lacks STANDING, a 12(b)(6) issue if anything.

STANDARD OF REVIEW – *PRO SE* FILINGS

Plaintiff would like to remind the Court that he is a *pro se* litigant. Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). In fact, a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow for the development of a potentially meritorious case. See, e.g., *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so.

PLAINTIFF HAS STANDING

Defendants do not appear to agree that a valid controversy exists, that Plaintiff has adequately plead his case ... but that the matter should be dismissed solely for a lack of standing. Plaintiff has standing as discussed below, and as such Defendants Motion to Dismiss should be denied.

Yes, Defendants are correct that “generally” a donation to a traditional non-profit is a one-way transaction and a donor would not have standing to sue. Defendants extensively argue that Plaintiff lacks standing because he is not the Attorney General of South Carolina or a director /

member of Exceptional SC. That is the quick and easy analysis, but incorrect analysis in that Exceptional SC is NOT a traditional non-profit.

Defendants have not looked at the next step in that analysis. Although this specific issue has not been litigated in the South Carolina appellate courts, it has been analyzed in the appellate courts of other states in reversals of trial courts that only looked at the initial step of the analysis. *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.) *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.)

What makes Exceptional SC different than the traditional non-profit and why do ALL DONORS to Exceptional SC have standing? It is very simple.

First, Exceptional SC actively solicits donations (as documented in Plaintiff's initial pleadings) by using the claim that it will allocate at least 98% of all donations to scholarships. It is a verbal contract with all donors and a binding contract subject to a condition subsequent.

If those donor solicitations are not enough, Exceptional SC is also legally bound by the requirements of S.C. Code Ann. § 12-6-3790(B)(4) which requires that Exceptional SC adhere to the 2% maximum administrative fee requirement. Exceptional SC solicits donations under the terms of S.C. Code Ann. § 12-6-3790(B)(4) and donors reasonably rely upon the plain language terms of the statute in forming a binding contract subject to a condition subsequent between the two parties. Standard contract law give all donors to Exceptional SC standing.

Furthermore, Exceptional SC accepts donations as a charitable trust pursuant to the terms of its donor solicitations (at least 98% will go to scholarships) and the express terms of S.C. Code Ann. § 12-6-3790(B)(4). Standard trust law gives all donors to Exceptional SC standing.

Defendants have admitted that Plaintiff is a donor to Exceptional SC. Given all donors have standing to sue, Plaintiff has standing in this case.

HARM

Defendants also raise the issue of harm to Plaintiff. Plaintiff is harmed in the respect that he and others donated to Exceptional SC with the binding expectation that at least 98% of Plaintiff's donation would go directly to scholarships. Plaintiff had other options to contribute to scholarships, including going directly to a beneficiary school or simply give 100% of the funds to a child in need. Defendants mislead Plaintiff by publicly stating in its donor solicitations that at least 98% of all donations would go to scholarships. Plaintiff also reasonably relied upon S.C. Code Ann. § 12-6-3790(B)(4) to force compliance with the 2% maximum administrative fee requirement.

FALSE AFFIDAVIT(S)

Defendants also put forth no evidence to support their claims for dismissal. Defendants provided this Court, in support of its Motion, two affidavits. Although sworn affidavits are typically given a weight of truth and fact, these two affidavits are particularly troubling and warrant further investigation.

CONNELLY AFFIDAVIT. The March 4th, 2020 Connelly affidavit is most troubling in that Mr. Connelly swore to this honorable Court that “[i]n the past 21 days Exceptional SC has

raised approximately \$1,045,000 in donations.” Yet, pursuant to a FOIA request sent to the Department of Revenue by Plaintiff, the Department has officially published that as of February 29th, 2020, Exceptional SC has only raised \$347,382.41. <https://dor.sc.gov/exceptional-sc> This is not a minor rounding error.

Not only has Mr. Connelly substantially lied in a sworn affidavit to this Court, Mr. Connelly as a fundraiser for Exceptional SC has also violated S.C. Code Ann. § 33-56-120(A) of the SC Solicitation of Charitable Funds Act which states “[i]n connection with the solicitation of contributions or the sale of goods or services for charitable purposes, a person shall not misrepresent or mislead, knowingly and wilfully, a person by any manner, means, practice, or device.”

We can not rely upon Mr. Connelly’s affidavit for evidence in this case.

DOR AFFIDAVIT. The Department of Revenue also submitted a sworn affidavit for a Department employee. Although Plaintiff has been involved in this program since 2013, Plaintiff has never heard of this person or their involvement in the program. Affiant is not a CPA or a lawyer and can not make legal and accounting conclusions of law in his affidavit. For nearly 7 years Plaintiff has interfaced with senior DOR staff and general counsel related to this program, so an affidavit from a “new” party is extremely suspect when professional staff has always been involved in the past. This is especially true when he is swearing to items purporting to have been “[f]rom its inception”.

Furthermore, the DOR Affiant references “numbers” from Exceptional SC’s financial statements created by The Hobbs Group, P.A. that do not match what Affiant purports the numbers to be. Affiant claims the “Unrestricted” net asset balance line item on the financial statements

represents unused fees available for Exceptional SC to use in the future. Although the first year (6/30/2017) financial statement coincidentally matches the underspent 2% maximum administrative fee for that year, the following two years do not. This reported “Unrestricted” net asset balance does not foot (aka “add up”) to any unused 2% maximum fee.⁵ Perhaps this and the fact that Exceptional SC is a CASH BASIS TAXPAYER (see discussion below) explains why Defendants used an unqualified Affiant from the Department of Revenue to provide this Court with a sworn affidavit purporting to evidence that Defendants did not violate the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4). A qualified professional would not have sworn to such a technically incorrect statement.

We can not rely upon the **unqualified DOR Affiant**’s affidavit for evidence in this case.

EXCEPTIONAL SC IS A CASH BASIS TAXPAYER

Defendants have also newly brought up a claim that they can carry-forward unused 2% maximum administrative fee cap year-to-year. As stated above, The Hobbs Group, P.A. prepared financial statements do not even track an unused 2% maximum cap (except for coincidentally the first year). The Hobbs Group, P.A. financial statements as well as Exceptional SC’s Form 990 IRS tax return specifically states that the entity is a CASH BASIS TAXPAYER. Cash basis taxpayers do not have “reserves” that can be carried over year-to-year - by definition. Exceptional SC does not have accrual base book or tax accounts and as such there cannot be any carryforward of unused 2% maximum administrative fee cap.

⁵ Plaintiff does not agree or concede that the unused 2% maximum fee cap can be carried over year-to-year. See discussion. No other state or non-profit working under similar K-12 tax credit scholarship programs allow participants to carry-forward unused fees. Basically you must use it, or lose it.

STATUS QUO WILL BE MAINTAINED

Defendants argue that Plaintiff seeks to alter, not maintain the *status quo*. This argument makes no logical sense. Plaintiff only asks for Defendant to follow the law of the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4). Following the law is and should be the *status quo*. If Plaintiff wants to alter anything it is to get Defendants to stop breaking the law.

NO DEPOSIT NECESSARY

As discussed above as it relates to maintaining the *status quo* of following the law, no deposit for potential damages is necessary. Again, Plaintiff is asking this Court to make sure Defendants follow the law. If Defendants follow the law as to the maximum 2% maximum administrative fee requirement Plaintiff asks, it is impossible to have damages.

CONCLUSION

Plaintiff has standing and Defendants' Motion to Dismiss should clearly be **DENIED** and the litigation to be engaged to ensure that Defendants are complying with the 2% maximum administrative fee requirement of S.C. Code Ann. § 12-6-3790(B)(4).

Respectfully submitted this 6th day of April, 2020.

A handwritten signature in blue ink, appearing to read 'Jeff Davis', is written over a horizontal line.

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

PLAINTIFF, *PRO SE*

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT

) C.A. NO. 2020-CP-36-00093

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the Governor. The directors of the public charity, along with the director of the department, shall designate an executive director of the public charity.

(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. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(5) By January fifteenth of each year, the department shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:

- (a) the number and total amount of grants issued to eligible schools in each year;
- (b) the identity of the school and the amount of the grant for each grant issued to an eligible school in each year;
- (c) an itemized and detailed explanation of fees or other revenues obtained from or on behalf of an eligible school;
- (d) a copy of a compilation, review, or audit of the fund's financial statements, conducted by a certified public accounting firm; and
- (e) the criteria and eligibility requirements for scholarship awards.

(C)(1) Grants may be awarded in an amount not exceeding eleven thousand dollars or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school. A qualifying student receiving a grant may not be charged tuition by an eligible

EXHIBIT A

EXHIBIT B

January 9, 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 (J) requires a Department of Revenue "report" by **January 15th, 2020**. See below.

(J)(1) The department shall conduct a comprehensive study of the Exceptional Needs Tax Credit program. The study must examine the following:

- (a) the allocation of scholarship funds and tax credits among students, including the effect of funding limitations on the addition of new participants; the demographic and socio-economic data of the participants and their families, including the distribution of scholarship funds by income ranges, to be determined by the department, of scholarship recipients, and their legal guardians, as applicable; and the geographical distribution of the participants. In reporting the information required by this subitem, the department shall protect and may not display any personally identifiable information of scholarship recipients, their families or legal guardians, or taxpayers;
- (b) the distribution of scholarship funds among all eligible schools; and
- (c) any other aspect of the program that the department determines would be relevant and useful in making future policy decisions in regard to the program and its continued existence or expansion.

(2) The department shall submit a report of its study to the General Assembly no later than January fifteenth of each year."

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you mail me a copy of the following public records:

- **The above referenced "report" due no later than January 15th, 2020, and any associated correspondence, cover letters, compilation, review, or audit. If the report has not yet been submitted to the General Assembly, please provide as soon as it is complete.**

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 fulfillment 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 \$5 deposit, but request prior notice should you determine that such costs will exceed \$10.

Best,

A handwritten signature in dark ink, appearing to be 'JD' with a stylized flourish extending to the right.

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

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

EXHIBIT C

300A Outlet Pointe Blvd.
Columbia, SC 29210



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

January 17, 2020

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

Re: Freedom Of Information Act Request Dated January 9, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act Request dated January 9, 2020. The document you requested is attached, along with a copy of your request. Also enclosed is your original check.

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:wcg
Enclosures



2018–2019 REPORT OF EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN PROGRAM

South Carolina Department of Revenue

JANUARY 15, 2020

dor.sc.gov

300A Outlet Pointe Boulevard
Columbia, SC 29210

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INTRODUCTION

The following report was prepared in accordance with Act 247 of 2018 regarding the Educational Credit for Exceptional Needs Children (ECENC) program. The data and information contained in this report are from Fiscal Year 2019 (FY19) and were provided by the South Carolina Department of Revenue (SCDOR), the South Carolina Education Oversight Committee (EOC), and Exceptional SC.

The ECENC program was reorganized under a proviso in 2016 to better serve South Carolina's exceptional needs students. In 2018, the program was codified under Act 247.



