

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
South Carolina Public Interest Foundation,)
and Joe E. Taylor, Jr., individually, and on)
behalf of all others similarly situated,)
Plaintiffs,)
)
v.)
)
Richland County and Richland County)
Council,)
Defendants.)
_____)

IN THE CIRCUIT COURT
CASE NO: 2020-CP-40-02839

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**



This matter came before the Court pursuant to a Summons and Complaint filed June 19, 2020.¹ On February 16, 2022, a hearing was held via Webex on the parties’ cross Motions for Summary Judgment, where Plaintiffs’ were represented by James G. Carpenter, Esq. and Defendants’ were represented by Andrew F. Lindemann, Esq.² After a review of the written submissions of the parties, the record presented, and the oral arguments of counsel, this Court GRANTS Plaintiffs' Motion for Summary Judgment and DENIES Defendants' Motion for Summary Judgment.

STATEMENT OF THE CASE

This is a taxpayer and public interest case. This is an action brought by the Plaintiffs South Carolina Public Interest Foundation (SCPIF) and Joe E. Taylor, Jr. seeking declaratory and injunctive relief on the allegation that Richland County Council members, and County Council, have failed to follow common law duties and duties under Council Rule 5.21. That rule requires

¹ Defendants filed an Answer on July 20, 2020. Subsequently, Plaintiffs’ filed an Amended Summons and Complaint on July 29, 2020, and Defendants’ filed an Answer to Amended Complaint on August 11, 2020.

² Defendants filed a Notice of Motion and Motion for Summary Judgment on August 30, 2021, and Plaintiffs filed a Motion for Summary Judgment and Memorandum of Law on August 31, 2021. The parties also filed a joint Stipulation of Facts on August 31, 2021.

Council members to vote on each issue presented to them, and if they fail to vote, to state their reasons for failure to vote, and to have Council record the reasons for abstention in the minutes.

Plaintiffs allege three separate kinds of violations: (1) that Council members fail to vote on an issue presented to Council without stating a reason for their failure or abstention, (2) that County Council as a whole, or the Chair, has failed in their duty to include the reason for the failure to vote in County Council minutes, and (3) that the Council clerk has failed in their responsibility to record a non-voting member's vote with the prevailing side when a Council member does not vote and does not abstain and state a reason which is recorded. These duties arise from the common law and from Council Rule 5.21.

STATEMENT OF THE FACTS

The County Council voting system has three options on a touchscreen at each Council member's desk: yes, no, and abstain. When a vote is called, each Council member has a duty to select one of the options, and if they abstain or fail to vote, to state on the record the reasons for the failure to vote and have the reasons recorded in the Council minutes.

From February through May, 2020, members of County Council repeatedly failed to vote on matters presented to them, and failed to give a reason for their non-vote or their abstention. The County Council Minutes attached to the Stipulation of Facts demonstrate that from February 11, 2020, to May 19, 2020, Council members failed to vote without giving a reason for the failure on 207 occasions. Some members were more frequent violators than others, but of the 11 Council members, 9 failed to vote and failed to give a reason for the non-vote on one or more occasions.³

Richland County Council has failed to follow the common law and enforce its own rules on members' voting and abstentions. Council has failed to require a non-voting member to state

³ The two members who most frequently failed to vote or failed to place a reason for abstentions on the record, Jim Manning and Gwen Kennedy, are no longer on County Council.

a reason for the failure to vote and has failed to record the non-votes and the reasons for non-voting.

The Court finds there is no genuine issue of material fact and that the disputes pertain to legal questions, including affirmative defenses raised by the Defendants.

LEGAL DISCUSSION

I. THE ISSUE OF WHETHER RICHLAND COUNTY COUNCIL AND ITS MEMBERS ARE FOLLOWING THEIR OWN RULES, INCLUDING ONES DESIGNED TO ELIMINATE PERSONAL OR PECUNIARY GAINS AND AVOID THE APPEARANCE OF IMPROPRIETY, IS APPROPRIATE FOR THE GRANTING OF PUBLIC IMPORTANCE STANDING.

First, the Court must decide whether Plaintiffs have standing to bring this action. It is well settled that “[s]tanding to sue is a fundamental requirement in instituting an action.” *Bodman v. State of South Carolina*, 403 S.C. 60, 742 S.E.2d 363, 366 (2013). Under South Carolina law, “[s]tanding 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, 669 S.E.2d 337, 339 (2008). In this case, where there is no basis for statutory standing, Plaintiffs must establish a right to sue through constitutional standing or by the “public importance” exception to the general standing requirements.