SOUTH CAROLINA DEPARTMENT OF REVENUE

In concert with Exceptional SC, the SCDOR assists in record keeping, account management, and disbursing grants awarded pursuant to Act 247.

The SCDOR implements and oversees the tax credit for Exceptional SC donors.

The SCDOR develops and implements a process for eligible parents to reserve, apply, and receive the ECENC Parental Tax Credit.



SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE

The EOC determines the eligibility of schools to participate in the ECENC program. Once a school is designated as eligible, it must submit an annual compliance audit to maintain eligibility.

The EOC establishes an advisory committee, including parents, representatives of independent schools, and independent school associations, to provide recommendations to the EOC on assessment reporting and other matters as requested.



EXCEPTIONAL SC

Exceptional SC is a 501(c)(3) that provides scholarship grants to exceptional needs students in South Carolina to attend credentialed private schools.

Exceptional SC fundraises, accepts and reviews student grant applications, and awards scholarship grants based on a number of criteria. Students who are awarded the scholarship must attend a school that the EOC has approved for program participation.

EXCEPTIONAL SC

Exceptional SC is dedicated to supporting exceptional needs students and families in South Carolina.

To be eligible for a scholarship from Exceptional SC, students must be residents of South Carolina, be eligible to attend a public school, complete an application with proof of disability (Medical/Professional Form or Educator Eligibility Form), and must attend an EOC approved school. Per legislation, scholarships are awarded to incumbents (students who have previously participated in the program) first and then to students who are new to the program.

\$12,000,000

tax year
2018
donations

2,295

scholarship
recipients
(657 new and
1,638 incumbent)

\$11,834,656

scholarship grants
disbursed

628

individual and
corporate donors

116

school recipients

\$6,857

average incumbent
scholarship grant

\$19,108

average
donation

20

average
scholarship grants
per school

\$600

average
new student
scholarship grant

Board Members

Board Chair,
Mr. Thomas Persons,
President & CEO, South
Carolina Technology Alliance

Mr. Michael Acquilano,
Director, South Carolina
Catholic Conference

Mr. Edward Earwood,
Executive Director, South
Carolina Association of
Christian Schools

Mrs. Betsy Fanning,
Head of School,
Trident Academy

Dr. Spencer Jordan,
Director, South Carolina
Independent School
Association

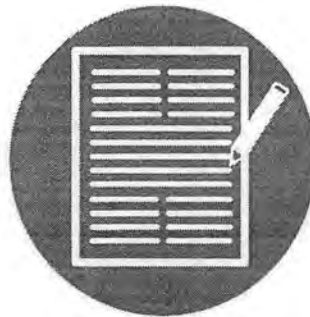
Executive Director
Chad Connelly

DONOR TAX CREDIT

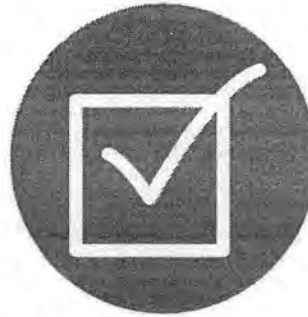
Individuals and corporations who pay South Carolina taxes are eligible to donate to the Exceptional SC 501(c)(3) scholarship fund. Donations to Exceptional SC are claimed as state tax credits.



South Carolina individuals and/or businesses make a donation to Exceptional SC.



Donors complete the Exceptional SC Donation Form, and Exceptional SC notifies the SCDOR of the donation.



The SCDOR confirms the credit amount, provided the statewide \$12 million cap has not been met.



Donors claim the credit amount with their SC income taxes using SC1040TC or SC1120TC (code 057).

Donors are:

- Eligible to claim a dollar-for-dollar credit on state income tax liability
 - (or) Entitled to a tax credit against bank taxes imposed pursuant to Chapter 11, Title 12
- Limited to a maximum credit claim that is 60% of their one-year tax liability
- Not allowed to designate a specific student or school as beneficiary
- Limited by a first come, first served annual statewide cap of \$12 million

\$12,000,000
donor credits
issued

\$19,108
average gift
per donor

628
individual and
corporate donors

100% of the statewide cap met

Data provided by the SCDOR.

PARENTAL TAX CREDIT

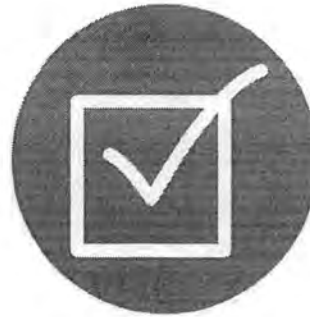
Parents or guardians of exceptional needs students attending eligible schools can apply for a refundable Parental Tax Credit toward their South Carolina income tax bill. Parental Tax Credits can only be claimed for actual out-of-pocket spending on tuition, up to \$11,000. There is a statewide cap of \$2 million in credits, reserved on a first come, first served basis.



Parents make their payment to an eligible school for an exceptional needs student's tuition.



Parents complete and submit Form TC-57A to the SCDOR to request a Parental Tax Credit. Parents should retain documentation of their child's eligibility for their own records.



The SCDOR confirms the "reservation" of a Parental Tax Credit, so long as the statewide \$2 million cap has not been met.



When the family files SC income taxes, the Parental Tax Credit amount is used to complete Form I-361.

\$4,881,687.75 credits applied for

1,137
applicants

410
recipients

\$4,878
average amount
per recipient

\$2 million credits approved

Data provided by the SCDOR.

4

STUDENTS

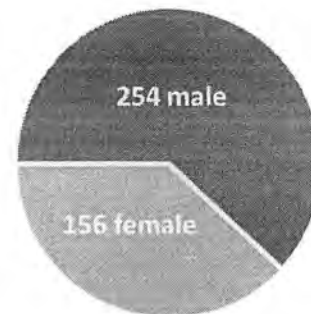
Act 247 calls for reporting demographic and socio-economic data of participants and their families, including the distribution of scholarship funds by income ranges. Collection of socio-economic data began for the 2018/2019 school year. All information below was reported by applicants.

PARENTAL TAX CREDIT RECIPIENTS

Data reported by applicants on TC-57A (credit application)

Household Income Range	# of Recipients
\$0-50,000	41
\$50,001-100,000	71
\$100,001-150,000	88
\$150,001-200,000	51
\$200,001-250,000	34
\$250,001-300,000	50
\$300,001+	75

Ages	# of Students
5-10	156
11-15	198
16+	54
No response	2



\$5,060
avg. est. additional
expenses from caring for
exceptional needs child

2
average number
of children in
household

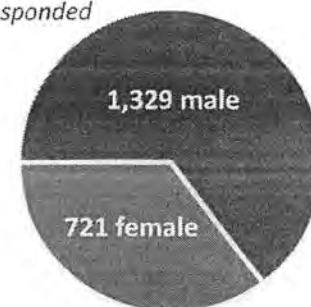
1
average number of
exceptional needs
children in household

SCHOLARSHIP RECIPIENTS

Data reported by applicants on scholarship application - not all applicants responded

Household Income Range	# of Recipients
\$0-50,000	493
\$50,001-100,000	715
\$100,001-150,000	499
\$150,001-200,000	202
\$200,001-250,000	153
\$250,001-300,000	96
\$300,001+	159

*Ages	# of Students
5-10	not available
11-15	not available
16+	not available
No response	not available



\$10,000
avg. est. additional
expenses from caring for
exceptional needs child

1.5
average number
of children in
household

1
average number of
exceptional needs
children in household

SCHOOLS

Schools apply to the EOC to participate in the ECENC program. A list of eligible schools is available on the EOC's website (eoc.sc.gov).

In order to receive an Exceptional SC scholarship grant for an exceptional needs student, the school must: be a private primary or secondary school physically located within South Carolina; not discriminate on basis of race, color, or national origin in their admission of students; use a curriculum which includes courses listed in state diploma requirements; use national or state standardized testing and provide test scores to the EOC; have physical facilities that meet local, state and/or federal laws; be a member of SACS, SCACS, Palmetto Association of Independent Schools, and/or SCISA; and complete an annual compliance audit.

Each year, private schools interested in participating in this program must apply for eligibility with the EOC. This application process helps protect students and families by ensuring schools meet and continue to meet the program eligibility requirements. To be considered for eligibility, a school must initially provide the EOC with: information on the school's eligibility, assessment score data from the previous school year, the number of grants received in the previous school year, a copy of an audit of the organization's financial statements, and a Statement of Services with information on the services and/or resources exceptional needs students receive and what needs those services are geared toward.

123 eligible schools

30

counties with
at least one
eligible school

94%

of eligible
schools enrolled
scholarship
recipients

116 schools received funding

GRANTS BY SCHOOL

The EOC approved the following schools to participate in the Exceptional SC program for FY19. All eligible applicants received grant funding.

ELIGIBLE SCHOOL HAVING RECEIVED SCHOLARSHIP GRANTS	NUMBER OF GRANTS ISSUED	VALUE OF GRANTS ISSUED
Addlestone Hebrew Academy	<10	\$15,266.50
Anderson Christian School	24	\$106,400.00
Ascent Christian Academy	<10	\$5,750.00
Ashley Hall	<10	\$61,332.00
Ben Lippen School	32	\$169,307.25
Bishop England High School	60	\$356,707.00
Blessed Sacrament School	16	\$72,845.00
Bob Jones Academy	26	\$56,687.75
Calhoun Academy	<10	\$600.00
Calvary Christian School - Greer	19	\$70,241.75
Calvary Christian School - Myrtle Beach	<10	\$6,090.00
Camden Military Academy	<10	\$22,400.00
Camperdown Academy	175	\$1,168,613.25
Cardinal Newman School	81	\$525,678.00
Chabad Jewish Academy	<10	\$24,700.00
Charleston Collegiate School	11	\$56,463.00
Charleston Day School	<10	\$20,000.00
Cherokee Creek Boys School	<10	\$10,000.00
Christ Church Episcopal School	98	\$627,157.00
Christ Our King-Stella Maris Catholic School	30	\$86,890.00
Clarendon Hall School	<10	\$2,000.00
Coastal Christian Preparatory School	<10	\$9,224.00
Colleton Preparatory Academy	36	\$122,516.00
Covenant Classical Christian	13	\$20,831.00
Cross School	10	\$38,353.00
Crown Leadership Academy	18	\$55,067.00
Cutler Jewish Day School	<10	\$45,797.50
Divine Redeemer Catholic School	<10	\$20,329.00
Einstein Academy	37	\$154,160.00
First Baptist School of Charleston	<10	\$15,166.00
Five Oaks Academy	<10	\$15,748.00
Glenforest School	34	\$158,311.25
Grace Christian School	<10	\$16,163.00
Greenwood Christian School	<10	\$6,918.00
Hammond School	27	\$115,919.50
Hampton Park Christian School	32	\$69,006.50

Data provided by Exceptional SC.

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GRANTS BY SCHOOL

ELIGIBLE SCHOOL HAVING RECEIVED SCHOLARSHIP GRANTS	NUMBER OF GRANTS ISSUED	VALUE OF GRANTS ISSUED
Harvest Community School	<10	\$7,500.00
Hawthorne Christian Academy	<10	\$13,100.00
Heathwood Hall Episcopal School	26	\$131,839.25
Heritage Academy	<10	\$8,630.00
Hidden Treasure Christian School	42	\$296,600
Hilton Head Christian Academy	34	\$267,124.00
Hilton Head Preparatory School	<10	\$55,806.00
Holy Trinity Catholic School	<10	\$34,755.00
HOPE Academy	75	\$543,362.00
Hope Christian Academy	12	\$76,825.00
John Paul II Catholic School	23	\$111,823.00
Laurence Manning Academy	<10	\$16,960.00
Lowcountry Preparatory School	<10	\$5,700.00
Mason Preparatory School	15	\$74,250.00
Mead Hall Episcopal School	<10	\$18,100.00
Miracle Academy Preparatory School	42	\$220,200.00
Mitchell Road Christian Academy	20	\$78,937.00
Montessori Academy of Spartanburg	<10	\$8,874.00
Montessori School of Anderson	<10	\$15,988.50
Montessori School of Florence	<10	\$8,975.00
Montessori School of Mauldin	10	\$32,960.00
Nativity Catholic School	11	\$28,682.50
New Covenant School	<10	\$12,720.00
Newberry Academy	12	\$26,761.00
North Myrtle Beach Christian School	<10	\$1,800.00
North Walterboro Christian Academy	<10	\$7,661.00
Northside Christian Academy	11	\$31,282.25
Oakbrook Preparatory School	12	\$51,137.50
Oconee Christian Academy	<10	\$20,982.25
Orangeburg Preparatory Schools, Inc.	<10	\$19,536.00
Our Lady of Peace Catholic School	34	\$79,211.25
Our Lady of the Rosary Catholic School	33	\$178,385.00
Palmetto Christian Academy - Mt. Pleasant	19	\$49,768.00
Palmetto Christian Academy of Greenwood	<10	\$8,157.00
Patrick Henry Academy	10	\$6,000.00
Pee Dee Academy	14	\$35,552.00
Porter-Gaud	<10	\$51,200.00
Prince of Peace Catholic School	11	\$34,020.00
Ridge Christian Academy	38	\$126,870.25
Sandhills School	83	\$651,400.00

Data provided by Exceptional SC.

8

GRANTS BY SCHOOL

ELIGIBLE SCHOOL HAVING RECEIVED SCHOLARSHIP GRANTS	NUMBER OF GRANTS ISSUED	VALUE OF GRANTS ISSUED
Shannon Forest Christian School	35	\$135,057.00
Sheila E. Academy	<10	\$4,800.00
South Aiken Baptist Christian School	<10	\$6,154.00
Southside Christian School	80	\$509,317.00
Spartanburg Day School	42	\$240,340.00
St. Andrew Catholic School	24	\$120,371.00
St. Anne Catholic School-Rock Hill	23	\$162,506.92
St. Anne-St. Jude Catholic School-Sumter	<10	\$14,872.00
St. Anthony Catholic School-Florence	13	\$47,833.00
St. Anthony of Padua Catholic School	<10	\$37,500.00
St. Elizabeth Ann Seton Catholic High School	<10	\$25,596.25
St. Francis by the Sea Catholic School	<10	\$31,720.00
St. Gregory the Great Catholic School	<10	\$12,585.00
St. John Catholic School-Charleston	31	\$158,043.25
St. John Neumann Catholic School	24	\$141,549.75
St. John's Christian Academy	15	\$58,551.50
St. Joseph Catholic School-Anderson	10	\$42,627.50
St. Joseph Catholic School-Columbia	31	\$128,595.00
St. Joseph's Catholic School-Greenville	46	\$348,689.50
St. Mary Help of Christians Catholic School	<10	\$46,045.00
St. Michael Catholic School	<10	\$21,800.00
St. Peter's Catholic School-Beaufort	<10	\$14,900.00
St. Peter's Catholic School-Columbia	18	\$56,917.00
Step of Faith Christian Academy	<10	\$5,240.00
Summerville Catholic School	10	\$32,099.00
Sumter Christian School	<10	\$7,916.00
Tabernacle Christian School	<10	\$3,500.00
The Barclay School	23	\$148,600.00
The Chandler School	65	\$566,600.00
The Charleston Catholic School	34	\$133,010.25
The King's Academy	27	\$147,356.50
The Oaks Christian	10	\$16,200.00
Thomas Hart Academy	12	\$32,132.50
Thomas Heyward Academy	14	\$36,582.00
Thomas Sumter Academy	10	\$28,805.00
Timmerman School	<10	\$24,174.50
Trident Academy	49	\$354,600.00
Walnut Grove Christian School	<10	\$18,682.50
Westminster Catawba Christian School	26	\$128,400.50
Westside Christian Academy	<10	\$6,313.54

Data provided by Exceptional SC.

9

DATA BY COUNTY

The chart below provides a look at the number of eligible schools, Exceptional SC scholarship grant recipients, and Parental Tax Credit recipients by county. For FY19, 16 of South Carolina's 46 counties did not have an eligible school participate in the program. Students in 8 of those 16 counties commuted to an eligible school in another county to participate in this program.

SC County	# of Grant Recipients	# of Credit Recipients	# of Eligible Schools
Abbeville	<10	0	0
Aiken	65	0	4
Allendale	0	0	0
Anderson	97	15	4
Bamberg	<10	0	0
Barnwell	0	0	0
Beaufort	106	14	8
Berkeley	79	16	4
Calhoun	<10	<10	<3
Charleston	372	45	18
Cherokee	<10	0	0
Chester	<10	<10	<3
Chesterfield	<10	0	0
Clarendon	15	<10	3
Colleton	49	<10	<3
Darlington	20	<10	<3
Dillon	0	0	0
Dorchester	65	<10	3
Edgefield	0	0	0
Fairfield	<10	<10	<3
Florence	26	<10	3
Georgetown	12	<10	<3
Greenville	245	167	19

SC County	# of Grant Recipients	# of Credit Recipients	# of Eligible Schools
Greenwood	<10	<10	<3
Hampton	14	<10	<3
Horry	80	<10	8
Jasper	<10	0	3
Kershaw	34	<10	<3
Lancaster	<10	<10	<3
Laurens	10	<10	0
Lee	0	0	0
Lexington	102	14	3
Marion	16	0	<3
Marlboro	<10	0	0
McCormick	0	0	0
Newberry	19	<10	<3
Oconee	10	<10	<3
Orangeburg	12	0	<3
Pickens	42	10	0
Richland	185	67	13
Saluda	0	0	0
Spartanburg	119	18	5
Sumter	55	<10	5
Union	0	0	0
Williamsburg	0	<10	0
York	65	<10	3

Data provided by Exceptional SC (grant recipients), the SCDOR (credit recipients), and the EOC (schools).

10

CONTACTS

SOUTH CAROLINA DEPARTMENT OF REVENUE

Hartley Powell

Director

803-898-5040

Director@dor.sc.gov

Meredith Cleland

Government Services

803-898-5402

Meredith.Cleland@dor.sc.gov

Bonnie Swingle

Public Information Director

803-898-5201

Bonnie.Swingle@dor.sc.gov

SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE

Dr. Rainey Knight

Interim Executive Director

803-734-6148

raineyhk@gmail.com

EXCEPTIONAL SC

Tom Persons

Chairman of the Board

803-261-0348

tep@sctech.org

Chad Connelly

Executive Director

803-924-4596

Chad@ExceptionalSC.org

APPENDIX

Compiled Financial Statements

South Carolina Educational Credit for Exceptional Needs Children Fund

Issued by The Hobbs Group, P.A. - January 15, 2020

COMPILED FINANCIAL STATEMENTS
*SOUTH CAROLINA EDUCATIONAL CREDIT FOR
EXCEPTIONAL NEEDS CHILDREN FUND*

June 30, 2019

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SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTINOAL NEEDS CHILDREN FUND

June 30, 2019

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1704 Laurel Street
Columbia, SC 29201

P.O. Box 2411
Columbia, SC 29202

Phone (803) 799-0555
Fax (803) 799-4212



125 W. Stone Avenue
Greenville, SC 29609

Phone (864) 271-7503
Fax (864) 751-5889

www.hobbscpa.com

Management is responsible for the accompanying financial statements of South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization"), which comprise the statement of assets, liabilities, and net assets - modified cash basis as of June 30, 2019 and the related statements of support, revenue, and expenses and functional expenses - modified cash basis for the year then ended and the related notes to the financial statements in accordance with the modified cash basis of accounting, and for determining that the modified cash basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements, nor were we required to perform any procedures to verify the accuracy or the completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

We draw attention to Note A of the financial statements, which describes the basis of accounting. The financial statements are prepared in accordance with the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

We are not independent with respect to the Organization.

Columbia, South Carolina
January 15, 2020

The Hobbs Group, P.A.

COMPILED FINANCIAL STATEMENTS

STATEMENT OF ASSETS, LIABILITIES, AND NET ASSETS - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 June 30, 2019

ASSETS

Current Assets

Cash and cash equivalents

	\$ 2,850,552
Total Current Assets	<u>2,850,552</u>

TOTAL ASSETS	<u><u>\$ 2,850,552</u></u>
--------------	----------------------------

LIABILITIES AND NET ASSETS

Liabilities

	\$ -
Total Liabilities	<u>-</u>

Net Assets

Without donor restrictions

58,330

With donor restrictions

2,792,222

Total Net Assets	<u>2,850,552</u>
------------------	------------------

TOTAL LIABILITIES AND NET ASSETS	<u><u>\$ 2,850,552</u></u>
----------------------------------	----------------------------

See accountants' compilation report and notes to the financial statements.

STATEMENT OF SUPPORT, REVENUES AND EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

	Net Assets Without Donor Restrictions	Net Assets With Donor Restrictions	Total
REVENUES AND OTHER SUPPORT			
Contributions		\$ 11,562,752	\$ 11,562,752
Investment income	\$ 12,757		12,757
Net assets released from restrictions	12,074,563	(12,074,563)	-
Total Revenues and Other Support	12,087,320	(511,811)	11,575,509
EXPENSES			
Program services	12,025,514		12,025,514
Management and general	137,987		137,987
Fundraising	2,600		2,600
Total Expenses	12,166,101	-	12,166,101
CHANGE IN NET ASSETS	(78,781)	(511,811)	(590,592)
Net assets at beginning of year	137,111	3,304,033	3,441,144
NET ASSETS AT END OF YEAR	\$ 58,330	\$ 2,792,222	\$ 2,850,552

See accountants' compilation report and notes to the financial statements.