In *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, the Supreme Court explained that constitutional standing requires the satisfaction of three elements:

First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291–92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.*

407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). Constitutional standing requires as one of its “core requirements” that the party suffered a “concrete and particularized injury.” *Bodman v. State of South Carolina*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013) (internal quotation marks omitted). However, where the harm is one shared by all taxpayers, the requisite showing of standing has not been made. *Id.* As the Supreme Court explained in *ATC*, the injury claimed by the taxpayer was common to all property owners in Charleston County, and “[t]his feature of commonality defeats the constitutional requirement of a concrete and particularized injury.” *ATC*, 669 S.E.2d at 341. The Supreme Court noted that “a taxpayer lacks standing when he ‘suffers in some indefinite way in common with people generally.’” *Id.* (quoting *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923)).

In the present case, Plaintiff Joe E. Taylor, Jr., who is a citizen and taxpayer of Richland County, has not pled nor shown any “concrete and particularized” injury that he will suffer separate from that allegedly common to all taxpayers. For this reason, the Court finds that Plaintiff Taylor’s status as a taxpayer is insufficient to confer constitutional standing for the claims alleged. Additionally, Plaintiff SCPIF has not demonstrated that it may claim constitutional standing.

The “public importance” exception allows a grant of standing “when an issue is of such public importance as to require its resolution for future guidance.” *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). The Supreme Court has noted that the rule requiring standing “is not an inflexible one” and that the application of the public importance exception “resists a formulaic approach.” *Thompson v. S.C. Comm’n on Alcohol & Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976) (per curiam); *ATC*, 669 S.E.2d at 341. The Supreme Court instructed in *Sloan v. Sanford* that courts should seek:

An appropriate balance between the competing policy concerns underlying the issue of standing ... Citizens must be afforded access

to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

In the present case, Plaintiffs have not simply alleged that Richland County Council have failed to properly follow their own rules but specifically rules designed to address, in some part, “direct personal or pecuniary interest[s] ... [and the] appearance of impropriety.” Richland County Council Rules, 5.21. Plaintiffs allege that Council members violated their common law duties by failing to vote or abstaining from a vote without stating a reason on the record, allowing potential conflicts to go unaddressed and creating a situation where Council members with conflicts on a matter can choose not to vote and still have their vote counted with the prevailing side. The Courts of this State have granted public importance standing many times to address issues of whether public bodies are operating within the bounds of the law in making decisions that affect their constituencies. *See South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (composition of infrastructure bank board); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008) (violation of procurement statute); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007) (violation of statute regarding appointment of commissioners); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006) (violation of referendum on sewer funding); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (violation of procurement laws); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (Governor having a commission from another power); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (violation of procurement ordinance); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App.

2000) (violation of procurement policy); *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999) (issuance of tax exempt bonds).

Here, the matter of whether a public body responsible for the resolution of matters that affect an entire county is following its own rules and violating the common law, especially when those rules are meant, in some part, to prevent personal gain, is a question “at least as important as the proper funding for a clinical hospital for MUSC.” *Sanford*, 593 S.E.2d at 472. The Court finds that Plaintiffs have demonstrated they are entitled to standing via the “public importance” exception to the general standing requirements.

II. PLAINTIFFS’ AMENDED COMPLAINT DOES NOT PRESENT A NON-JUSTICIABLE POLITICAL QUESTION AS THE ISSUE CAN BE JUDICIALLY DETERMINED, THE VIOLATION COMPLAINED OF IS OF A COMMON LAW DUTY, AND RESOLUTION OF THE ISSUE DOES NOT REQUIRE THIS COURT TO SUBSTITUTE ITS OWN INTERPRETATION OF LEGISLATIVE ACTS.

Defendants contend that the Plaintiffs’ Amended Complaint raises a non-justiciable issue—a political question—over which the courts lack any authority or jurisdiction to render judgment or grant relief. This Court disagrees. As the Supreme Court has recognized, “[t]he non-justiciability of a political question is primarily a function of the separation of powers.” *Alexander v. Houston*, 403 S.C. 615, 744 S.E.2d 517, 519 (2013). “The fundamental characteristic of a nonjusticiable ‘political question’ is that its adjudication would place a court in conflict with a coequal branch of government.” *Id.* “In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court’s inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded.” *Segars-Andrews v. Jud. Merit Selection Comm’n*, 387 S.C. 109, 122, 691 S.E.2d 453, 460 (2010) (quoting *Baker v. Carr*, 369 U.S. 186, 198 (1962)).