EXHIBIT D - Page 21 of 26

STATEMENT OF FUNCTIONAL EXPENSES - MODIFIED CASH BASIS
 SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND
 For the Year Ended June 30, 2019

		Supporting Services		
	Program Services	Management and General	Fundraising	Total
Awards and grant scholarships	\$ 11,834,656			\$ 11,834,656
Salaries and wages		\$ 31,500		31,500
Payroll taxes		1,982		1,982
Office		224		224
Contract services	183,578	62,754		246,332
Professional and legal fees		11,200		11,200
Bank fees		21,154		21,154
Miscellaneous		8,653		8,653
Amortization	7,280	520	\$ 2,600	10,400
TOTAL EXPENSES	<u>\$ 12,025,514</u>	<u>\$ 137,987</u>	<u>\$ 2,600</u>	<u>\$ 12,166,101</u>

See accountants' compilation report and notes to the financial statements.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

June 30, 2019

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Activities

South Carolina Educational Credit for Exceptional Needs Children Fund (the "Organization") was incorporated in South Carolina on June 16, 2016. The Organization's mission is to provide scholarship grants to K through 12th grade "exceptional needs" children by means of the efficient implementation of the South Carolina State Budget Proviso (the "Proviso" or "Program"). The Proviso is also commonly referred to as the Educational Credit for Exceptional Needs Children (ECENC).

South Carolina Educational Credit for Exceptional Needs Children Fund is the sole organization distributing scholarship grants as defined under the terms of the Proviso. Activities of the Organization are limited to accepting contributions eligible for a tax credit under the terms of the Proviso and issuing scholarships to eligible children in accordance with the Proviso. The Organization shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the South Carolina Department of Revenue (the "Department"), shall designate an executive director of the fund. The Department may expend up to two percent of the fund for administration and related costs. For purposes of this calculation the "fund" is defined as the total contributions for the fiscal year, net of the returned payments, plus any investment income earned for that year. The Organization may not expend public funds to administer the program. The Organization engages in no other activities outside the purposes reasonably contemplated by the Proviso.

In an act dated and signed May 14, 2018, the Governor signed into permanent law by adding section 12-6-3790 to provide definitions and to create the ECENC which sets limits for tax credits available and the way the scholarships should be awarded.

Summary of Significant Accounting Policies

Basis of Accounting: The financial statements of the Organization are prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (GAAP). Management has determined that the modified cash basis of accounting is an acceptable basis for the presentation of the Organization's financial statements.

Basis of Presentation: The Organization classifies its resources for accounting and reporting purposes into two classes of net assets, according to externally imposed restrictions:

Net assets without donor restrictions: The portion of the net assets of the Organization that can be used subject only to the broad limits resulting from the nature of the Organization,

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

the environment in which it operates, and the purposes specified in its bylaws. The Organization has the ability to choose when using these resources.

Net assets with donor restrictions: The portion of net assets of the Organization that is subject to either donor-imposed time restrictions or donor-imposed purpose restrictions. These restrictions limit the Organization's choices when using these resources as the Organization has a fiduciary responsibility to the donors to follow their instructions.

Cash and Cash Equivalents: The Organization considers all highly liquid investments available for current use with an initial maturity of three months or less, to be cash equivalents. The carrying value of cash approximates fair value because of the short maturities of these financial instruments.

Contributions: Contributions received are recorded as net assets with or without donor restricted support, depending on the existence and/or nature of any donor restrictions. All donor-restricted support is reported as an increase in net assets with donor restrictions, depending on the nature of the restriction. When a restriction expires or the purpose of the restriction is satisfied net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions.

Estimates: The preparation of the financial statements in conformity with accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The significant estimate in these financial statements is the functional allocation of expenses.

Functional Allocation of Expenses: Management estimates the Organization's indirect expenses on a functional basis. Management's estimates of other indirect costs are based on pro-rated percentages as determined by management. Expenses that can be identified with a specific program or supporting service are charged directly to the program or supporting service.

Income Taxes: The Organization has received a determination letter from the Internal Revenue Service (IRS) indicating it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Organization has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Organization and recognize a tax liability (or asset) if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Organization, and has concluded that as of June 30, 2019, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Organization is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations for tax years prior to 2016.

Donor-Imposed Restrictions: The Organization limits any donor-imposed restrictions on contributions to those allowed by the Proviso so that the contribution will be eligible for a tax credit. In order for contributions to be eligible for a tax credit, the Proviso prohibits donors from designating a specific child or school as the beneficiary of the contribution. The Organization does not accept contributions designated for the benefit of a specific child or school.

Educational Credit for Exceptional Needs Children Program: The 2018-2019 South Carolina State Budget New law act 247 approved by the Governor, allows for the issuance of a total of \$12,000,000 in individual scholarship grants in an amount not exceeding \$11,000 (as may be adjusted) or the total cost of tuition (whichever is less). These funds may be used for tuition, transportation or textbook expenses for eligible "exceptional needs" children attending approved South Carolina independent schools. Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

The Organization may not award grants solely for the benefit of one school. The Department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain. The Department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

The Provisos & Law also limit the Organization to administrative and related expenses of not more than 2% of the fund.

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE A -- NATURE OF ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- Continued

New Accounting Pronouncement: In August 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*. The Organization has adjusted the presentation of its financial statements accordingly. The new standard changes the following aspects of the Organization's financial statements:

- The temporarily restricted and permanently restricted net asset classes have been combined into a single net asset class called *net assets with donor restrictions*.
- The unrestricted net asset class has been renamed net assets without donor restrictions.
- The financial statements include a new disclosure about liquidity and availability of resources.

Subsequent Events: Subsequent events have been evaluated through January 15, 2020, which represents the date the financial statements were available to be issued.

NOTE B -- CONCENTRATION OF CREDIT RISK

The Organization maintains cash balances that at times, may exceed amounts insured. Accounts at each financial institution are insured by the Federal Deposit Insurance Corporation (FDIC insured) up to \$250,000 for bank and certificate of deposit balances. The Organization believes it is not exposed to any significant credit risk on its cash balances. The bank balances consist of the following at June 30, 2019:

Cash and cash equivalents	
on deposit insured by the FDIC	\$ 250,000
Cash and cash equivalents	
on deposit uninsured by the FDIC	2,604,590
	<u>\$ 2,854,590</u>

NOTE C -- NET ASSETS WITH DONOR RESTRICTIONS

A summary of temporarily restricted net assets is as follows at June 30, 2019:

Restricted to scholarship grants for eligible	
"exceptional needs" children enrolled at approved	
South Carolina independent schools	\$ 2,792,222

NOTES TO THE FINANCIAL STATEMENTS

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

NOTE D -- LIQUIDITY AND AVAILABILITY OF RESOURCES

The following table reflects the Organization's financial assets as of June 30, 2019, reduced by amounts not available for general expenditure within one year. Financial assets are considered unavailable when illiquid or not convertible to cash within one year, or because the Organization has set aside the funds for a specific contingency reserve. Board designations could be drawn upon if the Board approves that action.

	2019
Financial assets:	
Cash and cash equivalents	\$ 2,850,552
Total Financial Assets	<u>2,850,552</u>
Less those unavailable for general expenditure within one year, due to:	
Funds with donor restrictions	<u>(2,792,222)</u>
FINANCIAL ASSETS AVAILABLE TO MEET CASH NEEDS FOR GENERAL EXPENDITURES WITHIN ONE YEAR	<u>\$ 58,330</u>



EXHIBIT E
Jeff Davis <jeff@apogeetax.com>

URGENT: ECENC Fund - Misappropriation of Funds

1 message

Jeff Davis <jeff@apogeetax.com>

Fri, Jan 24, 2020 at 3:08 PM

To: geoffrey@cperlgroup.com, g.k.chambers@gmail.com

RE: ECENC Fund - Misappropriation of Funds

Mr. Chambers,

I have just received the ECENC Funds financial report from the SC Department of Revenue for the fiscal year 7/1/2018 - 6/30/2019.

The "Compilation", by the Hobbs Group, CPAs (*which now notably is disclaiming all independence and responsibility as it relates to the ECENC Fund's reporting / activities - I presume because of what I am inquiring about now*) clearly indicates that the ECENC Fund has **misappropriated \$99,935**. I also noted in the report that the Department of Revenue removed their prior year disclosures / footnotes confirming the reported numbers. It appears to indicate that both the SCDOR and the Hobbs Group CPAs are leaving all responsibility of this misappropriation of funds with your client(s).

Specifically Section 12-6-3790 (B)(4) states "**The public charity may expend up to two percent of the fund for administration and related costs.**"

Per the CPA report, \$11,575,509 was raised during the fiscal year by the ECENC Fund, allowing for a maximum of \$231,510 in fees.

However, per the CPA report, the ECENC Fund spend \$331,445.

Before this information is reported to parents, school officials and legislators, does your client have any explanation or comment as to this matter? Does your client wish to provide any detail on the \$246,332 in "Contract Services" listed in the CPA report?

Please advise ASAP if you intend to respond to this email and need additional time.

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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January 24, 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.

The Department recently provided me with its January 15, 2020 report entitled **“2018-2019 REPORT OF EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN PROGRAM”**.

Attached to that report, as Exhibit A, was Compiled Financial Statements for the South Carolina Educational Credit for Exceptional Needs Children Fund (“ECENC Fund”, aka Exceptional SC) as issued by The Hobbs Group, P.A. – January 15, 2020.

Pursuant to these CPA prepared compiled financial reports, the ECENC Fund, as by law administered by the SC Department of Revenue, spent in excess of the allowed 2% for administration and related costs. Specifically, the report appears to indicate that \$99,935 was misappropriated by the ECENC Fund.

SEE SUMMARY BREAKDOWN BELOW. Also refer to the “STATEMENT OF FUNCTIONAL EXPENSES – MODIFIED CASH BASIS” schedule on page 4 of The Hobbs Group, P.A. compiled financial reports.

Exceptional SC - Misappropriating Funds?

Fiscal Year 7/1/2018 - 6/30/2019 Fundraising:	\$11,575,509	Per 1/15/2020 CPA Compilation Report
Maximum Fee % allowed by law:	2.00%	Per Section 12-6-3790 (B)(4)
TOTAL ALLOWED EXPENSES:	\$231,510	

Salary	\$31,500	Per 1/15/2020 CPA Compilation Report
Payroll Taxes	\$1,982	Per 1/15/2020 CPA Compilation Report
Office Expenses	\$224	Per 1/15/2020 CPA Compilation Report
Contract Services *	\$246,332	Per 1/15/2020 CPA Compilation Report
Legal & Professional	\$11,200	Per 1/15/2020 CPA Compilation Report
Bank Fees	\$21,154	Per 1/15/2020 CPA Compilation Report
Misc	\$8,653	Per 1/15/2020 CPA Compilation Report
Website	\$10,400	Per 1/15/2020 CPA Compilation Report
TOTAL ACTUAL EXPENSES:	\$331,445	Per 1/15/2020 CPA Compilation Report

TOTAL ALLOWED EXPENSES:	\$231,510	
TOTAL ACTUAL EXPENSES:	(\$331,445)	
EXCESS FUNDS EXPENDED:	(\$99,935)	<u>Misappropriated funds?</u>

* Upon information and belief, the \$246,332 for "Contract Services" is the amounts paid to Executive Director Chad Connelly and allied parties either directly or indirectly. No further detail has been provided by the SC Department of Revenue.

Section 12-6-3790 (B)(4): "The public charity may expend up to two percent of the fund for administration and related costs."

Prepared 01/24/2020

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 discussed, opined on in any way, and/or authorized Chad Connelly and/or the SC Educational Credit for Exceptional Needs Children Fund (aka Exceptional SC) to expend funds in excess of the maximum “two percent of the fund for administration and related costs” as required by Section 12-6-3790(B)(4) for the fiscal year 7/1/2018 – 6/30/2019.
- Any document or record the Department discussed, opined on in any way, and/or indicating why The Hobbs Group, P.A. is no longer, as of the 7/1/2018 – 6/30/2019 reporting period, “independent” with respect to the ECENC Fund.
- Any The Hobbs Group, P.A. engagement letters related to the ECENC Fund.

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 fulfillment 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,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal line extending to the right.

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

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

EXHIBIT G

300A Outlet Pointe Blvd.
Columbia, SC 29210



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

February 4, 2020

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

Re: Freedom Of Information Act Request Dated January 24, 2020

Dear Mr. Davis:

This will acknowledge receipt of your Freedom of Information Act request dated January 24, 2020.

Your FOIA request contains three bullet points requesting documents.

Your third bullet point requests engagement letters with the Hobbs Group. The Department has elected to produce the only two such engagement letters in its possession. One is dated November 8, 2017, and the other dated August 27, 2018.

In response to the first bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that at no time has it authorized or opined that administrative expenses could exceed two percent.

In response to the second bullet, there are no documents to produce in answer to your request. The Department would affirmatively state that it does not agree with your editorial comment or conclusion that the Hobbs Group is not independent.

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

Sincerely,

Joe S. Dusenbury Jr.
General Counsel

JSDJr:weg
Enclosures

**EXHIBIT H**

Jeff Davis <jeff@apogeetax.com>

Re: Summons and Complaint

1 message

Jeff Davis <jeff@apogeetax.com>

Wed, Feb 19, 2020 at 5:24 PM

To: Geoffrey Chambers <g.k.chambers@gmail.com>, geoffrey@cperlgroup.com

Geoff ...

As requested, please see attached.

Always open to sitting down and discussing resolution with your clients if they are ever interested.

Thank you,

JD

Jeff Davis, JD, MBA

403 McCarter Avenue | Greenville, SC 29615

843-901-8036 (cell) | jeff@apogeetax.com

Attention: The information contained in this E-mail message is attorney privileged and confidential information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have 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 Wed, Feb 19, 2020 at 3:11 PM Geoffrey Chambers <g.k.chambers@gmail.com> wrote:

Jeff,

Please send me the summons and complaint and acceptance of service form.

I expect to have clearance to accept service by tomorrow.

Geoff

2 attachments2020-02-12 - LAWSUIT v Chad Connelly re 2 Percent vEmail.pdf
5825K2020-02-19 - Acceptance of Service - ECENC Fund.docx
25K

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' REPLY TO
PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DENY PRELIMINARY
INJUNCTION AND TO DISMISS
THE COMPLAINT AND
MOTION FOR SANCTIONS**

Defendants Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") (collectively "Defendants"), by and through the undersigned counsel and specifically reserving the defenses asserted in the previously filed Motion to Dismiss, submit this Reply to Plaintiff's Response in Opposition to Defendants' Motion to Deny Preliminary Injunction and to Dismiss the Complaint and Response to Motion for Sanctions. This memorandum supplements 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.

REPLY TO PLAINTIFF'S ASSERTION OF STANDING

In his two response filings, Plaintiff argues standing to bring the asserted claims upon the sole ground 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 because Exceptional SC solicited donors by advertising the statutory requirement that 98% of donated funds would be allocated to scholarships.¹ Plaintiff does not address that the South Carolina

¹ Plaintiff admits that South Carolina's common law does not support this argument. (See Pl.'s Resp. in Opp'n to Defs.' Mot. to Den. Prelim. Inj. & Dismiss Compl. at 10 ("[T]his specific issue has not been litigated in the South Carolina

Nonprofit Corporation Act expressly reserves standing to challenge the actions of a nonprofit corporation to the entity's directors and members and the South Carolina Attorney General. S.C. Code § 33-31-304 & The South Carolina Reports' Comments; Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979) (holding that parties who are not members of a nonprofit corporation have no standing to challenge the conduct of the corporation).

The two foreign cases cited by Plaintiff are easily distinguishable from applicable South Carolina law because their determinations and reasoning rely entirely on the statutes and common law applicable in their respective jurisdictions, which expressly conflict with the law applicable in this jurisdiction. In LB Research and Education Foundation v. UCLA Foundation, 29 Cal.Rptr.3d 710 (Cal. Ct. App. 2005), the California Court of Appeals determined that California law permits the donor of a gift given subject to express written conditions to challenge the use of the donated funds because the California Uniform Supervision of Trustees for Charitable Purposes Act expressly permits such actions. Id. at 714-16 (citing Cal. Gov. Code §§ 12591, 12598; City of Palm Springs v. Living Desert Reserve, 82 Cal.Rptr.2d 859 (Cal. Ct. App. 1999); Holt v. College of Osteopathic Physicians & Surgeons, 40 Cal.Rptr. 244, 247 (Cal. 1964)). The California Uniform Supervision of Trustees for Charitable Purposes Act provides as follows:

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.**

* * * *

appellate courts[.]"). Plaintiff also does not cite any South Carolina statute or regulation in support of this argument nor address the unambiguous language of the South Carolina Nonprofit Corporation Act and the South Carolina case law cited in Defendants motion to dismiss expressly limiting standing to challenge the actions of a nonprofit corporation or its directors and officers to the corporation or the Attorney General. (See id.)

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2 of 6

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.

Cal. Gov. Code 12591, 12598 (emphasis added). Accordingly, the California Court of Appeals held that “[a]lthough the [California] 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.” LB Research and Education Foundation, 29 Cal.Rptr.3d at 717. The California Court of Appeals nevertheless warned that such standing is limited “to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity’s affairs.” Id. (quoting Holt, 40 Cal.Rptr. at 248).

Similarly, in Smithers v. Saint Luke’s-Roosevelt Hospital Center, 723 N.Y.S.2d 426 (N.Y. App. Div. 2001), the New York Court of Appeals determined that New York common law permits the estate of a donor of a charitable gift to sue the donee to enforce the terms of the gift where the deceased donor expressly reserved to himself the right enforce the express terms of the gift. In doing so, the Smithers Court recognized that New York common law “explicitly forecloses the conclusion that the [New York] Attorney General’s standing in these actions is exclusive” and that “[i]nstead, the [New York] Attorney General [only] has the statutory power and duty to represent the beneficiaries of any disposition for charitable purposes.” Id. at 433.

The South Carolina Nonprofit Corporation Act, however, explicitly provides that “[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.” S.C. Code § 33-31-304. The South Carolina Reports’ Comments to this statute provide as follows:

Under this section of the Nonprofit Act, a member of a nonprofit corporation has no right to bring a direct attack against a proposed action. The claim may only be brought derivatively. If an action has been accomplished and the members believe that the

directors or others in charge have done something wrong, have acted “ultra vires,” the members may bring a derivative action against the alleged wrongdoers. There was consideration of adopting language more similar to the South Carolina Business Corporation Act. However, the South Carolina Business Corporation Act, as noted, provides for damage actions against the board which was viewed as undesirable in the context of nonprofit corporations. Consideration was also given as to whether the Attorney General should have authority to bring an action against directors of mutual benefit corporations as well as against directors of public benefit corporations. It was determined that the members of these corporations would have sufficient interest in the entity to adequately police any alleged wrongdoing.

Id.; see also Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979) (holding that parties who are not members of a nonprofit corporation have no standing to challenge the conduct of the corporation).

Accordingly, under South Carolina law, Plaintiff does not have any valid argument for standing under the theory that his donation created either an implied contract subject to a condition subsequent or a charitable trust because, unlike New York and California, South Carolina statutorily limits standing to challenge the actions of a nonprofit corporation or its directors and officers to the corporation or the Attorney General. Moreover, Plaintiff does not allege any express condition subsequent to his donation that provided the gift would revert back to the donor if unfulfilled. As a result, this Court should deny Plaintiff’s motion for a temporary injunction, dismiss Plaintiff’s Complaint, and grant Defendants’ motion for sanctions because South Carolina law expressly and unambiguously provides that Plaintiff lacks standing to bring the asserted claims.

REPLY TO PLAINTIFF’S ARGUMENT FOR A PRELIMINARY INJUNCTION

As discussed above, Plaintiff does not have standing to bring the asserted claims. Nevertheless, *arguendo*, in the event that Plaintiff did have standing to bring the claims, this Court should find Plaintiff’s arguments in support of his motion for preliminary injunctive relief unavailing. In fact, Plaintiff’s response filings fail to address the elements necessary for him to carry the burden of demonstrating facts and circumstances warranting an injunction. See Calcutt v. Calcutt, 282 S.C. 565, 572, 320 S.E.2d 55, 59 (Ct. App. 1984).

Plaintiff, for example, argues that any failure by Exceptional SC to allocate 98% of donated funds to scholarships breached his “binding expectation” that 98% of those funds would be allocated to scholarships constitutes immediate and irreparable harm to him. Plaintiff, however, fails to specify the nature or extent of that harm. Plaintiff similarly argues the tautology that preliminary injunctive relief is necessary to maintain the status quo because compliance with the law should be the status quo. Plaintiff, however, entirely fails to address the manner in which enjoining the nonprofit corporation from expending any additional administrative expenses, enjoining two of the nonprofit corporation’s five duly appointed directors and executive director from participating in the administration of the corporation, and requiring the production of financial information that the organization is statutorily prohibited from releasing would affect the ongoing general operation of Exceptional SC or require a violation of statute. Plaintiff also does not substantively address the extent to which such injunctive relief would irreparably injure Defendants during the pendency of the injunction and simply ignores the requirement that “no restraining order or temporary injunction shall issue except upon the giving of security by the applicant[.]” Rule 65(c), SCRCP. Moreover, Plaintiff does not specifically address whether Plaintiff’s claims are likely to succeed on the merits or whether the available remedies at law are adequate. As a result, this Court should deny Plaintiff’s motion for a temporary injunction and grant Defendants’ motion for sanctions because Plaintiff has filed a motion for preliminary injunction for which there exists no good ground for support and which were commenced in bad faith.

CONCLUSION

For the foregoing reasons, this Court should deny the injunctive relief requested by Plaintiff, dismiss Plaintiff’s causes of action with prejudice, and impose sanctions against Plaintiff in an amount sufficient to reimburse Defendants for the reasonable costs and attorney fees incurred in defending

against this frivolous action commenced in bad faith and impose other sanctions designed to deter Plaintiff from bringing future frivolous actions commenced in bad faith.

Respectfully submitted,

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April 16, 2020

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by *Hardt v. Vitae Foundation, Inc.*, Mo.App. W.D.,
November 10, 2009

130 Cal.App.4th 171

Court of Appeal, Second District, Division 1, California.