Defendants argue that Article VIII, §§ 7 and 17 of the South Carolina Constitution and S.C. Code Ann. §§ 4-9-25 and 4-9-110 prevent this Court from ordering a legislative body to “enforce” its own rules based on the Court's interpretation of those rules. Defendants argue such judicial action will violate the separation of powers doctrine. *See*, S.C. Const., art. I, § 8. Plaintiffs are not “contest[ing] the broad powers granted to counties by the legislature” nor are they seeking to force their own interpretation of Council Rule 5.21. *Alexander v. Houston*, 403 S.C. 615, 619, 744 S.E.2d 517, 520 (2013). Rather, Plaintiffs want County Council to enforce its own rules as written. The Stipulation of Facts submitted by both parties makes it clear that on many occasions, Council members either failed to vote or voted an abstention without placing a reason on the record. *See generally* Stipulation of Facts. The text of Council Rule 5.21 instructs that “[e]ach member shall vote on each question put . . .,” and the facts demonstrate that several members did not do so. *See* Richland County Council Rules, 5.21. Further, Council Rule 5.21 instructs that “[i]f voting an abstention, a reason for the abstention must be stated and recorded in the minutes,” and Council members frequently either did not offer a reason or the Clerk did not record one in the Minutes. *Id.*

Additionally, Defendants contend that it is well settled that the failure of a legislative body to follow its parliamentary rules is not subject to judicial review. As stated in *American*

Jurisprudence:

The courts generally do not concern themselves with violations of parliamentary rules in deliberative proceedings, whether such rules are codified in the form of a manual and formally adopted or whether they consist of a body of unwritten customs or usages, preserved in memory and by tradition. Since parliamentary rules are merely procedural and not substantive, the courts have no concern with their observance. Hence, they may be waived or disregarded by the legislative body.

59 Am. Jur. 2d *Parliamentary Law*, § 5. (Emphasis added).

The South Carolina Supreme Court has applied these very principles. In *McSherry v. Spartanburg County Council*, 371 S.C. 586, 641 S.E.2d 431 (2007), the Supreme Court noted that "in reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives." 641 S.E.2d at 433. This Court finds that Defendants characterization is incorrect: this case is concerned not with discretionary, parliamentary functions of County Council but with the substantive common law duty of Council members to vote, as will be discussed in Section III-A of this Order. *See Gaskins v. Jones*, 198 S.C. 508, 18 S.E.2d 454 (1942). In the absence of a conflict, Council Rule 5.21 states "each member *shall* vote on each question put ..." not that each member may, in their discretion, choose to vote depending on the matter before them. *See Richland County Council Rules, 5.21*. This Court is not interpreting County Council's rules but rather looking to the plain-meaning of the text for County Council's own stated intent.

As well, even in the absence of a violation of state statutory law or the South Carolina Constitution, this Court has discussed that Council members violated a common law duty to vote on every matter before them. Thus, this Court agrees with the Defendants that the judiciary should not undertake to compel a legislative body to implement or enforce its own discretionary, parliamentary rules absent a clear violation of constitutional or statutory law. Here, the Court is ordering that Defendants follow their own rules as written and follow their common law duty. Therefore, this Court finds that Plaintiffs allegations do not present a non-justiciable political question and resolution of the case does not violate the doctrine of separation of powers.

III. COUNCIL MEMBERS ARE VIOLATING THE COMMON LAW AND COUNCIL RULE 5.21.⁴

⁴ Plaintiffs argued at the February 16, 2022, hearing that Council members violated statutory duties related to S.C. Code Ann. § 8-13-700(B): this argument appears to be more proper for an argument that Council members

A. Council members are violating their common law duty to vote by choosing not to vote.

County Council members have a common law duty to vote on issues presented to them. South Carolina courts have not squarely addressed the question of whether members of a legislative body have a duty to vote on every matter before them but the Court finds guidance in the 1942 Supreme Court case *Gaskins v. Jones*, 198 S.C. 508, 18 S.E.2d 454 (1942). That case concerned a dispute amongst members of the governing board of Florence County over the filling of a vacancy in the office of county manager. After several deadlocks on votes between two candidates for that office, three members of one voting bloc left the chamber and the three remaining members voted for their chosen candidate. The Supreme Court found that the three remaining members lacked a quorum and in the course of that analysis explicated “well established” common law principles:

But the courts have steadfastly adhered to the rule that when members are present at a meeting, a mere refusal to vote on the part of some of the members cannot defeat the action of the majority of those actually voting. As long as the members are present in the council chamber and have an opportunity to act and vote with the others, it is their duty to act, and they will be regarded as present for the purpose of making a quorum and rendering legal the action of the council.

Gaskins, 18 S.E.2d at 456 (quoting Dillon on Municipal Corporations, 5th Edition, Section 527).