L.B. RESEARCH AND EDUCATION
FOUNDATION, Plaintiff and Appellant,

v.

The UCLA FOUNDATION et al.,
Defendants and Respondents.

No. B176151.

June 14, 2005.

Rehearing Denied July 12, 2005.

Review Denied Aug. 31, 2005.

Synopsis

Background: Donor who contributed \$1 million to establish endowed chair at university's medical school sued university foundation and university regents for breach of contract, declaratory relief, and specific performance of agreement setting forth certain conditions imposed by donor. Defendants moved for judgment of pleadings on ground that donor had created charitable trust that only state Attorney General could enforce. The Superior Court, Los Angeles County, No. BC305136, Robert L. Hess, J., granted defendants judgment of pleadings. Donor appealed.

Holdings: The Court of Appeal, Vogel, J., held that:

[1] agreement was conditional contract, rather than trust, and thus donor had standing to sue, and

[2] even if charitable trust was created, Attorney General did not have exclusive power to enforce it.

Reversed and remanded with directions.

West Headnotes (11)

[1] Charities **Nature of charities**

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. *Restatement (Second) of Trusts* § 348.

2 Cases that cite this headnote

[2] Charities **Form of gift**

To create a charitable trust, there must be a proper manifestation by the settlor of an intention to create a trust, a trust res, and a charitable purpose.

1 Cases that cite this headnote

[3] Charities **Form of gift**

Owner of property who wishes to make charitable gift may, rather than create a charitable trust, transfer it to another on condition that if latter should fail to perform specified act, transferee's interest shall be forfeited either to transferor or to designated third party; in such case, interest of transferee is subject to condition subsequent and is not held in trust. *Restatement (Second) of Trusts* § 11.

1 Cases that cite this headnote

[4] Charities **Form of gift**

A charitable 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, transferee of conditional gift receives both legal and equitable title to the property, and second, transferee has no enforceable duties.

[5] Charities **Form of gift**

Whether a trust or a gift subject to condition is created by a charitable contribution of

property 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.

1 Cases that cite this headnote

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

In determining whether a charitable contribution creates a trust or a conditional gift, the question 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.

2 Cases that cite this headnote

[7] **Charities** ➡ General rules of construction

Courts favor the construction of a charitable gift as a trust over a conditional gift, but if the donor clearly manifests an intention to make a conditional gift, that intention will be honored.

2 Cases that cite this headnote

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

Donor who contributed \$1 million to establish endowed chair at university's medical school subject to specified conditions created a gift subject to conditions subsequent, rather than a charitable trust, notwithstanding absence of absolute forfeiture provision, and thus donor had standing to enforce agreement; agreement between parties stated that if money was not used as directed, fund would be transferred to another educational institution, thereby indicating donor's intent to impose enforceable obligation on university to devote the fund to the stated purposes on the stated conditions.

3 Cases that cite this headnote

[9] **Pleading** ➡ Admissions by motion in general

For purpose of a defendant's motion for judgment on the pleadings involving interpretation of an allegedly ambiguous contract, plaintiff is entitled to allege its own construction of the agreement, and those allegations, unless contradicted by actual writing attached to complaint, are deemed true.

1 Cases that cite this headnote

[10] **Evidence** ➡ Public institutions

On appeal from judgment on the pleadings in favor of state university in donor's action to enforce conditions on its contribution to establish endowed chair at university's medical school, the Court of Appeal would not take judicial notice of printouts from Web sites maintained by university and medical schools, since information was subject to interpretation. West's Ann.Cal.Evid.Code §§ 451, 452.

3 Cases that cite this headnote

[11] **Charities** ➡ Persons entitled to enforce charitable trust

Although Attorney General had primary responsibility for enforcement of charitable trusts, that power was not exclusive, and donor had standing to sue university for alleged failure to comply with conditions donor imposed on donation to establish endowed chair at university's medical school. West's Ann.Cal.Gov.Code §§ 12591, 12598; Restatement (Second) of Trusts § 391.

See 11 Witkin, Summary of Cal. Law (9th ed. 1990) Trusts, § 291 et seq.; Cal. Jur. 3d, Charities, § 48; Cal. Civil Practice (Thomson/West 2003) Probate & Trust Proceedings, § 24:5 et seq.

3 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

VOGEL, J.

***175** A donor contributed \$1 million to establish an endowed chair at the UCLA School of Medicine, which UCLA accepted along with the conditions imposed by the donor. The primary question on this appeal is whether the agreement created (1) a contract subject to a condition subsequent or (2) a charitable trust, the answer to which supposedly determines whether the donor has standing to sue UCLA and the Regents of the University of California to enforce the terms of the gift. We find there is a contract subject to a condition subsequent, not a charitable trust, and also find that, in either event, the donor has standing to pursue this action. Because the trial court reached a contrary result, we reverse.

FACTS

A.

In July 2000, the L.B. Research and Education Foundation (a non-profit public benefit corporation) gave the UCLA Foundation (a fully qualified public charity) a contribution of \$1 million to establish an endowed chair, the Julien I.E. Hoffman, M.D., Chair in Cardiothoracic Surgery. By the terms of the parties' agreement (which was signed by both L.B. Research and the UCLA Foundation), the fund thereby created must be used by Chair holders who meet specified criteria to "support basic science research activities that may have the potential for clinical applications."¹ Annual financial accounts must be provided to L.B. Research, along with a brief report of the work accomplished, both "in perpetuity." In this regard, the writing provides:

"It is [L.B. Research's] wish that the Hoffman Chair exist in perpetuity. [L.B. Research] understands, however, that unforeseen circumstances may alter the academic plan of the University or remove the subject area from the campus

academic plan. In such circumstances, *if the Cardiothoracic Surgery program shall cease to exist at UCLA, or in the event that UCLA does not meet the terms and conditions of this agreement*, any and all funds shall be ***176** transferred to support an endowed chair in Cardiothoracic Surgery, on the same terms and conditions as herein set forth, in the Division of Cardiothoracic Surgery in the Department of Surgery at the University of California, San Francisco, School of Medicine. In the event that the Cardiothoracic Surgery program shall cease to exist in the Department of Surgery at the University of California, San Francisco, School of Medicine, any and all funds shall be transferred by the President of the University of California to ****713** another University within the University of California system to support an endowed chair in Cardiothoracic Surgery on the same terms and conditions as herein set forth. In the event that the Cardiothoracic surgery program shall cease to exist within the University of California system, the President of the University of California is authorized to redesignate the purpose of the Chair Fund, taking into consideration [L.B. Research's] expressed wishes regarding the designated purpose described in this document." (Emphasis added.)

The Chair was funded as promised.

B.

In October 2003, L.B. Research sued the UCLA Foundation and the Regents of the University of California for specific performance of the agreement, declaratory relief, and breach of contract, alleging that the UCLA Foundation and the Regents had failed to employ personnel meeting the criteria of the Chair; failed to account to L.B. Research; offered the Chair to non-qualified individuals and, over the objection of L.B. Research and the Attorney General of the State of California, elected an unqualified person to the Chair; withdrawn unearned fees from the Chair's fund; and refused to deliver the Chair's fund to the Department of Surgery at the University of California, San Francisco, School of Medicine.

In its first amended complaint, L.B. Research alleges that it (through its own personnel and through the Attorney General's office) brought these alleged violations to the attention of the appropriate people at UCLA and demanded performance in accordance with the terms of the gift, but that no response was forthcoming. The parties' agreement is an exhibit to the complaint.

The UCLA Foundation and the Regents answered, alleging among other things that L.B. Research had created a charitable trust which only the Attorney General had standing to enforce, then moved for judgment on the pleadings on the ground that L.B. Research lacked standing to prosecute this action. Over L.B. Research's opposition, the motion was granted, and this appeal is from the judgment thereafter entered.

*177 DISCUSSION

L.B. Research contends it has standing to bring this action, and that the motion for judgment on the pleadings should have been denied. We agree.

A.

[1] [2] "A charitable trust is defined as: '... 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; see also Gov.Code, § 12581.) To create a charitable trust, there must be a proper manifestation by the settlor of an intention to create a trust, a trust res, and a charitable purpose. (*City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 620, 82 Cal.Rptr.2d 859.)

[3] But a gift may have a charitable purpose and yet not constitute a charitable trust. Thus, the owner of property may, rather than create a trust, "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. [Citation.] 'In such a case **714 the interest of the transferee is subject to a condition subsequent and is not held in trust.' (Rest.2d Trusts, *supra*, § 11, com. a, p. 32)." (*City of Palm Springs v. Living Desert Reserve*, *supra*, 70 Cal.App.4th at p. 621, 82 Cal.Rptr.2d 859, fn. omitted; *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 125, 3 Cal.Rptr.2d 275.)

[4] The gifts at issue in the *Red Bluff* and *Palm Springs* cases (a public library and a desert wildlife preserve) were of land, not money, but were (as here) for charitable purposes and are otherwise indistinguishable from our case. As the court explained in *City of Palm Springs v. Living Desert Reserve*,

supra, 70 Cal.App.4th at pages 621–622, 82 Cal.Rptr.2d 859, 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. [Citation.] 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. [Citation.]

[5] [6] "'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.' *178 [Citation.] Trusts can be created by words of condition. [Citation.] 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. [Citation.] 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. [Citation.]

[7] "Courts favor the construction of a gift as a trust over a conditional gift for several reasons. Because forfeiture is a harsh remedy [citation], any ambiguity is resolved against it [citation]. 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. [Citation.] (*City of Palm Springs v. Living Desert Reserve*, *supra*, 70 Cal.App.4th at pp. 621–622, 82 Cal.Rptr.2d 859.)

"However, if the donor clearly manifests an intention to make a conditional gift, that intention will be honored. [Citation.] 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

transferer or his heir or a third person may enter for breach of the condition.' [Citations.]"

B.

[8] Accordingly, the first question before us is whether L.B. Research made a gift of \$1 million subject to conditions subsequent, or whether instead it created a charitable trust. If it was a conditional gift, L.B. Research has standing to pursue this action. ****715** (*City of Palm Springs v. Living Desert Reserve*, *supra*, 70 Cal.App.4th at p. 623, 82 Cal.Rptr.2d 859 [when the agreement is a contract subject to a condition subsequent and does not create a charitable trust, the Attorney General is not a necessary party to the action].) If a charitable trust was created, the question about standing must be separately considered. (See Part C, *post*.)

1.

[9] Because the threshold issue turns on our interpretation of an allegedly ambiguous contract, L.B. Research was entitled to allege its own construction of the agreement ***179** (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239, 282 Cal.Rptr. 233), and those allegations, unless contradicted by the actual writing attached to the complaint (which they are not), are deemed true for purposes of UCLA's motion for judgment on the pleadings (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515–516, 101 Cal.Rptr.2d 470, 12 P.3d 720; *Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394, 400, 113 Cal.Rptr. 585, 521 P.2d 841; *Marina Tenants Assn. v. Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 128, 226 Cal.Rptr. 321).