This Court finds the above-quoted language instructive. In the present case, minutes of Council meetings show that on several occasions Council members were present and chose not to vote. *Gaskins* cites favorably the proposition that members of legislative bodies have a “duty to

committed ethics violations. As Plaintiffs conceded in their Proposed Summary Judgment Order that they are not making claims of ethics violations against County Council or its individual members, and Plaintiffs have not plead ethics violations or violations of a statutory duty in their Amended Complaint, the Court does not need to consider or rule on whether this case involves statutory duties.

act” when at meetings. *Id.* Defendants contend that this statement must be construed within the context of quorum and that a duty to vote cannot be read from the opinion. In the quoted passage from Dillon, the first sentence does appear to reference quorum and the fact that non-voting members cannot interfere with the legislative business simply by not voting. The second sentence that is in contention here reads as a clear statement: “As long as the members are present in the council chamber and have an opportunity to act and vote with the others, it is their duty to act ...” *Id.* The two clauses of this second sentence, with the latter referencing quorum, are not dependent on each other. The reading promoted by Defendants would alienate “duty to act” from the sentence in favor of the sentence stating merely that members cannot defeat a vote by refusing to do so. *Id.* This interpretation would ignore the first clause of the sentence that is clearly dependent on “duty to act,” as it begins with “as long as”—a conjunction meaning “provided that.”⁵ Therefore, the rule is properly stated as, “[Provided that] the members are present in the council chamber and have an opportunity to act and vote with the others, it is their duty to act ...” *Id.*

Other courts have held similarly. *See Prosser v. Vill. of Fox Lake*, 91 Ill. 2d 389, 438 N.E.2d 134 (1982) (“If a quorum is present, municipal legislators cannot avoid their voting responsibilities by refusing to vote when present at a meeting.”); *Babyak v. Alten*, 106 Ohio App. 191, 154 N.E.2d 14 (1958) (“A councilman is elected for the purpose of expressing an opinion. Action, and not inaction, is a duty that he assumes with the office.”); *Cromarty v. Leonard*, 13 A.D.2d 275, 216 N.Y.S.2d 619, *aff’d*, 10 N.Y.2d 915, 179 N.E.2d 710 (1961) (quoting *State v. Yates*, 19 Mont. 239, 47 P. 1004 (1897)) (“The courts, as well as law writers and parliamentarians generally, have adopted the more rational rule that if a member of such a body join in making a quorum, and sit, his duty is to vote (unless excused for cause) ...”).

⁵ *As long as*. *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/as%20long%20as>.

Defendants have acknowledged the duty of Council members to vote on each question presented or provide a reason for the abstention. In the March 17, 2020, regular Council meeting, the Council discussed the members' failing to vote on matters presented to them. The Council voted to "request those Council members abstaining provide the reason for abstaining to the Clerk's Office by the close of business this week." Minutes, March 17, 2020, p. 2. This request reflects the Council members' recognition of their duty to vote or to provide a reason for an abstention.

The Court finds that Council members have a common law duty to vote and that Council members have been violating that duty by failing to vote on each matter presented to them.

B. Council members are violating Council Rule 5.21 by failing to place a reason on the record when abstaining from a vote and by failing to vote when present.

Richland County Council Rule 5.21 states, in pertinent part:

Each member shall vote on each question put, except that no member shall be permitted to vote on any question in which that member has a direct personal or pecuniary interest, or in which that member perceives that he or she has a direct personal or pecuniary interest, or in which his or her participation might create an appearance of impropriety in that member's estimation. . . . If a member does not declare a vote or an abstention, his/her vote shall be recorded with the prevailing side. If voting an abstention, a reason for the abstention must be stated and recorded in the minutes.

See Richland County Council Rules, 5.21. (emphasis added).

As demonstrated in the Minutes of County Council in the Stipulation of Facts, 207 times from February through May, 2020, members of the Richland County Council violated Council Rule 5.21 by failing to vote on issues raised and by abstaining without stating a reason.

Furthermore, Council has failed to require a non-voting member to state a reason for an abstention. Council has failed to record the reasons for each abstention in the County Council Minutes, and Council has failed to record non-votes as a vote for the prevailing side.

CONCLUSION

Based on the authorities and analysis set forth above, the Court:

1. Grants Plaintiffs standing subject to the “public importance” exception to the general standing requirements;
2. Issues declaratory judgment that Council members have not declared a vote on each issue raised, Council has failed to require an abstaining party to state a reason for every abstention, Council has failed to record the reasons for each abstention in the County Council Minutes, and when a Council member does not vote and does not state a reason which is recorded, the clerk has failed to record that member as having voted with the prevailing side, in violation of the common law and in violation of Richland County Council Rule 5.21; **AND**
3. Enjoins Richland County Council to follow the common law and County Council Rule 5.21.

Finally, Plaintiffs have requested attorneys’ fees and costs under S.C. Code Ann. § 15-77-300 ff. Plaintiffs may file such a motion within 15 days after the filing of this Order.

IT IS SO ORDERED.

THE HONORABLE DEANDREA GIST BENJAMIN
RESIDENT JUDGE, FIFTH JUDICIAL CIRCUIT

Date: _____
Columbia, South Carolina

******Electronic Signature to Follow******



Richland Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al vs Richland County Council
Case Number: 2020CP4002839
Type: Order/Summary Judgment

So Ordered

s/DeAndrea Gist Benjamin, #2161