We emphasize that our decision about whether this contract is in fact ambiguous might, given an appeal at a different stage in this case, be enhanced by the consideration of extrinsic evidence (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865–866, 44 Cal.Rptr. 767, 402 P.2d 839; *Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 39–40, 69 Cal.Rptr. 561, 442 P.2d 641), which might in the end bring us to a different conclusion about whether a charitable trust was created. As it is, UCLA and the Regents are bound by the rules governing our review of the motion they made, and the ambiguities must be construed in favor of L.B. Research, not in favor of the interpretation urged by UCLA and the Regents.

2.

L.B. Research alleges that the instrument is a contract and that it is ambiguous—because it “gives” a contribution of \$1 million to UCLA (which arguably sounds like an outright gift) but also includes language of the sort used to create a condition subsequent (“if” the money is not used as directed, the fund is to be transferred to another institution), and obligates UCLA to account and report annually to L.B. Research (which supports an inference that a failure to comply with the conditions would result in a forfeiture). The essential terms of the agreement are spelled out in the writing, which is dated and signed by both L.B. Research and the UCLA Foundation. The writing, as construed by L.B. Research, thus shows an intent “to provide that if the [fund] were not used for the designated ... purposes it should revert ... to ... a contingent donee, [and that L.B. Research] intended to impose an enforceable obligation on [the UCLA Foundation] to devote [the fund] to [the stated] purposes [on the stated conditions].” (*City of Palm Springs v. Living Desert Reserve*, *supra*, 70 Cal.App.4th at p. 622, 82 Cal.Rptr.2d 859.)

[10] To avoid this result, UCLA and the Regents contend that, because the agreement does not have an absolute forfeiture provision, it must be construed to create a charitable trust. We disagree. Although it is true that UCLA's failure to abide by the conditions imposed by the agreement would not accomplish a forfeiture vis-à-vis the entire University of California system, it would nonetheless be a forfeiture for the medical school at UCLA, ***180** which was plainly viewed by L.B. Research ****716** as a specific donee. ² (Prob.Code, § 15201 [a trust is created only if the settlor properly manifests an intention to create a trust]; *Estate of Ralston* (1934) 1 Cal.2d 724, 726, 37 P.2d 76.) Because UCLA's loss will be UC San Francisco's gain, the nature of this forfeiture supports rather than defeats L.B. Research's position and does not require adoption of a view antagonistic to the donor's charitable intent.

We conclude, therefore, that the agreement is a conditional contract, and that L.B. Research has standing to pursue its claims against UCLA and the Regents. (*Rosecrans v. Pacific Elec. Ry. Co.* (1943) 21 Cal.2d 602, 606, 134 P.2d 245 [in order to ascertain the intent of the parties, the interpretation of a condition subsequent must be based on the writing as a whole].)

C.

[11] Had we concluded otherwise (and found within the constraints of this appeal from a judgment on the pleadings that L.B. Research's gift created a charitable trust), we would have reversed on the ground that the Attorney General's power to enforce charitable trusts does not in this type of case deprive the donor of standing to enforce the terms of the trust it created. (Gov.Code, §§ 12591, 12598; *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, 752–757, 40 Cal.Rptr. 244, 394 P.2d 932 [minority directors of charitable corporations have an interest in ensuring that contributions are used for the purpose they were received in trust, and thus have standing to sue the majority directors].)

As our Supreme Court observed in *Holt*, 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. This position is adopted by the American Law Institute (Rest.2d Trusts, § 391) and is supported by many legal scholars. [Citations.] [¶] 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 *181 interest in the trust property.’ [Citations.]” (*Holt v. College of Osteopathic Physicians & Surgeons*, *supra*, 61 Cal.2d at p. 753, 40 Cal.Rptr. 244, 394 P.2d 932, emphasis added, fn. omitted.)

The statutes giving the Attorney General the power to bring an action for the enforcement of a charitable trust “were enacted in recognition of the problem of providing adequate supervision and enforcement of charitable trusts. 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. [Citations.] 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. [Citation.]

**717 “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. [Citations.] Moreover, part of the problem of enforcement is to bring to light conduct detrimental to a charitable trust so that remedial action may be 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. [Citations.] [¶] ...

“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.’ [Citation.] *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.* The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available.” (*Holt v. College of Osteopathic Physicians & Surgeons*, *supra*, 61 Cal.2d at pp. 754–756, 40 Cal.Rptr. 244, 394 P.2d 932, italics added, fns. omitted; and see *San Diego etc. Boy Scouts of America v. City of Escondido* (1971) 14 Cal.App.3d 189, 195, 92 Cal.Rptr. 186 [“But the right of the Attorney General to sue to enforce a charitable trust is not exclusive: other responsible individuals may be permitted to sue on behalf of the charity”].)

*182 Under either scenario—conditional contract or charitable trust—the motion for judgment on the pleadings should have been denied.

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court with directions to vacate its order granting the motion for judgment on the pleadings, enter a new order denying the motion, and place the case back on track for trial. L.B. Research Foundation is entitled to its costs of appeal.

We concur: SPENCER, P.J., and ROTHSCCHILD, J.

All Citations

130 Cal.App.4th 171, 29 Cal.Rptr.3d 710, 198 Ed. Law Rep.
662, 05 Cal. Daily Op. Serv. 5111, 2005 Daily Journal D.A.R.
7011

Footnotes

- 1 The Chair holder (referred to in the writing as the "incumbent") must "be a full and tenured professor with an established research interest. In addition, he or she will be a trained cardiac surgeon; will have received basic research training; will be actively involved in cardiovascular research; will have established a proven record of high-quality research as demonstrated by publication in peer-reviewed journals and funding awarded from outside sources; should be eligible for membership in the Cardiovascular Research Institute or Center or an organization of similar distinction. [¶] The incumbent may have clinical responsibilities but is dedicated to research aspects. [¶] The incumbent will have an established track record of mentoring cardiac surgeons to conduct basic research. [¶] The incumbent shall not hold an administrative position in the Department of Surgery or its Divisions—for example, Chair, Vice-Chair, Division Chief, Section Chief, and so on."
- 2 On this point, both parties have submitted requests for judicial notice comprised of printouts from various websites maintained by UCLA and the University of California. However tantalizing this public information might be, it is plainly subject to interpretation and for that reason not subject to judicial notice or to our consideration in reviewing the trial court's order granting a motion for judgment on the pleadings. (*Evid.Code*, §§ 451, 452; *Comings v. State Bd. of Education* (1972) 23 Cal.App.3d 94, 102, 100 Cal.Rptr. 73 [improper to judicially notice fact subject to reasonable dispute]; cf. *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 162, 86 Cal.Rptr.2d 645.)



KeyCite Yellow Flag - Negative Treatment

Distinguished by *Lucker v. Bayside Cemetery*, N.Y.A.D. 1 Dept., December 31, 2013

281 A.D.2d 127

Supreme Court, Appellate Division,
First Department, New York.

Adele SMITHERS, etc., Plaintiff–Appellant,
v.

ST. LUKE'S–ROOSEVELT HOSPITAL
CENTER, et al., Defendants–Respondents.

April 5, 2001.

Synopsis

Wife of deceased donor of charitable gift, made to hospital for purpose of establishing alcohol treatment center, sued hospital and state attorney general, seeking to enforce terms of gift. The Supreme Court, New York County, Beatrice Shainswit, J., denied wife's motion for preliminary injunction barring sale of building in which center was located, and granted motion to dismiss for lack of standing. Appeal was taken. The Supreme Court, Appellate Division, Ellerin, J., held that: (1) wife had standing to pursue action, and (2) preliminary injunction would be granted staying disbursement of proceeds of sale of building.

Affirmed as modified.

Friedman, J., dissented and filed opinion.

West Headnotes (1)

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

Wife of deceased donor of charitable gift of funds to hospital made for purpose of creating alcoholism treatment center, who was appointed administratrix for purposes of pursuing claim in question, had standing to sue hospital for enforcement of gift terms, despite claim that Attorney General had exclusive right to sue, as representative of beneficiaries. McKinney's EPTL 8–1.1(f), 11–1.1(b)(13).

12 Cases that cite this headnote

Attorneys and Law Firms

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Edward S. Kornreich, of counsel (Charles S. Sims, Leonard A. Feiwus and Herschel Goldfield, on the brief, Proskauer Rose LLP, attorneys) for defendants-respondents St. Luke's–Roosevelt Hospital Center and Continuum Health Partners, Inc. (formerly Greater Metropolitan Health Systems, Inc.).

William Josephson, of counsel (Peter H. Schiff, Dietrich Snell and Paula Gellman, on the brief, Eliot Spitzer, Attorney General of the State of New York, attorney) for defendant-respondent Dennis C. Vacco.

****427** ANGELA M. MAZZARELLI, J.P., BETTY WEINBERG ELLERIN, ALFRED D. LERNER, and DAVID FRIEDMAN, JJ.

Opinion

ELLERIN, J.

The issue before us is whether the estate of the donor of a charitable gift has standing to sue the donee to enforce the terms of the gift. We conclude that in the circumstances here present plaintiff estate does have the necessary standing.

A recitation of the factual allegations in the complaint, which must be deemed true on this application to dismiss (*see, e.g., Cron v. Hargro Fabrics*, 91 N.Y.2d 362, 670 N.Y.S.2d 973, 694 N.E.2d 56), is instructive. Plaintiff Adele Smithers is the widow of R. Brinkley Smithers, a recovered alcoholic who devoted the last 40 years of his life to the treatment and understanding of the disease of alcoholism. In 1971 Smithers announced his intention to make a gift to defendant St. Luke's–Roosevelt Hospital Center (the “Hospital”) of \$10 million over time for the establishment of an alcoholism treatment center (the “Gift”). In his June 16, 1971 letter to the Hospital creating the Gift, Smithers stated, “Money from the \$10 million grant will be supplied as needed. It is understood, however, that the detailed project plans and staff appointments must have my approval.”

According to the complaint, the Hospital agreed to use the Gift to expand its treatment of alcoholism to include, following five days of detoxification in the hospital, "rehabilitation in a free-standing, controlled, uplifting and non-hospital environment," that is, a "therapeutic community" removed from the hospital setting. With \$1 million from the first installment of the Gift, the Hospital purchased a building at 56 East 93rd Street in Manhattan to house the rehabilitation program, and in 1973 the Smithers Alcoholism Treatment and Training Center opened there.

***129** Smithers thereafter remained involved in the management and affairs of the Smithers Center. At times, according to the complaint, the Hospital sought to avoid its obligations under the terms of the Gift, and its relationship with Smithers was an uneasy one. On July 31, 1978, Smithers wrote that the Hospital had "not lived up to my letter of intent," and that "[u]nder the circumstances no funds or stock will be forthcoming from me." Only slightly more than half of the Gift had been made at that time.

In 1981 the president of the Hospital, Gary Gambuti, commenced discussions with Smithers in an effort to induce him to complete the Gift. In a November 5, 1981, letter, Smithers informed Gambuti that he had no objection to the sale of the building. Smithers noted in the letter that when the Smithers rehabilitation facility was set up there was practically no place in the New York area for an alcoholic to undergo rehabilitation after detoxification, but now there are a number of facilities, most of which "have the advantage of being at least a few miles out of town—so there is more chance of outdoor recreation." According to Mrs. Smithers, her husband had no intention of completing the Gift, but agreed to the sale of the building to keep the Smithers Center afloat. In any event, Gambuti, in response, assured Smithers of the Hospital's continuing interest in the Smithers Alcoholism Program and its commitment to expanding its entire alcoholism treatment program. He wrote that he saw no reason to sell the building until a plan for this program had been proposed, and that he would appreciate receiving Smithers's comments and suggestions before the ****428** plan was finalized. He expressed his hope that Smithers would be willing "to sit down with us and review our proposals for the future expansion in alcoholism." Contrary to the dissent's categorical conclusion that this appeal concerns merely the sale of the building, expressly agreed to by Smithers, that consent was given before the Gift's completion and must be viewed in the context of what follows.

Over the next two years, Gambuti repeatedly assured Smithers that the Hospital would strictly adhere to the terms of the Gift and carry out Smithers's intent in making it. Only when Smithers was completely satisfied of the Hospital's intentions did he agree to complete the Gift, which he accomplished in an October 24, 1983 letter, stating:

Thanks to the cooperation of the officers and staff of the Smithers Center and St. Luke's Roosevelt ***130** Hospital Center (the "Hospital"), the Smithers Center is now in splendid shape, and I feel that the time has come for me to complete the funding of the project. *(In this letter I will refer to all aspects of the existing alcoholism program, including in-patient, out-patient and rehabilitation services, and any future extension thereof, collectively as the "Smithers Center").* (Emphasis added.)

...

This final contribution is subject to the following restrictions and is to be used exclusively for the following purposes.

First, it is my intention that my final contribution be set aside as an endowment fund, (the "Smithers Endowment Fund"). The income is to be used exclusively for the support of the Smithers Center, to the extent necessary for current operations, and any unused income remaining at the end of each calendar year is to be accumulated and added to principal. Principal of the Smithers Endowment Fund is not to be expended for any purpose except for remodeling or rebuilding the administration section and out-patient floor at the Building on 58th Street, and for construction, repairs or improvements with respect to any other building space at any time used directly in connection with the Smithers Center. Such capital expenditures should be considered as secondary to the endowment function and should in no event exceed in the aggregate one half of the initial value of the Smithers Endowment Fund.

Beneath Smithers's signature is the following paragraph signed and dated by Gambuti:

The contribution of the number of shares of IBM Stock referred to above by R. Brinkley Smithers is gratefully accepted, *subject to the restrictions set forth in this letter*, in full satisfaction

of any outstanding pledge or other obligation. (Emphasis added.)

The existing rehabilitation services, which Smithers included in his definition of the Smithers Center and which the Hospital's acceptance of the Gift encompassed, were housed in the free-standing Smithers building and, according to the complaint, were intended always to be housed in a free-standing facility.

*131 In late 1992, the Hospital asked Mrs. Smithers to organize a "Silver Anniversary Gala," in honor of her husband and herself, to raise funds for restoration of the building and for a scholarship program for Smithers Center patients in need of financial assistance. From 1992 to March 1995, she and, until his death in January 1994, Smithers successfully solicited millions of dollars' worth of donated goods and services for a total restoration of the building and organized the fundraiser, scheduled for April 1995. Then, in March 1995, just **429 over a year after Smithers's death, the Hospital announced that it planned to move the Smithers Center into a hospital ward and sell the East 93rd Street building. The Hospital directed Mrs. Smithers, a month and a half before the fundraiser was scheduled to be held, to cancel the event.

The Hospital's announced intentions aroused Mrs. Smithers's suspicions. First, relocating the patients in a hospital ward would violate the Hospital's obligation to run the Smithers Center in a free-standing facility physically separate from the Hospital. Second, the Hospital's claim that it had to sell the building to become more competitive was inconsistent with its assurances to her husband and her through the years that the Smithers Center was operating at a profit. Mrs. Smithers notified the Hospital of her objections to the proposed relocation of the program and demanded an accounting of the Smithers Center's finances.

The Hospital at first resisted disclosing its financial records, but Mrs. Smithers persisted, and in May 1995 the Hospital disclosed that it had been misappropriating monies from the Endowment Fund since before Smithers's death, transferring such monies to its general fund where they were used for purposes unrelated to the Smithers Center. Mrs. Smithers notified the Attorney General, who investigated the Hospital's plan to sell the building and discovered that the Hospital had transferred restricted assets from the Smithers Endowment Fund to its general fund in what it called "loans." The

Attorney General demanded the return of these assets and in August 1995 the Hospital returned nearly \$5 million to the Smithers Endowment Fund, although it did not restore the income lost on those funds during the intervening years.

In the next three years, Mrs. Smithers tried to negotiate a resolution with the Hospital. The Attorney General participated in the negotiations, seeking, according to an affidavit in support of his motion to dismiss the complaint, "to effectuate a settlement that would resolve the plaintiff's concerns and benefit *132 the Smithers Alcoholism Program." When the negotiations proved unsuccessful, the Attorney General, according to the affidavit, "proceeded to conclude his investigation ... and to resolve those issues identified during the course of the investigation." On April 21, 1998, the Attorney General, having received a letter from an attorney writing on behalf of Mrs. Smithers, wrote to counsel for the Hospital advising that he would not object to the sale of the East 93rd Street building "so long as the Hospital can demonstrate [] to our satisfaction," *inter alia*, that the Hospital's plan for the Smithers program and the Smithers Center would continue "in accordance with the donor's gift," that the Hospital would disclose to the Attorney General any changes to the Smithers program budget resulting from "the proposed relocation of the inpatient rehabilitation unit from the East 93rd Street building to the Hospital," and that safeguards had been put into place to prevent future commingling of restricted funds. The letter stated that the Attorney General would require an assurance that no such commingling of funds would occur in the future.

In July 1998, the Attorney General entered into an Assurance of Discontinuance Pursuant to Executive Law § 63(15) with the Hospital. Under the terms of this assurance the Hospital agreed to make no more transfers or loans from Gift funds for any purpose other than the benefit of the Smithers Center and to return to the Gift fund \$1 million from the proceeds of any sale of the building. The Attorney General did not require the Hospital to return **430 the entire proceeds of such a sale, because he found that, contrary to Mrs. Smithers's contention, the terms of the Gift did not preclude the Hospital from selling the building.

Two months later, Mrs. Smithers commenced this suit to enforce the conditions of the Gift and to obtain an accounting by the Hospital of its handling of the Endowment Fund and property dedicated to the Smithers Center. The Hospital and the Attorney General were named, *inter alia*, as defendants. Mrs. Smithers had obtained Special Letters of Administration

from the Nassau County Surrogate's Court appointing her the Special Administratrix of Smithers's estate for the purpose of pursuing claims by the estate against the Hospital in connection with its administration of the Smithers Center. The named executor of Smithers's estate had consented to the issuance of the Special Letters of Administration. The Attorney General had appeared before the Surrogate on behalf of ultimate charitable beneficiaries. The Surrogate issued the letters "upon the *133 understanding that the Court takes no position with regard to the advisability of any contemplated litigation ..."

Mrs. Smithers sought an injunction to permanently enjoin the Hospital from selling the building and relocating the Smithers Center without court approval, for specific performance by the Hospital of the terms of the Gift, e.g., perpetual maintenance of a free-standing rehabilitation unit and return to the Gift funds of all proceeds of any sale or rental of the building, for return of all income lost on the funds misappropriated by the Hospital from the Gift funds, for imposition of a constructive trust, for an accounting, and for a judicial declaration concerning the terms and conditions under which the Gift fund is to be administered. She then moved for a preliminary injunction against the sale of the building by the Hospital. The Hospital moved to strike a notice of pendency that Mrs. Smithers had filed against the building and moved to dismiss the complaint for lack of standing. The Attorney General also moved to dismiss for lack of standing and for failure to state a cause of action. Supreme Court denied the motion for a preliminary injunction, granted the motions to dismiss, and canceled the notice of pendency on the building. Mrs. Smithers then moved this Court for a preliminary injunction pending appeal to prevent the sale of the building or, alternatively, to enjoin disbursement of the proceeds in the event of a sale. We granted the motion to enjoin disbursement of the sale proceeds and directed that the proceeds be placed in escrow pending our further order.

On appeal, the Attorney General's office, having reevaluated the matter "under the direction of the newly elected Attorney General," reversed its position and urged this Court to remand for a hearing on the merits to determine whether or not the building was subject to gift restrictions. If it were, then all proceeds of the sale would be subject to the same restrictions and could not be used for the Hospital's general purposes. The Attorney General was constrained to point out that, in that case, the Assurance of Discontinuance could not authorize the sale of the building and the application of only \$1 million

of the sale proceeds to the Smithers Center in the absence of the donor's release of the restrictions or a court order authorizing the release of the restrictions. He explained that he had supported Mrs. Smithers's motion before this Court for a preliminary injunction against the sale of the building because he agreed that a hearing was required to determine whether such restrictions existed. However, the Attorney General urged that *134 the issue of Mrs. Smithers's standing to bring the suit need not, and should not, be reached in this **431 action, since he certainly had standing and had joined with her in seeking reversal and remand.

We note that, not only did the Hospital (and the Attorney General) fail to seek court approval of the Assurance of Discontinuance, which was required by § 522 of the Not-For-Profit Corporation Law because the Assurance contemplated the sale of the building, the diversion of all the appreciation realized upon the sale, and the relocation of the rehabilitation unit out of a free-standing, non-hospital environment and into a hospital ward, all of which may have been contrary to the terms of the Gift (see, *Alco Gravure v. Knapp*, 64 N.Y.2d 458, 490 N.Y.S.2d 116, 479 N.E.2d 752), but also, just before signing the Assurance of Discontinuance, the Hospital had closed the in-hospital detox unit without even informing the Attorney General. The Attorney General learned of the closing a few months later from Mrs. Smithers's papers on her motion for a preliminary injunction. In his reply memorandum of law in support of the motion to dismiss, the Attorney General argued that he had not abdicated his duty by failing to prevent the closing, but had "reasonably relied on a specific representation" made by the executive vice president of the Hospital's corporate parent that the Smithers Alcoholism Center would remain at the Hospital, and that the Hospital had not advised the Attorney General of its actions "in breach of that representation." It may be observed that it was only Mrs. Smithers's vigilance that brought this to light, since apparently the Attorney General had no procedure in place by which to insure compliance by the donee. Appropriate oversight undoubtedly would have been provided had the requisite court approval been sought as statutorily required.

While this appeal was pending, the Attorney General and the Hospital reached another agreement. This agreement raised some issues for the first time, but it brought the position of the Attorney General and the Hospital on other issues into accord with Mrs. Smithers's position. For example, the Hospital agreed to allocate the entire net proceeds of the sale of the building to the restricted purposes of the Gift and to